1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 NORFOLK DIVISION
4
5 UNITED STATES OF AMERICA
6
7 vs.
8 SMITHFIELD FOODS, INC., et al
9
10
11 The deposition of JOSEPH W. LUTER, III, a
12 witness called on behalf of the plaintiff, before
13 Connie Alys Crane Pryor, a Registered Court Reporter
14 and a Notary Public in and for the State of Virginia
15 at Large, pursuant to Notice, beginning at 1:00 p.m.
16 on May 19, 1997, at the offices of Smithfield Foods,
17 Incorporated, 999 Waterside Drive, Norfolk, Virginia;
18 said depositions taken pursuant to Rules of Civil
19 Procedure for the United States District Court.
20
21
22
23 CRANE-SNEAD & ASSOCIATES, INC.
24 4914 Fitzhugh Avenue - Suite 203
Richmond, Virginia 23230
Tel. No. (804) 355-4335
25

COPY

1 APPEARANCES:

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Environmental Enforcement Section
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4 By: Ms. Sarah Himmelhoch
Counsel for the plaintiff
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MAYS & VALENTINE
6 1111 E. Main Street
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7 By: Mr. Anthony F. Troy
Counsel for the defendant
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1 I N D E X

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	DIRECT	CROSS
Joseph W. Luter, III	4	--

E X H I B I T S

	PAGE
Luter Deposition Exhibit No. 1 Letter dated December 5, 1996	89
Luter Deposition Exhibit No. 2 Letter dated December 7, 1989	124
Luter Deposition Exhibit No. 3 Copy of a Richmond Times-Dispatch article	130
Luter Depsoition Exhibit No. 4 Copy of a paid advertisement	142

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2
3 JOSEPH W. LUTER, III, a witness called on
4 behalf of the plaintiff, first being duly sworn,
5 testifies as follows:
6 DIRECT EXAMINATION
7 BY MS. HIMMELHOCH:
8 Q Could you please state your full
9 name and address for the record, please?
10 A Joseph W. Luter, III. Route 10,
11 Smithfield, Virginia.
12 Q Have you ever testified before,
13 Mr. Luter?
14 A Yes.
15 Q How often?
16 A I guess it's probably my fourth
17 deposition, probably.
18 Q Have you ever testified at trial?
19 A At trial? Yes. Uh huh.
20 (Indicating in the affirmative)
21 Q How many times at trial?
22 A Two, I believe.
23 Q Why don't we start with the
24 trials, since those are smaller in number. What were
25 the cases in which you testified at trial?

1 A One was a lawsuit that I brought
2 against an individual for fraud in the U.S. District
3 Court, which I won.
4 And the second, I believe, was a
5 State environmental lawsuit back in 1980,
6 approximately. Somewhere along in there.
7 Q Was that brought against
8 Smithfield Foods?
9 A That was brought against
10 Smithfield Packing Company, I believe. I'm not sure.
11 Q One of the two Smithfield
12 facilities in Smithfield, Virginia?
13 A That's correct.
14 Q What were the allegations in that
15 suit?
16 A Violations of the permit.
17 Q The Clean Water Act permit?
18 A I'm not sure. Probably so. I'm
19 not sure.
20 Q Do you remember the ultimate
21 resolution of that case?
22 A That was a fine, waters
23 violations.
24 Q Do you remember the amount of the
25 fine?

1 A Not exactly. I think it was
2 around $40,000.00, I believe.
3 Q Do you recall the nature of the
4 violations that were --
5 A I do not.
6 Q What were the four occasions in
7 which you testified in deposition?
8 THE WITNESS: Is this relevant,
9 Tony? I mean, I have nothing to hide.
10 MR. TROY: No. She has a right to
11 see what you've testified to before.
12 A One, let's see. Well, one was the
13 fraud case that I brought. Second was this case, I
14 think once. And a divorce proceeding. And one was an
15 SCC inquiry.
16 Q Was that into Smithfield Foods?
17 A No. That had nothing to do with
18 Smithfield Foods.
19 Q And the fraud case, did that have
20 anything to do with Smithfield Foods?
21 A What?
22 Q The fraud case?
23 A No, it did not.
24 Q I'd like to just get a little
25 professional understanding of your professional and

1 educational background and your work at Smithfield
2 Foods. What degrees do you hold?
3 A I have a BBA from Wake Forest
4 University.
5 Pardon me. I've got hay fever.
6 I'm having trouble getting words out today.
7 I have a BBA from Wake Forest
8 University, 1962.
9 Q In what area of study?
10 A BBA. Bachelor of Business
11 Administration.
12 Q I'm sorry. I didn't understand
13 the initials.
14 Do you hold any other degrees?
15 A No, I do not.
16 Q Where have you worked, other than
17 Smithfield Foods?
18 A Do you mean menial jobs? I worked
19 for Colonial Stores as a bag boy, stock boy back in
20 when I was in high school.
21 Q Since receiving your degree.
22 A Smithfield Foods. And I was
23 president of Bryce Mountain Resort for approximately a
24 five year period.
25 Q Approximately when was that?

1 A 1970 to 1975.
2 Q During that time period, were you
3 also working at Smithfield Foods?
4 A No, I was not.
5 Q What are the various positions
6 that you've held at Smithfield Foods?
7 A I was hired as a salesman, I held
8 the title of secretary/treasurer, president of
9 Smithfield Packing Company, which later became part of
10 Smithfield Foods. And I came back in 1975 as
11 president of Smithfield Foods in 19, in April of 1975.
12 Q When did Smithfield Packing become
13 a part of Smithfield Foods?
14 A I was president of Smithfield
15 Packing in 1969 and sold Smithfield Packing to a
16 company called Liberty Equities Corporation in 1969.
17 And I left the company shortly thereafter. And
18 Liberties Equities changed their name to Smithfield
19 Foods. And Smithfield Packing Company became a
20 subsidiary of Smithfield Foods.
21 Q And then you came back to
22 Smithfield Foods in 1975?
23 A In April of '75, that's correct.
24 Q At that time, were you
25 secretary/treasurer?

1 A No. No. I was
2 secretary/treasurer of Smithfield Packing Company in
3 the 1960's.
4 Q What was the position you took
5 with Smithfield Foods in 1975?
6 A As president and chief operating
7 officer.
8 Q When did Gwaltney of Smithfield
9 become part of Smithfield Foods?
10 A Smithfield bought Gwaltney in
11 November of 1981, I believe.
12 Q At that time, had Gwaltney been
13 sued by the Chesapeake Bay Foundation?
14 A I think it was shortly thereafter
15 that. It was, I think, sometime after that.
16 Q So you were president and chief
17 operating officer during the time that Gwaltney was
18 sued by the Chesapeake Bay Foundation?
19 A That's correct.
20 Q What was the nature of the
21 allegations made by the Chesapeake Bay Foundation?
22 A The nature of the allegations were
23 that they were, when we bought Gwaltney from ITT,
24 there were violations that were taking place. We
25 split the money to correct the violations. Because we

1 spent the money to correct the violations, the State
2 elected not to bring suit. The Chesapeake Bay
3 Foundation stepped in as a result and filed suit
4 alleging there were ongoing violations when, in fact,
5 the violations had been corrected.
6 And this case went all the way up
7 to the United States Supreme Court. And I'm sure
8 you've got the records.
9 Q What was your understanding of the
10 Chesapeake Bay Foundation's authority to bring suit
11 against Smithfield Foods or Gwaltney of Smithfield?
12 A My understanding is they could
13 bring suit if the State elected not to bring suit if
14 there were ongoing violations. And, and we believe
15 that there were not ongoing violations, because we had
16 spent the money to upgrade the systems. And the
17 violations had ceased prior to the filing of the suit
18 by the Chesapeake Bay Foundation.
19 But there was some testimony
20 during that trial that, that intimated that maybe
21 violations could continue in the future. And that was
22 the basis upon which they filed suit.
23 As I say, this went up to the
24 United States Supreme Court, and the Supreme Court
25 ruled. I'm not a lawyer. I'm sure you probably know

1 the facts better than I do. But the Supreme Court
2 ruled that the Chesapeake Bay Foundation, or no
3 environmental group can bring suit on violations that
4 have been corrected. But they can bring suit to stop
5 ongoing violations. That was the basis of the suit.
6 That was the basis of the decision.
7 Q At any time, did you formulate an
8 understanding of EPA's role with respect to
9 enforcement of the permit?
10 A EPA's role, what? Come again now?
11 Q Well, you just described your
12 understanding of what citizen groups could do to
13 enforce the permit. And I'm asking whether you ever
14 came to an understanding of what EPA could do to
15 enforce the law?
16 MR. TROY: Sarah, I'm going to
17 object to the mischaracterization. You
18 asked him his understanding of the nature of
19 the lawsuit, the Gwaltney suit, which is
20 what you indicated. You never asked him
21 about permits or anything like that.
22 (To the witness) Go ahead.
23 A Phrase your question once again.
24 Q What was your understanding of
25 EPA's authority to enforce the permit?

1 A I'm not going to say -- It's my
2 understanding that the State has primary enforcement
3 rights. And, and also the EPA has enforcement rights.
4 And what the balance of those rights are -- I'm not
5 an attorney. I have no authority to speak on that.
6 Q Do you belong to any environmental
7 groups?
8 A Do I belong -- No, we have
9 supported some environmental groups.
10 Q Which are those?
11 A Let's see. Give me a chance to
12 recollect the name of it. I've --
13 THE WITNESS: Carl, can you help
14 me? That Virginia -- We made a
15 contribution to --
16 MR. WOOD: Are you talking about
17 Ducks Unlimited?
18 THE WITNESS: Well, we've
19 contributed to Ducks Unlimited. I'm talking
20 about the VIMS.
21 MR. WOOD: Oh, yes. VIMS, right.
22 A We've made a contribution to that.
23 MR. WOOD: Yes, we have.
24 Q Was that contribution separate
25 from the funding for the study on the recalibration of

1 the Pagan River model?
2 A I'm not sure. I just know that --
3 I think they're one of the few or rational
4 environmental groups out there. I think they do good
5 work. I just know we have made a contribution. How
6 long ago and what amount, I don't remember.
7 Q When you say rational
8 environmental groups, what do you mean?
9 A There are an awful lot of radical
10 environmental groups out there.
11 Q What constitutes a radical
12 environmental group?
13 A That's a matter of interpretation.
14 Q I need to understand what you mean
15 by that phrase.
16 A I just said there are lot of
17 environmental groups out there. PETA is one.
18 P E T A. That's an animal rights group; it's also an
19 environmental group. That, in my opinion, is a
20 radical group.
21 Q What about VIMS strikes you as a
22 rational approach to the environmental issue?
23 A I think they -- I think they --
24 I don't know a lot about VIMS. But I've just been
25 told by numerous people that, that they approach

1 environmental issues through science and reason, and
2 not through hysteria. And, and VIMS depends upon
3 science. I think they've got groups out there that
4 really don't depend upon science; they depend upon
5 fear.
6 Q Would you put the Chesapeake Bay
7 Foundation in that category?
8 MR. TROY: What category are you
9 talking about?
10 Q A group that does not depend upon
11 science.
12 A I don't know that -- My only
13 experience with the Chesapeake Bay Foundation is the
14 lawsuit they brought against Gwaltney. And as I said
15 earlier, they brought the lawsuit after the problem
16 had been corrected. And, you know, I found some fault
17 with that, obviously. Because, because the problem
18 had been corrected at the time that they brought suit.
19 Q What was the ultimate resolution
20 of the action brought by the Chesapeake Bay
21 Foundation?
22 A You know that, so why do you ask
23 me?
24 Q I need to know what your
25 understanding of --

1 A My understanding is that the
2 Supreme Court ruled that environmental groups could
3 only bring suit to address ongoing problems and not
4 problems that have been corrected.
5 Q Did Smithfield Foods or Gwaltney
6 of Smithfield pay a penalty in the action brought by
7 the Chesapeake Bay Foundation?
8 A Yes, they did.
9 Q How much was that penalty?
10 A I don't remember. I think it was
11 around $300,000.00.
12 Q That was part of a settlement, is
13 that correct?
14 A That was part of a settlement,
15 yes.
16 Q Why did you settle with that
17 action if it was your understanding that --
18 A Because it was less than to pay
19 lawyers to carry the fight fairly.
20 I think we would could have won it
21 if we'd take it back up to the Supreme Court. But we
22 had a U.S. District Judge that made the statement in
23 front of our attorneys that he didn't give a damn what
24 the Supreme Court said, that he was going to make
25 Smithfield Foods pay. And he made that statement in

1 front of attorneys representing us at that time, and
2 in front of the Chesapeake Bay Foundation attorneys.
3 Which I thought was outrageous that a U.S. District
4 Judge would make such a statement. But he did make a
5 statement. And I have affidavits to that effect.
6 Q From whom?
7 A From Pat Raer, with Hogan &
8 Hartson, who represented us in that matter.
9 Q Anyone else?
10 A I'm not sure.
11 THE WITNESS: Tony --
12 MR. TROY: I can't recall.
13 Q Have you received any formal or
14 informal education in environmental science?
15 A No.
16 Q Have you ever managed or
17 supervised, other than in your role as Chief Operating
18 Officer of Smithfield Foods --
19 A I'm Chief Executive Officer now of
20 Smithfield Foods today.
21 Q When did you become Chief
22 Executive Officer?
23 A I'm not sure, but I think it was
24 some time between 1975 and 1979.
25 Q So in the late '70's?

1 A That's correct.
2 Q Other than in your capacity as
3 Chief Operating or Chief Executive Officer of
4 Smithfield Foods, have you ever supervised or managed
5 environmental compliance issues?
6 A No.
7 Q Are you aware that the Pagan River
8 has been classified by Virginia as a nutrient enriched
9 water?
10 A I think I've read that, yes.
11 Probably in the newspaper.
12 Q What is your understanding of what
13 that means?
14 A It means that it has, it has
15 nutrients in it.
16 Q Do you understand the implications
17 of being a nutrient enriched water?
18 A No. I only do know if too many
19 nutrients go into any river, I've been told that algae
20 blooms can take place, and fish kills can take place.
21 It's my understanding that there's
22 never been an algae bloom or a fish kill in the Pagan
23 River.
24 Q Is that your understanding of the
25 only impacts of being a nutrient enriched water?

1 A That's the only impact I've got.
2 Q Is the Pagan River open to shell
3 fish harvesting at this time?
4 A I don't -- I think it's been
5 closed for a number of years.
6 Q Approximately how long?
7 A I don't know.
8 Q Do you know why it's been closed?
9 A No, I do not.
10 Q Have you reviewed any water
11 quality data with respect to the Pagan River?
12 A Have I reviewed any water quality?
13 No.
14 Q Do you use the Pagan River for any
15 recreational activities?
16 A Quite often. I have -- I have a
17 home that's right on the Pagan River. And I water
18 ski, jet ski, fish, hunt in the Pagan River my entire
19 life.
20 MR. TROY: When you're using the
21 word you, you mean him, personally?
22 MS. HIMMELHOCH: Yes.
23 MR. TROY: That's the context in
24 which you've used the word previously?
25 MS. HIMMELHOCH: Yes.

1 MR. TROY: Okay.
2
3 BY MS HIMMELHOCH: (Continuing)
4 Q Are you aware of other individuals
5 who engage in recreational activities on the Pagan
6 River?
7 A Yes.
8 Q Who else?
9 A Oh, any number. Smithfield is a
10 small town. And quite a few people fish and hunt. I
11 don't have time enough to -- I mean, there are
12 numerous people I know that use the Pagan River.
13 Q Do you know of people who swim in
14 the Pagan River or wade in the Pagan River?
15 A Yes, myself. My children, as
16 recent as yesterday. Not with myself, yesterday, but
17 some friends of mine that were visiting me.
18 Q What type of fish do you catch out
19 of the Pagan?
20 A What kind of fish? Trout, striped
21 bass, croaker, spot -- Let's see. Toad fish, if you
22 will, eels, perch--brown and white--all of those fish.
23 Q At any time over the past five
24 years, have you noticed a decline in the frequency of
25 your catching any one of those fish?

1 A No. Quite to the contrary, it's
2 increased substantially. I think anybody you talk to
3 that fishes the Pagan River will tell you that it's,
4 from a fish standpoint, it's as healthy as it's ever
5 been.
6 Q In terms of the number of fish --
7 A Yes. One of my very good friends,
8 is a guy by the name of Rollis Bailey. He probably
9 fishes the Pagan River more than any one single
10 individual. And I have fished and hunted with him for
11 at least the last ten years. And I would say he
12 probably fishes an average of four to five times a
13 week. He's what I would call a professional
14 fisherman. And I think he would testify to the fact
15 that the fishing is better in the Pagan River than
16 it's ever been.
17 Q When did that increase begin?
18 A I don't know. I mean, as I've
19 said, I've known him way over ten years.
20 All I can tell you, when I was a
21 child growing up, we never caught rock fish in the
22 Pagan River. We would catch croakers, a few spot, and
23 a few perch. But it's only been in the last ten
24 years, I would say, that we're catching rock fish and
25 trout in the Pagan River.

1 Q Do you know what has caused the
2 change in the fishing?
3 A No. I just know that -- I just
4 know that, that for some reason, there's more fish in
5 the Pagan River today than it was when I was a child.
6 Q When was the Smithfield Packing
7 plant built?
8 A Which plant?
9 Q Smithfield Packing, in Smithfield.
10 A I mean, which plant? I mean, one
11 was built in 1936, and another was built in 1946.
12 Q For Smithfield Packing?
13 A Correct.
14 Q When was the plant that is
15 currently in use in Smithfield?
16 A 1946. The one that was built in
17 1936 burned down about five years ago, I guess. Maybe
18 a little bit longer.
19 Q And up until that time, had it
20 also been operating?
21 A Yes.
22 Q Where did the plant that was built
23 in 1936 discharge its waste?
24 A Into -- I'm not sure, but I think
25 it discharged its waste into the town system.

1 Q Where did the plant that is
2 currently in use in Smithfield for Smithfield Packing
3 discharge its waste prior to 1986?
4 A Into the Pagan River.
5 Q And it continues to do so today?
6 A One plant is not hooked on. The
7 Gwaltney plant is hooked on to HRSD, and the
8 Smithfield Packing Company is waiting to be hooked on,
9 as soon as HRSD notifies us they are ready to accept
10 the effluent.
11 Q So when you were a child, the
12 Smithfield Packing Company was discharging its waste
13 into the Pagan River?
14 A When I was a child, yes. Uh huh.
15 (Indicating in the affirmative).
16 When I was a child -- All of the
17 homes on Church Street were discharging raw sewage
18 directly into the Pagan River when I was a child.
19 Q When you were a child, what
20 treatment was the Smithfield Packing Company --
21 A I'm not sure if there was
22 treatment. But what the degree of treatment was, I
23 don't know. But the homes in Smithfield were
24 discharging with no treatment, whatsoever. It was
25 just a pipe to the Pagan River from the, from all of

1 the homes on Church Street in Smithfield. It was
2 common at that time.
3 Q Have you, as Chief Executive
4 Officer and former Chief Operating Officer of
5 Smithfield Foods, familiarized yourself with the
6 histories of the operations of the Smithfield Packing
7 plant and Gwaltney plants in Smithfield?
8 A What do you mean operations?
9 Q How the plants ran.
10 A I don't understand. I mean, that
11 covers sunrise to sunset. I don't really know what
12 you mean by that question.
13 Q Are you familiar with how the
14 Smithfield Packing Company processed hogs in the
15 1940's?
16 A Shortly speaking. We processed
17 them the same way we process them today. I mean,
18 there's been some refinements. But generally
19 speaking, the systems are the same.
20 Q Is that also true for Gwaltney?
21 A I assume so. Though, I'm not too
22 familiar with what happened with Gwaltney until we
23 purchased Gwaltney in 1980.
24 Q When was the Gwaltney plant built?
25 A Well, here again, the second

1 Gwaltney plant was built -- I believe it was four
2 stages. I think it started in the late '50's and was
3 built from the late '50's to the early '60's. It was
4 in stages over a four, five year period.
5 Q From that time until the time it
6 connected to the HRSD plant in 1996, did the Gwaltney
7 Plant also discharge into the Pagan River?
8 A That's correct. Uh huh.
9 (Indicating in the affirmative)
10 Q Do you eat the fish you catch in
11 the Pagan River?
12 A Yes, I do.
13 Q Do you cook them before you eat
14 them?
15 A Huh?
16 Q Do you cook them before you eat
17 them?
18 A Yes.
19 Q Do you eat raw shell fish out of
20 the Pagan River?
21 A I eat raw shell fish, but I don't
22 shell fish, myself. I don't know how much, where the
23 shell fish come from.
24 Q Would you eat a raw shell fish
25 from the Pagan River?

