

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III
Administrative Law Judge

Case No. 2017-002598

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SC Court of Appeals

CHARLES S. BLACKMON AND SOUTH CAROLINIANS FOR RESPONSIBLE
AGRICULTURAL PRACTICES, ... APPELLANTS,
v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
AND DAVID COGGINS BROILERS, ... RESPONDENTS,

CHARLES S. BLACKMON AND SOUTH CAROLINIANS FOR RESPONSIBLE
AGRICULTURAL PRACTICES, ... APPELLANTS,
v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
AND HEATH COGGINS BROILERS, ... RESPONDENTS,

CHARLES S. BLACKMON AND SOUTH CAROLINIANS FOR RESPONSIBLE
AGRICULTURAL PRACTICES, ... APPELLANTS,
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SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
AND JIM YOUNG BROILERS, ... RESPONDENTS.

RECORD ON APPEAL
Volume 2 of 4
Pages 531-999

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RECORD ON APPEAL
Index

ORDERS

Order on Joint Motion to Consolidate for Hearing Purposes (March 29, 2017)	1
Final Order and Decision (November 30, 2017)	4

PLEADINGS

Request for Final Review (Heath Coggins) (December 15, 2016)	36
Request for Final Review (David Coggins) (December 28, 2016)	40
Request for Final Review (Jim Young) (January 4, 2017)	44
Statement of Staff Position (Heath Coggins) (January 6, 2017)	48
Statement of Staff Position (David Coggins) (January 11, 2017)	56
Statement of Staff Position (Jim Young) (January 17, 2017)	64
DHEC Denial of Final Review Conference (David Coggins) (January 18, 2017)	72
DHEC Denial of Final Review Conference (Heath Coggins) (January 18, 2017)	74
DHEC Denial of Final Review Conference (Jim Young) (January 23, 2017)	76
Petition for Contested Case Hearing (David Coggins) (February 17, 2017)	78
Petition for Contested Case Hearing (Heath Coggins) (February 17, 2017)	91
Petition for Contested Case Hearing (Jim Young) (February 17, 2017)	102
Petitioners' Proposed Order (October 13, 2017)	114
Respondents' Proposed Order (October 13, 2017)	174
Respondent Broiler Facilities' Motion for Partial Summary Judgment (August 4, 2017)	221
Petitioners' Memorandum in Opposition to Motion for Partial Summary Judgment (August 10, 2017)	246

TRANSCRIPT

Administrative Hearing (August 15-17, 2017)	340

EXHIBITS

Map of Existing and Proposed Poultry Facilities in Mountville Area	1212
DHEC Map of Proposed and Existing Poultry Facilities in Mountville Area	1213
Property Map	1214
David Coggins Broilers' Application and Comprehensive Nutrient Management Plan	1215
Heath Coggins Broilers' Application and Comprehensive Nutrient Management Plan	1332
Jim Young Broilers' Application and Comprehensive Nutrient Management Plan	1492
Email from Mary Basel to Bill Chaplin (October 21, 2016)	1661
DHEC Response to Questions & Comments Provided at Public Meetings	1662
Permit Checklist (David Coggins)	1666
Permit Checklist (Heath Coggins)	1678
Permit Checklist (Jim Young)	1689
DHEC Permit Issued to David Coggins with correspondence	1701
DHEC Permit Issued to Jim Young with correspondence	1706
DHEC Permit Issued to Heath Coggins with correspondence	1711
Photographs Taken by Kathy Lowman	1716

OTHER MATERIALS

Respondent DHEC's Response to Court's Inquiry (November 3, 2017)	1722

CERTIFICATE

Certificate of Appellants' Counsel	1725

1 to answer any questions that Mr. Mustian or Mr.
2 Hightower or the Judge may have. Thank you.

3 **THE COURT:** Who's going first? Mustian.

4 **MR. BLACKMON - CROSS EXAMINATION BY MR. MUSTIAN:**

5 Q: Good afternoon, Mr. Blackmon. How are you,
6 sir?

7 A: Doing fine. Hope you are.

8 Q: Good. Yes, sir. Mr. Blackmon, I just have a
9 few questions for you. I want to make sure I
10 understand. You talked -- the property that
11 you own, you don't live on that property; is
12 that right?

13 A: No, I don't reside at the property in
14 Mountville.

15 Q: Okay. You actually live in Clinton, which is
16 how many miles away?

17 A: Probably eight as the crow flies.

18 Q: Okay. And about how often would you say you
19 visit the property that's adjacent to the
20 Coggins' proposed farm?

21 A: It varies by season. During hunting season,
22 I'm there about every day. You know, check on
23 it if nothing else. Go to church every Sunday
24 down through there. So, on average, twice a
25 week.



1 Q: Okay. You made mention of odors, that you've
2 experienced odors. Have you ever experienced
3 odors from Mr. Blackmon's -- I'm sorry, not Mr.
4 Blackmon. I'm going to do that all week, I'm
5 sure. I apologize. From Mr. Coggins' current
6 facility?

7 A: On Highway 39 I assumed it was coming from
8 there.

9 Q: And when you say you assume, but you know that
10 it was coming from there, do you?

11 A: I don't know, but it's the nearest one.

12 Q: Okay. Did you file a complaint?

13 A: No.

14 Q: Okay. Are there other farms around that area?

15 A: Not in the immediate vicinity, no.

16 Q: Okay. But you would agree with me that it
17 could've come from some other facility?

18 A: It's possible.

19 Q: You talked about your cousin, Debo Jacks; is
20 that right?

21 A: Right.

22 Q: And I believe that I've got my family tree that
23 I've put together throughout the deposition and
24 I think I've got it straight. But you said
25 that Mr. Jacks delivers -- used to deliver.



1 chicken litter to your property; is that right?

2 A: He did.

3 Q: And the last time that you said he delivered it
4 was in 2014; does that sound right?

5 A: Best to my recollection, that's about when it
6 was.

7 Q: Okay. You didn't have it delivered in 2015?

8 A: Not to my recollection..

9 Q: When was the last time you asked Mr. Jacks to
10 deliver chicken litter to your property?

11 A: I don't remember that.

12 Q: Okay. Do you remember asking him to deliver
13 chicken litter to your property in 2016?

14 A: I don't.

15 **MR. MUSTIAN:** Beg the Court's indulgence.

16 **THE COURT:** When the chicken litter was spread on
17 your property ---

18 **THE WITNESS:** Yes, sir.

19 **THE COURT:** --- did it create an odor?

20 **THE WITNESS:** Oh, yes sir.

21 Q: Did it create an odor -- over how many years
22 would you say that you had spread chicken
23 litter on the property?

24 A: I'm going to guess maybe five -- four or five
25 years.



1 Q: Okay. Every time that you spread it, it
2 created an odor.

3 A: It certainly did.

4 Q: But obviously the odor wasn't enough for you to
5 stop spreading it; is that right?

6 A: Well, I wasn't always in the vicinity of it.
7 You know, he would deliver and spread it and
8 then tell me -- he'd call me later and say it
9 was done.

10 Q: But you went and disked it in, didn't you?

11 A: I did.

12 Q: So was -- did you not have an odor -- did you
13 not smell an odor when you went and disked it
14 in?

15 A: Uh-huh (affirmative response). I did.

16 Q: So every time you disked it in, you smelled an
17 odor, right?

18 A: I suspect every time I disk it in I smell an
19 odor.

20 Q: So, the odor wasn't enough then to stop you
21 from continuing to do it for five years in a
22 row; is that right?

23 A: Until I saw the pattern that I was having upper
24 respiratory infections following that season.

25 Q: Did you ever have a doctor tell you that the



1 chicken litter was what causing your upper
2 respiratory infections?

3 A: Yeah.

4 Q: And what did he -- did he ---

5 A: Well, they told me that I didn't need to be in
6 that kind of environment.

7 Q: He did you didn't need to be in that kind of
8 environment, but did he tell you that it was
9 what was causing it?

10 A: I don't think he could draw that conclusion.
11 He drew the conclusion based on my medical
12 experience of heart problem and upper
13 respiratory infection frequency.

14 Q: And you said you were -- you have been
15 susceptible to this your whole life; is that
16 right?

17 A: Right.

18 Q: So, there's other things that cause it; is that
19 not true?

20 A: I'm sure it would.

21 MR. MUSTIAN: Your Honor, if I could just have just
22 a second. Your Honor, That's all the questions
23 I have.

24 MR. BLACKMON - CROSS EXAMINATION BY MR. HIGHTOWER:

25 Q: Good afternoon, Mr. Blackmon.



1 A: Good afternoon.

2 Q: I have a few question to ask you. With regard
3 to the manure you received from your cousin,
4 Debo Jacks, you stated that you never provided
5 him with any soil samples or soil analysis of
6 your feed. ---

7 A: I didn't.

8 Q: Did he tell you that he needed it?

9 A: No.

10 Q: When was the first time you learned that Mr.
11 Jacks -- or I should say that you had a
12 requirement to provide such information to a
13 manure broker or to a farmer who was providing
14 you with manure?

15 A: Well, probably at the September meeting it
16 became information for the first time I knew
17 anything about, but no definitive answer was
18 given then.

