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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

ANNE ANDERSON, et al.

vs

CRYOVAC, INC., Division of W. R. Grace & Co.; W. R. GRACE & CO.; JOHN J. RILEY COMPANY, Division of Beatrice Foods Co.; BEATRICE FOODS CO.

Civil Action
No. 82-1672-S

Deposition of JOHN A. WHITNEY, III,
taken on behalf of the Plaintiffs, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Valerie T. Wong, Notary Public within and for the Commonwealth of Massachusetts, at the offices of Schlichtmann, Conway & Crowley, 171 Milk Street, Boston, Massachusetts, commencing at 2:25 o'clock P.M. on Thursday, July 11, 1985.

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Appearances:

Jan Richard Schlichtmann, Esq.
Schlichtmann, Conway & Crowley
171 Milk Street
Boston, Massachusetts
for the Plaintiffs.

Amy Woodward, Esq.
Foley, Hoag & Eliot
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Boston, Massachusetts
for the Defendant W. R. Grace & Co.

Donald R. Frederico, Esq.
Hale & Dorr
60 State Street
Boston, Massachusetts
for the Defendant Beatrice Foods Co.

Frederick J. Connors, Esq.
100 Highland Avenue
Somerville, Massachusetts
for the Deponent.

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I N D E X

<u>Deposition of:</u>	<u>Direct</u>	<u>Cross</u>
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MR. SCHLICHTMANN: We are going to waive the filing of the deposition; hold all objections, except as to form; and allow your client to read the deposition if he wishes, signing under the pains and penalties of perjury.

MR. FREDERICO: And reserving motions to strike.

MR. SCHLICHTMANN: Right.

MR. CONNORS: Fine.

JOHN A. WHITNEY, III,

a witness called by the Plaintiffs, first having been duly sworn, on oath deposes and says as follows:

Direct Examination

Q (By Mr. Schlichtmann) Would you state your name?

A John A. Whitney, III.

Q How old are you?

A 36.

Q Where do you live?

A Boxford, Mass.

Q Boxford?

A Yes.

- 1
- 2 Q Where is your place of business?
- 3 A Woburn, 256 Salem Street.
- 4 Q What is the name of your business?
- 5 A The Whitney Barrel Company, Incorporated.
- 6 Q What is your position with the Whitney Barrel
- 7 Company?
- 8 A Right now?
- 9 Q Yes.
- 10 A What am I now, Fred?
- 11 MR. CONNORS: You're at least a director.
- 12 Q Business manager or --
- 13 MR. CONNORS: He would be the manager,
- 14 too. It is a one-man operation. It is in the
- 15 process of being dissolved.
- 16 Q You manage the business?
- 17 A Yes. I am the only one left. My father passed
- 18 away.
- 19 Q When did your father pass away?
- 20 A Last August 14th.
- 21 Q What was your father's name?
- 22 A John A. Whitney, Jr.
- 23 Q Is it a family business?
- 24 A Yes.
- 25 Q How long have you been involved in the family

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business?

A I would say 1969.

Q That is when you started to work at that location?

A Yes; off and on after school.

Q How old were you when you started to work at the company?

A 20.

Q What were the kind of things you did when you first began to work for the company?

A I drove a truck.

Q What kind of truck was that?

A The make and model?

Q What kind of truck -- What kind of stuff did you do?

A Delivering barrels.

Q You would deliver barrels?

A Right.

Q What kind of barrels would you deliver?

A Steel drums.

Q 55-gallon drums?

A Yes.

Q Who would you be delivering these to?

A Different customers.

Q What would be the area?

- 1
- 2 A A 50-mile radius of Boston.
- 3 Q These would be reconditioned drums?
- 4 A Right.
- 5 Q Drums that the company had received and done some-
- 6 thing to?
- 7 A Right.
- 8 Q Cleaned them out?
- 9 A Right.
- 10 Q And you were selling them to other companies to be
- 11 used for whatever purpose?
- 12 A Yes.
- 13 Q There wasn't any content in these drums?
- 14 A No; they're empty.
- 15 Q Do you know whether the company ever sold or
- 16 delivered any of these drums to the John J. Riley
- 17 Company?
- 18 A Not to my knowledge.
- 19 Q How about W. R. Grace & Company on Washington
- 20 Street, Cryovac?
- 21 A Not to my knowledge.
- 22 Q How about Unifirst or Interstate Uniforms on
- 23 Olympia Avenue?
- 24 A Not that I know of; no.
- 25 Q You're familiar with the business of the Whitney

1
2 **Barrel Company?**

3 **A Right.**

4 **Q Could you give me a description of the business,**
5 **what kind of business the Whitney Barrel Company**
6 **engages in?**

7 **A Reconditioning of steel drums.**

8 **Q How would that be done?**

9 **A Washing.**

10 **Q Would you go through the process for us?**

11 **A We take in empty, raw drums and wash them on the**
12 **inside, wash the outside; repaint them and sell**
13 **them as a used and reconditioned drum.**

14 **Q Would these drums be the kind that have a bund**
15 **hole?**

16 **A Yes; bund hole and open head.**

17 **Q You did both?**

18 **A Right.**

19 **Q The drums you received, did they ever have any**
20 **content in them, in other words, any liquid in**
21 **them?**

22 **A No; empty.**

23 **Q Is that the condition they're in when you purchase**
24 **them?**

25 **A Yes.**

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Q Or them being sold to you?