1 A Would I today? Yes.
2 Q Would you five years ago?
3 A Five years ago? I think so.
4 Yeah.
5 Q Would you have in 1994?
6 A In '94?
7 Q Yes.
8 A That's three years ago. So I
9 mean, I -- Yes, I would.
10 Q Are you familiar with the phrase,
11 fecal coliform?
12 A Vaguely.
13 Q What is your understanding of what
14 fecal coliform is?
15 A All I know is it's a -- Well, I
16 say vaguely. I just know that we have -- We have to
17 meet limitations. Fecal coliform is one, nitrogen is
18 one, phosphorous is one. But exactly what it is, I'm
19 not sure.
20 Q Do you know the source of fecal
21 coliform?
22 A No, I do not.
23 Q How -- Who runs Smithfield Foods?
24 A I do.
25 Q Is there also a Board of

1 Directors?
2 A Yes.
3 Q How many members are on that Board
4 of Directors?
5 A I'm not sure. But it's 15, 16, I
6 guess. I can give you that number, but I'm not
7 sitting and counting. But I'm not sure of the exact
8 number.
9 Q Is there also a Board of Directors
10 for Smithfield Packing?
11 A Um, yes. Each of our subsidiaries
12 has a Board of Directors.
13 Q Are there common members between
14 the Board of Directors for Smithfield Foods and the
15 Board of Directors for Smithfield Packing?
16 A That's correct, yes.
17 Q How many common members?
18 A I don't know. I can -- The Board
19 of Directors of subsidiary companies are there for
20 housekeeping matters rather than to make policy. All
21 the policy is made by the management of Smithfield
22 Foods with the supervision of the Board of Directors.
23 Q So you make the policy decisions
24 that affect Smithfield Packing's plant and Gwaltney?
25 A That's correct. The policy

1 decisions, yes, I do.
2 Q And you make the policy decisions
3 affecting the Gwaltney plant at Smithfield?
4 A That's correct.
5 Q And that includes environmental
6 compliance issues?
7 A That includes-- Yes, as far as
8 policy is concerned.
9 Q What is Smithfield Foods' policy
10 with respect to environmental compliance?
11 A To totally comply with the law one
12 hundred percent.
13 Q How have you taken steps to
14 effectuate that policy?
15 A I have given instructions, um,
16 that every company is to totally comply with the law.
17 And I have given authority to subordinates to try to
18 ensure that policy takes place.
19 Q How have you communicated your
20 policy of totally complying with the law?
21 A Orally.
22 Q To whom?
23 A To the people that were in charge,
24 which would, which was Bill Hellmann--who was
25 responsible for all environmental matters up until he

1 retired. And then since that time, it's been Carl
2 Wood.
3 Q Do you remember the precise
4 statement that you made to these individuals?
5 A When you say precise, I could tell
6 you in no uncertain terms, I told them that we are,
7 that private industry is subject to one set of rules,
8 and municipalities and government concern, government
9 agencies are subject to another set of rules. And
10 that a private industry, particularly a meat packing
11 company, is going to receive a high degree of scrutiny
12 from the State, from the federal government, and from
13 environmental groups. And that we are to stay in
14 total compliance and to do our best to stay in total
15 compliance at all times.
16 We went through a very lengthy,
17 expensive lawsuit we went over a few minutes ago that
18 the Chesapeake Bay Foundation brought. It was quite
19 clear to me that we had to stay in compliance, or that
20 we would bankrupt the company in paying lawyers and
21 paying fines.
22 Q Was Bill Hellmann responsible for
23 environmental compliance just at the Smithfield plants
24 or at other plants owned by Smithfield Foods?
25 A He was in charge of Smithfield

1 Packing Company, and I believe Gwaltney. I think all
2 the other companies that we have today were bought
3 after Bill Hellmann retired. Well, let me -- Let's
4 see. Hold on.
5 Let me back up. Maybe we had a
6 plant in Baltimore that was closed down. But that
7 went into a municipal system.
8 The only two plants that I know of
9 that had discharge permits with Bill Hellmann were the
10 Smithfield Packing Company and Gwaltney.
11 Q Is it fair to say that Smithfield
12 Foods has grown quite substantially over the past five
13 years?
14 A I would say so. I would say over
15 the last 22 years. No more in the last five than
16 previously. We've -- I guess if you don't grow, you
17 die, one of the two.
18 Q What companies were acquired by
19 Smithfield Foods between 1991 and 1997?
20 A We bought John Morrell, and we
21 bought LIKES, in Florida. I think they're the only
22 two.
23 MR. WOOD: Mash.
24 THE WITNESS: Was that after '91?
25 MR. WOOD: No. That was prior to

1 '91.
2 A There's a small ham company up in
3 Maryland named Mash. I don't remember the exact year
4 but I think it was before '91. I can give you that
5 information, if you'd like.
6 Q What states does Smithfield Foods
7 operate in?
8 A I might forget one, but we operate
9 in Kansas, and Iowa, South Dakota, Wisconsin,
10 Virginia, North Carolina, Georgia, Florida, Maryland.
11 I believe that covers them all. Ohio. I missed Ohio.
12 Q Other than communicating orally
13 your policy of total compliance with the law to
14 Mr. Hellman and Mr. Wood, did you engage in any direct
15 communication with employees at the Smithfield Packing
16 or Gwaltney plant regarding compliance with
17 environmental statutes?
18 A None, other than the way we're set
19 up, we have a president of each subsidiary. And I
20 conveyed to the president of Smithfield Packing
21 Company, and the president of Gwaltney that
22 Mr. Hellman and Mr. Wood were in charge of
23 environmental compliance. And that they, although
24 they had almost complete autonomy to run the different
25 businesses, they are to take directions from Mr. Wood

1 to curtail production or shut down the plant, if
2 necessary, if it meant to try to come into, to stay in
3 compliance.
4 And it's my understanding that,
5 that Mr. Wood and Mr. Hellmann, on numerous occasions,
6 have curtailed production to, in an effort to stay in
7 compliance. That's the policy of the company. And
8 everyone from the top down knew it.
9 Q How did you insure that everyone,
10 other than who you spoke to, was aware of that policy?
11 A Well, I mean, I conveyed it
12 verbally to Mr. Hamilton, who's the president of
13 Smithfield Packing Company, and at various, and
14 Gwaltney. I mean, everyone knows that, you know, that
15 Mr. Wood has authority in that area. And it's never
16 been -- It's never been a topic of debate. It's
17 clear cut, and everyone understands it.
18 Q How do you know that everyone
19 understands that?
20 A Because when I give
21 instructions -- It's not like the government. When I
22 give instructions, those orders are followed.
23 Q What do you mean it's not like the
24 government?
25 A Well, I'm in control of Smithfield

1 Foods. I mean, you don't have -- I mean, in the
2 government, you've got an Executive Branch, you've got
3 the Legislative Branch, you've got the Judicial
4 Branch. And there's no, there's a sharing pile.
5 But a private corporation, people
6 do what I say, or they are disciplined or discharged.
7 It's that simple.
8 Q At any time, did you have
9 conversations with anyone other than Mr. Wood,
10 Mr. Hellman and the presidents of Smithfield Packing
11 and Gwaltney regarding the policy of the company
12 towards environmental compliance?
13 A Not that I remember, no.
14 That's not to say that I might not
15 have made a comment in passing someone. But I
16 don't -- I mean, presidents report to me, and the
17 Smithfield Foods staff reports to me. But other than
18 them, no one reports to me.
19 Q And the chain of command is an
20 important concept at Smithfield Foods?
21 A Absolutely.
22 Q And at Smithfield Packing?
23 A Absolutely.
24 Q And at Gwaltney?
25 A Absolutely.

1 Q And people are discouraged from
2 circumventing one supervisor to report to another?
3 A Everyone has a boss, and they
4 report to their boss. That doesn't mean that, that
5 from time to time people don't go around their boss to
6 talk to someone else. You know, that happens in all
7 organizations, I guess.
8 Q But that's not a favored practice
9 at Smithfield Foods?
10 A I -- No. I think a favored
11 practice of Smithfield Foods is we have open debate.
12 And I have, I have an open-door policy, myself. And
13 there are many people that work at Smithfield Foods
14 will come in, will come to me and talk to me about
15 something that, that's that's not in the chain of
16 command. That's just because I have an open-door
17 policy. Sort of helps me to to keep abreast of what's
18 going on.
19 Q When did you initiate that
20 open-door policy?
21 A It's just been my management style
22 my entire life.
23 Q How do you communicate that
24 open-door policy to the staff?
25 A I don't. I don't invite it. I'm

1 just saying that, you know -- I've -- People in the
2 organization -- I mean, I'll give you an example.
3 Tom Ross, who's the Vice-president
4 of Personnel at Smithfield Packing Company, he reports
5 directly, today, to the president of Smithfield
6 Packing Company. But if something comes up that he
7 thinks I would be interested in, he feels free to walk
8 in the door and discuss it with me.
9 Q What kind of topics has he come
10 into your office to discuss?
11 A Oh, might be labor union matters;
12 it may be some new law that's come out in regard to
13 personnel matters. You've got all kinds of new laws
14 today to deal with that you didn't have to deal with
15 years ago in regard to racial or sexual
16 discrimination, that sort of thing.
17 But my policy has always been, you
18 stay out of -- Courtrooms are expensive, lawyers are
19 expensive.
20 And anybody that works for
21 Smithfield Foods that knows me knows that our policy
22 is to comply with any and all laws, irregardless of
23 whether you think those laws are appropriate or not.
24 But we have a policy that we just, we don't break the
25 law. Whether it's labor law, or whether it's

1 environmental law, or whether it's wage and hour law.
2 I mean, whether it's the subject --
3 The meat packing business is a
4 highly regulated industry, and we learned a long time
5 ago that, you know, the best policy is to comply with
6 all laws.
7 Q What topics, other than advising
8 you of new developments in either union rules or laws
9 have employees at Smithfield Foods, Smithfield Packing
10 or Gwaltney brought to your office?
11 A I can't tell you. I mean, you
12 know, I've been there for 22 years. People walk in my
13 office every day on a wide variety of subjects.
14 I do not -- I do not micro-manage
15 the business. I mean, I leave it up to people. I
16 give them responsibilities. I try to make them feel
17 that they are part owner of the business. And they
18 have authority to run their ends of the business. And
19 I hold those people responsible.
20 That's not to say that if, I mean,
21 if someone thought that we were breaking a law, not
22 doing something that's right -- I mean, Tom Ross
23 thought that a president of a company was encouraging
24 him to violate the law, he'd go right around that
25 person and come to me, yes.

1 Q Would staff go around the chain of
2 command to report to you?
3 A If they thought a law was being
4 broken, I think they would, yes.
5 Q Has anyone ever done that?
6 A The only time I can recall is I
7 think we had a supervisor one time that was letting
8 truck driver's work longer than prescribed hours. And
9 the personnel man came to me and said, hey, some of
10 these truck drivers are working longer than prescribed
11 hours. You know, we can get in trouble. And I
12 immediately corrected the problem.
13 Q How did you correct the problem?
14 A I decided we will monitor the
15 truck drivers' hours to make sure that they don't
16 fudge when they turn in their time sheets.
17 Q How did you monitor their hours?
18 A I don't know. I just said, look,
19 bring it to a halt.
20 Q And you did not get into the
21 details of how they fixed it?
22 A I don't get into the details.
23 This is a four billion dollar a year business. I
24 can't get into details. There's not enough hours in
25 the day for me to do that.

1 Q Are you aware of any instances
2 where someone has reported environmental compliance
3 issues to you outside the chain of command?
4 A No.
5 Q What training do new employees at
6 Smithfield Packing or Gwaltney of Smithfield receive
7 before they begin working?
8 MR. TROY: What do you mean, what
9 employees?
10 A What employees? I've got 18,000
11 employees. Obviously, there are different degrees of
12 training required for 18,000 different employees. And
13 probably, probably five thousand different job
14 functions.
15 Q Is there a general environmental
16 compliance course taught on behalf of Smithfield
17 Foods, Smithfield Packing or Gwaltney to new
18 employees?
19 A No. We don't get into anything
20 like that. Environmental course? No. I know we --
21 No. I mean, the people that are in charge of the, of
22 running our Waste Water Treatment Plants, I assume,
23 have got the qualifications and the background and the
24 education and the mentality to perform their jobs.
25 Q Is there any written or oral

1 training given to employees, other than waste water
2 treatment plant employees, regarding environmental
3 compliance?
4 A Here again, I don't know-- I mean
5 it's -- We've got a lot of employees that can't read
6 or write.
7 Q But they can listen.
8 A They can listen. But are you
9 asking me, do we run our business like the federal
10 government runs its business? The answer is, no.
11 Q What do you mean?
12 A Exactly what I said.
13 Q What do you mean by how the
14 federal government runs its business?
15 A I just said. We don't -- We
16 don't -- We don't run our business with mounds of
17 paperwork that go in the files that no one looks at.
18 We just don't run our business that way. We're not a
19 paper-driven kind of a company.
20 Q My question was, is there any
21 written or oral training given to employees, other
22 than Waste Water Treatment Plant employees regarding
23 environmental compliance?
24 A It may be. I'm not aware of it.
25 But it may be. It may be.

1 Q What training is given to
2 employees who begin operating on the kill floor?
3 A You'll have to ask the
4 Vice-president of Operations what training is given.
5 It depends upon -- Here again, we've got many
6 different jobs on the kill floor. Some jobs don't
7 require any training; some jobs require an awful lot
8 of training.
9 Q Is there any job --
10 A I mean, you're a lawyer with the
11 EPA. You know, you've got janitors working for the
12 EPA. So it's, you've got different levels required
13 for different positions.
14 Q Is there any training given to
15 employees working in the kill room regarding job
16 safety?
17 A Oh, job safety is always a top
18 priority with us.
19 Q What kind of training is given in
20 job safety on the kill floor?
21 A We have a safety -- We have a
22 safety director. We have safety meetings all the
23 time. I mean, every accident is very, very expensive.
24 I think every company in the country tries to operate
25 a safe environment. It's -- Accidents are costly,

1 plus they're damaging to the employee.
2 And we have safety programs we
3 have for truck drivers; we have safety programs for
4 most of our employees, some more than less, I guess.
5 I'm not familiar with the details of those programs.
6 Q Do you receive regular reports on
7 the operations at Smithfield Packing and Gwaltney?
8 A No. Well, I wouldn't say regular
9 reports. I mean, bottom line reports. But I'm not --
10 Not detailed reports.
11 Q What do you mean by bottom line
12 reports?
13 A I mean sales per week, that sort
14 of thing, perhaps. But, but not day-to-day operation
15 reports. The answer is no.
16 Q Do you receive reports on
17 accidents?
18 A I receive a report once a quarter
19 on Workmen Comp claims, yeah.
20 Q Do you receive a productivity
21 report?
22 A Not in any great detail.
23 Q Do you receive reports on
24 environmental compliance?
25 A I receive reports when we're not

1 in compliance, yes. Here again, it's orally.
2 We have a problem with compliance,
3 Carl Wood will come into my office and tell me we've
4 had a problem.
5 Q Do you receive regular reports on
6 the operation of the Waste Water Treatment Plant?
7 A No.
8 Q Is it fair to say you receive
9 regular reports on the key indicators of profit and
10 loss at Smithfield Packing and Gwaltney?
11 A No. It would not be fair to say
12 that.
13 Q Who would receive those reports?
14 A The presidents of each of those
15 companies.
16 Q Are those ever reported to you?
17 A Well, obviously.
18 Q How often?
19 A I mean, we run monthly financial
20 statements.
21 Q Do you review those monthly
22 financial statements?
23 A I look at them, yes.
24 Q For both Smithfield Packing and
25 Gwaltney?

1 A For every company we have, I've
2 seen them. But I don't -- I don't -- Here again, I
3 look at them more if there are problems. I don't look
4 at them if things are going well.
5 Q So do you look at the monthly
6 report for each company or --
7 A I look at the financial statements
8 every month. I look at the consolidated financial
9 statements of Smithfield Foods. Smithfield Foods is
10 made up of, you know, of various operating entities.
11 Q Have there been instances in which
12 either the Smithfield Packing plant or the Gwaltney
13 plant have not complied with environmental laws?
14 A Have there been instances?
15 Q Yes.
16 A We've had violations, yes. I
17 think everyone has violations from time to time. I
18 mean, you know, you've got -- You're going to
19 disagree, but I think our environmental record hasn't
20 been perfect, but -- I don't think it's been bad
21 compared to most other ones we've had.
22 MR. TROY: Sarah, I want to put an
23 objection on the record for the form of that
24 last question to the compliance.
25 MS. HIMMELHOCH: To the extent

1 that it calls for legal conclusion? Is that
2 the objection?
3 MR. TROY: To the extent that it's
4 vague.
5
6 BY MS. HIMMELHOCH: (Continuing)
7 Q You say your record compared to
8 most --
9 A No. I'm just saying that -- I'm
10 saying that we make every effort to be in total
11 compliance. Because we're well aware that if we're
12 not in total compliance, that the State of Virginia or
13 various environmental groups would be very, very quick
14 to file suit. And I'm very much aware that every
15 violation is subject to a $25,000.00 fine. And that,
16 and that it is company policy to try to make sure that
17 does not happen.
18 I have been told that, that we do
19 operate a biological system. And from time to time,
20 there are upsets. I have talked to outside
21 consultants--not recently, but going back to the, to
22 the Gwaltney lawsuits of 15 years ago, I guess it's
23 been now--that from time to time, the biological
24 systems, there are upsets. We don't live in a perfect
25 world.

1 Q Who are the consultants you spoke
2 with during that time period?
3 A Wells Engineering was, is our
4 primary. And then I believe we've consulted with
5 other people, also, from time to time. Names, I don't
6 remember.
7 Q Between the conclusion of the
8 Gwaltney lawsuit and the present, have you personally
9 spoken with Wells Engineering regarding environmental
10 compliance at either the Smithfield Packing or
11 Gwaltney plants in Smithfield?
12 A No.
13 Q Have you personally spoken with
14 anyone at CH2M-Hill regarding --
15 A No.
16 Q I appreciate your desire to get
17 through this quickly, but you do have to let me finish
18 the question so that the record is clear.
19 Have you personally, since 1991,
20 spoken with anyone at CH2M-Hill regarding Waste Water
21 Treatment Plant issues at Smithfield Packing plant or
22 Gwaltney of Smithfield?
23 A No.
24 Q Are you aware of any instances in
25 which Smithfield Packing or Gwaltney have violated the

1 fecal coliform levels set forth in the permit?
2 A I'm aware there have been some
3 occasional variances. There have been some occasional
4 violations, yes. I'm aware of those, yes. But I --
5 We did some calculations some time ago. And we run
6 hundreds, literally hundreds of thousands of tests.
7 The vast, vast, vast majority of the tests, we're in
8 compliance. But there have been, there have been
9 occasional upsets, and there have been occasional
10 violations.
11 Q When you say you run hundreds of
12 thousands of tests, are those all tests run on the
13 final effluent discharge to the Pagan River?
14 A I'm not sure. I just know that
15 we, I asked Mr. Wood to tell me the number of possible
16 violations that we could have in a year's time. He
17 did that some months ago. It was in the hundreds of
18 thousands.
19 Q Why did you ask him to do that?
20 A I wanted to see -- What I wanted
21 to see was the number of violations we had, was this
22 something that was out of the norm? Was it more than
23 what other companies in the meat packing industry have
24 experienced? I wanted to try to find out whether we
25 were doing a good job or a bad job in comparison to

1 other industries, to other companies in our industry
2 and other industries.
3 And the reports get back to me, as
4 you know, we're not perfect. We've occasional
5 problems. But in the overall scheme of things, we
6 have not had that many violations. And those
7 violations were not violations that were life
8 threatening or posed any significant risk to the well
9 being of the Pagan River.
10 Q What is the basis of your
11 understanding that the violations did not pose a
12 significant risk to the well being of the Pagan River?
13 A Conversations with Mr. Wood.
14 Q Any other basis?
15 A No other bases, other than, I
16 believe that the majority of the phosphorus and the
17 nitrogen that is in the Pagan River is coming from
18 agriculture runoff and from the natural decaying
19 process that takes place in the vast amount of marsh
20 land that's around the Pagan River.
21 Q What is the basis of that belief?
22 A Conversations with Wells
23 Engineering, with Carl Wood. This was back -- This
24 goes back to the Gwaltney lawsuit when I was talking
25 with lawyers and with Wells Engineering, and, and our

1 people to try to get hold of what was really taking
2 place.
3 And then, then when I found out in
4 19, in the late 1980's that the State was going to put
5 in a two parts per million phosphorus limitation,
6 Mr. Hellmann came to me at that time and said, Joe,
7 that the State is going to, was going to, is talking
8 about imposing a two parts per million phosphorus
9 limitation. He says there's no way that we can meet
10 it on a consistent basis. And I said, I asked him at
11 that time, had he discussed it with the outside
12 engineers? And he told me that he had, and they had
13 come to the same conclusion.
14 And, and I'd just gone through the
15 Chesapeake Bay Foundation experience. And I was very
16 concerned that, that you know, that the State may be
17 asking us to do something that would be impossible to
18 comply with on a consistent basis.
19 Q Did you personally talk to Wells
20 Engineers about the phosphorus compliance issue?
21 A Let me think back. I believe I
22 did. I believe a guy named --
23 THE WITNESS: Carl, refresh my
24 memory. What's that young guy's name that
25 testified?