19 Q: Did you ever report it to the Department that
20 your cousin had done this?

21 A: No.

22 Q: Okay. Why didn't you report it?

23 A: At the time I learned that you should have, it
24 was a little moot I thought.

25 Q: Well, you were showing -- you were mentioning



1 about some photographs that Mr. Guild had you
2 identify and they talk about -- or at least
3 they purport to from 2013. So, the meetings
4 were held in 2016. Why do you consider those
5 important, but not your cousin's failure to
6 follow the regulations?

7 A: I don't think I fully realized the extent of
8 the people who appeared not to be complying
9 across our community until I saw the satellite
10 images. I had no reason to look at the
11 satellite images until I saw the picture album
12 at the public meeting.

13 Q: Well, since then you now know about it. Have
14 you contacted the Department to report the
15 violation of your cousin?

16 A: No.

17 Q: Now, you state that -- let's see, you own the
18 property, but you don't live on this property
19 that's within two miles of the proposed
20 facilities; isn't that correct?

21 A: That's correct. The Mountville property I do
22 not live on now. I used to.

23 Q: Okay. When did you move?

24 A: I think it was about 2002.

25 Q: And you haven't lived on the property since



1 2002, correct.

2 A: No. Not permanently.

3 Q: Okay. You stated you had the -- that based on
4 your knowledge, you knew that the Department
5 was provided comments by members of the
6 community, including yourself; is that not
7 correct?

8 A: I know I provided comments.

9 Q: You were provided responses to those comments,
10 weren't you?

11 A: I was provided a response to my comments,
12 correct.

13 Q: Okay. So, it's fair to say that the Department
14 did consider your response, even if you may not
15 agree with the actual response; isn't that
16 correct?

17 A: Well, they actually agreed to some of my
18 comments in regarding the distribution of
19 manure needing a tighter regulation.

20 Q: Okay.

21 A: Said they had merit.

22 Q: So, the Department did respond to you?

23 A: (Nods head affirmatively).

24 Q: One moment. Just to make sure, that the
25 photographs that Mr. Guild asked you about, you



1 didn't take those photographs, did you?

2 A: The last series of photographs he showed me,
3 no, sir, I did not.

4 Q: You had stated earlier that you were a Warrant
5 Officer I believe in the South Carolina
6 National Guard. Is that correct?

7 A: That's correct.

8 Q: In what specialty?

9 A: Maintenance, track and wheel.

10 Q: Track and wheel. As part of track and wheel
11 maintenance officers' duties, reading a
12 topographical map wouldn't be one of the
13 requirements of your duties, would it be?

14 A: It could be. We had a shortage of military
15 personnel for awhile there while in Vietnam, so
16 Warrants were given the authority of
17 commissioned Lieutenants and such. So, I
18 served part time as a platoon leader. And that
19 would mean, when we did field exercises, it
20 would -- I could have that responsibility to
21 lead the men from point A to B using, you know,
22 terrain maps and other things.

23 Q: So, that would've been at the time of the
24 Vietnam War, so we're talking ---

25 A: Following it.



1 Q: --- 40 years ago.

2 A: Following it, you know.

3 Q: Following it. How long following?

4 A: Well, I served from '69 to 20 years later. So,
5 any time during that period. I came up through
6 the ranks. The first six years I was -- made
7 it up to Staff Sergeant. So, you know, I had
8 extensive exercises with terrain navigation and
9 map reading.

10 Q: Since that time has your -- have you had the
11 occasion to have to read a topographical map?

12 A: I do right often in my own business of looking
13 at my own place and other lands, surrounding
14 land. I utilize that Google Earth and the
15 terrain overlay a lot.

16 Q: But other than that, have you -- strike that.

17 MR. HIGHTOWER: One moment. No further questions.

18 THE COURT: Re-Direct for new questions asked?

19 MR. GUILD: Just a couple.

20 MR. BLACKMON - RE-DIRECT EXAMINATION BY MR. GUILD:

21 Q: Mr. Blackmon, you said you moved off your
22 property in Mountville about 2002. Who lives,
23 if anyone, on the property now?

24 A: My son and his wife and my two grandchildren.

25 Q: All right. And that's the home place that you



1 once resided in yourself?

2 A: They don't live in the old home place, but they
3 live within a half mile of the old home place,
4 yeah.

5 Q: And how close is that place that your son and
6 his family's to the proposed facilities?

7 A: Probably right about a mile.

8 Q: Okay. So, when answered questions of I think
9 Mr. Hightower, you said that you expressed
10 concerns to DHEC about proper -- or improper
11 manure management and they responded by saying
12 that your concerns had merit?

13 A: I think that was the reply that I got, that
14 those particular comments in there. I
15 suggested things like that we should buy -- I'm
16 the president of the Laurens County Forest
17 Landowners Association. And when we put smoke
18 into the air, we have to follow some real
19 strict guidelines. And I proposed that that
20 would be a good thing for the manure
21 distribution. In other words, they should call
22 every time they go to haul the manure and
23 report the coordinates where it's going, how
24 many tons are going and have somebody look at
25 the downwind sensitive areas, such as nearby



1 roads or people with medical problems before
2 issuing a permit number that day. And that's
3 what we have to do when we, you know, put smoke
4 in there air.

5 Q: Did any of those measures get included as
6 conditions to these permits?

7 A: No. Not to my knowledge.

8 MR. GUILD: That's all I have. Thank you, Your
9 Honor.

10 THE COURT: You may step down.

11 MR. GUILD: Next witness, Your Honor. Call Margaret
12 Sparrow, please. Ms. Sparrow.

13 MARGARET SPARROW, having been duly sworn, testifies
14 as follows:

15 COURT REPORTER: Please state your full name for the
16 record.

17 THE WITNESS: Margaret Dunlap Sparrow.

18 COURT REPORTER: Can you spell your last name for
19 me?

20 THE WITNESS: S-P-A-R-R-O-W, just like the bird.

21 COURT REPORTER: Thank you so much. Ms. Sparrow,
22 it's M-A-R-G-A-R-E-T?

23 THE WITNESS: Uh-huh (affirmative response)

24 COURT REPORTER: Thank you.

25 MS. SPARROW - DIRECT EXAMINATION BY MR. GUILD:



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1 Q: Good afternoon.. Ms. Sparrow, you've been in
2 the hearing room for the testimony before you
3 of Mr. Blackmon?

4 A: Yes, sir.

5 Q: And did he correctly identify your property on
6 the maps at the beginning of his testimony?

7 A: Yes, sir.

8 Q: All right. So, unless the Court would like,
9 we've established where your property is. You
10 own property or have an interest in property
11 that adjoins the proposed three facilities;
12 correct?

13 A: Yes.

14 Q: The Coggins site. And what is your interest in
15 that property, ma'am?

16 A: Percentage wise or ...

17 Q: Legally. What ownership interest. ---

18 A: My sister and I have joint ownership and then
19 also our minor children have part ownership.

20 Q: And who's your sister?

21 A: Mary Dunlap Basel.

22 Q: All right. And she's present in the courtroom?

23 A: Yes.

24 Q: Okay. And what's the origin of the property?
25 How did you acquire that interest?



1 A: The property's been in our family. It was a
2 land-grant farm. My father had 12 -- there
3 were 12 children. And they lost part of the
4 property during the depression. My aunts and
5 uncles went to different parts of the country
6 to make money to buy back the parts that had
7 been lost. So, the family has owned this farm
8 for over -- for hundreds of years.

9 Q: All right. And how do you use the property
10 yourself?

11 A: It's our retreat. My sister and I come several
12 times -- it depends on the season, just like
13 Mr. Blackmon said. During hunting season we're
14 there probably every other weekend. And then
15 in the spring, probably once every four to five
16 weeks.

17 Q: And how do you -- where do you stay when you're
18 on the property?

19 A: We built a cabin there.

20 Q: And where is it located on the property?

21 A: It's located near the corner of 72 and Lisbon
22 Road. We built the cabin because we wanted our
23 children to love the land like we did. And we
24 knew the only way that we could do that was to
25 bring them there and let them -- that be a part



1 of their childhood.

2 Q: And how long have you had the cabin?

3 A: I think 2006, 2007. There were other
4 structures there, but this is our structure.

5 Q: And does anyone else live on the property on a
6 full-time basis?

7 A: No.

8 Q: And has anyone in the past lived there?

9 A: Oh, yes. Yes. My aunt, Hattie Mae, lived
10 there; My uncle, John Pluss; my aunt, Sarah,
11 lived there part of the time; my grandmother,
12 her 12 children lived there; and I think her
13 mother-in-law lived there. So, it's ...

14 Q: And how extensive is the property?

15 A: It's about 500 acres now.

16 Q: You mentioned hunting and use of the property
17 as a retreat. How else do you use the property
18 if at all?

19 A: We have a lot of family gatherings there, we
20 have friends over. Last night -- we're staying
21 there during this. And last night we walked
22 where the timber's being cut and we walked
23 barefoot in the mud like we were little kids.
24 So, it's a very emotional attachment for us.

25 Q: All right. And do you have any streams or



1 water bodies on the property?

2 A: Yes.

3 Q: Tell the Court about that.

4 A: This is where we waded as children and this is
5 where the cows drank when we were children.
6 And it runs into Little River and Beaver Dam
7 also.