A Yes.

Q Did you buy them?

A Yes.

Q To your knowledge, did Whitney Barrel Company ever receive any drums from the W. R. Grace Company on Washington Street?

A No.

Q Not to your knowledge?

A Not on Washington Street.

Q Some other W. R. Grace Company or division?

A Not to my knowledge. They were never an account as far as I can remember.

Q Do you remember Cryovac, the Cryovac Division of W. R. Grace?

A No.

Q Did John J. Riley Company ever deliver to the company any drums to your knowledge?

A Not to my knowledge.

Q How about Interstate Uniforms, which is now known as Unifirst?

A I don't believe so.

Q Did you ever have any local businesses give you drums or deliver drums to you, sell drums to you?

- 1
- 2 A Oh, yes. People have brought in all kinds of drums
- 3 over the years.
- 4 Q Now, other than 55-gallon drums, did you ever
- 5 receive any other kind of container?
- 6 A Tanks.
- 7 Q Would these be 5000-gallon tanks?
- 8 A Yes.
- 9 Q Underground?
- 10 A Underground tanks.
- 11 Q What would you do with these?
- 12 A Scrap them.
- 13 Q How would you do that process?
- 14 A Cut them up, scrap them.
- 15 Q What kind of condition would these underground
- 16 tanks be in when they came to you?
- 17 A They're empty. They had to be empty.
- 18 Q Prior to your receiving them?
- 19 A Yes.
- 20 Q That is part of the deal?
- 21 A That is the law.
- 22 Q So these drums would be empty when you --
- 23 A All containers. There is a law that all containers
- 24 had to be empty before they come in.
- 25 Q Would that apply to the 55-gallon drums as well?

- 1
- 2 A Yes.
- 3 Q Other than the 55-gallon drums and the 5000-gallon
- 4 tanks, did Whitney Barrel Company ever receive any
- 5 other kind of container?
- 6 A No; just drums and tanks.
- 7 Q Okay.
- 8 A And plastic drums.
- 9 Q All sorts and sizes or any particular size?
- 10 A 55-gallon.
- 11 Q What would their condition be?
- 12 A They contained apple juice.
- 13 Q What company would that be?
- 14 A They come in from foreign countries to a company
- 15 called Lincoln Foods in Lawrence. They empty the
- 16 apple juice and sell us the barrels.
- 17 Q Other than driving the truck, what were the other
- 18 duties you had during the time you worked for
- 19 Whitney Barrel Company?
- 20 A That is about it.
- 21 Q What do you do now for Whitney Barrel Company?
- 22 A Right now the company is shut down. We are not
- 23 reconditioning drums.
- 24 Q How long has it been shut down?
- 25 A A few months after my father's death; I would say

1
2 January of this year.

3 Q How long, to your knowledge, has the Whitney Barrel
4 Company been in existence at that location?

5 A 1949.

6 Q That was run by your father?

7 A Right.

8 Q How, did --

9 A Well, my grandfather -- Well, it goes way back to
10 ancient times. We're the oldest barrel company in
11 New England.

12 Q At that location?

13 A No.

14 Urban renewal forced us from Somerville
15 in 1949 and we moved to Woburn.

16 Q You went to the Salem Street location in 1949?

17 A Yes.

18 Q The company did?

19 A Yes.

20 Q That was run by your father at the time?

21 A My grandfather ran it originally.

22 Q Do you know when your father took over?

23 A My grandfather passed away in '64.

24 Q Your father worked with your grandfather from 1949
25 on?

1
2 A Yes.

3 Q And your father was in charge of the company until
4 he passed away?

5 A Right.

6 Q To your knowledge, did Whitney Barrel Company ever
7 use chemicals?

8 A Use chemicals?

9 MR. FREDERICO: Objection. I am
10 objecting to the form of the question. You can go
11 ahead and answer.

12 THE WITNESS: We use a soap to clean
13 barrels and water.

14 Q Is that trisodium phosphate?

15 A Exactly.

16 Q Other than that, did Whitney Barrel Company ever
17 use any other kind of chemicals to your
18 knowledge?

19 MR. FREDERICO: Objection.

20 A There was a trisodium phosphate, hot boiling water;
21 and that is about it.

22 Q Did the Whitney Barrel Company ever use any kind
23 of solvent to your knowledge?

24 A Solvent? Not for cleaning barrels; no.

25 Q What did you use solvents for?

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A To mix with paint when we spray painted.

Q You had a spray painting operation?

A Yes; part of the reconditioning.

Q What kind of solvents would you use to mix with your paint?

A It is called a mineral solvent, Mobil Solvent 5.

Q Do you know what the constituents of that solvent are?

A It is an oil. It is not a lacquer thinner or the other types.

Q Do you know if it contained chlorinated hydrocarbons?

A I don't believe so.

Q Do you know what chlorinated hydrocarbons are?

A Not really.

I know this is a light-duty solvent. It is different from acetone.

Q Do you know if any of the chemicals Whitney ever used contained trichloroethylene?

A No.