1 MR. WOOD: Willis Sneed?
2 A Willis Sneed. Yes, I do believe I
3 did talk to Willis Sneed. This is back in the late
4 '80's. Willis Sneed, at that time, told me he did not
5 know of another meat packing company in the country
6 that was subject to that strict of a limitation. And
7 he had very serious reservations about whether we
8 could meet it on a consistent basis despite spending
9 millions of dollars. And anyway, as a result of
10 listening to my people, plus outside consultant
11 engineers--this is what they do for a living--I came
12 to the conclusion that, you know, that we could not
13 meet it on a hundred percent basis.
14 Here again, I keep going back,
15 today, you have to meet it on a hundred percent, or
16 you're subject to be drug in court and charged
17 $25,000.00 for every single violation. So --
18 Q When you spoke to Mr. Sneed at
19 Wells Engineers about the ability of the plants to
20 meet the phosphorus limit, had he conducted a study of
21 the plant or written a report regarding the ability of
22 the report to meet the limit?
23 A He had been doing that work for
24 years. And as I say, the issue was so serious that we
25 brought in other people other than Mr. Sneed, other

1 than Wells Engineering. And it's my understanding
2 that it was unanimous from our side that if we agreed
3 to a two parts per million phosphorus limitation that
4 we would be in non-compliance quite often. And with,
5 and with, and subject to, subject to fines and
6 publicity that would be detrimental, if not ruin us,
7 to the company.
8 Q What was your understanding of how
9 often the phosphorus limit would have been violated?
10 A Well, I say, we couldn't meet it
11 on a consistent basis. It was too tight to meet it on
12 a consistent basis. The regulatory agencies, today,
13 insist it's one hundred percent, or they come down
14 hard on you.
15 Q What was your understanding of how
16 often the phosphorus limit --
17 MR. TROY: Asked and answered.
18 A I've answered that twice.
19 Q Did they give you an estimate of
20 the number of times per month the phosphorus limit
21 would be --
22 A No. No. They said, Joe, have you
23 a biological system? You are, the nature of the
24 effluent in a meat packing plant is naturally high in
25 phosphorus. They explained it to me, they said, hey,

1 that--I'm trying to remember the--dioxin. Said, look
2 you can put one part per trillion dioxin in your
3 treatment plant, and you can meet it. But a paper
4 company can't meet a 1 part per billion.
5 See, different companies have
6 different limitations in their permit. And the
7 limitations are based on what's the best available
8 technology.
9 And, and that because the nature
10 of your effluent in a meat packing business is high in
11 nutrients, which means high in nitrogen and
12 phosphorus--I believe they are nutrients--that the
13 three parts was extremely tight, unrealistic, and that
14 I would be putting the company's future in severe
15 jeopardy if I ever agreed to a three parts per
16 million.
17 So we -- I -- We brought our
18 lawyers in. We discussed it. The general sentiment
19 was the three parts per million was an unrealistic
20 demand on the part of the State. And we -- I gave
21 instructions to contest, to contest it in court. And
22 it's my understanding that the law firm of Mays &
23 Valentine instituted a lawsuit, or maybe it wasn't a
24 lawsuit--I'm not sure of the terminology--but they
25 took the necessary action to challenge, to challenge

1 that limitation, because we thought that the, that
2 that request by the State was unrealistic.
3 Q Who, other than Willis Sneed,
4 advised you that the limit could not be met?
5 A As I say, it was another company.
6 You just mentioned it, I believe. I believe that was
7 the company.
8 Q Do you recognize the name
9 CH2M-Hill?
10 A I believe that's the one. I'm not
11 sure, but I think that was the one.
12 Q When did CH2M-Hill --
13 A I don't know. I don't know. I've
14 never talked to anyone. I just-- I know that the, it
15 was serious enough that I told, I can't remember
16 whether it was Bill Hellmann or whether it was Carl
17 Wood, but it was serious enough, I said, let's go get
18 another outside opinion to make sure that we know what
19 we're talking about here.
20 Q Did you review the reports of that
21 second study?
22 A No.
23 Q Did you ask your staff what the
24 result of that study were?
25 A No. My staff has always been

1 consistent. My staff is basically Carl Wood, and Bill
2 Hellmann before him. That they reconfirmed that the
3 two parts per million, we would run a severe risk of
4 being in violation if we, if we -- And that was it.
5 And I mean, it was serious enough
6 that we started considering shutting the plants down
7 in Virginia and moving to North Carolina. That's how
8 seriously we took it.
9 MR. TROY: Sarah, I think the
10 witness previously indicated three parts. I
11 think we all know that the record should
12 reflect he meant two parts. He just said
13 two parts a second ago.
14 A Okay. I'm sorry. Yes.
15 My head is clogged up with hey
16 fever. I rode three wheelers over the weekend and got
17 pollen in my head. I'm not thinking very clearly
18 today, I'm afraid.
19 Q Would you like to reschedule the
20 deposition for another time?
21 A No. Listen, I want to get it over
22 with.
23 Q And you feel comfortable that you
24 can fairly answer the questions?
25 A Oh, yes. Oh, yes.

1 Q Why didn't you move the Smithfield
2 Packing and Gwaltney plants to North Carolina?
3 A Well, in reality, I did. I built
4 a -- Because of the State action, I, which I thought
5 was severe, over severe, that I did not feel like if
6 the State recognized that, that a two parts per
7 million phosphorus limitation was something that was
8 not attainable by Smithfield Foods, I made every
9 argument. And the State refused to give in. And I
10 basically made the decision to build a plant in North
11 Carolina which did not have a strict phosphorus
12 limitation requirement.
13 Q I'm going to ask you to take a
14 look at a couple of documents. This has previously
15 been marked as Exhibit 51 to Mr. Wood's deposition.
16 And he has identified it as the study that was
17 performed on behalf of Smithfield Foods by CH2M-Hill
18 regarding phosphorus compliance. I'd ask you to
19 turn --
20 A I have seen it. So I mean, I'll
21 turn to whatever page you want to.
22 Q I'd ask you to turn to -- Give me
23 a moment to find the page. If you would turn to Page
24 61 of this exhibit, which is Bates No. SF403218.
25 These are the conclusions that

1 CH2M-Hill presented to Smithfield Foods. And if you
2 look at the third bullet on this page, could you read
3 that to yourself?
4 A I've read it.
5 Q So CH2M-Hill prepared a report and
6 submitted it to Smithfield Foods that indicated that
7 Smithfield can meet a two milligram per liter
8 phosphorus limit, is that correct?
9 MR. TROY: I'm objecting to the
10 form of the question. I think the report
11 speaks for itself and has to be read en
12 toto.
13 A I was told on certain days, you
14 can meet it. I'm saying that I was told that I could
15 not meet a two parts per million phosphorus limitation
16 on a consistent basis, which means a hundred percent
17 of the time. Because if I'm 95 -- If I run
18 phosphorus tests for 365 days, and 364 days I meet two
19 parts per million, and then the 365th day I do not,
20 I'm subject to being drug into federal court and
21 subject to a fine.
22 Q So if you can't meet it a hundred
23 percent of the time, you're not going to try to meet
24 it at all?
25 A No. That's not what I said. I'm

1 saying that -- I'm saying that I, I have to meet it a
2 hundred percent of the time, or I'm opening myself up
3 to constant litigation.
4 Q Did you ask to see the report that
5 CH2M-Hill --
6 A No. No. I don't read reports
7 like that. I don't have enough time to do that.
8 Q Did you speak with CH2M-Hill
9 directly?
10 A I just told you, I did not.
11 Q Did you review the Wells
12 Engineering reports?
13 A I have not reviewed any reports,
14 period.
15 Q Other than instructions given to
16 the individuals we've already identified, have you
17 taken any other steps to insure environmental
18 compliance at Smithfield Packing or Gwaltney at
19 Smithfield?
20 A It is well known with the top
21 management, of all the top managers of Smithfield
22 Packing Company and Gwaltney, that we are to comply
23 with all environmental laws. And that we are to do
24 whatever is necessary to be in compliance.
25 Q If an employee is unable to insure

1 compliance, does he have reason to fear losing his
2 job?
3 A Absolutely not. Now, if he, if
4 he -- If he makes mistakes that should not happen,
5 and it's human error that is not excusable, or is what
6 I would call dereliction of duty, yes, he's got --
7 Yes, he knows he would be fired. But that's true --
8 That's true throughout the organization in all areas
9 where people are held responsible.
10 Q Is it fair to say that it was a
11 pervasive notion within Smithfield Packing and
12 Gwaltney that the companies did not wish to report any
13 violations of the Clean Water Act?
14 A It's fair to say that, that
15 everyone is to do their utmost to make sure that
16 violations do not occur.
17 Q And that is the pervasive attitude
18 within the companies?
19 A No, it's not pervasive. I'm
20 saying -- Pervasive is your word. I'm saying that we
21 spent the money to put in the treatment plants that
22 were recommended to us by Wells Engineering and other
23 people. We were told that these treatment plants were
24 designed, and if they were operated properly, that we
25 could be in compliance.

1 And I gave Carl Wood and his, and
2 he has subordinates under him. I told Carl Wood it's
3 his responsibility to see that, to staff these
4 facilities as they should be staffed, and that we try
5 to achieve as close to one hundred percent compliance
6 as we possibly can.
7 Q Did you give --
8 A But I mean, that's something-- I
9 think that's -- But that's -- I think every company
10 in the country operates with that understanding today.
11 Might be a few companies that don't, but I mean,
12 it's -- You can't -- You can't conduct business in
13 this country with an attitude of breaking the law.
14 Q In the late 1980's, do you recall
15 any upgrades to the Waste Water Treatment Plants?
16 A Do I what?
17 Q Upgrades, improvements.
18 A There have been several upgrades.
19 I will say this. That every time a request came to my
20 desk, I approve all capital expenditures above
21 $10,000.00. It has been increased about a year ago,
22 that limit was increased to $25,000.00. But up until
23 about a year ago, I approved every capital expenditure
24 project in excess of $10,000.00. And that I have
25 never turned down one request. I have never delayed

1 approval of any request of any additions to the waste
2 water treatment system to upgrade to keep us in
3 compliance. I've always immediately said, spend the
4 money, do what is necessary to stay in compliance.
5 Q You indicated earlier today that
6 Mr. Wood and Mr. Hellmann had the authority to cut
7 back production, if necessary, to achieve compliance?
8 A That's correct.
9 Q And that they did so on several
10 instances?
11 A Quite a few instances over the
12 years, yes.
13 Q After Mr. Hellmann left Smithfield
14 Foods, are you aware of any instances in which
15 production was cut back to achieve compliance with the
16 Clean Water Act?
17 A Mr. Wood has told me he's cut
18 back. Many times, we've cut back operations within
19 the plant that use a lot of waste water. I mean, use
20 a lot of water. And he has told me that he has done
21 it on numerous occasions. And specifically, what he
22 did on what day, I don't know. But in following
23 through on my instructions, he has, he has issued
24 instructions to cut back.
25 I separated -- I mean, when

1 you've got operating presidents, when you've got
2 operating heads of companies that I hold responsible
3 for bottom line profits, quite, you know, they're
4 quite reluctant to scale back production. Because
5 profits are down, they come under very severe
6 pressure. So I had to take that responsibility away
7 from the operating presidents and I gave it, I gave it
8 to Mr. Wood.
9 Q Since 1991, are you aware of
10 specific occasions in which production has been cut
11 back in order to maintain or achieve compliance of the
12 Waste Water Treatment Plant?
13 A I just said, I've been told --
14 I've been told by Mr. Wood that he has done it on
15 numerous occasions. You need to ask him the specific
16 times. I don't know the specific times, but I do know
17 that -- I do know there were times we had them save
18 casings and chitterlings, because we were pushing the
19 limits, and we were, we would be running the risk of
20 having violations. I do know that we have curtailed
21 production. I believe we have actually cut the kills
22 from time to time. We've cut back on casings and
23 chitterlings.
24 We have -- It's a, something
25 that's monitored. My understanding, you know, you

1 know, on an hourly or daily basis. And we, we
2 monitor, we try to monitor it very, very closely.
3 Here again, as I say, it is a biological system. And
4 it's -- It's my understanding that you constantly
5 have to adjust or tweek the system to stay in
6 compliance. I mean tweek, I mean add chlorine or
7 subtract chlorine -- I'm not an expert, I don't know
8 what goes on. But I do know that, that it's something
9 that requires, you know, constant attention.
10 Q How long has Mr. Wood been in
11 charge of environmental compliance at Smithfield
12 Packing and Gwaltney of Smithfield?
13 A I think since Mr. Hellmann's
14 retirement, I believe.
15 Q When did Mr. Hellmann retire?
16 A I'm not sure. It was in the late
17 '80's, I believe.
18 Q Has Mr. Wood told you specific
19 occasions after 1991 in which he cut back production
20 in order to achieve or maintain compliance?
21 A He's told me he has done it, yes.
22 You know, when and where it was, I don't know. I
23 mean, he has told me that he has done it on numerous
24 occasions.
25 Q Did you ever --

1 A I mean -- But he wouldn't have to
2 tell me every time he did it, because he had the
3 authority to do it. Because -- And he, quite
4 frankly, was in a difficult position, because I had
5 some presidents of companies that got very mad with
6 him from time to time, because he was hurting the
7 profitability of the company, which was, which made
8 them look bad. But -- But I backed up Mr. Wood on
9 every occasion and said, I can't help it. Mr. Wood's
10 got complete authority in this area, and, and we're
11 not going to have violations.
12 Q Did you ever conduct or instruct
13 anyone else to conduct investigations of ways to
14 reduce the need to cut back production in order to
15 stay in compliance?
16 A No.
17 Q Do you know whether the frequency
18 with which production was cut back increased or
19 decreased between 1991 and 1994?
20 A I don't know. I think
21 Mr. Hellmann and Mr. Wood both exercised that
22 authority from time to time. But whether it's
23 increased or decreased, I don't know.
24 Q Did you create any positive
25 incentives to achieve environmental compliance at the

1 Smithfield Packing or Gwaltney plants?
2 A What do you mean by positive
3 incentives?
4 Q Did you offer bonuses, or raises,
5 or promotions, or awards of any kind?
6 A Sure. I mean, if we -- I mean,
7 I -- What? From 1982-'83, you know, we went for ten,
8 eleven years without violations. I think for the most
9 part, we had an occasional upset, but I was told by
10 Mr. Wood that, you know, that, you know, occasional
11 upset was recognized as something that happens with
12 these biological systems, in that, in that Mr. Wood
13 told me that he thought that, that our systems were
14 certainly within the norm of what to expect from these
15 kind of systems.
16 Q What is the basis of your
17 understanding that there were no violations between
18 1983 and 1994?
19 A I just didn't think -- I could be
20 wrong. I just didn't think we had any. We might have
21 an occasional upset, one or two. But here again, as I
22 say, when you run hundreds of thousands of tests a
23 year, sometimes you will have -- You know, you'll
24 have a bad test, for instance. You know, I don't
25 know. But I just -- I just know that I was told

1 that, that, you know, that the systems were operating
2 satisfactorily.
3 And, and I know from time to time,
4 that-- Correct me if I'm wrong. I could be wrong on
5 this, because my memory is a little bit vague. But I
6 think from time to time, Mr. Wood came to me and said
7 we needed to add a couple of aerators or spend some
8 money to, to upgrade the system, and I did it. In
9 fact, I think he came to me after we reached an
10 agreement to tap onto HRSD, he came to me and
11 requested I spend some monies to upgrade the system.
12 And I said, well, why in the world do we have to
13 upgrade it? We're going to tear it down in a couple
14 of years. But he said, well, he said, I need to do it
15 to stay in compliance during this interim period. I
16 said, if we've got to do it, we've got to do it. I
17 authorized it. But I thought it was a little bit
18 foolish, perhaps, because we were getting ready to tap
19 onto HRSD. I didn't delay the decision. I think I
20 approved every request to spend monies on the waste
21 water treatment system the day the request hit my
22 desk. I did not -- I never -- I never delayed it.
23 I'd ask a few questions, as I do. But, you know, I
24 was told that we need to do it to stay in compliance.
25 And I said, well, if we need to do it, we need to do

1 it.
2 Q What is your -- When you had
3 these conversations with Mr. Wood about the lack of
4 violations between 1983 and 1994, did you include
5 phosphorus in those discussions?
6 A No. I -- You know, it's my
7 opinion that we don't have, I mean, it's my opinion
8 today that we don't have any phosphorous violations.
9 I think the only reason we have phosphorus violations
10 is because EPA is challenging the agreement that we
11 reached with the State back in I guess 1990, '91's.
12 Q Did you review the agreement
13 signed in 1991?
14 A No.
15 Q Did you discuss with anyone the
16 terms of that agreement?
17 A Well, no. The, the only time I
18 got involved was a meeting was set up at my office in,
19 at Smithfield Packing Company. This was when -- This
20 meeting was when we were challenging the State's right
21 to put a two parts per million phosphorus limitation
22 in our permit. And the State was being very insistent
23 upon this. We made all the arguments about most of
24 the phosphorus we believed in the Pagan River was
25 coming from agricultural run off and from natural

1 decaying of the marsh land. These are my personal
2 opinions.
3 But in any event, the meeting was
4 set up. I don't remember who requested the meeting,
5 but a meeting was set up, which I met with the State
6 Water Control Board--Richard Burton was there at that
7 time. He was head of the State Water Control Board.
8 Mr. Borberg who was there with HRSD. Jim Ryan, an
9 attorney with Mays & Valentine. He was handling the
10 challenges to the State's action was there. I was
11 there. I don't remember whether Mr. Wood or
12 Mr. Hellmann were there. I just don't remember. Had
13 one member from the State Water Control Board, Pat
14 Stanley was there.
15 The thrust of the meeting was, my
16 position was you're asking me to do something that I
17 can't accomplish. And I've got really three
18 decisions. I've got -- And that is, to shut the
19 plants down to come into compliance; to make the
20 improvements, but run the risk, severe risk of being
21 in non-compliance on an ongoing basis; or to fight the
22 new tougher limitations through the court. And my
23 intention was to fight it all the way.
24 And they brought up to me at that
25 meeting that I didn't know I had a fourth alternative.