8 Q: And what's the name of that stream?

9 A: We've always called it Ginger Creek. It runs
10 into Beaver Dam Creek and then into Little
11 River.

12 Q: All right. So, you've used the stream for --
13 you wade, have contract recreation?

14 A: Uh-huh (affirmative response).

15 Q: All right. What do you do when you're not able
16 to be on the land and enjoy it as a retreat?
17 What's your work?

18 A: My work? I teach school.

19 Q: And where do you do that?

20 A: Newberry County.

21 Q: Are you a member of SCRAP?

22 A: Yes...

23 Q: And are you one of the signatories to the
24 request for Board review that's been discussed
25 in this case?



1 A: Yes. Yes. I also went to Columbia to turn in
2 the money.

3 Q: All right. Along with your sister?

4 A: Yes. We drove together.

5 Q: All right. And who did you talk to when you
6 got to DHEC for that purpose?

7 A: I'm not sure of the lady's name, but she was
8 telling us about going to visit her brother in
9 prison in Alabama, so we talked with her a long
10 time.

11 Q: Now, do you understand it might -- was it the
12 DHEC Board clerk who receives the materials,
13 Lisa Longshore? Does that name ring a bell?

14 A: The name doesn't ring a bell. She came down --
15 she came from upstairs to us. We did not go
16 upstairs. She met us in the lobby. But it was
17 not the lady who signed us in. So, she worked
18 upstairs.

19 Q: All right. And did you have a physical copy of
20 the request for Board review or had they
21 already received that and they were just
22 getting you to pay the filing fee? Do you
23 recall?

24 A: I can't remember. I just remember us cutting
25 the check.



1 Q: Okay. And the check was for what amount, if
2 you recall?

3 A: Whatever was -- we were told our portion would
4 be.

5 Q: Okay. So, you don't recall a specific amount?

6 A: No. \$100, is that ---

7 Q: \$100 for each of the appeals ---

8 A: I think that was ---

9 Q: Now, there were five cases at the time.

10 A: Yes. So, we might have paid for two. I'm not
11 sure. We paid our percentage, our part.

12 Q: What's the formal name of the property holder
13 for your family land that you have there?

14 A: Dunlap Homeplace, LLC.

15 Q: Dunlap Homeplace, LLC. And would the check to
16 DHEC for the filing fee been on the account of
17 that entity?

18 A: Yes.

19 Q: I want to show you what's been marked as
20 Petitioners' Hearing Exhibit 2D. And it's a
21 series of documents, Petitioners' 02271. It's
22 the hunting leases. Some portion of this was
23 identified by Mr. Blackmon and received in
24 evidence. And I just want you to work through
25 that series of pages and tell me if you can



1 identify that full document -- or what pages
2 you can identify, please.

3 A: The first one, PET-02271 is Sadalia-Dunlap
4 Homeplace Hunt Club, Hunting Lease Rules and
5 Regulations. And this is for Charles Blackmon,
6 Eric Blackmon and a guest, Mary Basel and a
7 guest, David Benton and guest, Steve Harrower
8 and guest, Warren Parrish and guest.

9 Q: All right. And there are additional pages in
10 that document. If we'll just flip through
11 there. Can you confirm that that lease
12 includes of several pages?

13 A: Yes.

14 Q: Through page, excuse me, 02274; is that right?

15 A: Uh-huh (affirmative response).

16 Q: And then following that page there's a 02275.
17 Can you identify that?

18 A: Oh, it's the mobile deposit for funds received
19 for Dunlap Homeplace.

20 Q: Is that a payment on that hunting lease?

21 A: Yes. From William Parrish.

22 Q: And previously identified is the lease to
23 Mr. Blackmon himself, correct?

24 A: Yes.

25 Q: And that's 02276, correct?



1 A: Yes.

2 Q: An then we go to a document that's not your
3 lease, correct?

4 A: This is Ross Stewart's lease.

5 Q: Mr. Stewart's lease. Is that on your property
6 or no?

7 A: No, sir. It's across the road.

8 **THE COURT:** So, Your Honor, I believe all those
9 pages have already been received in evidence.

10 **MR. GUILD:** Your Honor, I'm just trying to confirm
11 and make sure we did get it all in. But, as I
12 recall, Mr. Blackmon identified that he was, in
13 fact, the party to that first page.

14 Q: Ms. Sparrow, did you participate in the DHEC
15 public meetings that were discussed by Mr.
16 Blackmon earlier?

17 A: Yes, sir. Both of them.

18 Q: And did you communicate any concerns about the
19 proposed permits at those meetings?

20 A: Yes, sir.

21 Q: All right. And what concerns -- can you just
22 summarize what concerns you expressed to DHEC?

23 A: I remember one question I asked was what
24 becomes of the manure after it's taken off the
25 property. And I was asked why I cared. And I



1 responded that I cared because I felt like we
2 were responsible for this -- for South Carolina
3 and that it did matter to me where it went
4 after it left Laurens County.

5 Q: And what concerns did you have in that regard?

6 A: That it would be just a haphazard thing, that
7 people wouldn't take consideration for what
8 they were doing.

9 Q: And did you submit any written concerns to
10 DHEC?

11 A: Yes, I did.

12 Q: And what were the nature of those concerns?

13 A: Once concern I wrote about was the way in which
14 they informed the community, the size of the
15 signs, the literacy level of the signs, and the
16 fact that one had to get out of their car to
17 read the signs and that the average age of
18 people in Mountville is over 55, so that
19 wouldn't be conducive to getting out and
20 reading it.

21 Q: Have the existing facilities, existing poultry
22 facilities in the Mountville community affected
23 your use and enjoyment of your property?

24 **MR. MUSTIAN:** Objection. The same basis as before,
25 Your Honor.



1 THE COURT: Any response?

2 MR. GUILD: It's an effort to get her to explain
3 what her concerns are, if she has any, Your
4 Honor. What the basis is for her concerns
5 about proposed facilities, if she has an
6 experience with existing facilities.

7 THE COURT: I'll let that in for what it's worth at
8 this point in time.

9 Q: Have the operation of existing poultry
10 facilities in the community have any affect on
11 your use of the property and use and enjoyment
12 of the property?

13 A: I am aware of them. I will tell you, my first
14 experience with the poultry industrial farm was
15 I was teaching school and I thought, gee, it's
16 dark, I need to go home, and it was only 4:30.
17 My door was covered in flies. So, I know that
18 flies and rodents and coyotes go with the
19 property.

20 THE COURT: This is in Newberry?

21 THE WITNESS: No this was in, Hart County, Georgia.

22 THE COURT: Okay.

23 Q: Do you hunt on your property?

24 A: No, sir. I'm not a hunter.

25 Q: You lease the property to others ---



1 A: Yes.

2 Q: --- as we've just described from ---

3 A: And my sister and my niece hunt and my
4 brother-in-law.

5 Q: And how did you learn about the proposed
6 permits for these facilities?

7 A: Mr. Steve Harrower, who is one of the people
8 who leases our farm, we were together and he
9 said what are they building here? He saw the
10 signs. And he's in construction and he
11 recognized what they were.

12 Q: And did you take any action to investigate or
13 inform yourself about the proposals?

14 A: Oh, yes. The school teacher in me started
15 reading books.

16 Q: What did you do to inform yourself?

17 A: I read, I talked with people, I listened a lot
18 because I wanted to know. I went to the
19 meetings to know. I didn't go in with a
20 preformed notion. I wanted to know what was
21 going on.

22 Q: And did you sign the request for DHEC Board
23 review that's been discussed today, the one
24 that was taken to DHEC?

25 A: Yes. Yes. We were together. Mary and I were



1 together.

2 Q: And did you support the expressions or concerns
3 that were reflected in that Board review, the
4 basis for challenging the permits?

5 A: Very much, because we have to look out for
6 South Carolina. This is -- at first it was me
7 personally and what I felt that I was going to
8 lose. But the more I learned, I realized
9 there's going to be collateral damage
10 throughout Laurens County and I became more
11 involved.

12 Q: Now, are you personally familiar with the land
13 on which these proposed facilities are to be
14 built?

15 A: Somewhat. It's been a while since I've been
16 over there. I know that the soil is not very
17 rich and I know there are lots of gullies
18 there.

19 MR. HIGHTOWER: Objection, Your Honor.

20 Q: Well, how do you know that -- what relation, if
21 any ---

22 THE COURT: Wait. He objected. What's the ground?

23 MR. HIGHTOWER: Objection to foundation as to how
24 she knows that the soil is not good or any of
25 these other things that she just mentioned.



1 **THE COURT:** Well, I sustain it at the point. Mr.
2 Guild, lay the foundation.

3 **MR. GUILD:** Yes. Thank you.

4 **Q:** So, what connection, if any, does your family
5 have to the property on which the proposed
6 facilities are to be built?

7 **A:** Originally it was part of -- we owned it in
8 partnership with my cousin. And I can tell you
9 why I know that the soil is not rich.

10 **Q:** Yes.