Q Do you know if any of the chemicals Whitney ever used contained tetrachloroethylene?

A Not to my knowledge.

Q Or 1,2-transdichloroethylene?

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A No.

Q Toluene?

A No.

Q Benzene?

A No.

Q Did the Whitney Barrel Company ever use any product containing benzene?

A Not to my knowledge.

Q Did the Whitney Barrel Company ever use gasoline?

A Gasoline?

Q Yes.

A In the trucks.

Q Did you store gasoline on the site?

A No.

Q Or did the company at any time store gasoline on the site?

A No.

Q From 1969 until the present, have you worked for the Whitney Barrel Company?

A Yes.

Q You have worked full-time?

A Yes.

Q Do you know Mr. John J. Riley?

A Yes; not very well.

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Q Do you know him by sight?

A Probably. It has been a while since I've seen him.

Q You're familiar with the property behind Whitney Barrel, a plot of land that runs along the river between the railroad tracks?

A Yes.

Q Are you aware of the fact that is owned by Mr. Riley?

A Yes.

Q You're familiar with the Aberjona Auto Parts and Murphy Waste?

A Yes.

Q And those companies are to the west of Whitney Barrel?

A Yes.

Q To your knowledge, have they been in operation throughout the time you have been associated with Whitney Barrel?

A Yes, as far as I know.

Q Now, at anytime have you had occasion for whatever reason to go to Mr. Riley's property between the railroad tracks and the river?

A I know the property well. I used to ride horseback down there.

2 Q You know the property from riding horseback?

3 A Oh, yeah.

4 Q What years did you ride?

5 A We had horses in the mid '60s, '65 and '66.

6 Q You would ride horses?

7 A Yes.

8 Q Horses you owned?

9 A Yeah. We had one on the land.

10 Q At Whitney Barrel?

11 A Right.

12 Q And one of the places you would ride would be this
13 area?

14 A Yes.

15 There is a public road that goes down
16 to the old Stoffard Chemical.

17 Q That is an access road through the property?

18 A Yes; a public access road.

19 Q And along that road there are sewer lines?

20 A Could be now.

21 Q Is that the road that runs along the sewer line
22 that you're referring to?

23 A There is no sewer line once you get down the road.
24 It is marsh land and railroad tracks.

25 Q Before you get to that --

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- 3 **A** He has a few sewer lines.
- 4 **Q** That run along the road?
- 5 **A** Yeah.
- 6 **Q** To gain access to that property, is it true you
- 7 have to pass through the Whitney Barrel Company
- 8 property?
- 9 **A** No. You would go through the Aberjona Auto Parts,
- 10 actually.
- 11 **Q** There is also an access road from Whitney Barrel
- 12 Company?
- 13 **A** You can get out there from our property.
- 14 **Q** Is there a road?
- 15 **A** Yes. Well, it is not really a road.
- 16 **Q** A dirt road?
- 17 **A** An opening. It is all dirt.
- 18 **Q** You can also gain access from the Aberjona Auto
- 19 Parts?
- 20 **A** Yes.
- 21 **Q** Can you also gain access from Murphy's Waste Oil?
- 22 **A** No. You would have to cross the railroad tracks
- 23 and then -- wait a minute. No, there is no access
- 24 from there.
- 25 **Q** There isn't?
- A** Oh, yes, there is.

1
2 Q Now, other than horseback riding trips you would
3 take on the land in '65 and '66, for any other
4 reason did you have occasion to go on the Riley
5 land at any point in time?

6 A No.

7 Q Did you ever drive through there in a car on the
8 access road?

9 A No. You can't drive a car down there.

10 Q A truck?

11 A No.

12 Q Have you ever walked the land for any reason at any-
13 time?

14 A Oh, yes. I have been out there. I am familiar with
15 the land.

16 Q What would have been your reason for going out
17 there?

18 A I used to go rabbit hunting out there.

19 Q Anything else?

20 A That is about it. I did a little dirt riding,
21 motorcycle riding.

22 Q Were there trails to ride your dirt bike?

23 A Uh-huh.

24 Q During the time you rode horses, how would you
25 describe the land, the Riley land?

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2 **A** There is a lot of wildlife out there.

3 **MR. FREDERICO:** Before he completes his
4 answer, I am just a little unclear. First of all,
5 he has been referring to the Riley land. I don't
6 think the witness is competent to say which land
7 Mr. Riley owned. It is unclear what the
8 boundaries of the land are that he is describing,
9 whether everything he is referring to is on the
10 land owned by either Riley or some entity
11 connected with Riley or on some neighboring piece
12 of land.

13 **MR. SCHLICHTMANN:** You can bring all that
14 out. I guess it goes to how much weight you want to
15 put on his testimony.

16 **MR. FREDERICO:** It may be better not to
17 refer to the land as Riley's land.

18 **Q** How do you refer to that land in back of Whitney
19 Barrel?

20 **A** I have always thought of that as Riley's land. I
21 am not sure what the boundaries are. I know the
22 road is a public road.

23 **Q** You know it passes through property behind the
24 Whitney Barrel Company?

25 **A** Yes.

1
2 Q You have always believed the land was owned by the
3 John J. Riley Company?