1 That was to tap on to HRSD. And, and seeing that the
2 lines were in Suffolk, and that HRSD would be willing,
3 Mr. Borberg said that he would be willing to run the
4 lines to Smithfield, but they would only make economic
5 sense if the two packing plants agreed to tap onto
6 those lines, because the town of Smithfield was not
7 large enough to support the cost of running the lines
8 from Suffolk to Smithfield. I think it was like 15,
9 16, 17 miles. I don't remember what it was. But that
10 it made economic sense if the two plants agreed to do
11 it. And this would be good for the community. It
12 would get the town off the Pagan River--and they were
13 quite clear to me really what they wanted to do was to
14 eliminate all point discharges on the Pagan River.
15 And they thought that this was my best, this was my
16 best alternative to do this. I asked what it would
17 cost just on an annualized basis. I was told about a
18 million-and-a-half dollars a year. I said, this is up
19 and above what my current treatment costs are? They
20 said, yes. And I said, well, that will probably go
21 up? I said, oh, yes, million-and-a-half today, but
22 it's going to be two million dollars two years from
23 now. No telling what it's going to be four, five
24 years from today. They said, well, all we can promise
25 you is we won't be discriminatory; we'll charge you

1 the same as we charge everybody else on a per gallon
2 basis. And it's clear to me that this was an
3 orchestrated effort to, to convince me to eliminate
4 the two point discharges into the Pagan River--one in
5 Packing and one in Gwaltney.
6 And shortly thereafter, I
7 evaluated my position. And I, quite frankly, didn't
8 have any choice. And my choice was either to shut the
9 plants down or to, or to tap on. And, so I made a
10 decision that I thought it was in the best interest of
11 my shareholders. That's what my responsibility is. I
12 mean, I've got to comply with all the laws, that goes
13 without saying.
14 But it's clear to me that, that,
15 that the million-and-a-half dollars a year, plus it
16 was going to be about a three million dollar cost to
17 modify our system. And I was told what we would have
18 to do is down grade our system, because our effluent
19 was too good to put into HRSD. I said, my gosh. I've
20 just spent all this money in the last ten years to
21 upgrade my system. Now, you tell me you've got to
22 downgrade this system. This is what was told me, that
23 I had to downgrade the system, because we had to give
24 HRSD effluent that they could blend in with the
25 effluent from the town and everybody else that was

1 discharging into the HRSD lines. I said, well, okay,
2 fine.
3 So anyway, I made the decision to
4 spend the three million dollars to convert over to tap
5 on to HRSD, and to incur ongoing expenses about a
6 million-and-a-half dollars a year, initially, fully
7 expecting those numbers to increase substantially as
8 time goes on.
9 Q You said that you were convinced
10 that this was an orchestrated effort to get the two
11 point sources.
12 A Why Mr. Borberg was there. Why
13 would he be there, otherwise?
14 Q So what did you mean this was an
15 orchestrated effort? That meeting?
16 A Yeah. The meeting, yes. Uh huh.
17 (Indicating in the affirmative.) Yeah. Because
18 Mr. Borberg was there. He was head of HRSD. So I
19 mean, it was clear to me -- I had the State Water
20 Control Board there, I had HRSD there. So I mean, it
21 was clear to me that this is what they wanted to
22 accomplish. That was to get the town of Smithfield
23 and the two plants off of the Pagan River.
24 Q And did you disagree with that
25 goal?

1 A I told them that I thought that,
2 that a phosphorus limitation of something in excess of
3 three, in excess of two, excuse me, is something that
4 we could live with, if you'd give us an eight, or
5 nine, or ten--I can't remember the number. But I said
6 I think we can live with that. But I said, to me, to
7 require us to go to two, and then to do nothing in
8 regard to agricultural run off, was basically spending
9 an awful lot of money to correct a small part of the
10 problem when you're not addressing the true culprit.
11 I mean, I still feel that way
12 today. I mean, I think it's absolutely absurd to hold
13 Smithfield Foods to a two parts per million phosphorus
14 limitation, and then to allow the City of Richmond to
15 dump hundreds of millions of gallons of raw sewage
16 into the James River year in and year out and do
17 absolutely nothing.
18 Q What is -- Aside from the casual
19 conversations that you had with individuals regarding
20 their understanding of the sources of --
21 A Would you start again? Start with
22 your question, again? I'm not sure --
23
24 NOTE: At this time, the previous
25 question was read by the court reporter.

1
2
3 BY MS. HIMMELHOCH: (Continuing)
4 Q -- phosphorus and nitrogen in the
5 Pagan River, what is the basis of your belief that the
6 majority of phosphorus and nitrogen in the Pagan River
7 comes from agricultural sources?
8 A Talking to Mr. Wood, talking to
9 Willis Sneed years and years back, conversations that
10 Mr. Wood had related to me in regard to conversations
11 he'd had with VIMS, I believe. You'll have to ask
12 Mr. Wood this. But -- And plus, what I read in the
13 newspapers. Not that I can put a lot of faith in that
14 a lot of the time. But there's no question that, that
15 agricultural run off is a very, very big problem. And
16 virtually nothing has been done to address that. I
17 mean, the Pagan River is surrounded by crop land and
18 phosphorus and nitrogen are applied to crop lands
19 every year. And every time it rains, a lot of that
20 fertilizer flows right into the Pagan River.
21 Q How much is the flow of run-off
22 into the Pagan River?
23 A Huh?
24 Q How many cubic feet per second --
25 A Oh, I have no idea.

1 Q How much is the Smithfield Foods
2 companies contributing to the Pagan River?
3 A I have no idea. All I know is I
4 was told that whether we're at two parts per million
5 or whether we're at ten parts per million, as far as
6 the quality --
7 Really this all came with the
8 impact by the Chesapeake Bay. This was a Bay
9 initiative. I was told that, you know, that whether
10 we were two parts per million or whether we were ten
11 parts per million, you wouldn't be able to measure the
12 impact in the Chesapeake Bay. And, and rightly or
13 wrongly, I still, I believe today that, that you would
14 be able to measure it in the Pagan River with the flow
15 of water there.
16 Prior to all of this litigation
17 coming up two years ago -- I believe this. And the
18 reason -- And the reason that I know I believe this
19 two years ago, before I knew there was any litigation,
20 whatsoever, was I instructed Carl Wood to run samples
21 of the Pagan River, take water samples to have VIMS do
22 it--not Smithfield--because I know anything Smithfield
23 would come up with would be questioned by
24 environmental groups. But I said then wait, wait.
25 And then two or three years later, do another water

1 sample, and let's see how much the Pagan, the water
2 quality in the Pagan River has improved, because we
3 stopped discharging into the Pagan River three years
4 ago.
5 And I authorized him to contact
6 VIMS to spend our money to do that test, because I
7 wanted to see whether all of these monies that
8 Smithfield Foods had spent, whether it's going to have
9 any major impact on the water quality of the Pagan
10 River.
11 Q Have you received the results of
12 the second set of samples?
13 A I said three years after we
14 stopped discharging. What I'm saying is, I told
15 Mr. Wood over two years ago to spend the money to do
16 those tests. And I believe that Mr. Wood will testify
17 that he contacted VIMS, and they agreed to run those
18 tests. And those conversations took place over two
19 years ago.
20 So that should give you some
21 indication that I seriously question whether the two
22 parts per million is going to have any real positive
23 impact upon the water quality of the Pagan River.
24 Q I don't doubt the sincerity of
25 your belief. I'm trying to fully understand the basis

1 for that belief. And as I understand it --
2 A I'm not a scientist, and I have to
3 believe -- I run a very large corporation. I've got
4 production people telling me something; I've got sales
5 people telling me something; I've got engineering
6 people telling me; I've got environmental people
7 telling me something, and I got lawyers telling me
8 something. And I have to depend upon what people tell
9 me. I'm not that smart. I can't be an expert in all
10 of these areas at the same time.
11 Q Other than what Carl Wood and
12 Willis Sneed have told you, you have no other basis
13 for your belief that --
14 A Bill Hellmann told me that years
15 ago. When the State first approached Smithfield Foods
16 about the two parts per million, Bill Hellman came
17 into my office and said, you can't believe -- And he
18 was very concerned. He says, Mr. Luter, he says, I
19 just, we can't do it. We can't do it. They're asking
20 us to do something that I'm going to be in trouble all
21 the time.
22 Q Well, there's a difference between
23 whether or not you can meet the limit and whether or
24 not agricultural sources contribute more phosphorus to
25 the river --

1 A I think it's immaterial. You put
2 a limit in. I've got to comply with it. I made the
3 argument to the State Water Control Board about the
4 agricultural run off. Okay? But, but the bottom line
5 is, the EPA -- You don't go after people where
6 there's a lot of political clout. You don't go after
7 the farmers. You don't go after the municipalities,
8 because there are millions of voters. You don't go
9 after the City of Richmond. Because if you require
10 the City of Richmond to clean up their act, they're
11 going to have to put a substantial tax increase in to
12 pay for it, and that's politically unacceptable.
13 And you all have a dual
14 enforcement policy. You require companies like
15 Smithfield to be in total complete compliance one
16 hundred percent of the time, or you're going to come
17 down on us. And yet, you turn a blind eye to what
18 other government agencies do.
19 Q What do you base that on?
20 A Based on facts. I'll give you one
21 example. You talk about why I'm hostile to
22 environmental groups? They say the Pagan River is one
23 of the most endangered rivers. That's the Elizabeth
24 River. (Pointing out of the window.)
25 Q Yes.

1 A Okay? These are government
2 installations all around here. This river is so
3 toxic, that I doubt there's been a live fish in there
4 in years. What are you doing? Nothing. And you
5 compare the Elizabeth, the Pagan River with the
6 Elizabeth River?
7 The reason is, is that the federal
8 government is polluting the Elizabeth River. The City
9 of Norfolk is polluting the Elizabeth River. The City
10 of Portsmouth is polluting the Elizabeth River. So
11 you have a dual enforcement. The State Water Control
12 Board privately admitted this to me.
13 Q Who on the State Water Control
14 Board admitted that to you?
15 A They've admitted it to me by
16 not -- I've made the same argument to the State
17 Water, to Richard Burton. And I said, why are you
18 trying to put a two parts per million phosphorus
19 limitation on Smithfield Foods when the City of
20 Richmond discharges hundreds of millions of gallons of
21 raw sewage into the James River? The Pagan River
22 flows into the James River. And, um, and -- And I
23 said, you all have a dual enforcement policy.
24 Look. Every lawyer in this
25 country knows that the federal government and the

1 state governments have those dual enforcement
2 policies. So I'm not telling you something you don't
3 already know.
4 Q What is the basis for your belief
5 that there is no effort by the State or federal
6 government to stop the discharges of sewage by
7 Richmond into the James?
8 A It's been going on for decades,
9 and it's still happening.
10 Q Have you investigated whether or
11 not EPA or any state agency has worked with the City
12 of Richmond?
13 A I'm not saying you've not worked
14 with. It's my understanding -- It's my understanding
15 that the State was complaining about what the --
16 THE WITNESS: Correct me, Tony, if
17 I'm wrong.
18 Q You're refering to Blue Plains?
19 A Blue Plains, okay. And the
20 argument that the federal government used is the same
21 argument that I'm using in your case against
22 Smithfield Foods today.
23 Q Which argument is that?
24 A That is, give us time, give us a
25 consent order, and we're going to come into

1 compliance.
2 Q What is your understanding of the
3 nature of the dispute between the federal government
4 and Blue Plains?
5 A My understanding is that the, that
6 there is severe pollution taking place on the Potomac
7 River that's affecting the water quality in the State
8 of Virginia, and that the federal government has been
9 very lax in requiring those people to clean up their
10 act. And the State of Virginia is very unhappy about
11 it.
12 Q What is the basis of your belief
13 that the federal government has been lax?
14 A It's what I read in the newspapers
15 and just conversations.
16 Q Have you familiarized --
17 A I'm not a lawyer. I'm not an
18 expert. All I'm saying is that -- But I do know --
19 I do know that -- I do know this Elizabeth River is
20 very, very polluted.
21 Q How do you know that?
22 A And how do I know it? Just read
23 the newspapers. It's the most polluted river probably
24 in the State of Virginia. And the federal government
25 is the main polluter.

1 Q How do you know that the federal
2 government is the main polluter?
3 A Because I know what's here on the
4 Pagan River. It's all these ship yards.
5 MR. TROY: Elizabeth River.
6 A Excuse me. The Elizabeth River.
7 Because of the government shipping, I'm not-- You
8 don't need to question me on this. These are well
9 known facts.
10 Q I need to understand the basis of
11 what you're saying. That's why I'm asking.
12 A I'm saying-- I'm saying that the
13 EPA has a dual enforcement policy. One for private
14 industry and a completely different one for other
15 government agencies.
16 Q And that's based on the Richmond
17 case, the Blue Plains case and Smithfield?
18 A And thousands of cases all over
19 this country.
20 Q Have you conducted a survey --
21 A No, I haven't.
22 Q -- of the cases brought by EPA
23 against municipalities?
24 A All I know that if I ran
25 Smithfield Foods the way the City of Richmond

1 operates, I'd probably be in jail. But that's -- I
2 mean, that's -- If I ran my pitching plants the way
3 the government runs Social Security, I'd be in jail.
4 Q You indicated that you had this
5 meeting with HRSD and the State in which they proposed
6 connection to HRSD as another option in your challenge
7 to the phosphorus limit, is that correct?
8 A Yes, uh huh. (Indicating in the
9 affirmative).
10 Q Approximately when did that
11 meeting occur?
12 A I believe it was in January. I
13 had to refresh my memory on it, but I think it was the
14 first part of 1990.
15 Q And do you know whether the
16 Hampton Roads Sanitation District had begun to plan a
17 sewer expansion before that meeting?
18 A It's my understanding that they,
19 they had contemplated possible expansion, but
20 Mr. Borberg told me that the only way they would agree
21 to run the line to Smithfield is if we tied, if we
22 agreed to tie on the two plants.
23 Q Do you know whether planning for
24 the sewer line continued after that meeting but before
25 you committed to hook up to HRSD?

1 A I don't know. All I know is that
2 shortly thereafter--and whether it was one day, or one
3 week, or one month, but it was a very short period of
4 time--I said, okay, I'll agree to do it. I really
5 don't have any choice. This is the only alternative
6 that makes any sense. I certainly don't want to close
7 down the plants and put thousands of people out of
8 work. I certainly don't want to spend the rest of my
9 life in federal court being sued by the EPA, or the
10 State of Virginia, or some environmental group. So I
11 really don't have -- I really don't have any choice.
12 And so my -- Unless the State
13 agreed to relent on this strict limitation-- And the
14 State let me know in no uncertain terms that they were
15 not going to relent, and they were going to hold me,
16 and that we were going to be in litigation for the
17 foreseeable future.
18 And, and then they told me that,
19 at that meeting that they would agree not to put in
20 those new tougher limits until -- They would give me
21 relaxation from those new tougher limits if I would
22 agree to tap on when the lines were made available to
23 Smithfield.
24 Q Who told you that?
25 A Richard Burton told me that. That

1 was the entire, the entire consensus in that room. I
2 think if you depose everybody that was at that
3 meeting, I think that they will tell you that.
4 Q They told you that they wouldn't
5 put the limit in the permit?
6 A They told me they would not hold
7 Smithfield to the, the new tougher limitations that we
8 were challenging.
9 Q Did they tell you that they would
10 not put that requirement in the permit?
11 MR. TROY: Asked and answered.
12 A I just answered the question.
13 Q Did they tell you that they would
14 not put the limit in the order?
15 A I told you, they told me that they
16 would not require Smithfield to meet that new tougher
17 limitation, that I, in my mind, knew was impossible to
18 meet on a consistent basis.
19 Q Well, it's one thing to say they
20 wouldn't hold to you the limit, and it's another thing
21 to say they wouldn't put the limit in the permit. And
22 my question is, did they say they wouldn't put the
23 limit in the permit?
24 MR. TROY: It was asked and
25 answered. Now, that's the third time you've

1 asked the question. I would ask that you
2 ask another question.
3 MS. HIMMELHOCH: The witness has
4 not answered the question.
5 A I will answer it the same way.
6 I'll answer it the same way. Ask me one more time.
7 Q Did anyone say to you that they
8 would not put that limit in the permit?
9 A They told me, in no uncertain
10 terms that, I believe -- First of all, I believe that
11 they had a lot of sympathy for my position that I
12 could not meet these new tougher limitations. They
13 kept going back to one point. Well, Joe, you have an
14 alternative, and that is to tap onto HRSD. And they
15 told me they would give me whatever -- They told me
16 they would give me relief during the interim period of
17 time until HRSD lines would be available in
18 Smithfield. I asked them, how long would it take to
19 bring those lines to Smithfield? They told me two to
20 three years. And it would depend upon EPA grants, the
21 permit process that they go through, I guess. I don't
22 know what they had to go through. But they told me
23 two or three years, depending upon monies available.
24 And some of those monies were coming from EPA.
25 Q They told you that in 1990?

1 A They told -- Yes. Uh huh.
2 (Indicating in the affirmative). Yes. They told me
3 that in 1990.
4 Q Who said that?
5 A I don't remember. I just remember
6 that it was some uncertainty about the exact time it
7 would take. But I asked them, because quite
8 obviously, I wanted to know when I was going to have
9 to start spending the million-and-a-half dollars a
10 year. And I was told two or three years. Okay? The
11 point is, that I have done everything that was asked
12 of me as a result of that agreement that I reached
13 with the State.
14 Q The State told you that they would
15 give you relief from the phosphorus limit. Did they
16 describe the nature of the relief that they would give
17 you?
18 A They told me that they would give
19 me relief from the new tougher standards that they
20 were taking. I believe they were taking tougher
21 standards in other things other than phosphorous.
22 They told me they would give me, they would not
23 tighten the standards on me if I agreed to tap on.
24 And they said, look, it will be good for the State; it
25 will be good for the town of Smithfield; it will be

1 good for everybody. And I said, yes, but it's going
2 to cost me a million-and-a-half dollars. But I said--
3 At that meeting, I didn't agree to it.
4 But within a very, very short
5 period of time, I had a meeting with my people. We
6 discussed all of our alternatives. And we all
7 basically came to a conclusion. I made the final
8 decision that, that this was the best alternative. It
9 was a very difficult situation, a very expensive
10 situation. But this was really the only viable
11 alternative I had other than a long, protracted
12 lawsuit with the State. And, and knowing that the
13 subject is the environment, usually, the State will
14 win, and industry will lose.
15 And because of all of these facts,
16 I agreed to tap onto HRSD when they brought the lines
17 to Smithfield.
18 Q Did the State tell you the form
19 that they would use to give you relief from the
20 phosphorus limit?
21 A No. I didn't get into details.
22 I'm just -- I was involved in the general
23 understanding. The general understanding was that
24 they would not -- They would delay getting tougher on
25 me if I would agree to tap onto HRSD. Now, what form

1 that took, I don't know.
2 Q Did they make any representations
3 to you about EPA's position with respect to this
4 issue?
5 A This was a conversation seven
6 years ago. I don't know whether they made any
7 representation, but I had full knowledge that the
8 State works closely with EPA on all, that EPA serves
9 as oversight of everything that the State does. And I
10 assume that EPA was kept informed and was made privy
11 to the agreement.
12 But I had, I have never had any
13 dealings with the EPA; I had dealings with the State
14 Water Control Board, and I assumed that they had
15 authority to enter into an agreement. And that if the
16 EPA had an objection to the agreement, that it would
17 come back to me at that time, and say, hey, we've got
18 to change something. But that never took place.
19 Q Did you ever confirm your
20 assumption that EPA was aware of these agreements?
21 A I was not aware -- To me, it was
22 a relationship between the State of Virginia and EPA,
23 and it was not a place for me to be.
24 Q Did you, at any time, receive any
25 repsentations from the Department of Environmental

1 Quality or the State Water Control Board regarding
2 EPA's position with respect to the phosphorus
3 agreement?
4 A I assumed that the EPA did not
5 have any problem with the agreement that I reached
6 with the State of Virginia, because there were no
7 objections made at that time. There were no
8 objections made in 1991, 1992, 1993, 1994, 1995, 1996.
9 The first time that I was aware
10 that EPA had any objection or any concerns was three
11 days later, after the EPA had notified the Washington
12 Post that they were filing suit against Smithfield
13 Foods. And several weeks after -- And weeks prior to
14 even notifying me, you're having correspondence going
15 from Mr. McCabe to environmental groups in the State
16 of Virginia discussing how the fines against
17 Smithfield Foods are going to be distributed before
18 I'm even notified that EPA has a problem, whatsoever.
19 Q What question --
20 A And I'm also aware that this
21 decision came from the top down at EPA and not from
22 the staff up.
23 It's strictly a political vendetta
24 that's taking place, because there's a problem between
25 Governor Allen and the Clinton administration.

1 Q On what do you base that?
2 A That you would go to the
3 newspapers before you even notify me that you've got
4 any problems, whatsoever. That you would -- That you
5 would have correspondence with environmental groups
6 regarding fines against Smithfield before you notified
7 Smithfield. That you have any problems before you
8 notified Smithfield that you were filing suit.
9 Q Which environmental group are you
10 referring to?
11 MR. TROY: I believe it's already
12 in discovery produced by your own records,
13 if I'm mistaken.
14 MS. HIMMELHOCH: I'm still
15 entitled to ask the witness which --
16 A I saw it today. There are so many
17 environmental groups out there, I'm not sure. It's
18 the James River something or another.
19 Q Is this a document you reviewed in
20 preparation for your deposition today?
21 A This was a document that I was
22 told about by Hogan & Hartson four weeks ago. And I
23 asked them to fax a copy of it down to me today, so I
24 would be more familiar with that document. They faxed
25 it down to me today.