11 **A:** When it was planted in pines, the pines did not
12 flourish as opposed to the ones on the other
13 side of the road. And I remember asking my
14 mother why are they not growing like the
15 others. And she said because ---

16 **MR. MUSTIAN:** Objection.

17 **MR. HIGHTOWER:** Objection. Hearsay.

18 **Q:** What did you observe? Let's stick with that,
19 Ms. Sparrow. With regard to the pines not
20 growing. How did they appear?

21 **A:** They were not as green and tall as the ones on
22 the other side of the road.

23 **Q:** Can you describe the property? There's Little
24 River on the north of the property.

25 **A:** Uh-huh.



1 Q: And how steep is the property between the
2 Lisbon Road down toward the river, would you
3 say?

4 A: It's -- when you ride by on Lisbon Road, it
5 appears to be flat. But the closer you go to
6 the river, the deeper the incline.

7 MR. GUILD: Moment, Your Honor. That's all I have.
8 Thank you. Answer any questions, please, other
9 lawyers or the Judge may have for you.

10 MR. MUSTIAN: Your Honor, I just have two questions,
11 if you don't mind if I stay here.

12 THE COURT: That's fine.

13 MS. SPARROW - CROSS EXAMINATION BY MR. MUSTIAN:

14 Q: Ms. Sparrow, you've talked about the manure and
15 the concerns you had. You understand that the
16 manure can be taken outside of Laurens County
17 and be applied on other people's land, correct?

18 A: Yes, sir.

19 Q: And with respect to the property of the
20 Coggins, have you ever done any soil analysis
21 or had any soil analysis of that property
22 conducted?

23 A: I've seen the Clemson results.

24 Q: But have you ever had any soil analysis done of
25 the property when you owned it?



1 A: Oh, I'm sorry. I thought you were talking
2 about his present farm.

3 Q: No. I'm talking about the proposed property
4 that used to be your property.

5 A: No, sir.

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

7 THE COURT: Mr. Hightower.

8 MS. SPARROW - CROSS EXAMINATION BY MR. HIGHTOWER:

9 Q: Ms. Sparrow, the property that you own with
10 your sister, it is northwest of where the
11 proposed facilities would be located ---

12 A: Across the road, yes.

13 Q: Across the road, okay. And where is the Little
14 River ---

15 A: I'm sorry. And one parcel adjoins it too. I'm
16 sorry. Majority of the property is across the
17 road and one parcel does adjoin it.

18 MR. HIGHTOWER: I believe this was already put in
19 evidence. Your Honor, I'm going to publish
20 what is admitted into evidence as 4T.

21 THE COURT: Did you say 14?

22 MR. HIGHTOWER: 4T.

23 THE COURT: It sounded odd. Are you trying to zoom
24 it or ...

25 MR. HIGHTOWER: Yes. I'm just trying to zoom.



1 THE COURT: That's on the right.

2 Q: Okay. Ms. Basel -- excuse me, Ms. Sparrow, I'm
3 sorry. Could you show where your two
4 properties are located?

5 A: One's across the road from Coggins.

6 Q: And could you put a mark there?

7 A: Right there. That's one of them.

8 Q: Okay.

9 A: Then the third one is next to it. And then
10 across the road next to Coggins is the 80
11 acres.

12 Q: Across the road, okay. Now, your properties
13 would be -- well, let me strike that. Looking
14 at this map, the flow of water would go from
15 the top of the map to the bottom of the map; is
16 that not correct?

17 A: Yes, sir.

18 Q: Okay. So, that would mean that one of your
19 properties is upstream to the extent that it
20 borders the Little River. And the other one is
21 on a tributary that does not join the Little
22 River until some distance downstream; am I
23 correct?

24 A: That's right.

25 Q: So, operations at the Coggins property would



1 not impact any water quality for property that
2 you own; isn't that correct?

3 A: But as a South Carolinian, it does impact.

4 Q: That may be true. But you personally will not
5 be impacted in any way different than any other
6 member of the community in Laurens County;
7 isn't that correct?

8 A: I see this as beyond Margaret.

9 **THE COURT:** If you can answer his question.

10 A: Please ask it again.

11 Q: Okay. My question is, is that, since the
12 property that you own jointly with your sister,
13 Mary Basel, is either located upstream of the
14 Coggins property or it's located adjacent to,
15 but it borders a different tributary, I think
16 you said Ginger Creek, which doesn't join
17 Little River until some distance downstream of
18 where the facility is, you're not impacted by
19 any water quality issues that would be separate
20 and apart from any other member of Laurens
21 County; isn't that correct?

22 A: My water will not be affected, however I look
23 at this -- I came to this as someone who is
24 concerned about my state. The picture is
25 bigger than Margaret.



1 Q: And actually looking at that map, the same
2 could be said for Ms. Blackmon's property,
3 isn't that true? His property is on the
4 northern side, if you will, of property that
5 you own; isn't that correct?

6 A: That's true.

7 Q: Okay. So, he also would not -- let me strike
8 that. You stated that you had some issues with
9 the signs that we used by the Department to
10 notify the public.

11 A: Yes, sir.

12 Q: Okay. But the Department -- you did see that
13 there were signs up?

14 A: Yes, sir.

15 Q: Okay. And were you also aware that there was
16 a notice published in the local newspaper?

17 A: I was not aware of that.

18 Q: Okay. But you have no knowledge that would
19 lead you to believe that the Department didn't
20 put a notice in the newspaper?

21 A: No, sir. I would believe what you say.

22 Q: And currently you don't reside on the property;
23 is that not correct?

24 A: No, sir. I'm there as often as I can be,
25 though.



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1 Q: Okay.

2 MR. HIGHTOWER: No further questions.

3 THE COURT: Any further ---

4 MR. GUILD: Yeah, a little bit.

5 MS. SPARROW - RE-DIRECT EXAMINATION BY MR. GUILD:

6 Q: Ms. Sparrow, I thought I heard Mr. Mustian say
7 that it was a fact that manure from these
8 facilities was not going to be land applied in
9 Laurens County. Did I understand that was a
10 question to you?

11 A: I think so, yes, sir.

12 MR. MUSTIAN: Your Honor, I believe that's a mis-
13 characterization of my question, but ...

14 Q: Well, I just would say, are you aware of any
15 permit condition that requires them to take
16 manure or waste from these three facilities and
17 apply it on land outside of Laurens County?

18 A: I thought it was going to be applied on the 192
19 acres, but I may -- I'm not sure of that. I
20 believe it was my understanding it was going to
21 be applied in Laurens County or nearby.

22 Q: And Mr. Hightower asked you a bit about where
23 the water flows downhill. And I guess the
24 point he was trying to make is the water flows
25 past your property before it gets to Little



1 River. Do you know whether fish swim upstream
2 as well as downstream?

3 A: Fish like water.

4 Q: And would you prefer that the fish swim in
5 unpolluted water both downstream and upstream
6 of your property to be healthy?

7 A: Oh, yes.

8 MR. GUILD: That's all I have. Thank you for your
9 testimony.

10 THE COURT: Anything else, Mr. Mustian?

11 MR. MUSTIAN: No, Your Honor.

12 MR. HIGHTOWER: No further questions, Your Honor.

13 THE COURT: You may step down.

14 MR. GUILD: Call Mary Basel.

15 MARY BASEL, having been duly sworn, testifies as
16 follows:

17 COURT REPORTER: Please state your full name for the
18 record.

19 THE WITNESS: Mary Dunlap Basel. That's B-A-S-E-L.

20 COURT REPORTER: Thank you.

21 MS. BASEL - DIRECT EXAMINATION BY MR. GUILD:

22 Q: Good afternoon, Ms. Basel. A few questions for
23 you. I'm going to show you again that document
24 that's in evidence that's a map that depicts
25 the area in question, including your family



1 property. Let's just see if we can't zoom in
2 a little bit here. So, again, to orient you,
3 Ms. Sparrow, the -- get my tool up here please.

4 **THE COURT:** I think it's Ms. Basel.

5 **MR. GUILD:** Ms. Basel. Excuse me.

6 Q: We've got Coggins property that's the
7 property -- the subject site of the three
8 proposed facilities. You understand that in
9 this case?

10 A: Yes, sir.

11 Q: Okay. And then, as your sister testified, your
12 family land is across Lisbon Road here, but
13 also adjacent to the property to the northwest
14 as well, correct?

15 A: That's correct.

16 Q: Okay. Now, how do you use your property
17 yourself?

18 A: Well, I am the hunter in the family and I
19 pretty much manage the lease that you looked at
20 previously. And we've had this club since 2008
21 and been leasing it to a great group of people.
22 And they look at the land as if it's their own
23 and take care of it.

24 Q: All right. And what kind of hunting do you do
25 on the property?



1 A: I hunt deer.

2 Q: And what kind of hunting do you -- what kind of
3 deer hunting do you do?

4 A: I do bow hunting and I do riffle.

5 Q: Riffle and bow. Now, you heard the
6 testimony -- you were present during Mr.
7 Blackmon's testimony?

8 A: Yes.

9 Q: Some discussion with counsel for the Applicants
10 involving the restrictions on use of firearms
11 within a certain distance of a poultry
12 facility. Are familiar with that statute?