4 A That is right.

5 Q When I refer to the Riley land, I am referring to
6 that land behind the Whitney Barrel Company
7 between the railroad tracks and the river where
8 the access road goes through.

9 MS. WOODWARD: I may have missed some-
10 thing from coming in late. Are we putting dates
11 on the time when he went through there on horse-
12 back?

13 MR. SCHLICHTMANN: 1965, 1966.

14 THE WITNESS: Through the '60s.

15 Q More than just one year?

16 A Oh, yeah.

17 MR. FREDERICO: I want the record to
18 reflect given the definition you gave of the land,
19 I am going to continue to object to the form of
20 the questions referring to "the land."

21 Q How would you describe the Riley land in the
22 1960s?

23 MR. FREDERICO: Objection.

24 A In its natural state, it is a very narrow strip
25 of land. There are railroad tracks. There is a

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very narrow strip of woods that goes down to Olympia. There is also the public road. And then there is the marsh land. There is not really much there.

Q Did you ever have occasion to be on the land in the '70s?

MR. FREDERICO: Objection.

A I am certain I did. I must have been there at one time.

Q How about the '80s?

MR. FREDERICO: Objection.

A I don't think I have been out there since '80.

Q No?

A No.

Q During the times you have been on this land behind the Whitney Barrel Company between the railroad tracks and the river, which you have referred to as the Riley land, have you ever noticed any drums on the land, empty drums?

MR. FREDERICO: Objection.

A Not to my knowledge, no.

Q You never saw any?

A No.

Q Are you aware today there are empty drums on the

1
2 property behind Whitney Barrel Company between the
3 railroad tracks and the river?

4 MR. FREDERICO: Objection.

5 A There could be.

6 Q Are you aware there are?

7 MR. FREDERICO: Objection.

8 MS. WOODWARD: Objection.

9 Q You can answer.

10 A I haven't been out there lately.

11 Q You're not aware there are any drums?

12 MR. FREDERICO: Objection.

13 A Not to my knowledge at the present.

14 Q During the '60s and '70s, do you ever remember
15 seeing abandoned underground, storage tanks on the
16 Riley land between the railroad tracks and the
17 river?

18 MR. FREDERICO: Objection.

19 A Abandoned tanks?

20 Q Yes; or storage tanks.

21 A I don't remember any; no.

22 Q Do you ever remember seeing any out there at all?

23 MR. FREDERICO: Objection.

24 A No.

25 Q At all?

1
2 **A** No.

3 The line between our property is not
4 very definite. There could have been one of my
5 tanks out there; I don't know.

6 **Q** Let me show you a photograph and ask you to examine
7 it.

8 **A** It looks so different from an aerial view. I don't
9 know where I am.

10 **Q** Do you recognize this as Salem Street (Indication)?

11 **A** That is our place here (Indication).

12 **Q** Okay.

13 **A** This is an old picture. This building burned down
14 since then.

15 **Q** This is an aerial photograph taken in September of
16 1969. Are you able to identify the Whitney Barrel
17 Company?

18 **A** That is right there (Indication).

19 We had three major fires. This building
20 is gone now (Indication).

21 **Q** But in examining the photograph, are you able to
22 place the Whitney Barrel Company on the
23 photograph?

24 **A** Yes.

25 **MR. SCHLICHTMANN:** Let's mark this.

(Aerial photograph, marked
Exhibit No. 1.)

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4 Q Could you point out the land you referred to as
5 the Riley land?

6 A That is the road, this here and this back here
7 (Indication).

8 (Acetate overlay, marked
9 Exhibit No. 2.)

10 MR. SCHLICHTMANN: For the record, we
11 have placed an acetate overlay on the aerial
12 photograph, Exhibit 1. The acetate overlay is
13 Exhibit 2.

14 Q Could you find Salem Street there and write the
15 words "Salem Street" on here?

16 A (Witness complies).

17 Q Could you outline the buildings in ink?

18 A This building is gone (Indication); this was
19 destroyed by fire.

20 Q As of 1969, please.

21 A 1969?

22 Q Right.

23 A (Witness complies).

24 Q Now, why don't you put "B" in there for building?

25 A (Witness complies).

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Q Now, would you be able to determine approximately where the property ended of the Whitney Barrel Company?

A Uh-huh.

Q Would you do that with a line at the top?

A (Witness complies).

Q Can you mark it as best you can, how you remember the property being?

A (Witness complies).

Q Why don't you put "WP" for Whitney property?

A In here (Indication)?

Q Yes.

A (Witness complies).

Q There was an access road that went behind Whitney Barrel to the land you described as Riley's?

A Yes. It is right in here (Indication).

Q Would you be able to take it through the land to the railroad?

A Okay. There is the tracks and it comes down like this (Indication).

Q Why don't you put in "access road" there?

A (Witness complies).

Q Now, in examining that aerial photograph, can you see it through the acetate overlay?

1
2 A Yes.

3 Q Would you be able to pick out structures that look
4 like storage tanks of the kind the Whitney Barrel
5 Company used to recondition?