1 Q And this is a letter from the
2 James River Association to whom?
3 A Mr. McCabe. And a response of
4 Mr. McCabe back to the James River Association. I
5 believe it's the James River Association.
6 Q What was the date of the letter
7 written by the James River Association?
8 A I'm not sure. You've got the
9 letter, so, you know, you got the date.
10 MS. HIMMELHOCH: Counsel, do you
11 have that letter here?
12 MR. TROY: I believe it's been
13 produced out of your own documents.
14 MS. HIMMELHOCH: Counsel, my
15 question is, do you have that letter here?
16 MR. TROY: Not to my knowledge,
17 but --
18
19 BY MS. HIMMELHOCH:
20 Q Mr. Luter, is that letter in your
21 office?
22 A I think I can get it for you.
23 Q If you could, please.
24
25

1
2 NOTE: At this time, recess is
3 had; whereupon the deposition continues,
4 viz:
5
6 NOTE: The above-referred to
7 letter dated December 5, 1996 was marked and
8 filed as Luter Deposition Exhibit No. 1.
9
10 Q I'm handing you what's been marked
11 Luter Deposition Exhibit 1.
12 Is that the letter to which you
13 were referring?
14 A Uh huh. (Indicating in the
15 affirmative) I just got it today, I told you.
16 Q This letter is dated December 5,
17 1996, is that correct?
18 A That's correct.
19 Q When was the first time you became
20 aware of the United States' claims against Smithfield
21 Foods?
22 A I'd say three or four days
23 after -- I didn't become aware of it until on a
24 Monday. My understanding that, that our attorneys
25 became aware of it approximately 5:00 o'clock the

1 previous Friday. We started receiving telephone calls
2 from the news media I believe Tuesday or Wednesday,
3 prior to the Friday in question.
4 Q Do you have any personal knowledge
5 as to how the news media became aware of the United
6 States' claims?
7 A Oh, sure.
8 Q How?
9 A I think it was a controlled leak
10 by the EPA.
11 Q On what do you base that?
12 A Well, I mean, why would EPA go to
13 the news media -- Why -- If EPA had a problem --
14 EPA hasn't alleged that -- I've complied one hundred
15 percent with the agreement that I reached with the
16 State of Virginia in very adversarial negotiations
17 with a democratic administration--not with Governor
18 Allen's administration. And I would think, this is
19 America.
20 And if EPA had a problem with that
21 agreement, and they were really truly concerned about
22 the environment, they would have approached me or the
23 State of Virginia, or both of us and said, hey, we've
24 got a problem. This is not good for the environment,
25 and we don't, we don't think that Smithfield Foods is

1 doing enough to comply with the law. And then I said,
2 okay, you tell me what I need to do.
3 But you don't -- You don't
4 contact me. You don't tell me that you even have any
5 concerns, much less a problem.
6 Let me finish. And all you do is
7 file suit rather than trying to work it out.
8 Q My question is --
9 A Now -- And it's clear -- And
10 it's clear that the EPA was very much aware of the
11 agreement between the State of Virginia and Smithfield
12 Foods. You even approved -- I understand it's, EPA
13 monies went to pay for the line, or a portion of the
14 line that was run to Smithfield. And it's, it's
15 beyond any doubt that EPA was fully aware of
16 everything that was taking place. You had quarterly
17 meetings with the State of Virginia, is my
18 understanding. And you never raised an objection.
19 Now, if this is America, and the
20 EPA is charged with treating people fairly, why
21 wouldn't you come to me and say, hey, look. We don't
22 like this agreement. What can we do to strengthen the
23 agreement to further protect the environment? No.
24 You all don't say a word to me. You go and talk to
25 the press. You talk to the environmental groups that

1 are out there, and you don't even talk to you us. And
2 all you do is file suit.
3 Q Sir, my question was, what is the
4 basis of your statement that EPA spoke to the press
5 prior to sending the letter to Smithfield Foods?
6 A When the press calls me days
7 before being, before I was notified that a lawsuit was
8 being filed, it tells me that EPA operates the way a
9 lot of government agencies operate in Washington, is
10 through leaks to accomplish whatever agenda they have
11 through the press.
12 Q Do you have any specific evidence
13 that EPA --
14 A I'm not stupid. When reporters
15 call me three days, call my people--they didn't call
16 me--but when they talked to my people, what's this
17 about EPA filing a lawsuit? We said, we know nothing
18 about it.
19 Q What is your evidence that it is
20 EPA who informed the press about this lawsuit?
21 MR. TROY: That's asked and
22 answered.
23 A I've answered it three times.
24 Q Other than your assumption that
25 because you heard from the press. Do you have any

1 other evidence that EPA notified the press of the
2 impending lawsuit?
3 MR. TROY: Sarah, he's already
4 asked and answered that.
5 A I think EPA has notified the
6 press. I think they notified the James River
7 Association. And no telling who before they notified
8 me. I think I was the last to find out.
9 Q You were aware of the United
10 States' potential claims when you met with me at the
11 Department of Justice, is that correct?
12 A That's exactly right, yes. I made
13 these same complaints to you, at that time, if you
14 recall.
15 Q Do you recall the date of that
16 meeting?
17 A No, I don't, but I'm sure you have
18 the date. But I made these same complaints. I
19 remember vividly making the same accusations at that
20 time.
21 MS. HIMMELHOCH: Counsel, will you
22 stipulate that that meeting occurred on
23 October 31, 1996?
24 MR. TROY: If you say so, Sarah.
25 I'm not going to stipulate to it. I'll let

1 you proffer it to the --
2 A It happened after I was notified
3 of the lawsuit.
4 Q But my question is, do you know
5 the date of that meeting?
6 A No, I don't know the date of it.
7 I attend hundreds -- I've probably attended five
8 hundred meeting since I had that meeting.
9 MR. TROY: We'll let you proffer
10 the date for the record. I presume you're
11 right, but I'm not stipulating to it,
12 because I don't know.
13 Q What is your basis for the
14 statement that that letter from the James River
15 Association was sent to Mr. McCabe prior to your
16 meeting with the Department of Justice?
17 A Reach -- We'll see you in July.
18 I see July.
19 Q Is there any evidence that that
20 meeting in July related to the Smithfield Foods case?
21 MR. TROY: That's another reason
22 Mr. McCabe will have to be a witness in this
23 case. Find out those inquiries. You can
24 add this, as the other predicate, to the
25 discussions we had.

1 A It's not important what I believe.
2 It's important what, what will be brought out when you
3 put Mr. McCabe under oath.
4 Q Mr. Luter, what evidence do you
5 have that the meeting that is referenced in the first
6 page of Luter Exhibit 1 discussed Smithfield Foods?
7 A Well, you mention the Pagan River.
8 We are the only point discharger on the Pagan River.
9 Q My question doesn't go to the body
10 of the letter. My question goes to --
11 A I believe they mention Smithfield
12 Foods. Yeah.
13 I'm writing to you to address the
14 present situation with Smithfield Foods,
15 which I have recently discussed with
16 Stephanie.
17 You know, I haven't, I haven't
18 looked at this as -- All I'm telling you is that I've
19 met with Pat Raher several weeks ago in Washington
20 that you're probably familiar with. I met with
21 Senator Chaffee from Rhode Island in regard to this
22 matter.
23 And at that time, Mr. Raher told
24 me he was incensed. He says, can you believe -- It's
25 your money. I'm going to tell you this; this will

1 upset you. That there was correspondence between the
2 EPA and environmental groups in regard to the
3 Smithfield case? And it was his impression that this
4 correspondence was taking place. Communications were
5 taking place prior to the filing of the lawsuit.
6 Q Other than the correspondence that
7 has been marked as Luter Exhibit 1, is there any other
8 correspondence that you're aware of?
9 A Not that I'm aware of. The
10 lawyers may -- Pat Raher, with Hogan & Hartson
11 mentioned to me this one letter. And today, I just
12 asked him to fax me a copy down so I could read it.
13 Q And is it your understanding that
14 EPA --
15 A There may be a lot more
16 correspondence. There may be, may be a lot of things
17 my attorneys may know that I don't know in regard to
18 this entire matter. I'm not sure. I don't know. I
19 suspect they know more than what they've told me.
20 Q You're not aware of any other
21 correspondence yourself, then?
22 A No.
23 Q Do you know if the letter that is
24 written by Mr. McCabe and Bates No. US6850, which is
25 the last page of Luter Exhibit 1 -- Do you know if

1 that letter predates or postdates the letter from the
2 James River Association?
3 A I guess it says:
4 Thank you for your letter of
5 December 5th.
6 So I assume that that letter, this
7 Mr. McCabe's letter was after the 5th.
8 Q Are you aware of any
9 correspondence from Mr. McCabe to the James River
10 Association before December 5, 1996?
11 A Am I personally aware? No.
12 Q You indicated that this was a
13 decision, in your words, that was top down, is that
14 correct?
15 A Uh huh. (Indicating in the
16 affirmative)
17 Q What was the basis of that
18 contention?
19 A This is what my attorneys told me.
20 Q Do you have any personal knowledge
21 in support of that contention?
22 A No. My attorneys tell me this is
23 clearly a political decision. You're caught between
24 two governments fighting, and you're caught in the
25 middle, Joe. I'm sorry, but you're caught in the

1 middle. This is what my attorneys are telling me.
2 Q Do you have any person knowledge
3 as to the nature of the funding for the Hampton Roads
4 Sanitation District sewer that was brought out for the
5 Smithfield plants?
6 A No. Except what I was told. I
7 was told there was an EPA grant on that line. But I
8 was just told that. Here again, I think I was told by
9 my attorneys or Mr. Wood. But I'm not -- I was just
10 told that. Whether that's true or not, I don't know.
11 That's what I was told.
12 Q Do you have any personal knowledge
13 that EPA was aware of the consent orders at the time
14 that they were entered into between Smithfield and the
15 State of Virginia?
16 A I understand that the consent
17 orders were part of the EPA files, yes.
18 Q Do you know when they got to the
19 EPA files?
20 A Here again, I don't know -- I
21 don't have anything -- The only thing I know is what
22 my attorneys are telling me. And I'm not so sure I
23 need to go into what my attorneys tell me. Do I have
24 any specific -- No. This is not --
25 MR. TROY: Don't tell them.

1 A This is not a burning issue with
2 me. I mean, I've got many other things to contend
3 with than this. I leave it to the attorneys.
4 Q So you don't have any personal
5 knowledge of when the consent orders got into the EPA
6 files?
7 A I wouldn't have any knowledge, no.
8 How would I know?
9 Q You testified earlier that HRSD is
10 requiring you to downgrade your systems. Do you
11 recall making that statement?
12 A Uh huh. (Indicating in the
13 affirmative)
14 Q What do you mean by that?
15 A I was told -- And here again, I
16 was told by Mr. Wood that we had, I thought that we
17 were, the effluent -- Probably shows how little I
18 know about these systems.
19 But we were putting effluent --
20 Last year, we were putting effluent into the Pagan
21 River. Okay. I thought that all we were going to
22 have to do is put that same effluent into the HRSD
23 system. Okay? I said, why have we got to spend three
24 million dollars to change my system if all we're going
25 to do is to pipe it into HRSD? I was told that, no.

1 That our effluent was too good for HRSD, because they
2 had different parameters about the effluent they could
3 accept. Because they had to look at what the total
4 effluent coming into the system is, and they were
5 going to blend it.
6 So they'll take effluent that's
7 very low in phosphorus, blend it with us that are high
8 in phosphorus. But then when it's blended, then it
9 will come within the limitations, I guess, of the HRSD
10 permit.
11 But I was told that we would have
12 to, in effect, dirty up our effluent to give HRSD what
13 they want. Now, don't ask me to elaborate, because
14 that's all that I know. And it was second hand
15 information that was passed on to me when I questioned
16 why we had to spend three million dollars more to, to
17 discharge at HRSD.
18 Q The source of that information was
19 Mr. Wood?
20 A I believe it was Mr. Wood, yes.
21 Q Are you familiar with the
22 phosphorus standards in North Carolina?
23 A No. I mean, I know that it's my
24 understanding that, that either we do not have, or we
25 have a much higher phosphorus standard in our permit

1 in North Carolina.
2 Q Why is there a higher standard in
3 North Carolina?
4 A I have no idea.
5 Q Have you ever inquired?
6 A I was told that, that -- I mean
7 it wasn't required, because evidently, there were more
8 rivers that was not nutrient enriched.
9 Q During the course of your
10 discussions as to what steps to take in response to
11 the phosphorus limitation, did you have any
12 conversations with employees of Smithfield Foods,
13 Smithfield Packing or Gwaltney regarding reduction of
14 phosphorus loading through alterations in the process
15 used at the Smithfield Packing or Gwaltney plants?
16 A Discussions? No. I, I know that
17 there was an ongoing effort to keep the phosphorus as
18 low as possible. But I mean, as a company policy, we
19 try to keep our effluent as clean as possible, even
20 though it may be well within the parameters of what
21 we're allowed to discharge.
22 Q Let me ask you this. When you
23 decided to hook up to HRSD, that was approximately
24 late 1990, is that correct?
25 A No. I think it was early '90.

1 We -- It was shortly after the -- It was shortly
2 after when the final I's and T's were dotted and
3 crossed. It might have been later, but there was a,
4 there was a verbal commitment on our part.
5 Keep in mind that in our business,
6 I mean, everything that we sell, virtually 99 percent
7 of what we sell, is verbal. It's a verbal company. I
8 mean, we sell verbally. We sell on the telephone.
9 You have mutual trust, or you don't do business.
10 As a result, we have a culture.
11 We do things by word of mouth, because if your word is
12 no good, you don't survive in this business. I mean,
13 it's the kind of business that things are
14 communicated. Everything is bought and sold on the
15 telephone.
16 If you have disagreements with
17 people of any consistency at all, you're out of
18 business, because business is conducted on trust.
19 And that's the way -- That's the
20 way that -- That's the culture of this company. Once
21 I committed -- Once I committed to tap onto HRSD, it
22 was a commitment.
23 I mean, for instance, right after
24 Doug Wilder became governor, he requested a meeting
25 with me, because he had heard that we were going to

1 possibly move our operations out, build a plant in
2 North Carolina. And, and he was concerned about the
3 job loss in Virginia. And I told him at that meeting
4 that it was too late. This took place in Gerald
5 Balisles' administration. And that I had already
6 committed to tap onto HRSD, and I'd also already
7 committed to build a plant in North Carolina, because
8 I was very concerned about, quite frankly, what the
9 State was going to do to me next.
10 MS. HIMMELHOCH: (To the court
11 reporter) Can you read back the first part
12 of that answer, please?
13
14 NOTE: At this time, a portion of
15 the previous answer was read by the court
16 reporter.
17
18 A Shortly after the meeting in
19 January, I said, tell Richard Burton, tell Richard
20 Borberg that I'm going to tap onto HRSD. Then, as far
21 as I was concerned, I went on to other matters.
22 Q At that time, did you direct
23 anyone to begin to study what steps Smithfield would
24 have to take in order to connect to HRSD?
25 A No. I mean, I assumed that the,

1 you know, that they would be back in touch with us and
2 tell us what we had to do. You know, things had to be
3 worked out exactly where would the HRSD line be, and
4 where would we tap on, that sort of thing. But here
5 again, these were technicalities I would not involve
6 myself with.
7 I made the policy decision to tap
8 onto HRSD, and told Mr. Wood to make sure it happened.
9 Q Did you direct them to take steps
10 between the time that you decided to hook up to HRSD
11 and the time the connection was available to control
12 phosphorus discharges from the Smithfield Packing or
13 Gwaltney plant?
14 A I told them to comply with the
15 law.
16 Q Did you specifically direct them
17 to take any steps with respect to phosphorus prior to
18 the hook up with HRSD?
19 A No. I didn't tell them to take
20 any specific steps towards phosphorus, or nitrogen, or
21 ammonia, or any of the parameters in the permit. It
22 was understood that, you know, we would have to comply
23 with all the limitations that we had previously been
24 working under.
25 Q Did you ever read the permit

1 issued to Smithfield Foods --
2 A No.
3 Q -- to the Waste Water Treatment
4 Plant?
5 A No.
6 Q Did you ever ask for a summary of
7 that permit?
8 A No.
9 Q Did you ever ask anyone to explain
10 to you what the permit required?
11 A No. I knew the permit had
12 limitations in various categories, and, and that, you
13 know, we had, we had to meet, we had to stay within
14 those limitations. But what those limitations were, I
15 don't know. I mean, I know it's two parts on the
16 phosphorus, because that was a, that was a burning
17 issue, the two parts. What our -- What parts
18 nitrogen, ammonia, I couldn't tell you what the limit
19 is today. I have no idea. I even made a mistake. I
20 thought it was three points for a while. I was unsure
21 about the two or three.
22 Q After you had made the decision to
23 connect to HRSD, Smithfield Foods' permit went through
24 modification and renewal process, is that correct?
25 A I don't know.

1 Q You didn't participate in that at
2 all?
3 A Huh huh. (Indicating in the
4 negative.) No.
5 Q You didn't ask whether the
6 modified permit contained the new phosphorus limits?
7 A I was promised relief from the
8 tougher standards. As far as I was concerned, the
9 subject was closed.
10 And quite frankly, during that
11 period of time, I didn't discuss anything. I was --
12 I asked when would we be required to tap on? And
13 other than that, I didn't involve myself with
14 anything.
15 MR. TROY: Sarah, I'm going to
16 object to the form of the question as a
17 foundation basis, because I believe the
18 record, thus far, has indicated the modified
19 permit was issued in January of 1990. So
20 the question has some, a confusion built
21 into it.
22 MS. HIMMELHOCH: The permit was
23 renewed in 1992.
24 MR. TROY: That's correct.
25 MS. HIMMELHOCH: And it was not

1 modified in 1992. Is that what you're
2 saying?
3 MR. TROY: There's a modified
4 permit, as you perhaps know, that was issued
5 in 1990. So I just want to avoid confusion
6 on those terms.
7
8 BY MS. HIMMELHOCH: (Continuing)
9 Q Did you make any inquiry as to
10 whether the permit that became effective in January,
11 1992 contained the phosphorus limit?
12 MR. TROY: That's been asked and
13 answered.
14 MS. HIMMELHOCH: I'm responding to
15 your objection.
16 A To me, this wasn't an issue of --
17 I wasn't -- It's just something I wasn't thinking
18 about at that time.
19 I mean, I -- I was told by my
20 people that, that, that we were granted interim relief
21 from, from these very severe limitations because we
22 had agreed to tap on. As far as I was concerned, that
23 was the end of the problem, and I had many other
24 problems in many other areas to address, quite
25 frankly, in my job, that it should have, it was over

1 with. And once, once something is over with, I go
2 onto something else. I don't go back and rehash.
3 Q At any time, did any member of
4 your staff inform you that EPA had made any statements
5 regarding the consent order?
6 A No. I don't think EPA -- As I
7 said earlier, I don't think people talked about the
8 EPA. I think it was understood by everybody in my
9 organization that, that we would be, we were dealing
10 with the State Water Control Board, and that the EPA
11 had oversight over the State Water Control Board. And
12 if the EPA had any reason to think that the State was
13 not doing its job, it had remedies that didn't pertain
14 to Smithfield.
15 Q Were you aware of any enforcement
16 rights EPA had against Smithfield Foods?
17 MR. TROY: Object to the form of
18 the question.
19 (To the witness) Go ahead and
20 answer if you can.
21 MS. HIMMELHOCH: I'll rephrase.
22 Q Were you aware that EPA could sue
23 you for what they alleged were violations in the
24 permit?
25 A No. I was not -- I was shocked

1 when I got the EPA suit, because I had assumed that,
2 that I was dealing with someone who had the right on,
3 or the power to enter into a binding agreement with
4 Smithfield Foods. And I was shocked that EPA could
5 come in and object to that, to that agreement.
6 And it went beyond shock when I
7 became aware that EPA had full knowledge of that
8 agreement and only decided to object when it served
9 its political purposes.
10 Q Setting aside the phosphorous
11 limits --
12 A I'm sorry. That any government
13 agencies can sue me for most anything but Jesus.
14 Q Were you aware that EPA could sue
15 you for violations of the permit, other than
16 phosphorus?
17 MR. TROY: Other than phosphorus?
18 Q Other than phosphorus.
19 MR. TROY: That's been asked and
20 answered, too. You're including TKN?
21 A I'm aware that the EPA can sue who
22 it damn well pleases. Okay?
23 Q At any time, did you --
24 A At any time they want to sue.
25 Anybody -- In this country, all you need is $10.00 in

1 your pocket, you can sue anybody for anything.
2 Q Did you ask anyone at the State if
3 they were speaking, or if they had the authority to
4 bind EPA?
5 MR. TROY: It's been asked and
6 answered. He's already indicated the
7 understanding that he had, also the prima
8 seat enforcement authority.
9 Q Please answer the question.
10 A My lawyer just did.
11 Q Please answer the question.
12 A My lawyer just did. I have
13 nothing further to say. If you want to get a Judge to
14 force me to answer it further, I'll do that.
15 MS. HIMMELHOCH: I will have to
16 keep this deposition open if he refuses to
17 answer this question, and we will address
18 this issue at another time.
19 MR. TROY: Well, you're not
20 keeping the deposition open. He already
21 indicated what his response was. It's been
22 asked and answered.
23 MS. HIMMELHOCH: He's refused to
24 answer the question.
25 MR. TROY: No, he hasn't, Sarah.