13 A: Yes, I am.

14 Q: Okay. And do you have concerns about that
15 impact of that statute on your use of your
16 hunting land?

17 A: I have great concerns.

18 **MR. MUSTIAN:** Your Honor, we would object on the
19 ground of relevance. On behalf of my clients,
20 we've stipulated, I believe. I won't belabor
21 that. But we stipulated that we will waive and
22 make that a special condition of the permits,
23 so we believe this line of questioning is
24 irrelevant because that issue has now been
25 resolved.



1 MR. GUILD: Well, I don't believe it has been
2 resolved and that's why I'm asking the
3 question. I'm laying the foundation, Your
4 Honor. And I believe I'm entitled to ask her
5 the question.

6 Q: What concerns, if any, do you have ---

7 THE COURT: I'm going to let you go into it in a
8 limited fashion. But tell me why it hasn't
9 been resolved.

10 MR. GUILD: Well, I want to hear from the witness
11 and I'm going to ask her.

12 THE COURT: Okay.

13 Q: What concerns, if any, do you have about the
14 impact of the facilities on your use of your
15 hunting land?

16 A: Well, first of all, concern is Mr. Blackmon is
17 not the property owner. My sister and I are.
18 And it impacts us directly. My second concern
19 is it's going to lessen the amount of land that
20 I can lease. And the third issue that I have
21 with this is I have -- I am concerned for the
22 welfare of the chickens.

23 Q: So, let's say ---

24 THE COURT: Of the chickens?

25 THE WITNESS: Of the chickens.



1 THE COURT: Okay.

2 THE WITNESS: The birds.

3 Q: Yes. So, let's say you're within 900 feet.
4 Mr. Mustian's clients have given you this,
5 whatever you want to want to characterize it,
6 waiver or lease. So, you're free to use
7 firearms within the 900 feet. And the barns
8 are just over the property line and you're
9 firing a riffle at a deer. What concerns do
10 you have about impact on the chickens?

11 A: Well, you're looking at barns with 40,000
12 chickens and they grow at a very rapid rate.
13 And if they get frightened, they will run to
14 the other side of the ---

15 MR. MUSTIAN: Objection, Your Honor. There's been
16 no foundation as far as how chickens would
17 react to a riffle being shot across the road.

18 Q: Ms. Basel, you understand that there's a
19 statute ---

20 THE COURT: Let me make rulings on the these things
21 that have been brought. I sustain the
22 objection and strike the testimony as to her
23 understanding. And then now you can proceed.

24 MR. GUILD: Why would they have a prohibition
25 against firing a riffle within 900 feet of a



1 chicken barn if it doesn't hurt the chickens,
2 for God sakes?

3 **MR. MUSTIAN:** Objection, Your Honor. We don't know
4 what the legislature intended when it adopted
5 that statute. And she is not in a position
6 where she can opine on that.

7 **THE COURT:** Y'all don't get into argument between
8 yourselves.

9 Q: Well, then are you satisfied with their
10 agreement to not enforce this prohibition
11 against you? Does that satisfy your concerns,
12 ma'am?

13 A: It is of great concern that there is a rule on
14 the books that obviously was put there to
15 protect the chickens. And I have concern and
16 I don't understand why a poultry operator would
17 not share that concern. And I have a fear
18 that, if the mortality rate of those chickens
19 increases and it's because we're shooting
20 firearms, that's a concern.

21 Q: All right. Thank you. Now, are you a member
22 of SCRAP, Ms. Basel?

23 A: Yes, I am.

24 Q: And did you participate in the comment process
25 that we've been discussing today?



1 A: Yes, I did.

2 Q: Did you offer comments about the proposals
3 yourself?

4 A: Yes, I did.

5 Q: Could you tell the Court just briefly what your
6 concerns are that you expressed to DHEC?

7 A: The concerns that I wrote to DHEC, I was
8 concerned with air quality, water quality, and
9 the impact of health issues that people near
10 existing poultry operations expressed during
11 the public meetings.

12 Q: What air quality issues did you express?

13 A: The air quality, we talked about the ammonia
14 levels from the smell. And it's not just the
15 nuisance of the smell, but it's the chemicals
16 that create the smell and harmfulness of that.
17 We currently -- the people that lease our
18 property complained already of ---

19 **MR. MUSTIAN:** Objection, Your Honor. Hearsay.

20 **THE COURT:** You can only testify to what you know
21 personally.

22 A: Members of our hunt club have complained about
23 the odor ---

24 **MR. MUSTIAN:** Objection, Your Honor. Hearsay.

25 **THE COURT:** One more time. You can testify to what



1 you know personally..

2 **THE WITNESS:** What I know personally.

3 Q: What's the basis for your expression of
4 complaints about odors to DHEC?

5 A: I'm concerned that it is a nuisance and that it
6 has harmful affects.

7 Q: What impact, if any, will air quality issues,
8 odors included, have on your use and enjoyment
9 of your property for hunting?

10 A: It's going to impact our recreation, our
11 entertainment. Nobody wants to sit in a deer
12 stand and smell chicken manure.

13 Q: You mentioned water quality concerns. What
14 water quality concerns do you have?

15 A: Well, I have great water quality concerns. As
16 my sister mentioned, we previously owned that
17 property with our cousins, partnership land.
18 And I'm very familiar with -- I don't read
19 topography maps, but I have ridden over that
20 property many times. I've walked that property
21 many times. I know the gullies. I know the
22 dropoff. And when you put 18 barns, which are
23 going to equate to like a Wal-Mart out there,
24 it's -- you know, the roofs, the plating of the
25 land, the dropoff, it's going to impact and run



1 off ---

2 **MR. MUSTIAN:** Objection, Your Honor. There's been
3 no foundation that she can opine about runoff.

4 **MR. GUILD:** Well, let's look.

5 Q: I'm going to show you what's been identified as
6 a topo map of the site. Do you recognize that
7 map depiction including that site?

8 A: I have seen this map, but I am not a topography
9 reader, map reader. I'll admit that.

10 Q: Well, I'm just going to direct your attention
11 to -- all right. So, Highway 72 to the right,
12 you see that red line?

13 A: Yes, sir.

14 Q: All right. Lisbon Road running from the left
15 to the lower right. You see that?

16 A: Yes.

17 Q: And a railroad track to the left of what's
18 indicated to be the proposed barn sites. Is
19 there a railroad track near your property?

20 A: Yes. A railroad track is behind our property.

21 Q: All right. And then Little River is depicted.
22 So, when you talk about gullies on the
23 property, have you physically seen those
24 yourself when you were on the property as
25 you've described?



1 A: Oh, yes.

2 Q: And you see the features we've got right here
3 and here ---

4 **MR. MUSTIAN:** Your Honor, a couple of things. One
5 is, I don't believe -- I believe when this was
6 introduced into the record, I believe that you
7 introduced it for a very limited purpose, which
8 is the topography that's shown on the map had
9 not been authenticated as far as how accurate
10 it was. In addition ---

11 **MR. GUILD:** That's what we're doing right now,
12 Judge.

13 **MR. MUSTIAN:** Your Honor, she did not create this
14 map, so I don't know how she can authenticate
15 it and talk about its -- how accurate it is.
16 But in addition, she's also said specifically
17 that she is not versed in topography issues.
18 So, I don't know how she can -- how Mr. Guild
19 can walk her down the path of where gullies are
20 on this map when she has no basis upon which to
21 explain that.

22 **THE COURT:** At this point in time I'm going to -- I
23 may hear your objection on this later on. But
24 at this point I don't believe he's stepped on
25 the toes of that which you are objecting about.



1 But I will say, I didn't enter it into
2 evidence. I allowed it into evidence.

3 MR. MUSTIAN: You're very right, Your Honor.

4 THE COURT: Mr. Guild entered it in.

5 MR. MUSTIAN: I apologize, Your Honor. You're very
6 correct.

7 Q: Describe the gullies that you've observed on
8 the property independent of looking at this
9 topographic map. What do they look like?

10 A: Well, we -- you know, we have the big gullies
11 on this side and we also have some gullies on
12 the other side. But we have those areas
13 planted in timber and, you know, that will
14 protect the runoff. But I did read Ross
15 Stewart's deposition ---

16 MR. HIGHTOWER: Objection, Your Honor.

17 THE COURT: Well, she's getting close to it. She
18 said she read it. She hasn't said what he ---

19 MR. HIGHTOWER: Anticipating.

20 Q: Let's talk about what you've seen. You've
21 walked this property; is that right?

22 A: I've walked this property.

23 Q: And you said that -- you testified earlier that
24 you observed gullies on the property. Well,
25 describe the gullies that you observed.



1 A: I can't give you exact dimensions, but, you
2 know, they're steep. You can't -- it'd be very
3 difficult to go down it and then come back up.
4 We always try to find an area that maybe we can
5 walk because it's so steep and deep, you -- you
6 know, you're running the risk of sliding back
7 down if you ---

8 Q: All right. And do you observe erosion of soil
9 on those -- in those gullies?

10 A: Well, the last time I saw the area, they had
11 timber. But the timber -- I'd say 40 percent
12 of the timber has been cut since I last was on
13 the property.