6 A It is hard to tell. This looks magnified. I
7 can't tell if they're drums or tanks.

8 Q Do you see areas you can identify as drums and
9 tanks?

10 A Right.

11 Q Why don't you put the words "drums and tanks" in
12 there?

13 MR. FREDERICO: He said drums or tanks.

14 Q Are they both?

15 A Could be both; yeah. It is hard to tell.

16 MS. WOODWARD: How about drums and/or
17 tanks?

18 Q In examining the aerial photograph, are you able
19 to identify any structure on there which appears
20 to be tanks or drums?

21 MR. FREDERICO: Objection.

22 Q Without the acetate overlay?

23 A No.

24 Q I am going to ask you to examine this area with
25 the acetate overlay.

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3 MR. FREDERICO: My objection is still
4 on the record.

5 Q Now, I am pointing out an area to you here, a long
6 access road between -- and between the access road
7 and river there are structures in the photograph.
8 I will ask you examine that and identify whether
9 they are tanks or drums.

10 A It looks like big logs out there or something.

11 Q You cannot identify them as tanks or drums?

12 A I really can't see; no.

13 Q During anytime while you were on the Riley land
14 for whatever reason, do you ever recall seeing any
15 storage tanks or 55-gallon drums --

16 MR. FREDERICO: Objection.

17 Q -- along the access road?

18 MR. FREDERICO: Objection.

19 A I don't remember seeing any; no.

20 Q At any point in time?

21 A No.

22 There is always a possibility that one
23 or two will end up there. There was a problem of
24 gangs in the neighborhood that would come in and
25 take things. They would steal from us and go
down this road (Indication). Whatever they had

1
2 may have dropped along the side.

3 Q You don't remember seeing anything?

4 A Not to my knowledge.

5 Q Mr. Whitney, at anytime did the Whitney Barrel
6 Company, to your knowledge, ever pour chemicals or
7 waste material containing toxic chemicals on the
8 Whitney Barrel property?

9 MR. FREDERICO: Objection.

10 MS. WOODWARD: Objection.

11 A No. I don't remember seeing them doing that.

12 Q To your knowledge, did the Whitney Barrel Company
13 at anytime ever dispose of waste material
14 containing chemicals on the Riley land?

15 MR. FREDERICO: Objection.

16 MS. WOODWARD: Objection.

17 A Not to my knowledge.

18 Q Do you have any reason to believe that at anytime
19 any party or any person came to the Riley land at
20 some time and disposed of waste material on the
21 Riley land?

22 MR. FREDERICO: Objection.

23 MS. WOODWARD: Objection.

24 A I never saw anybody do it.

25 Q At anytime did you ever see any trucks traveling

1
2 the access road on the land you have identified as
3 the Riley land?

4 MR. FREDERICO: Objection.

5 A You would see trucks down there every once in a
6 while. He does have -- Right back in there is
7 something to do with sewers. They go in there and
8 clean out. It is maintenance trucks that I would
9 call them. They erected a fence down there.

10 Q Would you be able to locate that on the photograph,
11 this area that you're referring to?

12 A The area would be right back here (Indication).
13 There is something to do with sewers right there.

14 Q You think it is a sewer or well?

15 A I don't know what it is.

16 Q You referred to it as a sewer. Why do you think
17 it is a sewer?

18 A I thought it had something to do with the sewer.
19 It could be a well.

20 Q Why do you think it has something to do with the
21 sewer?

22 A It is like a concrete form and you can get into it.
23 I am not -- I don't know.

24 Q You have seen trucks out there?

25 A Oh, yeah.

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Q What kind of trucks?

A I assumed them to be maintenance trucks.

Q How would you describe the trucks?

A Small trucks. You can't get a big one in there.

Q Not a tanker truck?

A No.

Q Why don't you write in there "concrete?"

A (Witness complies).

Q How did you know these were people associated with
John J. Riley?

MR. FREDERICO: Objection.

A I didn't.

Q You don't know?

A No.

Q Now, at anytime have you ever seen any trucks on
the access road on the Riley land?

A At anytime?

Q Yes.

MR. FREDERICO: Objection.

A I would have to say I have seen trucks out there;
yes.

Q What kind of truck?

A Just maintenance to go down and pick up the fence,
do this concrete structure.

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Q What fence are you referring to?

A Just recently they put up a fence. I imagine it would separate our land from his.

Q How recently was that?

A Just last year.

Q Prior to that was there any fence in the area?

A No.

Q Would you indicate on that photograph where the fence is now or where it was placed a year ago?

A I would say right on the line here (Indication).

Q Why don't you draw a thick line and mark it "fence?"

A (Witness complies).

Q Now, did --

A There is also a gate now to stop people from using this access road.

Q When did the gate go up?

A I would say about a year ago.

Q A year ago?

A About the same time as the fence.

Q Prior to a year ago was there any barrier or fence?

A No. There was nothing to stop anyone from going in or out.

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2
3 Q Until last year?

4 A You have to go through the Bussell property.

5 Q Aberjona Auto Parts?

6 A Uh-huh.

7 The other way goes up to Olympia. It is
8 a steep hill and you can't drive.

9 Q You can also go through Whitney Barrel Company
10 property?

11 A Yes.

12 This access road is blocked up now, I
13 believe.

14 Q Now, do you remember during the '60s and '70s the
15 access road to the Riley land had no barricade
16 around it?

17 A No.

18 Q So it was easy to get access to the road?

19 MR. FREDERICO: Objection.

20 Q Is that right?

21 A I would say so; yes.

22 Q Were there several different points you could
23 enter the Riley land onto the access road, enter
24 from several different points?