1 He indicated what the answer was. Please,
2 ask another question now.
3
4 BY MS. HIMMELHOCH: (Continuing)
5 Q Has your lawyer informed you of
6 the testimony of the Department of Environmental
7 Quality with respect to the consent orders?
8 MR. TROY: I'm going to object.
9 You have no right to inquire as to what we
10 have or have not communicated to this
11 client.
12 MS. HIMMELHOCH: This witness
13 has --
14 MR. TROY: Please ask another
15 question.
16 MS. HIMMELHOCH: I will place my
17 response to your objection on the record.
18 And then if you choose to direct the witness
19 not to answer, we can proceed.
20 This witness has testified at
21 length today regarding the information
22 provided to him by his attorneys with
23 respect to the factual issues in this case.
24 I'm entitled now to inquire as to the scope
25 of information provided to the client by his

1 attorneys.
2 MR. TROY: No, you're not. And
3 you can ask another question. There's been
4 no waiver of attorney/client privilege.
5 MS. HIMMELHOCH: Please instruct
6 the witness not to answer if you're going to
7 do so, then we can proceed.
8 MR. TROY: Ask your question.
9 MS. HIMMELHOCH: (To the court
10 reporter) Please, read the question back.
11
12 NOTE: At this time, the previous
13 question is read by the court reporter.
14
15 MS. HIMMELHOCH: Are you going to
16 instruct the witness not to answer, or do
17 you want him to answer the question?
18 MR. TROY: Yeah. I'm going to
19 instruct him not to answer that question.
20 You can ask him what he knows, but you
21 cannot ask him about communications between
22 the attorney and his client.
23 Now, ask another question.
24 MS. HIMMELHOCH: I simply needed
25 the instruction on the record. Thank you.

1

2 BY MS. HIMMELHOCH: (Continuing)

3 Q Are you aware of the testimony of

4 the Department of Environmental Quality regarding the

5 effect of the consent order on the 1992 permit?

6 A No.

7 Q What was your understanding of why

8 Virginia imposed a phosphorus limit or sought to

9 impose a phosphorus limit of two milligrams per liter?

10 A Well, my understanding was that

11 the State of Virginia, and the State of Maryland and

12 the State of Delaware entered into some sort of

13 agreement to try to improve the water quality of the

14 Chesapeake Bay. And that the Upper Chesapeake Bay was

15 very rich in nutrients, and the Upper Chesapeake Bay

16 was polluted because of extreme pollution taking place

17 in the upper regions of the Bay, particularly around

18 the City of Baltimore. And so they entered into an

19 agreement to begin to severely reduce the nutrient

20 level of the Chesapeake Bay.

21 During my efforts to not to be

22 subject to the two parts per million limitation on

23 phosphorus, I pointed out the following facts. I

24 didn't get anywhere, but I pointed it out that the

25 Pagan River discharges into the lower Bay very close

1 to the ocean, and the lower Bay is flushed out by the
2 ocean every day, and that there is not a nutrient
3 problem in the lower Bay; so the Pagan River will not
4 negatively impact the Chesapeake Bay.
5 Now, if the Pagan River was
6 discharging up in the very upper reaches of the
7 Chesapeake Bay, around Baltimore, or Annapolis, or in
8 that area, I could accept the argument that what we
9 were doing, or what we were discharging into the Pagan
10 River could adversely affect the Chesapeake Bay.
11 But since we're down here in this
12 area, and since there are many rivers that are a
13 million times more polluted than the Pagan River--the
14 Elizabeth River, right here in Norfolk, for
15 instance--that it didn't make a lot of sense to me to
16 impose back in 1990 a two parts per million phosphorus
17 limitation when there were much more severer
18 violations taking place.
19 And, you know, and I approached it
20 as a business man. Okay. If you've got a problem on
21 one to one hundred. First of all, you solve the, you
22 solve the 95's to a hundred. Once they're solved, you
23 solve the 90 to 95, and then you work your way down.
24 But it didn't make any sense to me to spend millions
25 of dollars a year to reduce phosphorus to a two parts

1 per million until you, until you solve the real major
2 pollution that was taking place, which was
3 agricultural runoff and major pollutions from
4 municipalities, and the federal government and so on.
5 And it's like why, you know, why
6 worry about a small leak in a roof if half your house
7 doesn't have a roof on it? That was the argument that
8 I used to the State in my efforts to get some
9 relaxation on the two parts per million. But I got
10 absolutely nowhere.
11 Q What is the basis for your belief
12 that the Pagan has no impact on the nutrient loading
13 problem in the Chesapeake Bay?
14 A I just explained that to you,
15 Sarah. We're -- Common sense. I'm in the -- We are
16 in the lower Bay. We're -- Where the Pagan River
17 discharges right into the James -- The Pagan River to
18 the Atlantic Ocean is a very short distance. And
19 we're in the very, the lowest part of the Bay that you
20 can discharge into, which is where the Atlantic Ocean
21 comes in. And, and this is flushed by the ocean every
22 day. The high nutrient levels are not in the lower
23 Bay where the ocean flushes it every day; it's in the
24 upper Bay.
25 Q And how do you know that?

1 A Common sense. I'm not a
2 scientist, but I've got common sense.
3 Q Did you ever tell any of your
4 employees not to report exceedences of the permit
5 limits?
6 A Absolutely not.
7 Q Did you ever suggest to anyone
8 that they not report any exceedence?
9 A Absolutely not.
10 Q Did you have any conversations
11 with anyone who was employed at Smithfield Foods,
12 Smithfield Packing or Gwaltney regarding the
13 submission of false data to DEQ prior to 1994?
14 A Never.
15 Q When did you first become aware
16 that Terry Rettig had submitted false data to the
17 Department of Environmental Quality?
18 A When Carl Wood came in to me -- I
19 don't remember the exact date. He came into my office
20 and said that he had been contacted by the State of
21 Virginia, and that the State was doing, in the course
22 of investigation of Mr. Rettig's work for other
23 entities--not Smithfield Foods--but the town of
24 Smithfield, the town of Surry, and I believe a trailer
25 park, that they had found some irregularities, and

1 that they had reason to believe that he had used
2 Smithfield's work sheets and substituted them for work
3 he was doing for them when, in fact, maybe that he
4 hadn't done the necessary tests and had just
5 substituted Smithfield's work sheets for work that he
6 should have done for these other people.
7 And, and I was surprised, because
8 I didn't even know Terry Rettig was working for anyone
9 else. I assumed he was just working for Smithfield.
10 I didn't know that he was moonlighting on the side.
11 And I said, fine. I said, you know, give the State
12 whatever they want, and, and see where it goes.
13 Q Did you ask Mr. Wood if he was
14 aware that Mr. Rettig had been working for other
15 clients?
16 A I don't remember. I was
17 surprised. I didn't know it. But whether Mr. Wood
18 knew it or not, I don't know. We have employees that
19 work for other people, you know. We have a lot of
20 employees that moonlight other jobs. So it didn't --
21 It was news to me, but I wasn't shocked about it.
22 Q Did you direct Mr. Wood to take
23 any steps other than to cooperate with the State?
24 A I told him to cooperate fully with
25 the State, completely.

1 Q Did you direct him to do anything
2 else?
3 A No. I said, give the State
4 whatever they want and don't -- I don't even think I
5 told him this. He would know not to hide anything. I
6 said, you know, cooperate with the State, and keep me
7 informed of what takes place.
8 Q After that time, did you direct
9 Mr. Wood to conduct an environmental audit of your
10 Smithfield Packing or Gwaltney plants?
11 A After that, yes. Well, let me go
12 to the next sequence, if you will.
13 The next conversation that I had
14 with Mr. Wood was he came into my office again, and
15 said that the State had been down looking at our
16 records to see if he had used our records to
17 supplement for these other outside concerns, and that
18 some of our records were missing. I said -- My
19 first, are they missing? Are we required to keep
20 them? He said, yes, we're required to keep them. I
21 said, what happened? He says, I think Terry Rettig
22 destroyed them. And I said, oh, my God. That was my
23 response. And, you know, I said, do you think he was
24 falsifying data for us? He said he didn't know, but
25 the records were missing.

1 I instructed him -- I asked him
2 this exact question. I said, Carl, is there a
3 smoking -- If I need to know, is there a smoking gun
4 here anywhere? Is there something missing? Do you
5 know anything of this at all? Do any of your people
6 know anything? My exact words was the smoking gun. I
7 took it from the Watergate episode, painfully aware
8 that a cover up is worse than the crime in many cases.
9 He assured me at that time, that absolutely not. I
10 said, well, don't hold anything back. Be completely
11 open in all of your communications with the State.
12 He came back to me after that for
13 a third time and told me that he or some of his
14 people--I don't remember--had found some records which
15 indicated that he had falsified some data for us.
16 MR. TROY: He, being --
17 A He, being Terry Rettig.
18 And I said, of course, we've got
19 to release that information. Give that information to
20 the State immediately. He says, yes, I agree totally.
21 I said, do it today. Don't wait a day. Call them,
22 tell them that we found some records that were missing
23 that we have found. Because what we -- We promised
24 the State that we would look for those records that
25 were missing, and someone found them. I don't know

1 who found them. But I don't know whether Carl found
2 them or somebody working for Carl. But the minute
3 that we found them, my instructions were to
4 immediately give everything to the State, let the
5 chips fall where they may.
6 Q How long was it between the second
7 time Carl Wood came into your office and the third
8 time?
9 A I don't remember. I really don't.
10 I mean, it wasn't a long period of time. But it could
11 have been a month, two months. I don't remember.
12 Q Did you ask Mr. Wood if he had
13 conducted an investigation to locate those records?
14 A I knew -- I instructed him to, to
15 search for those records, to cooperate fully with
16 everyone concerned, and not to hold anything back.
17 But when you start talking about missing records, that
18 got my attention. And, and I told him at that time
19 to -- And then when he found them, there wasn't any
20 debate about whether, are we going to give this
21 evidence away? Because it made us look bad. There
22 was never any debate with Mr. Wood or myself, was, of
23 course, we've got to release it. And we did it
24 immediately.
25 Q And the State was already aware of

1 the concern that Mr. Rettig had falsified data, is
2 that correct, at that time?
3 A Yeah. The State was concerned
4 initially, as I said earlier, about the falsified data
5 for other people. Then when they got into our records
6 to see if our records were being used to justify his
7 other tests, then we found our records were missing.
8 Then when we found some of those
9 missing records -- But anyway, we totally cooperated
10 at every instance. And, and in fact, I asked Carl
11 Wood, I said, Carl, are we sure? I mean, is this
12 something -- Is anyone above Terry Rettig? It
13 appears that Terry Rettig wasn't doing his job that
14 he's committed a criminal offense. I said, is there
15 anybody above him, do you think, that's involved with
16 this? He says, absolutely not. He didn't believe
17 that.
18 Then I made sure that
19 Mays-Valentine got into it, which is our attorney.
20 And I've asked Mays-Valentine to do an independent,
21 not an audit, but to, independently to look into it to
22 see if the same went beyond Terry Rettig.
23 Q Did you ever talk to Mr. Lively
24 about these incidents?
25 A No. Huh huh. (Indicating in the

1 negative.)
2 Q Did you talk with anyone other
3 than Mr. Wood and the attorneys at Mays & Valentine
4 regarding these incidents?
5 A I probably -- I can't say I did,
6 but I probably discussed it with Aaron Troub, who is
7 an inhouse counsel. He doesn't know anything about
8 environmental law, but I -- But since he's the
9 inhouse attorney, I'm sure I discussed it with him. I
10 made -- I made our Board of Directors aware of what
11 had taken place. And I think all of it --
12 This is the type of company we
13 have, but all of our top management, I would say, was
14 aware that, you know, that this was a problem.
15 Q When you say this is the type of
16 company we have, what do you mean?
17 A I'm just saying that we're an open
18 company. We don't -- If something goes wrong, we
19 don't try to hide it. I mean, we just have an open --
20 It's an open philosophy, if you will. I mean, it's
21 not -- I mean, it's something that, if I had a
22 conversation with the Vice-president of Sales, I'd
23 say, by the way, I'm in a bad mood today. I just
24 heard that we've got some missing documents. I mean,
25 we're an open company. We don't -- At least I am.

1 We don't try to -- It's not a secretive kind of a
2 company. It's pretty open.
3 Q During the time period in which
4 Mr. Hellmann was retiring from Smithfield Foods, did
5 you have any conversations with Mr. Rettig regarding
6 his desire to resign from the company?
7 A Resign from the company? No.
8 I've never had any conversations with Mr. Rettig at
9 all. I believe that either Bill Hellmann or Carl Wood
10 brought Mr. Rettig in one day and introduced me to
11 him. And I was introduced to him. I said, well,
12 welcome aboard, something like that. I've never had a
13 substantive conversation with Mr. Rettig. But I think
14 Mr. Rettig is very much aware of the openness of the
15 company.
16 As I say, I have an open door
17 policy. Mr. Rettig could come into my office at any
18 time and speak to me about any issue that was of
19 concern to him if he wanted to.
20 Q Did you have any conversations --
21 A But he never did.
22 Q Did you have any conversations
23 with Mr. Morris regarding Mr. Rettig offering to
24 resign?
25 MR. TROY: Objection. Lack of

1 foundation, if there's any such offer.
2 A I don't remember Mr. -- I mean,
3 Mr. Rettig resigning or not resigning would not be
4 something that would concern me one way or the other.
5 I mean, he -- I mean, I -- If he was, if he was a
6 vice-president, I would be involved. But Terry
7 Rettig's come and go. I mean, we've got 18,000
8 employees. You know, people at that level come and
9 go, or offer to, or threaten to resign, or whatever.
10 But I would never know about it.
11 MR. TROY: Let the record show
12 when he said that Terry Rettig's, he was
13 just referencing simply employees, not
14 officers. He wasn't referencing the
15 character of Terry Rettig.
16 A No. No.
17
18 NOTE: The above-referred to
19 letter dated December 7, 1989 was marked and
20 filed as Luter Deposition Exhibit No. 2.
21
22 A Giving the same speech eight years
23 later, am I not?
24 Q This is a letter you wrote to
25 Governor-elect Douglas Wilder, is that correct?

1 A Okay. Let's see. Uh huh.
2 (Indicating in the affirmative)
3 Q This is a letter you wrote to
4 Governor-elect Douglas Wilder, is that correct?
5 A Yes.
6 Q You reference a meeting that --
7 A I say, you know -- Yeah.
8 Evidently, the meeting I had with -- Yeah. So
9 evidently, I must have met with him on the, probably
10 the 6th of December. I thought it was after he took
11 office. But was this '91 or '90?
12 Yeah. This is right after he was
13 elected, before he was inaugurated, I guess. Yeah.
14 He was elected in '89; he took office in '90.
15 MR. TROY: Correct. We can
16 stipulate that the electoral elections were,
17 '89 was the year for the election.
18 Mid-January 1990 is when Governor Wilder
19 took office.
20 A Yeah. Had this meeting taken
21 place. It's no secret. Richard Holland, is who is on
22 our Board of Directors was State senator. He was very
23 much aware of the fight between the State of Virginia
24 and Smithfield Foods in regards to this two parts per
25 million phosphorus limitation. He arranged a meeting

1 with the Governor-elect at that time, Governor Wilder.
2 I basically made my case. And that was it.
3 Q Is it fair to say that you were
4 advising the Governor-elect that if you did not
5 receive relief from the two milligram per liter
6 phosphorus limit, you would move your operations to
7 North Carolina?
8 A I told -- At that time, I don't
9 believe I had the -- I don't believe I had the HRSD
10 option. I think the HRSD option was -- I was made
11 aware of the HRSD option, I believe, after this. I
12 think the meeting with Mr. Borberg and Richard
13 Burton -- Wait a minute. Wait a minute. I believe
14 it was after, was after this meeting, I believe.
15 Q So it is fair to say that at this
16 time, you told Douglas Wilder that you would be moving
17 the company out of Virginia if you do not receive --
18 A No. I told him that this was a
19 limitation that I believed at that time, and that I
20 believe, in fact, today, that we could not meet on a
21 consistent basis. And that if some relief wasn't
22 forthcoming, that I would have to move out of state,
23 severely curtail production in the State of Virginia.
24 I said in a way that, as tough as
25 the State has been on me, I have no interest at all in

1 expanding in a state that every time -- See, what --
2 Let me back up. The State would
3 put in a limitation. We would spend millions of
4 dollars to do what was necessary to come into
5 compliance of that limitation. Then two, three years
6 later, they would up the ante. And I -- It was -- I
7 had a moving target all during the 1980's. It was a
8 moving target. And I never knew where I stood. I
9 couldn't make plans to do anything, because I never
10 knew what the State was going to do, as far as
11 tightening up the limitations. And, and then I
12 finally just, I just made the mental decision that I'm
13 not going to expand in the State of Virginia any
14 further, because they're just too unreasonable and too
15 tough. And as a result, I built, I built this very
16 large plant in North Carolina.
17 Q So because of the strictness of
18 environmental regulations in Virginia --
19 A No, I wouldn't say the strictness.
20 I would say because of the unreasonableness of putting
21 in a limitation that I could not meet.
22 Q Was there any limitation other
23 than the phosphorus limit that you viewed as
24 unreasonable?
25 A I don't remember. I just remember

1 at the time that every time that I would build waste
2 water treatment facilities, the rules would change.
3 And I've got -- Then I've got a crisis on my hands,
4 again. And, and I was just getting very, very tired
5 of it. And I said, you know, I said -- And we had,
6 got businesses in many other states. I said, my God,
7 Virginia is -- Evidently, they just don't want a meat
8 packing plant in the State of Virginia.
9 So quite frankly, since that time,
10 for the last 15 years, virtually every capital, I
11 mean, most of our monies have been spent outside of
12 the State of Virginia.
13 Q Was it your understanding that
14 only the meat packing industry was subjected to the
15 two milligram per liter standard?
16 A No. As I said earlier, the meat
17 packing industry -- If you want to put me to a very,
18 very strict limit, make it ten times tougher on dioxin
19 than the paper industry, then I can deal with that.
20 Because the nature of my effluent allows me to deal
21 with a much stricter standard.
22 Phosphorus may not be a problem
23 for many industries, but it's a problem for people
24 that are in the meat packing industry.
25 Q Do you know whether phosphorous is

1 a problem for other industries?
2 A I assume it is for some
3 industries, but in some industries, it's not.
4 MR. TROY: Objection.
5 A It depends upon the nature of the
6 effluent that comes out of various industries.
7 Q Did you do anything to familiarize
8 yourself with the nature of the effluent coming from
9 other industrial discharges in the State of Virginia?
10 A I'm not concerned about other
11 industries. I'm concerned about what's available
12 under best available technology minus what was, what
13 was explained to me at that time is that if the limits
14 are not set at some magical point, that pollution
15 occurs. The limits are set on what is obtainable
16 within various industries with best available
17 technology and that you can stay in compliance. And
18 that some industries will have a much higher standard
19 or much lower standard, not because it's some magical
20 point of pollution, but because that's what's
21 attainable with best available technology.
22 Q So you did not familiarize
23 yourself with --
24 MR. TROY: Objection.
25 A I am not an expert; I'm not a

1 scientist; I do not have a degree in environmental
2 matters. I, I depended upon people like Mr. Wood and
3 outside consultants to tell me what I could accomplish
4 and what I could not accomplish.
5
6 NOTE: The above-referred to copy
7 of a Richmond Times-Dispatch article dated
8 2/25/87 was marked and filed as Luter
9 Deposition Exhibit No. 3.
10
11 A All I can say is I have never read
12 a newspaper article in my life the way I knew the
13 facts cold, where there weren't numerous mistakes in
14 the article. I will say this before I even read this
15 particular article.
16 Q I understand that.
17 A Do you want me to read this
18 article?
19 MR. TROY: What's the date of this
20 article?
21 MS. HIMMELHOCH: February 25,
22 1997.
23 MR. TROY: 199- what?
24 MS. HIMMELHOCH: 7.
25 A I mean, there are so many

1 inaccuracies. I want to work outside the system.
2 I've tried to work within the system. But these
3 environmental groups, you know, wouldn't --
4 Q They wouldn't what?
5 A Huh? Oh, they don't mean -- Most
6 of them, it's hard to reason with them. They're so
7 radical, you can't reason with them.
8 Q Have you had a chance to review
9 the article?
10 A Yes.
11 Q In the second paragraph of this
12 article, the Richmond Times-Dispatch attributes a
13 statement to you that EPA is targeting him--I think
14 referring to you--in an effort to embarrass the DEQ
15 under Republican Governor, George Allen.
16 A Uh huh. (Indicating in the
17 affirmative)
18 Q Is that a correct reporting of the
19 statement that you made?
20 A Yes. Uh huh. (Indicating in the
21 affirmative)
22 Q What was the basis of that
23 statement?
24 A What my attorneys told me.
25 Q What, specifically?