14 MR. GUILD: Moment please.

15 THE COURT: I'm trying to decide, Mr. Guild, how
16 could a gully be formed but for the erosion of
17 soil?

18 MR. GUILD: Excellent observation, Your Honor.

19 Q: Ms. Basel, you and your sister contemplated --
20 or did you contemplate building homes on your
21 family property?

22 A: We did. We had DHEC come and approve or the
23 perc. testing. And we had home sites approved
24 or building sites. We got a building plan and
25 then all of this started. And we addressed



1 this issue with DHEC about, you know, would
2 they allow the additional setback or whatever.
3 And we never really got a clear answer, so we
4 did not proceed with the building of the homes.

5 Q: And where would the homes have been built?

6 A: It would have been built near our old -- where
7 the original house was, the big two story home,
8 which burned. That's just probably one of the
9 most beautiful parts of our -- I mean, it's all
10 beautiful, but that area is really beautiful
11 and that's where we wanted to put the homes.

12 Q: All right. I'm going back to the area map that
13 indicates the parcels that has Basel/Sparrow
14 and several separate parcels with the Coggins'
15 property, the subject site of the barns shown
16 as well. Can you indicate on the -- on this
17 map where the home sites were that you
18 contemplated?

19 A: Right. This is where the old barn is. And the
20 site's probably right here and right here.

21 Q: Okay. And when did you -- did you get approval
22 from DHEC for a home site at that location?

23 A: I think the perc. testing was done -- and the
24 information that was given. But I thought the
25 perc. testing was done in November, but I know



1 that. the building plan was completed in
2 probably April.

3 Q: April preceding the November date?

4 A: Yes.

5 Q: Your requests for Board review that's in the
6 record says in paragraph six that in
7 November 2015 SC DHEC collected fees and perc.
8 two residence sites along Lisbon Road for Basel
9 and Sparrow. Basel and Sparrow then acquired
10 a building permit. August 16, David Coggins
11 applied for a poultry house permit. Are those
12 accurate dates to the best of your knowledge?

13 A: Yes, they are.

14 Q: Now, would that home site have given you the
15 minimum 1,000 foot setback between the
16 footprint of the barns and a residence had you
17 built on that property at that location?

18 **MR. MUSTIAN:** Objection, Your Honor.

19 **MR. HIGHTOWER:** Objection.

20 **MR. MUSTIAN:** There's no footprints. I'm not sure
21 how she can testify as to what the setback
22 would be from the facilities.

23 **MR. GUILD:** Well, there's a proposed footprint, Your
24 Honor. I mean, there's a DHEC permit
25 application.



1 Q: Do you know whether you would have been -- your
2 home site would have been a thousand feet from
3 the barns?

4 MR. MUSTIAN: Your Honor, he hasn't laid any
5 foundation for where these home sites are. He
6 hasn't presented any documents that demonstrate
7 where they are or where they would be.

8 THE COURT: She can testify where -- I guess he has
9 to lay a foundation for her -- the measuring of
10 a thousand feet is from the home site to where
11 the proposed location is.

12 MR. GUILD: Yes, sir. The footprint of the barns is
13 what I understand DHEC uses to measures the
14 thousand feet.

15 THE COURT: She would have to understand where the
16 -- you'd have to lay a further foundation on
17 it.

18 Q: Have you reviewed the question of whether or
19 not your home site would be at least 1,000 feet
20 from the footprint of the nearest proposed
21 facility?

22 A: The house plans were sent to Bill Chaplin upon
23 his request. And then, you know, they may have
24 made changes, but to the original information
25 that they presented at the public meetings --



1 Q: They DHEC?

2 A: DHEC.

3 Q: Yes, ma'am. They would have had to moved the
4 barns further back based on ---

5 **MR. MUSTIAN:** Same objection, Your Honor.

6 **THE COURT:** All right.

7 Q: And do you know whether or not they did move
8 the barns further back to accommodate your
9 proposed home site?

10 A: I do not recall seeing an updated picture or
11 map of where the barns would be relocated.

12 Q: And as a result of the decision by DHEC to
13 approve the proposed three facilities, what
14 action, if any, have you or your sister taken
15 with your home site plans?

16 A: We've just put them on hold.

17 Q: Now, when you say you had plans, did you spend
18 money to have home plans prepared for you?

19 A: We spent money to have the perc. testing done
20 and did not spend money to have the building
21 plans done.

22 Q: All right.

23 **MR. GUILD:** Moment please.

24 Q: Did you accompany your sister to Columbia to
25 pay the filing fee at DHEC as she described?



1 A: Yes. I drove and it was \$200.

2 Q: All right. And there were five facilities. Is
3 it accurate to say, as was testified, that you
4 split the filing fees among the responsible
5 parties in the group?

6 A: That is correct.

7 Q: And you just paid your share, whatever that
8 was?

9 A: Right.

10 MR. GUILD: Please answer any questions other
11 counsel or the Court may have for you.

12 THE COURT: Mr. Mustian.

13 MS. BASEL - CROSS EXAMINATION BY MR. MUSTIAN:

14 Q: Ms. Basel, during the DHEC process, did you
15 complain or you ask DHEC to do something about
16 requiring a vegetative buffer along Lisbon
17 Road; did you not?

18 A: That was one of the requests that I did make.

19 Q: And what did DHEC do in response to that
20 request?

21 A: I think they requested a buffer.

22 Q: In fact, they never ---

23 A: I mean, along the Lisbon Road now, even though
24 a lot of the trees have been cut, there are
25 still standing trees along Lisbon Road.



1 Q: And do you know how deep that buffer goes?

2 A: I do not know.

3 Q: If I said to you it was 400 feet, would that
4 sound approximately correct?

5 A: I can't judge that.

6 Q: Whatever would be reflected in the permit, you
7 wouldn't disagree with, though, would you?

8 A: Whatever was in the permit.

9 Q: And when you say the property is clear cut,
10 there are squares in the middle of the property
11 that have been -- a trace has been cut,
12 correct?

13 A: That is correct.

14 Q: It hasn't been clear cut all the way to the
15 road; is that correct?

16 A: From what I can see from the road, it has not
17 been totally cleared cut.

18 **MR. MUSTIAN:** No further questions, Your Honor.

19 **MS. BASEL - CROSS EXAMINATION BY MR. HIGHTOWER:**

20 Q: Ms. Basel, you stated, I believe, it was in
21 November of 2016 would it have been that you
22 had a perc. test done; is that correct?

23 A: Had a protest done?

24 Q: A perc. test.

25 A: A perc. test.



- 1 Q: Yes.
- 2 A: I think that was 2015.
- 3 Q: Okay. And it was November of 2015?
- 4 A: Right.
- 5 Q: And the application was put out on public
- 6 notice in August of 2015, correct?
- 7 A: Of 2016.
- 8 Q: 2016. Okay. And between November and August
- 9 of 2016 did you construct your home?
- 10 A: No, we did not.
- 11 Q: Okay. Was there anything that prevented you
- 12 from doing that?
- 13 A: Well, part of the delay was we knew we were
- 14 going to be doing some tree finning. We were
- 15 going to use that money to pay for the
- 16 construction of the homes.
- 17 Q: Okay. And were you going to move onto that
- 18 property and live there?
- 19 A: I personally was not, but my sister's son is
- 20 going to be graduating from high school and he
- 21 is looking to move there. And we also wanted
- 22 to build a little area for the person who
- 23 oversees the leasing on the property.
- 24 Q: Okay. But it was basically your choice not to
- 25 build a home prior to the applications being



1 publically noticed; isn't that correct?

2 A: It was our decision based on the financial
3 status.

4 Q: Okay. You stated there was some problems with
5 ammonia. Are you aware that ammonia is not a
6 regulated air pollutant in the ambient air in
7 South Carolina?

8 A: I was not aware.

9 Q: And, I guess, as with the questions I asked
10 your sister, your property does not -- is not
11 upstream -- or excuse me. It's not downstream
12 of the Coggins facility, correct?

13 A: Our property is not downstream.

14 Q: So, if there are any issues, your issues are
15 the same as anybody else?

16 A: Anybody else in Mountville, South Carolina or
17 ---

18 Q: Well, Laurens County I guess. Well, strike
19 that. The Mountville area, is it -- does
20 Little River go through the Mountville
21 community itself?

22 A: Well, the river does not, but the Ginger Creek
23 that runs into Beaver Dam Creek runs into
24 Little River, which is impacted by existing
25 poultry operators.



1 Q: Okay. But we're concerned about these
2 facilities here, the Coggins facility. If --
3 okay. The Coggins facility is -- abuts Little
4 River on its northeast section, right along
5 here, correct?

6 A: That's correct.

7 Q: Okay. And Mountville is somewhere over here I
8 believe. Or actually is this the Mountville
9 area right up here?

10 A: I can't tell where Mountville is from this map.

11 Q: Okay. Well, would Mountville be down Lisbon
12 Road from your property?

13 A: Lisbon Road is here and then you get on 72 and
14 you go here and there's Mountville.

15 Q: Okay. So, Mountville is somewhere west of
16 Lisbon Road, correct?

17 A: Correct.

18 Q: Okay. So, the Mountville community would not
19 be directly impacted by Little River; isn't
20 that correct? It doesn't ---

21 A: Not Little River because it doesn't flow there.
22 But they can be impacted by the tributaries
23 that lead into Little River.