25 MR. FREDERICO: Objection.

A Well, you could come down the road that the

1
2 Buzzells have or come down our place.

3 Q At anytime during the '60s and '70s was a fence
4 ever placed at the Aberjona Auto Parts or Whitney
5 Barrel Company which would have prevented access
6 to the access road that goes through the Riley
7 land?

8 MR. FREDERICO: Objection.

9 A There was no fence at that time.

10 Q At anytime have you ever seen anyone pouring liquid
11 waste from a 55-gallon drum onto the Riley land?

12 MR. FREDERICO: Objection.

13 A No.

14 Q At anytime have you ever seen a truck, a tanker
15 truck on the access road or off to the side of the
16 access road, see it stop and dispose of liquid
17 waste on the property?

18 MR. FREDERICO: Objection.

19 A No.

20 Q Do you have any reason to believe that waste
21 material or liquid waste was ever poured or
22 disposed of on the Riley land at anytime?

23 MR. FREDERICO: Objection.

24 MS. WOODWARD: Objection.

25 A No.

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Q Have you ever heard that was done?

MR. FREDERICO: Objection.

Q Have you ever seen that done?

MR. FREDERICO: Objection.

A No.

Q You never heard any rumors to that effect?

MR. FREDERICO: Objection.

A No.

Q Has anyone ever made the statement to you that at some point someone disposed of waste liquid on the Riley land?

MR. FREDERICO: Objection.

A No.

Q Never?

A No.

Q Mr. Whitney, do you believe that prior to government regulations that it was common practice for companies to bury their chemicals on their property by digging a hole and pouring the stuff in?

MR. FREDERICO: Objection.

MS. WOODWARD: Objection.

A I believe that people did that; yes.

Q Why do you believe that?

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2 MR. FREDERICO: Objection.

3 MS. WOODWARD: Objection.

4 A Why do I believe that?

5 Q Yes.

6 A Hearsay.

7 Q What kind of hearsay?

8 MS. WOODWARD: Objection.

9 MR. FREDERICO: Objection.

10 A You have to realize everything I'm saying is being
11 taken down. I am just speculating.

12 Q Feel free.

13 MR. FREDERICO: I am objecting.

14 MS. WOODWARD: So am I.

15 Q You can continue to speculate.

16 A Woburn has a large dumping site, the old Stoffard
17 Chemical Company, along the infamous acid pit. It
18 still remains there. From what I have heard, it
19 was known as a dumping site for all of Metropolitan
20 Boston.

21 Q Other than that place, do you know of any others?

22 MR. FREDERICO: Objection.

23 MS. WOODWARD: Objection.

24 A No.

25 There is a place called the North Woburn

1
2 dump. Actually, it is no longer there. All new
3 factories are built on it. That is actually where
4 it is; it is all underneath.

5 Q What is there?

6 A Whatever they dumped.

7 MR. FREDERICO: Objection.

8 MS. WOODWARD: Objection.

9 Q When you say they, who are you referring to?

10 A I don't know. It is just what I have heard.

11 Q You heard that people have used Woburn as a
12 dumping ground?

13 MS. WOODWARD: Objection.

14 MR. FREDERICO: Objection.

15 A Yes.

16 The North Woburn dump did exist as that
17 for a fact.

18 Q What kind of dumping?

19 A Everything.

20 Q What kind do --

21 A I would say anything that came in containers or
22 things like that.

23 Q You mean drums?

24 A Yes.

25 Q Or tanks?

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A Uh-huh.

Q The tanks and drums that Whitney Barrel received, they never had any residue?

A No. They were empty.

Q To your knowledge, was there ever any dumping of any contents of the drums or tanks that the Whitney Barrel Company had received on their property or someone else's property?

MR. FREDERICO: Objection.

MS. WOODWARD: Objection.

A Not to my knowledge.

Q Do you have any reason to believe that liquid waste was poured on the Riley land off of the access road at anytime?

MR. FREDERICO: Objection.

MS. WOODWARD: Objection.

A No.

Q I am going to show you another aerial photograph. This was taken in 1975. Would you be able, in examining that, point out the Whitney Barrel Company?

A That must be it there (Indication).

Q And the access road that runs through the Riley land?

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2 MR. FREDERICO: Objection.

3 A It is back here (Indication).

4 Q In examining that picture, do you see some dark
5 spots along the access road?

6 A Right there (Indication).

7 Q And further up north?

8 A I do see the spots. I can't tell what they are,
9 though.

10 Q At anytime do you ever remember anyone disposing
11 of liquid waste on those areas indicated as dark
12 spots?

13 MR. FREDERICO: Objection.

14 MS. WOODWARD: Objection.

15 A Not to my knowledge.

16 MR. FREDERICO: How many times are you
17 going to ask that?

18 THE WITNESS: I never saw anyone doing
19 it.

20 Q And to your knowledge, in examining that picture,
21 is that roughly how the Riley land looked to your
22 knowledge in the mid '60s and '70s?

23 MR. FREDERICO: Objection.

24 A It is still the same, all woods.

25 Q That is essentially how the access road ran, as

1
2 depicted in that photograph?