1 A I just said it. What my attorneys
2 told me.
3 Q What did they say to you?
4 A They made me aware of the ongoing
5 battle between the EPA and the Allen administration,
6 much of it that I did not know of.
7 But when I got the EPA suit, my
8 reaction was, my God, what's this all about? I said,
9 we entered into an agreement with the State. Why --
10 We're just -- We're right on the verge of doing,
11 accomplishing everything that's been asked of us in
12 regard to improve the water quality of the Pagan
13 River. There will be no point discharges. The two
14 plants of Smithfield, plus we, what we did, paid for
15 allowed the State, the town of Smithfield not to incur
16 any heavy costs and to eliminate the only other point
17 discharge on the Pagan River.
18 I said, my God, we should be
19 celebrating. Why is the EPA coming in at this point
20 in time, if it was -- If they were trying to abate an
21 ongoing problem that was going to threaten the water
22 quality of the Pagan River, I could understand it.
23 But I said, we're not going to be discharging anything
24 into the Pagan River -- At that time, I thought it
25 was just a matter of weeks until we tap on the second

1 plant. It's been some delays that was out of my
2 control.
3 But I couldn't -- I didn't
4 understand -- My question to my attorneys--and Tony
5 Troy is sitting right here--why in the world would EPA
6 sue Smithfield when the problem is going to be
7 completely solved in a positive fashion in a matter of
8 weeks?
9 Q Is it your understanding that you
10 have been sued by the United States only for
11 phosphorous violations?
12 A It's my understanding that that's
13 the vast majority of it, yes.
14 Q In terms of --
15 A I haven't even read it, quite
16 frankly, the complaint or the lawsuit.
17 Q Is it your belief that the United
18 States is seeking penalties for fecal coliform
19 violations for political reasons?
20 A I think that the EPA has filed
21 suit against Smithfield for political reasons,
22 whatever violations that Smithfield Foods has been
23 responsible for. I'm sure the State of Virginia is
24 going to do its best to levy fines for those
25 violations.

1 What I object about is, you know,
2 let EPA and the State of Virginia decide who's going
3 to do what, but don't put us in the middle.
4 Q You also are attributed as saying
5 that:
6 I'll spend five million in
7 attorney's fees before I pay three million
8 in fines.
9 Is that correct?
10 A That's right.
11 Q Why is that?
12 A Because I think that what the EPA
13 has done is so outrageous. I've got numerous letters
14 from small business people that have been put out of
15 business that have gone bankrupt personally. And
16 there are businesses that don't have the resources to
17 stand up to the unlimited power and money that the
18 federal government has. And I think it's so totally
19 wrong.
20 I have done everything that's been
21 asked of me. And, and everything that we've done is
22 going to make the Pagan River as pristine as it can
23 be. And I think the EPA's action is outrageous. I
24 think it's unAmerican. Just my personal opinion.
25 When decisions are made, these kind of decisions are

1 made for political reasons. Whether I'm right or
2 wrong, I think it's criminal. Whether it is or not, I
3 don't know. I'm not a lawyer. But I'm totally
4 outraged that this has taken place.
5 I'm not outraged about the State
6 lawsuit. I mean, I've had violations; I admit to
7 those violations. I know I'm subject to a fine every
8 time I have a violation. And I will, you know --
9 That will be what will be.
10 But for the EPA to come in at this
11 point in time, after it has fully been aware of what
12 has transpired in the last six years, I think is
13 totally outrageous. And I think it's probably the
14 biggest power grab that the federal government has
15 tried to embark on in my lifetime.
16 I mean, if, if this decision is
17 allowed to stand, you just as well disband 50 DEQ's
18 from all 50 states, because no corporation or no
19 individual is going to enter into any agreement with
20 any state enforcement agencies if six years or seven
21 years later, the federal government can come in, oh
22 yes, we knew about this, but we didn't sign onto this
23 and can overthrow it. I mean, what's the practical
24 result? I guess we'll just abolish 50 DEQ's in the
25 country.

1 I've got attorneys at Hogan &
2 Hartson that have said that they're advising their
3 clients, don't agree to any consent order or any
4 agreement with any state unless you make sure that EPA
5 has signed on, because you're opening yourselves up to
6 a nightmare.
7 Q Has the Board of Directors
8 approved your decision to spend five million dollars
9 in attorney's fees --
10 A No. I make those decisions.
11 Q Is this a sound fiscal decision?
12 A That's for me to judge.
13 Q Do you --
14 MR. TROY: I'm going to object to
15 the form fiscal. There's no discussion.
16 A I know. How I spend Smithfield
17 Foods' money should not be of any concern to you or
18 the government.
19 The bottom line is, you succumb to
20 a tyrant once, you will succumb to him a second,
21 third, fourth, fifth time. And I think in this
22 instance, the government is the tyrant. I -- I think
23 this is so outrageous that if I'm not going to take a
24 position on this, I'd just as soon not take a position
25 on any lawsuit.

1 I mean, we have people suing us
2 all the time demanding millions of dollars for broken
3 teeth, from a piece of bone on a piece of sausage, for
4 instance. But I'm not about to -- I'm not about to
5 settle this lawsuit, because I think I'm right.
6 Q Who are the small businesses that
7 you have heard from regarding their closure?
8 A I'm not going to get into that.
9 I've got two, three personal letters. And quite
10 frankly, I thought they may be discovery. Some of
11 them were, actually make you cry. And I personally
12 tore them up, because I thought they may -- I just
13 didn't want to make them a part of the fight. But I
14 received numerous letters from, from people.
15 I mean, one -- Give you one
16 example. Said, you know, my business went bankrupt, I
17 went personally bankrupt. I didn't have the resources
18 to stand up to the EPA. Please, don't give into them.
19 Someone needs to stand up. Unfortunately, I didn't
20 have the resources to. And he sent me a check for
21 $15.00. And I sent the $15.00 back to him, by the
22 way.
23 Q Did you investigate the accuracy
24 of the claim in the letter --
25 A No. But I realize that -- I see

1 what the EPA has done in my instance, so it's not hard
2 for me to extrapolate from that that they have been
3 heavy handed in other instances.
4 Q Do you have specific evidence of
5 those other instances?
6 A As I told you, do I take my time
7 to investigate it? No. That's their problem. I've
8 got my own problems.
9 I can tell you this. That you all
10 are hurting your efforts in trying to improve the
11 environment in this country in taking on the kinds of
12 cases that you've taken on in regard to Smithfield.
13 Q How so?
14 A Because I think that it's one
15 thing about the truth. When it comes to the surface I
16 think they will see it for what it is, that there is a
17 political vendetta. And knowing I'm making every
18 effort to testify before Congress to make members of
19 Congress aware of what is taking place in this
20 instance with Smithfield so they can, so there can be
21 some Congressal oversight upon government agencies
22 that are out of control.
23 Q If this is a fight between the
24 United States and Virginia, why did they pick you?
25 A I haven't -- You'll have to ask

1 the EPA.
2 Q Why do you believe --
3 A I think because -- I think I
4 made -- I made a political contribution to Governor
5 Allen. And I think EPA has accused the Allen
6 administration of being soft on the environment. And,
7 you know, as I say, all the reason I think it's
8 political. I think, as I told you, the decision came
9 from the top down, not from the bottom up, the way
10 these normally, the staff takes problems and takes it
11 up the ladder for prosecution. And rather than being
12 pushed down from the top -- And I think it's my
13 understanding that, that the staff at EPA will testify
14 this is something they did not recommend, but it was
15 pushed down from the top.
16 Q If, in fact, that's not the case,
17 would that alter your opinion of this action?
18 A Probably not. Because I -- If I
19 believe that EPA was not aware of the agreement that
20 Smithfield Foods and the State of Virginia entered
21 into some seven years ago, I think it may change my
22 mind. But it's clear to me in discussions I've had
23 with my attorneys that the EPA was fully aware and was
24 kept fully informed of this entire matter. And, and
25 why, why -- What other reason would there be -- If I

1 was going to continue to discharge into the Pagan
2 River for the next two, three, four or five years, and
3 you want to abate that pollution, I can understand
4 you're unhappy with the amount of phosphorus we're
5 putting into the River. I can understand you saying,
6 hey, look, bring it to a stop tomorrow. Then I've got
7 to make a decision.
8 Q So is it your opinion that any
9 action --
10 A I think any time the federal
11 government files suit against someone before they even
12 have the courtesy to talk to the people that they are
13 suing, it's outrageous.
14 Q I need to be --
15 A It's outrageous.
16 Q Sir, I need to finish my question.
17 Is it your opinion that any action
18 for wholly passed violations is inappropriate?
19 A It's inappropriate when the
20 federal government -- I'm not sure of the question.
21 I don't know whether you're talking about the
22 phosphorus or whether you're talking about the
23 violations that the State is suing me on. I'm not
24 sure what you're referring to.
25 Q Is it your belief that it would be

1 improper for EPA to sue a company who had been in
2 violation of the act but had since come into
3 compliance?
4 MR. TROY: I'm going to object to
5 this line of questioning as to, you know,
6 I'd like to know where we're going, how this
7 could lead to the discovery of relevant
8 evidence. He's already testified at length
9 about his beliefs regarding this litigation,
10 why he feels it was improperly motivated.
11 What are these hypotheticals going to lead
12 to, Sarah?
13 MS. HIMMELHOCH: Counsel, he has
14 testified that he would understand if this
15 action were brought to abate future
16 violations. And I'm entitled to probe what
17 that understanding is.
18 A No. No. My understanding is the
19 State of Virginia, any violations that we have that
20 the State of Virginia can and will bring appropriate
21 action. If the EPA doesn't think that the State of
22 Virginia is fulfilling its obligations under
23 environmental law, then they can take, they've got
24 certain remedies. They can take over the enforcement
25 and sue us directly, I guess.

1 What I have a problem with--and
2 I've repeated it over and over and over again--is if
3 you've got a problem with anything that we've done,
4 discuss it, first. Bring it to my attention. Tell me
5 what I'm doing wrong. Let me see if I can do better.
6 This -- Bill Clinton did something every week, and
7 says we've got a new era of government, that we're
8 going to work together for the common good. And
9 rather than taking a meat axe approach -- And
10 evidently, the regulatory agencies are not paying any
11 attention to the president of the United States.
12 But -- But as I said earlier, the
13 EPA can sue anybody for whatever they want to at any
14 time. I mean, the lawsuits are very easy to bring in
15 this country. So I mean --
16
17 NOTE: The above-referred to copy
18 of a paid advertisement was marked and filed
19 as Luter Deposition Exhibit No. 4.
20
21 Q Would you please examine what's
22 been marked as Exhibit 4?
23 A I know what it is.
24 Q What is it?
25 A It's an ad that I ran in various

1 newspapers about six, seven weeks ago, I guess, now.
2 Q Which newspapers did it run in?
3 A I believe it was the Washington
4 Post, the Norfolk Virginia Pilot, the Roanoke paper
5 and a Richmond paper, I believe.
6 Q How much did the ad cost?
7 A Different amounts for different
8 newspapers.
9 Q How much did it cost in the
10 Washington Post?
11 A I don't know.
12 Q You state in this advertisement
13 under the heading:
14 What are the facts behind EPA's
15 lawsuit? That more than five thousand
16 alleged violations which are expressly
17 excused by two states issued administrative
18 consent orders.
19 A Uh huh. (Indicating in the
20 affirmative)
21 Q What is the basis of that
22 statement?
23 A To the phosphorus violations that,
24 that we've been talking about.
25 Q Is there a document that expressly

1 excuses you from compliance with the phosphorus
2 limitations? And when I say you, I mean Smithfield
3 Foods?
4 A There's an agreement that we
5 entered into with the State that excuses us from the
6 phosphorus limitations that EPA is very much aware of.
7 Q Did EPA sign that agreement?
8 A I don't know whether they signed
9 it or not.
10 Q Did you sign the agreement?
11 MR. TROY: Do you mean him,
12 personally, or Smithfield?
13 MS. HIMMELHOCH: Yes, he.
14 A I don't remember.
15 Q Did you review the agreement?
16 A No. I mean, my attorneys would.
17 But I sign my signature probably -- I don't know. I
18 probably average 20 times a day with various
19 documents. I have people review them, tell me it's
20 okay to sign them. If they tell me it's okay to sign
21 them, I sign them.
22 Q Who wrote the advertisement that's
23 been marked as Luter Exhibit 4?
24 A Primarily myself and, and we use a
25 PR firm. And help from the law firms.

1 Q What is your evidence that Terry
2 Rettig acted alone?
3 A That's what I believe.
4 Q Do you have any specific evidence
5 to that effect?
6 A I have -- I don't have any
7 specific evidence to the contrary.
8 Q Do you have any specific evidence
9 that Terry Rettig acted alone?
10 A I believe he acted alone. I don't
11 have any evidence that anyone else was involved other
12 than Terry Rettig.
13 Q What controls does the company
14 have in place now to prevent violations like those
15 that occurred during Terry Rettig's work at Smithfield
16 Foods?
17 A My response is that if someone
18 wants to steal from you, they can steal from you. All
19 the controls in the world are not going to stop that.
20 If someone wants to falsify a
21 document or to lie, he can do that. You have to --
22 It's impossible -- When you've got 18,000 employees,
23 it's impossible to, to put tight controls on
24 everybody.
25 MR. TROY: Sarah, I'm going to

1 also apologize for the late objection, but
2 the question as to, that you posed regarding
3 Terry Rettig working alone, I'm going to
4 object to the form of that question, because
5 it mischaracterizes the exhibit, itself,
6 which indicates that Terry Rettig gave an
7 affidavit that he had acted on his own.
8 MS. HIMMELHOCH: Thank you for
9 supplementing your witness' testimony.
10 A No. No.
11 MR. TROY: It's
12 mischaracterization of your question, Sarah.
13 I think I have the right to object as to the
14 form of your question.
15 A No. When I asked Carl Wood -- I
16 said, Carl, is there a smoking gun here any place?
17 And, you know, at that time, he told me that Terry
18 Rettig had signed an affidavit saying that no one else
19 was involved. And my response was, thank God.
20 Q Let me ask you this. What
21 procedures were put in place to supervise the
22 activities of the person who replaced Terry Rettig?
23 A Well, I have Carl Wood. Then
24 below Carl Wood is Larry Lively. Below Larry Lively
25 is, what's her name, Carl?

1 Q Mr. Gill?
2 A I have -- Well, Mr. Gill replaced
3 Larry Lively recently. But then you have Diane --
4 Q Carson?
5 A Diane Carson is below Mr. Gill
6 today. And then I think she's got any number of
7 people reporting to her. And it's like a chain of
8 command. If there's a broken link anywhere, then
9 problems occur. But I mean, you know --
10 Q Was there any change in the
11 management structure relating to the Waste Water
12 Treatment Plant as a result of the violations that
13 were discovered while Mr. Rettig was employed by
14 Smithfield?
15 A Repeat that one more time.
16 Q Did you make any changes to the
17 management chain supervising the waste water treatment
18 plant in response to Mr. Rettig's violations?
19 A No. When I found --
20 MR. TROY: Wait a minute. Terry
21 Rettig was terminated. I mean, what are you
22 talking about?
23 MS. HIMMELHOCH: I'm talking
24 about --
25 A When we found out that Terry

1 Rettig had -- When we first became aware that the
2 State suspected that Terry Rettig may be involved in
3 improper conduct, we took a wait-and-see attitude.
4 Obviously, we couldn't fire him at that point, because
5 we didn't have any basis to fire him. And you get in
6 trouble by firing someone today unless you've got
7 cause to do the same.
8 When we found out that Mr. Rettig
9 was involved in improper conduct, it's my
10 understanding that we acted promptly and discharged
11 Mr. Rettig at that time.
12 Q Did you make any changes as to how
13 the Waste Water Treatment Plant was supervised, other
14 than discharging Mr. Rettig?
15 A No. It's my understanding -- And
16 here again, you'll have to ask other
17 people--Mr. Lively and Mr. Wood. It's my
18 understanding that when he was let go, that we
19 immediately hired a replacement. And that entire
20 episode was a major topic of discussion. And every
21 effort was being made to make sure that such an event
22 never could happen again.
23 But here again, I mean -- I mean,
24 you can always have employees that, that cannot do
25 their job, and that you're not aware of it until a

later date.

Q Did you ask Mr. Wood what checks had been placed on Mr. Rettig when you first found out about the allegations that Mr. Rettig falsified data?

A I told him -- Obviously, he said he was going to watch him very closely. We just -- We didn't -- You know, we were not aware of there being anything initially, other than unsubstantiated allegations.

Q My question went to the supervision of Mr. Rettig before the allegations arose. When Mr. Wood reported to you that there had been allegations that Mr. Rettig had falsified data. So this is either the second or the third meeting that you had with Mr. Wood regarding Mr. Rettig.

MR. TROY: Wait a minute. I'm going to object to the form of the question, too. It mischaracterizes, I believe, the prior testimony.

Q Did Mr. Wood, at any time, report to you allegations that Mr. Rettig had falsified data?

A Did he report to me?

Q Yes.

A Yes. He reported to me when he found, when he or his people found some documents that

1 implicated Mr. Rettig -- You know, I testified he
2 came to me and reported that incident to me. And I
3 assumed Mr. Rettig was discharged, you know, within
4 short order.
5 Q Did you ask Mr. Wood when he
6 reported this to you --
7 A I talked to him -- No.
8 Q Sir, I have to be able to finish
9 my question.
10 Did you ask Mr. Wood when he
11 reported these falsifications to you, what auditing or
12 checks had been put in place to check what Mr. Rettig
13 was reporting to DEQ?
14 MR. TROY: Objection to the form
15 of the question. It's an invalid
16 foundation. There's no foundation that at
17 that time he was reporting anything to DEQ,
18 Sarah. You're mischaracterizing the entire
19 course of the discovery of this case.
20 Q At any time, did you ask Mr. Wood
21 what checks had been put in place to check on the
22 information reported by Mr. Rettig to DEQ?
23 MR. TROY: Same objection. And
24 I'm not going to allow you to
25 mischaracterize the evidence.