24 Q: Well, the tributaries lead into Little River
25 downstream of the facility, correct?



1 A: It leads downstream to Little River.

2 Q: Well, if I understood correctly, Ginger Creek
3 is somewhere over here, correct? Somewhere in
4 that ---

5 A: Correct.

6 Q: Okay. And the Coggins facility is north of
7 that, correct?

8 A: His existing or his proposed?

9 Q: The proposed facility.

10 A: The proposed facility is over across Lisbon
11 Road.

12 Q: Across Lisbon Road some distance at least a
13 thousand feet or more, correct?

14 A: I can't give you an estimate.

15 Q: Okay. Well, how deep is your property, if you
16 know, from Lisbon Road to Ginger Creek?

17 A: I can't tell you how many feet that is.

18 Q: All right.

19 **MR. HIGHTOWER:** No further questions.

20 **THE COURT:** Re-Direct?

21 **MR. GUILD:** None. Thank you, Your Honor.

22 **MS. TAYLOR:** Can we take a quick break?

23 **THE COURT:** Yes, we may. I was about to say that
24 anyway. You may step down. Five, ten minute
25 break.



1 (Off the Record)

2 THE COURT: Call your next witness.

3 MS. TAYLOR: Your Honor, we call Mr. Ross Stewart to
4 the stand.

5 EUGENE ROSS STEWART, having been duly sworn,
6 testifies as follows:

7 COURT REPORTER: Please state your full name for the
8 record.

9 THE WITNESS: Eugene Ross Stewart.

10 COURT REPORTER: You said Eugene?

11 THE WITNESS: Yes.

12 COURT REPORTER: Thank you so much. Is it S-T-E-W-
13 A-R-T?

14 THE WITNESS: Right.

15 MR. STEWART - DIRECT EXAMINATION BY MS. TAYLOR:

16 Q: Mr. Stewart, can you hear me fine over here or
17 do I need to move to the podium?

18 A: I can.

19 Q: Okay. Can you tell us where you reside, Mr.
20 Stewart?

21 A: I reside at 106 Meadow Woods Court in Easley,
22 South Carolina.

23 Q: And you own property in Laurens County, South
24 Carolina?

25 A: Yes, I do.



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1 Q: Looking at this map here, do you see your
2 property identified on this map?

3 A: Yes, ma'am.

4 Q: Can you point to the parcel or parcels that you
5 own?

6 A: (Complies).

7 Q: All right. And I see, if I'm correct, that the
8 back border or the northern border, however you
9 wish to describe it, has the Little River
10 running along it; is that correct?

11 A: That's correct.

12 Q: And this is adjacent from Mr. Coggins'
13 property?

14 A: Yes.

15 Q: Is it upstream or downstream from ---

16 A: Downstream.

17 Q: --- Mr. Coggins' property? All right. Tell me
18 a little bit about your employment background,
19 Mr. Stewart.

20 A: I worked for 36 and a half years for U.S.
21 Department of Agriculture and Natural Resources
22 Conservation Service, which is an agency that
23 deals with conservation of erosion control,
24 proper land management, those type of issues.

25 Q: And in that position that you held, did you



1 have dealings with industrialized poultry
2 facilities?

3 A: Yes, uh-huh.

4 Q: Tell us about what that experience involved.

5 A: Well, if you go back probably 15 years ago, we
6 wrote a good portion of the waste management
7 plans. As more and more poultry came to South
8 Carolina, particularly in the upstate, we kind
9 of got overwhelmed by the numbers. And it was
10 taking so much of our time that they farmed out
11 or, you know, used private engineers probably
12 the last I'd say five years that I worked. But
13 they would get a lot of information from us and
14 then we would still write some plans and, you
15 know, certify the waste management plan.
16 Sometimes I would gather information for our ag
17 engineers, because they typically signed off
18 and certified the plans.

19 Q: Just for clarification purposes, you're talking
20 about your employment with the NRCS?

21 A: Right.

22 Q: And that acronym stands for?

23 A: Natural Resources Conservation Service.

24 Q: Okay. And when you're talking about your role
25 and writing plans, can you give us some more



1 detail about what those plans are?

2 A: Well, we would go in and take sets of aerial
3 photos where the landowner or the producer,
4 poultry producer, would, you know, tell us what
5 fields they plan to land apply manure on. And
6 then we would ask them for a soil analysis on
7 those fields, the crops that were going to be
8 grown. You know, we would look at the pH of
9 the soil to see what range that range was in
10 and how the crops would grow under the pH that
11 existed at the time. We would look at any
12 streams or permanent water bodies that were on
13 those maps where they said they were going to
14 apply and we would draw in setbacks. You
15 couldn't get but so many feet of the stream or
16 so many feet of a water bank with your
17 application rate. We'd take the crop they told
18 us that was going to be growing on. If it was
19 row crop, such as corn or soy beans, they would
20 have a, you know, particular need for nitrogen,
21 phosphorous, and potassium for that particular
22 plant. And so, we would look at the existing
23 soil analysis and see what the current level of
24 NPK was and then we would use that to kind of
25 streamline how much manure to put out, what the



1 application rate would be. And then we would
2 look at the number of houses, the number of
3 birds, the amount of manure that they would
4 produce and we would see if the acreage that
5 the particular individual had was adequate to
6 fit the spreading plan. And, of course, if it
7 wasn't, then we would tell them that and they
8 would go and look for additional acreage to
9 spread on. And we looked for things like wells
10 or residences, you know, the setbacks that
11 normally come along set by DHEC and in the
12 state regs. And, you know, we would
13 particularly look at phosphorus levels.
14 Phosphorus tends to bind to clay particles.
15 And if you get high phosphorus or excessive
16 phosphorus, sometimes you had to eliminate
17 those fields from a spread plan, because you
18 don't want to continue to add phosphorus when
19 your level is already too high, because it'll
20 leach over time, it could get in groundwater --

21 -
22 MR. MUSTIAN: Objection, Your Honor. Foundation
23 hasn't been laid for his ability to opine about
24 phosphorus.

25 MS. TAYLOR: Your Honor, I think he's already



1 testified to his many years of service with the
2 National Resource Conservation Service and his
3 ---

4 **THE COURT:** He has to testify about his knowledge of
5 chemical aspects of leaching. So, if you want
6 to lay a foundation.

7 **MS. TAYLOR:** Sure. Yes, Your Honor.

8 **THE COURT:** But at this point, I sustain the
9 objection. Strike the testimony on leaching.

10 **Q:** Mr. Stewart, can you tell us more about your
11 job responsibilities at the NRCS in terms of
12 leaching, characteristics of potassium,
13 nitrate, and -- nitrogen, and -- what was the
14 other one?

15 **A:** Well, I'm not -- the three main elements that
16 you got is nitrogen, phosphorus, and potassium.

17 **Q:** Potassium. I'm sorry. It escaped me.

18 **A:** And usually in the manure, you can look at an
19 analysis of manure, the nitrogen and phosphorus
20 kind of go hand in hand. So, if you take a
21 soil test and get it back and it says that the
22 phosphorus is excessively high, then what will
23 concern you is that over a period of time if
24 stormwater infiltrates into the ground, that is
25 going to ---



1 **MR. MUSTIAN:** Your Honor, objection. This is not
2 factual testimony. He's providing speculation
3 and expert -- he's providing opinion. He's not
4 been offered as an expert. He was not
5 identified in discovery as an expert. And he
6 is not demonstrated any specialized knowledge
7 or education in this field.

8 **THE WITNESS:** Well, I also majored in agronomy and
9 got a masters from Clemson University, so ---

10 **MR. HIGHTOWER:** Same objection, Your Honor.

11 **THE WITNESS:** --- maybe that doesn't qualify me
12 either.

13 **MS. TAYLOR:** Your Honor, may I ask about his
14 educational background?

15 **MR. MUSTIAN:** Your Honor, we would object. The
16 scheduling order for -- that was issued by the
17 Court required the Petitioners to identify
18 their experts by a certain day. They did not
19 identify Mr. Stewart as an expert. In fact,
20 they specifically identified him as a fact
21 witness. These are not facts. These are his
22 opinions about the movement and the affect of
23 phosphorus and nitrogen and potassium in soil.

24 **MS. TAYLOR:** No, we have not identified Mr. Stewart
25 as an expert witness. We do think that,



1 because of his job experience, he has personal
2 knowledge. He's not here to offer an opinion
3 as far as these facilities. He has a wealth of
4 information based on his own personal
5 experience dealing with poultry operations.

6 **MR. HIGHTOWER:** But, Your Honor, that would be
7 exactly what an expert would do ---

8 **THE COURT:** I understand, I understand. He can give
9 me -- or continue to give his factual knowledge
10 about the management plans, but he -- and I'm
11 going to say this and I'll let you argue back,
12 but I don't believe he can give an opinion as
13 to the leaching. He's going back and referring
14 to that. And just talking about his background
15 education, he may have the ability to give an
16 opinion, but he hasn't been identified ---

17 **MS. TAYLOR:** I will certainly ask those questions.

18 **THE COURT:** But I throw that out -- do you have a
19 response?