3
4 A Yeah.

5 MR. SCHLICHTMANN: Why don't we mark this
6 photograph Exhibit 3?

7 (Aerial photograph, marked
8 Exhibit No. 3.)

9 MR. SCHLICHTMANN: And we'll mark the
10 acetate overlay as Exhibit 4.

11 (Acetate overlay, marked
12 Exhibit No. 4.)

13 Q Now, you said you could indicate on the photograph
14 the different accesses from Salem Street to the
15 property line. First of all, could you draw a line
16 to indicate Salem Street?

17 A This has to be Salem Street (Indication).

18 Q Why don't you write that in underneath?

19 A (Witness complies).

20 Q Would you indicate on the photograph how you gained
21 access to the Riley land?

22 MR. FREDERICO: Objection.

23 A (Witness complies).

24 Q If you were going from Whitney Barrel, how would
25 you get to Salem Street?

A Over the driveway. We have two driveways; one that

1
2 goes here, a circular driveway (Indication).

3 Q Would you show us?

4 A (Witness complies).

5 Q Why don't you continue the line that went to the
6 Riley land, to the railroad tracks?

7 MR. FREDERICO: Objection.

8 A The road?

9 Q Yes.

10 A This is the road here (Indication).

11 Q Why don't you write in "access road" there?

12 A (Witness complies).

13 Q Now, in examining Exhibit 3, do you recognize what
14 appears to be evidence of trucks or motor vehicles
15 going through the land in the area around here
16 (Indication)?

17 MS. WOODWARD: Objection.

18 MR. FREDERICO: Objection.

19 A There is a road here (Indication). The access road
20 goes down here and can go in here where that
21 concrete thing is (Indication).

22 Q Okay.

23 A And there is a loop here, going up here to another
24 loop, and that goes all down.

25 Q Would you be able to indicate the road on this

1
2 acetate overlay?

3 A (Witness complies).

4 MR. FREDERICO: I object.

5 Q Referring to the aerial photograph with the acetate
6 overlay --

7 A There are railroad tracks over there (Indication).

8 This house does not exist anymore (Indication).

9 There are tanks down here.

10 Q What kind of tanks?

11 A Storage tanks.

12 Q Storage tanks?

13 A Yes.

14 Q Why don't you mark "storage tanks" there?

15 A (Witness complies).

16 Q And write that underneath.

17 A (Witness complies).

18 Q And indicate the road and how it looked.

19 A It goes up and around here (Indication), another
20 loop over here and here, comes down like this,
21 another one that comes along the tracks but does
22 not go anywhere (Indication).

23 Q You said there was another loop somewhere in here
24 (Indication)?

25 A Yes; another one like this (Indication).

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Q Now, do you want to complete the loop here?

A (Witness complies).

Q You have made a line with some circle to indicate a road that looped around?

A Yeah; the dirt roads.

Q Would you put "dirt roads" on there?

A (Witness complies).

Q Now, the tanks you have identified, do you know how long they have been out there?

MR. FREDERICO: Objection.

A Years and years.

Q As long as you can remember?

A When I was young.

Q Do you know what the tanks are used for?

A I am not sure. I think they're being used by Murphy right now.

Q The dirt roads you have indicated on the photograph, do you know what those roads were used for at anytime?

A No.

Q Do you have any knowledge as to how they were used?

A No. I don't know what they're there for.

Q Have they been there throughout the time you can remember?

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A As long as I can remember; yes.

Q At anytime did you ever see any trucks on those roads?

A No.

Q The roads you called dirt roads?

A No.

You couldn't bring anything bigger than a pickup truck. They're more like fire roads.

Q They loop around?

A Yeah.

Q You don't know what they were used for?

A No. They have been there for ages as far as I know.

Q At anytime have you ever seen any person dumping waste on the ground off to the side of this area, those dirt roads?

MR. FREDERICO: Objection.

A No.

Q Do you know of any reason to believe at anytime those dirt roads were used as access to the property to dispose of waste on the ground?

MR. FREDERICO: Objection.

MS. WOODWARD: Objection.

A Not that I know of.

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Q You have no knowledge?

A No.

Q Or any reason to believe that?

A No.

Q Mr. Whitney, did any spillage ever occur on the Whitney Barrel Company land that you're familiar with?

MS. WOODWARD: Objection.

MR. FREDERICO: Objection.

A Large spillage?

Q Yes.

A No.

Q Any spillage, even minor?

A Not that I can remember.

MR. FREDERICO: Objection.

Q About five years ago did a spillage occur on the Whitney Barrel Company land?

MR. FREDERICO: Objection.

MS. WOODWARD: Objection.

A There is another sewer out here that is on my land as far as I know about here (Indication). I know I got a call from Jack Riley and he said that he had to clean out some drums to get to this sewer. I guess there was a problem. I guess it was

1
2 overflowing and the city had to come down and
3 correct it.

4 Q The sewer was overflowing?

5 A Yes.

6 Q At anytime were you aware any of the sewers that
7 went through the Riley land ever overflowed?

8 MR. FREDERICO: Objection.

9 MS. WOODWARD: Objection.

10 A I am not sure about that.

11 Q Are you aware as to whether or not there has been
12 any time, any access to the sewer that runs along
13 the access road on the Riley land?