1 Let me just -- For clarification
2 purpose, you can object that it's an
3 improper objection, if you want. But
4 testimony has already been made that when
5 the first report regarding Terry Rettig came
6 to light, there was no question at that time
7 about falsification of documents.
8 MS. HIMMELHOCH: And I'm not
9 implying that there was.
10 MR. TROY: And you know from the
11 record that at that time, Terry Rettig was
12 removed from his position as waste water
13 manager. So he was no longer reporting
14 anything to DEQ from that date forward.
15 MS. HIMMELHOCH: I'm not implying
16 that he is. I'm asking--
17 MR. TROY: Your question implies
18 that he was.
19 MS. HIMMELHOCH: No, it doesn't.
20 I asked Mr. Luter whether he ever inquired
21 of Mr. Wood what system was in place to
22 check what Mr. Rettig was reporting to DEQ
23 prior to --
24 THE WITNESS: No. No. No.
25 MS. HIMMELHOCH: -- prior to the

1 allegation surfacing.
2
3 BY MS. HIMMELHOCH:
4 Q Let me step back and lay a couple
5 of questions down.
6 Mr. Rettig was submitting
7 information to DEQ on behalf of Smithfield Foods until
8 he was relieved of his responsibilities, is that
9 correct?
10 A I assume so, yes.
11 Q Did you, at any time, ask Mr. Wood
12 what checks were in place on the information that
13 Mr. Rettig submitted to DEQ on behalf of Smithfield
14 Foods?
15 A Once we became that Mr. Rettig was
16 suspect, I'm not sure, but I'm sure I would have said
17 something like, Carl, watch him closely, or make sure
18 that Larry Lively watches him closely until we know,
19 until we find out what the facts are.
20 Q Right. But I'm asking whether you
21 tried to find out what the historical practice of
22 supervision had been?
23 A No, I don't get involved -- I
24 can't -- I can't micromanage Carl. I've got -- I've
25 got ten people, probably, that have got Carl Wood's

1 responsibility. I've got the President of Packing,
2 the President of Gwaltney, Carl Wood, the head hog
3 buyer, the buyer that heads the, that does the
4 commodity trading, and three or four other jobs. I do
5 not try to micromanage their job.
6 Carl Wood had the responsibility
7 to keep us in compliance. And that was his
8 responsibility. And I did not get involved in how he
9 fulfilled his responsibilities. That's not my job.
10 Q Even after these allegations
11 arose?
12 A After these allegations, I said
13 monitor closely, cooperate fully. He told me that
14 he'd hired a replacement for Terry Rettig. He spoke
15 highly. He thought that he's got all the confidence
16 in the world in Larry Lively at that time.
17 I don't know Larry well, but he,
18 he impresses me as a fine gentleman who would not ever
19 do anything improper. I used to see Larry Lively
20 almost every day in the hallway. And, and I -- To
21 this day, I believe that Larry Lively has got one
22 hundred percent integrity. Do I think he made a
23 couple of mistakes? Absolutely.
24 Q What mistakes did me make?
25 A He made the mistakes -- The only

1 one that I know that he made was a test he should be
2 running every hour; I think he ran it every two hours.
3 That's the only one that I know of.
4 Q Are you aware that Mr. Wood signed
5 the DMR's on occasion?
6 A No.
7 Q Were you aware --
8 A I don't know who -- I'm not aware
9 who signs the DMR's, quite frankly. I mean, I assume
10 that -- I mean, what I know today, I assumed it was
11 Terry Rettig. But, I mean, I couldn't say for a fact
12 today whether Terry Rettig signs DMR's, or Larry
13 Lively, or Carl Wood. I don't know.
14 Q Let me ask you this. You've
15 testified that the atmosphere at Smithfield Foods is
16 an open atmosphere.
17 A That's correct.
18 Q How did Mr. Rettig get away with
19 what he did in such an open company?
20 A I think that -- As I said
21 earlier, I think any time an employee wants to do
22 something dishonest, he can get away with it for a
23 period of time. I think, eventually, the truth always
24 comes to the surface, quite frankly.
25 But, you know, I think a teller in

1 a bank can steal for a while, can steal for years.
2 But eventually, that teller is going to get caught.
3 And I think the same thing applies to Mr. Rettig. I
4 mean, I have to depend upon the integrity of many
5 people that work for Smithfield Foods.
6 Once in a while, we, we have
7 employees that let us down. But that's, you know --
8 You don't blame the president of the United States for
9 everything that goes wrong in his administration,
10 because the job -- He can't involve himself with
11 everything that Webster Hubbel does, or what his wife
12 does, or whatever. I mean, it's -- The job is too
13 big. If I get bogged down in the, too much detail, I
14 can't do my job.
15 Q Do you have an internal accounting
16 department at Smithfield Foods?
17 A We have an accounting department
18 at Smithfield Foods, yes.
19 Q Who prepares the tax returns for
20 Smithfield Foods?
21 A We do, with the help of Arthur
22 Anderson.
23 Q Who signs -- Who has the
24 authority to sign checks of $10,000.00 or more at
25 Smithfield Foods?

1 A I have no idea. Lots of people.
2 Q Is there a counter-signature in
3 place for Smithfield Foods?
4 A I think some instances, yes. But
5 I don't think so in all instances, no.
6 I mean, if my hog buyers want to
7 steal from me, they can steal from me for years and
8 probably never get caught.
9 If someone in the Purchasing
10 Department wants to steal from me for years, they can
11 probably get away with it for an extended period of
12 time.
13 Q Are your accounting records
14 audited on a regular basis?
15 A We're a publicly held company, and
16 we're audited, as all publicly held companies are
17 audited. I mean, I -- And we get a report from
18 Arthur Anderson every year telling us where they
19 believe that the internal controls of the company are
20 adequate. And, and they have been. I mean, they come
21 up with suggestions from time to time on how we can
22 tighten the internal controls, and we usually follow
23 their advice when they make such a recommendation.
24 Q Did you consider having an
25 investigation done of the Waste Water Treatment Plant

1 to determine whether additional internal controls can
2 be placed on the reporting by the Waste Water
3 Treatment Plant employees to DEQ after you discovered
4 what had happened with Mr. Rettig?
5 A No. I asked the law firm -- I
6 wanted to make sure that I got an unbiased opinion, or
7 unbiased investigation, because I, you know -- I
8 didn't know what the facts were. And, you know, I
9 asked Mays & Valentine to, to look into it for me.
10 Q Did they do so?
11 A It's my understanding they did,
12 yes.
13 Q Did they give you a written
14 report.
15 A No. But I got a report back. I
16 mean, I talked to Tony Troy and Jim Ryan. And, you
17 know, asked do they have any reason to believe that
18 anybody other than Terry Rettig was involved? They
19 told me no.
20 I did the same thing on Shannon
21 Williams, I believe is his name, when I heard about
22 Shannon Williams. I asked the law firm to immediately
23 investigate that.
24 Q That addresses the question of
25 whether Mr. Rettig acted alone. My question was, did

1 you ask anyone to investigate the internal controls to
2 see if they should be improved so that future
3 incidents like that which happened with Mr. Rettig
4 could not occur again?
5 A If one wants to falsify a
6 document, they will. All the internal controls in the
7 world are not going to prohibit that from taking
8 place.
9 Q In this instance, Mr. Rettig's
10 falsification was traceable to written records
11 maintained by Smithfield Foods, is that correct?
12 A I don't know.
13 Q Did you ask anyone to see whether
14 there should be closer scrutiny of the DMR's before
15 they are submitted to DEQ in order to prevent someone
16 else from doing what Terry Rettig did?
17 A It's my understanding that
18 meetings were held after the Terry Rettig matter
19 became public, and everyone was told that this was not
20 only unacceptable behavior, it was criminal behavior.
21 In all likelihood, people go to jail for such
22 behavior. And, and exactly what, what that meeting or
23 meetings encompassed, I don't know. But I know that,
24 that I considered it very serious. I know Mr. Wood
25 considered it very serious. I don't tell Mr. Wood

1 what to say to his people.
2 But it's my understanding that,
3 that this whole episode was, was addressed properly
4 with the person that took Mr. Rettig's job. And she
5 was very aware of the disastrous consequences that
6 would take place if she conducted herself as
7 Mr. Rettig had conducted himself.
8 But you know, I mean, it's --
9 What seems to be forgotten here was that Mr. Rettig
10 was convicted. But most of the charges he was
11 convicted for were something that were -- Most of the
12 charges he was convicted for were charges that did not
13 pertain to Smithfield Foods.
14 Now, if you -- Have you
15 questioned the integrity of the town of Smithfield?
16 Have you questioned the integrity of the town of
17 Surry? No. You're focusing on Smithfield Foods,
18 alone. Which, here, again, once again, makes my case,
19 that you treat, that you treat private industry
20 totally different than you treat, than you treat other
21 governments.
22 Mr. Rettig -- The majority of
23 Mr. Rettig's violations were violations with
24 municipalities. Why aren't you going after them?
25 Q Mr. Luter, do you have any

1 evidence that Mr. Rettig destroyed an entire year's
2 worth of records for any other facility?
3 A I don't -- No. All I know is as
4 I've told you that Mr. Wood told me that there were
5 improper records -- That Mr. Rettig -- I'm tired
6 right now. Let me catch my breath.
7 MR. TROY: Why don't we take a
8 short break.
9 A No. Let's get it over with. I
10 mean, gosh, I thought I'd be out of here two hours
11 ago.
12 MR. TROY: How much longer do you
13 have?
14 MS. HIMMELHOCH: Not very much.
15 A Rephrase your question; I'll try
16 to answer it.
17 MS. HIMMELHOCH: (To the court
18 reporter) Would you read it again, please?
19
20 NOTE: At this time, the previous
21 question was read by the court reporter.
22
23 A I don't have any evidence that he
24 destroyed Smithfield's records. I don't have any
25 evidence -- I don't know anything that Mr. Rettig,

1 for a fact, has done. All I know is what's been told,
2 what's been related to me. I don't know for a fact
3 that he's destroyed anybody's records.
4 All I know is, you know, that he's
5 been convicted, and, for X number of violations. And
6 some of those violations pertain to Smithfield Foods.
7 But the majority of those violations pertain to other
8 people he was working for.
9 Q When you say the majority, what do
10 you mean?
11 A The majority means the majority,
12 Sarah.
13 Q How are you counting the
14 violations?
15 A What's reported in the newspaper.
16 He was -- He was convicted of X number of counts.
17 And the majority of those counts, was my
18 understanding, were --
19 Q So based purely on the number of
20 counts in the indictment?
21 A That's my understanding, yeah.
22 Q Not the number of events giving
23 rise to any particular count?
24 A I don't know the number of events
25 at Smithfield or the number of events -- I'm not

1 familiar with the details of this lawsuit.
2 Q You indicate in Luter Exhibit 4
3 that, in fact, there have been at least 74 reported
4 exceedences at the Smithfield plant, is that correct?
5 A Uh huh. (Indicating in the
6 affirmative)
7 Q What were those parameters that
8 were exceeded?
9 MR. TROY: Where are you
10 referencing?
11 MS. HIMMELHOCH: The second
12 paragraph in: An Open Letter From Joe
13 Luter.
14 A I asked Mays & Valentine to give
15 me the number of violations that, that had taken place
16 at Gwaltney and Smithfield Packing Company since 19,
17 going back 15 years. And, and that -- I got the
18 number from, from Mays & Valentine.
19 Q Is it fair to say that you
20 delegated responsibility for the waste water treatment
21 plant to Mr. Wood and his staff, and that you did not
22 consider it your job or necessary for you to supervise
23 what Mr. Wood was doing with respect to the Waste
24 Water Treatment Plant?
25 MR. TROY: Object to the form of

1 the question.
2 (To the witness) Go ahead and
3 answer it.
4 A Well, he is -- I expected him --
5 I -- He's responsible; I'm ultimately responsible.
6 If, if he had marching orders from me, then I expected
7 him to follow those marching orders. And it's my
8 understanding then, it's my understanding now, that he
9 conveyed those marching orders to Mr. Lively.
10 Mr. Lively conveyed them down to Mr. Rettig.
11 Mr. Rettig conveyed them down to people that worked
12 under him.
13 Q It was absolutely clear in your
14 mind that the employees of Smithfield Packing and
15 Gwaltney, that you would accept no violations at the
16 waste water treatment treatment?
17 A No. I said earlier that I realize
18 that biological systems do have upsets. And there are
19 violations from time to time that occur. It's my
20 opinion that Jesus Christ cannot operate a biological
21 system and keep it in one hundred percent compliance
22 one hundred percent of the time.
23 MR. TROY: His Father could,
24 but --
25 THE WITNESS: Yeah. His Father

1 could, yeah.
2 MS. HIMMELHOCH: Why don't we take
3 five minutes. I think I'm done.
4
5 NOTE: At this time, recess is had
6 from 4:45 to 4:50 p.m.; whereupon the
7 deposition continues, out of the presence of
8 Mr. Troy, viz:
9
10 THE WITNESS: I'd just like to
11 make one statement to make sure there's no
12 misunderstanding.
13 MS. HIMMELHOCH: We have to wait
14 until Tony comes back in the room. I'd be
15 happy to accommodate you --
16 THE WITNESS: I understand.
17 That's fine.
18
19 NOTE: Mr. Troy returns to the
20 deposition at 4:54 p.m.
21
22 BY MS. HIMMELHOCH: (Continuing)
23 Q Mr. Luter, you indicated you
24 wanted to make a statement on the record before we
25 adjourn for the day.

1 A Yes. I just wanted to make sure
2 that we are clear on one point.
3 I had testified earlier that with
4 a biological system, that I know from time to time
5 that there are violations that occur. And these
6 violations, it's my belief that are unavoidable
7 treatment in a biological system. There are upsets;
8 there are human errors; there are dramatic changes in
9 the environmental conditions--temperature, rainfall,
10 and so on--that can throw a biological system out of
11 balance.
12 And so that I do -- Because this
13 was a point that was covered in the lawsuit in great
14 depth in regard to the Chesapeake Bay Foundation
15 lawsuit. But under no circumstances was there
16 pressure from me to anyone in the organization to
17 intentionally violate, don't have any violations, to
18 intentionally have any violations. There are
19 unavoidable violations that take place, because this
20 is not a perfect world.
21 So I just wanted to make that
22 clear that -- I suspect maybe the thrust of your
23 question was to, was to catch me, if you will, to
24 insinuate that I put pressure, we're not going to have
25 violations. That was not the case. We're not going

1 to have intentional violations, and we're not going to
2 be involved in anything that is illegal. So I just
3 want to make that point perfectly clear.
4 Q If I understand you, what you're
5 saying is you never said to anyone, I want you to
6 falsify data?
7 A I've never said that. I've never
8 insinuated that, and I've never put pressure upon
9 people of a nature that would encourage them to, to
10 falsify data.
11 Q To your knowledge.
12 A That's my opinion, that I have not
13 put -- I have put pressure upon people to do their
14 job.
15 But when Mr. Wood comes in and
16 tells me that -- I think we had some heavy rainfall
17 here a couple years ago, and the system went out of
18 what can for a few days. It's nothing -- It's an Act
19 of God, can't do anything about it.
20 And, you know, but when I find out
21 mistakes are made that should not be made, I get
22 pretty upset. But things that we can't do anything
23 about, I try to be reasonable about it.
24 Q In the context of the clear policy
25 of maintaining compliance?

1 A Clear policy of maintaining
2 compliance. I've got -- It's just too much history
3 out there, you know, to, to have any other policy. I
4 mean, you've got to be out of your mind to have any
5 other policy today.
6 Q Are you aware of any violations
7 for which Smithfield Foods has been fined at any of
8 the plants, other than the two at Smithfield?
9 A No. I mean, there were some
10 problems at the Morrell plant before we bought
11 Morrell, which we had absolutely nothing to do with.
12 That was all years before we bought Morrell.
13 I think there had been surcharges
14 where we have discharged into municipal systems that
15 we have had to pay for, because someone didn't do
16 their job, or something that was unavoidable, and the
17 counts go up. So we get a bill from the City of
18 Kenston, for instance, North Carolina that, you know,
19 your effluent did not meet certain criteria, so there
20 was a surcharge. I don't know whether you call that a
21 violation or not. I'm aware of that.
22 Q Are there any other instances --
23 A But I think the whole
24 environmental movement is to set these parameters
25 extremely high to try to improve the environment. But

1 if you exceed those parameters by the slightest
2 amount, then there are severe consequences that
3 result.
4 And that's why we fought so
5 vigorously parameters that were, which the State was
6 trying to impose upon us that we felt would keep us in
7 constant trouble.
8 Q And you're referring to the
9 phosphorus?
10 A I -- Phosphorus -- I think there
11 was some concern about nitrogen, too. Or it would be
12 any parameter that we would be worried about our
13 inability to meet it a hundred percent of the time.
14 Q Why didn't Smithfield Foods
15 install any of the chemical pretreatment that it is
16 using now at Smithfield Packing before 1995?
17 A I'm not aware of that.
18 Q Well, Smithfield Food--Mr. Wood,
19 among others--has testified that chemical pretreatment
20 was one of the things that was put into the Smithfield
21 Packing plant in order to hook up to HRSD. I'm
22 wondering why that wasn't installed before 1995.
23 A I don't know. You'll have to ask
24 him. I don't know.
25 Q Did you have any studies done on

1 whether or not the Smithfield plants could meet the
2 nitrogen level?
3 A As I testified earlier, we had
4 Wells Engineering and another company in to look at --
5 It's my understanding--it may not be the case. It's
6 my understanding that, you know, they looked at
7 everything that was asked of us by the State and gave
8 a report back, and --
9 Q Including nitrogen?
10 A As I say, I'm not sure. I'm not
11 sure. As I testified, I didn't read the report. I
12 mean, you know, you know, I depended upon other people
13 to read the report and report back to me what we
14 needed to do to satisfy the State. And that's when I
15 got involved.
16 Q Have you ever met Mr. McCabe?
17 A No.
18 Q Have you ever had any
19 conversations with Mr. McCabe?
20 A No.
21 Q Have you ever exchanged letters
22 with Mr. McCabe?
23 A I don't think so, no.
24 Q Are you aware of anyone on your
25 staff who has had conversations, met with, or

1 exchanged letters with Mr. McCabe?
2 A No. I mean, I -- I saw an
3 interview that he had with Becky Dunlap.
4 Q But you never met him?
5 A No. I've never met him, no.
6 MS. HIMMELHOCH: I have no further
7 questions at this time.
8
9
10
11 And further this deponent saith not.
12
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14 DEPOSITION CONCLUDED AT 5:03 P.M.
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1 COMMONWEALTH OF VIRGINIA,
2 City/County of _____, to wit:
3
4
5
6 I, Joseph W. Luter, III, do hereby certify
7 that I have read the foregoing pages of typewritten
8 matter numbered 1 through 171, and that the same
9 contains a true and correct transcription of the
10 deposition given by me on the 19th day of May, 1997,
11 Norfolk, Virginia, to the best of my knowledge and
12 belief.
13
14
15 _____ _____
Date Jospeh W. Luter, III
16
17 Subscribed and sworn to before me this
18 _____ day of, 1997.
19
20 My commission expires _____.
21
22 _____
23
24
25

1 COMMONWEALTH OF VIRGINIA, to-wit:
2
3 I, Connie Alys Crane Pryor, a Registered
4 Court Reporter and a Notary Public in and for the
5 Commonwealth of Virginia at Large, of qualification in
6 the Circuit Court of the City of Richmond, Virginia,
7 and whose commission expires on the 31st day of
8 August, 1998, do certify that pursuant to Notice, the
9 within deponent, Joseph W. Luter, III, appeared before
10 me at Norfolk, Virignia, as hereinbefore set forth,
11 and after being duly sworn by me to "testify to the
12 truth, the whole truth, and nothing but the truth, so
13 help you God," of his knowledge touching and
14 concerning the matter in controversy in this action at
15 law, was thereupon examined upon his oath by counsel,
16 and his examination reported in shorthand and reduced
17 to typescript by me; and that the foregoing is a true
18 and correct transcript of the testimony adduced, and
19 other matters set forth therein and relating thereto.
20 I further certify that I am not related to, nor
21 associated with any counsel or party to this
22 proceeding, nor otherwise interested in the event
23 thereof; and that there were 4 exhibits introduced
24 during the deposition.
25

1 Given under my hand and Notarial Seal at
2 Richmond, Virginia, this 21st day of June, 1997.
3
4 /s/ CONNIE ALYS CRANE PRYOR
5 Connie Alys Crane Pryor
Notary Public, State of Virginia at Large
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CRANE-SNEAD & ASSOCIATES
Court Reporters
4914 Fitzhugh Avenue - Suite 203
Richmond, Virginia 23230

June 21, 1997

MAYS & VALENTINE
1111 E. Main Street
Richmond, Virginia 23219

RE: United State of America
vs
Smithfield Foods, Inc., et al

Dear Mr. Troy:

Please find attached hereto the original signature page of Joseph W. Luter, III.

Please have Mr. Luter read his deposition; if there are corrections to be made, you will find an errata sheet attached to his signature page. Have him sign the original signature page before a Notary Public and then return to me so that I may forward the original in a sealed envelope to Ms. Himmelhoch for filing if deemed necessary.

Thank you for your prompt cooperation. Mr. Luter has twenty-one days within which to read and sign his deposition; otherwise it will be filed unsigned.

Very truly yours,

Connie A. Crane Pryor

cc: Ms. Sarah Himmelhoch