14 MR. FREDERICO: Objection.

15 MS. WOODWARD: Objection.

16 A What do you mean?

17 Q The one that runs along the access road on the
18 Riley property.

19 MR. FREDERICO: Objection.

20 A Have they done work?

21 Q Do you know of any access point?

22 A I don't understand.

23 Q In other words, the ability to pour into the sewer
24 that runs along the access.

25 MR. FREDERICO: Objection.

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2 MS. WOODWARD: Objection.

3 A No.

4 Q Do you have any knowledge as to whether anyone has
5 to pay to go on the Riley land?

6 MR. FREDERICO: Objection.

7 A To pay?

8 Q Yes.

9 A No.

10 Q Do you have any reason to believe that people using
11 the access road on the Riley land had to make any
12 kind of payment to use that road?

13 MR. FREDERICO: Objection.

14 MS. WOODWARD: Objection.

15 A Not to my knowledge; no.

16 Q Are you aware whether anyone has had to pay to
17 dispose of waste material on the Riley land?

18 MR. FREDERICO: Objection.

19 MS. WOODWARD: Objection.

20 A Not to my knowledge.

21 Q Do you have any knowledge about that?

22 A No.

23 Q Have you had any conversation with Mr. Riley at
24 anytime?

25 A I have met Jack Riley briefly once. My father

1
2 introduced us.

3 Q Years ago?

4 A I wouldn't remember what he looked like.

5 Q Have you ever had any conversation with people who
6 work for the Riley Company?

7 A No.

8 Q At anytime?

9 A No; not to my knowledge.

10 Q Do you have any reason to believe that the Murphy
11 Waste Oil Company at anytime ever used the Riley
12 land to dispose of waste material?

13 MS. WOODWARD: Objection.

14 MR. FREDERICO: Objection.

15 A I have no reason to believe that.

16 Q Do you have any reason to believe that the Aberjona
17 Auto Parts ever used the Riley land to dispose of
18 waste material?

19 MR. FREDERICO: Objection.

20 MS. WOODWARD: Objection.

21 A No.

22 Q When did the Whitney Barrel Company stop receiving
23 underground storage tanks?

24 A Stop receiving?

25 Q Yes.

- 1 .
- 2 **A** We still are receiving.
- 3 **Q** You are still receiving underground storage tanks?
- 4 **A** Yes.
- 5 **Q** Are you still receiving the 55-gallon drums?
- 6 **A** No.
- 7 **Q** When did you stop receiving them?
- 8 **A** January.
- 9 **Q** Of this year?
- 10 **A** You mean putting them in the yard?
- 11 **Q** Having them come to the property for whatever
- 12 reason.
- 13 **A** They don't come to the property now.
- 14 **Q** Are you still delivering 55-gallon drums or under-
- 15 ground storage tanks to anyone?
- 16 **A** No.
- 17 **Q** Are you --
- 18 **A** You mean delivering drums?
- 19 **Q** Or tanks.
- 20 **A** You can't sell tanks anymore. You have to scrap
- 21 them. However, I do have one account that I
- 22 kept. What I do is I pick up their drums, bring
- 23 them to my cousin, who also is a reconditioner,
- 24 and I pay him to recondition and I deliver them
- 25 back.

1
2 Q To your knowledge, did Whitney Barrel keep records
3 of people who would deliver drums to them or where
4 they would deliver drums?

5 MR. FREDERICO: Objection.

6 A Records of customers, yes. We have invoices.

7 Q Do you still have those invoices?

8 A Yes.

9 Q How far back do the invoices date, do you know?

10 A I don't know.

11 Q Would they go back to the '60s or '70s?

12 A I would doubt it very much.

13 Q To your knowledge, when drums were received was
14 there an invoice?

15 A When we pick up drums, yes.

16 Q When you would sell them or deliver them?

17 A We'd send them a bill.

18 Q You're not aware whether the bills go back to the
19 '60s and '70s?

20 A I don't believe so.

21 Q What is your best estimate on how far back the
22 records go?

23 A Probably the last few years.

24 Q You think the others were destroyed?

25 A Yes. We had three major fires.

1
2 Q And records may have been consumed in those fires?

3 A Definitely so, yes.

4 MR. SCHLICHTMANN: I will be right back.

5 (Recess)

6 MR. SCHLICHTMANN: That's all I have.

7
8 Cross Examination

9 Q (By Mr. Frederico) When you testified about trucks
10 that had gone to what you described as either the
11 sewer or well, it was not your testimony, was it,
12 you had knowledge whether those trucks were Riley
13 trucks?

14 A No.

15 Q You have no knowledge as to whether those trucks
16 were in any way associated with the Riley
17 Tannery?

18 A No.

19 Q Do you know whether those trucks were the City of
20 Woburn trucks?

21 A Some of them, yes.

22 MR. FREDERICO: No further questions.

23 MS. WOODWARD: I just want to say for
24 the record W. R. Grace reserves the right to
25 recall the witness in view of the fact that we did

not receive any advance notice that the deposition would be taking place here today and therefore, we were unable to prepare for it.

(Whereupon the deposition was suspended at 3:15.)

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