20 **MS. TAYLOR:** I mean, if he has experience from his
21 work about experiences with leaching -- I'm not
22 asking him to render an opinion as far leaching
23 with these facilities, but if he -- and I
24 haven't gotten this far, Your Honor, but he is
25 a member of SCRAP. He has, you know, knowledge



1 that is useful in forming his own opinions or
2 not -- scratch that. I'm not trying to say
3 opinion, I ---

4 **MR. MUSTIAN:** I would be glad if you did.

5 **MS. TAYLOR:** It's been a long day.

6 **THE COURT:** Well, to testify about leaching is not
7 something you could really observe. So, it
8 would have to be an opinion. But what I --
9 from my perception. So, that's -- if you want
10 to continue along this line and educate me
11 further, but at this point in time I'll sustain
12 the objection.

13 **MS. TAYLOR:** Just to clarify, just to make sure I
14 understand. In terms of leaching of these
15 particular chemical compounds?

16 **THE COURT:** Well, leaching of -- was it phosphate?

17 **MS. TAYLOR:** Nitrate and ---

18 **THE COURT:** No it's the one that binds to the soil.

19 **THE WITNESS:** Yeah, leaching through soil into the
20 groundwater.

21 **THE COURT:** He testified to one of them. It was
22 nitrogen, phosphorous, and potassium. But I
23 thought it was phosphorus that binds to the
24 soil.

25 **MS. TAYLOR:** Right.



1 **THE COURT:** And he was testifying about that. I
2 don't know if he can give an opinion about
3 that.

4 **MS. TAYLOR:** About that in relation to these
5 proposed facilities or that it does or can
6 occur?

7 **THE COURT:** Its occurrence, because he -- that's not
8 something that someone can observe. That would
9 be something someone would testify to based on
10 their educational training and would give an
11 opinion about it.

12 **MS. TAYLOR:** Can it be served through soil test
13 results?

14 **MR. HIGHTOWER:** Then he's giving an opinion. He's
15 being given test results that, first of all, he
16 didn't perform the tests. And then he's being
17 asked to render an opinion about it. And the
18 Department had specifically asked their expert
19 as to whether or not there was going to be
20 anything about groundwater. And based on that,
21 the Department determined whether or not it
22 needed to call its own expert. And now we're
23 kind of getting into -- Mr. Stewart is kind of
24 being a quasi-expert. Maybe not officially
25 identified as that, but his testimony goes to



1 groundwater and what could be ---

2 **THE COURT:** Well, Ms. Taylor's going to take it as
3 far as she can go. But at this point in time,
4 I sustain your objection.

5 **MR. MUSTIAN:** Thank you, Your Honor.

6 **MS. TAYLOR:** All right. I've lost train of the
7 questioning here. So, if I repeat the
8 question, please forgive me.

9 **Q:** I think I was prior just trying to -- let me
10 get one point of clarification just for the
11 benefit of the court reporter here. What is
12 the chemical character for phosphoreus? Is
13 that P?

14 **A:** P205.

15 **Q:** Okay.

16 **A:** P205.

17 **Q:** And you had mentioned K. What does that stand
18 for?

19 **A:** Potassium.

20 **Q:** Okay. And N, what does that ---

21 **A:** Nitrogen.

22 **Q:** Okay. I just wanted to make that clear. Let's
23 get back to your personal knowledge related to
24 the NRCS. Were you -- to clarify, when you're
25 talking about all these plans and the very



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1 detailed testimony that you just gave
2 concerning that, are you talking about
3 comprehensive nutrient management plans
4 comparable to what we see in these proposed
5 facilities' permit applications?

6 A: Yeah.

7 Q: Have you had experience within your employment
8 at the NRCS with land application of chicken
9 manure?

10 A: Well, yeah. I've observed, you know, the
11 application of the manure.

12 Q: Okay. Do you have any concerns relating to
13 these applications about, I guess that would be
14 Jim Young's application, to prevent a relevance
15 objection, in terms of land application of
16 manure?

17 A: Well, Mr. Young, where he's going to apply is
18 away from the watershed, you know, of Little
19 River. So, I'd have a general concern. But,
20 you know, to say to say that I had, I guess, a
21 personal concern about applying it away from
22 Little River watershed, I mean, it wouldn't
23 affect me per say, but it could affect somebody
24 else.

25 Q: Have you applied chicken manure on any property



1 that you own?

2 A: Once.

3 Q: And what property was that?

4 A: It was a farm we leased at Gray Court, South
5 Carolina.

6 Q: Okay. And have you continued to land apply
7 chicken manure?

8 A: I only applied it one time and haven't applied
9 it since.

10 Q: And why was that?

11 A: Well, originally I had called a broker, a
12 manure broker, and I asked him to -- you know,
13 told him I wanted some manure for this
14 particular place. And so, he wanted to know
15 how much I wanted and I told him. And he had
16 a driver deliver the first eight loads. And I
17 had a soil test, I had maps of the things that
18 I knew were required. And I offered them to
19 the truck driver, but he said he didn't -- he's
20 just driving the truck. He didn't want them.
21 So, actually I was going to get a guy that had
22 a spreader to apply it. And so, the guy that
23 I as buying it from, the broker, he never asked
24 me for anything. So, I just took my soil test
25 and looked at it and, you know, applied what



1 loads he brought. He never brought what I
2 asked for, he just brought a few loads and then
3 he quit. But that kind of demonstrated to me
4 that a lot of these broker plans are -- you
5 know, their consciousness about the way that
6 they apply ---

7 **MR. HIGHTOWER:** Objection, Your Honor. He's
8 generalizing to manure brokers in general what
9 occurred with one broker. He can testify to
10 what that broker did, but to generalize that a
11 lot of manure brokers do this is speculative at
12 best. And other than that, it would be his
13 opinion, which, again, he can't give.

14 **THE COURT:** Yeah. Ms. Taylor ---

15 **MS. TAYLOR:** I think he's ---

16 **THE COURT:** --- his testimony is that one broker
17 came out in one instance and now he's
18 testifying about that is to all brokers.

19 **MS. TAYLOR:** --- if he could -- I believe he was
20 attempting to limit it just to his own personal
21 experience.

22 **THE COURT:** Well, anything he testifies to about all
23 brokers, I'd strike that and I'll let you
24 proceed ---

25 **MS. TAYLOR:** I understand. Yes.



1 THE COURT: --- down that path.

2 Q: So, your experience with -- your own personal
3 experience with manure brokers, if you could
4 continue Mr. Stewart.

5 A: Well, I've observed other people that, you
6 know, got a broker to bring them litter and
7 just dump it on their place and they didn't,
8 you know, have any oversight whatsoever. The
9 litter was a just dumped there.

10 MR. HIGHTOWER: Objection, Your Honor. There's no
11 way that the witness would know whether or not
12 in these other situations -- he said he just
13 observed it. He wasn't a party to the
14 contract, didn't know if it had mailed to the
15 person or anything else. So, it's ---

16 THE COURT: Mailed?

17 MR. HIGHTOWER: Mailed. Let's say they had mailed
18 the test results. I don't know what he is ---

19 THE COURT: I thought you meant mailed litter.

20 MR. HIGHTOWER: I'm sorry. It's been a long day
21 too.

22 THE COURT: I wouldn't want to be the post office
23 ...

24 MS. TAYLOR: But, Your Honor, he can testify to his
25 observations...



1 THE COURT: And he saying ---

2 MR. HIGHTOWER: And I'm agreeing that he can testify
3 to his observation, but he was going down the
4 road that ---

5 THE COURT: But he started with I observed.

6 MR. HIGHTOWER: But he stated that he knew that the
7 proper paperwork wasn't ---

8 THE COURT: Okay.

9 MR. HIGHTOWER: --- provided. And there's no way
10 that he could say, oh, I know that, other than
11 he was a party to it or it's relying on
12 hearsay; I spoke to a person and he told me.

13 MS. TAYLOR: But, Your Honor, he can say that he
14 observed, or did not -- through his
15 observation, he did not see any paperwork being
16 exchanged.

17 MR. HIGHTOWER: Well, he can state that, but ---

18 THE COURT: You want to just ask him ---

19 MS. TAYLOR: Yes.

20 Q: Mr. Stewart, when we were just talking about
21 your observation of a manure broker, did you or
22 did you not observe any paperwork being
23 exchanged between the broker and the owner of
24 the field in which the manure was being
25 applied?



1 A: No. There was none.

2 Q: Okay. Have you personally observed manure that
3 was applied to land that included anything
4 other than chicken litter?

5 A: There was some dead birds in the litter I got.

6 Q: And the chicken litter manure that was
7 personally delivered to your property?

8 A: Yes.

9 Q: How many dead birds did you observe?

10 A: Well, that would be kind of hard to say because
11 you don't -- I mean, you don't want to get in
12 there and be counting, but ---

13 Q: You didn't bring ---

14 A: I mean, when the truck starts spreading and you
15 see them coming out of the back of the truck,
16 I mean, there was, you know, several. And
17 that's one concern I had about litter, is you
18 can get botulism in your ---

19 **MR. MUSTIAN:** Objection, Your Honor.

20 **MR. HIGHTOWER:** Objection.

21 **THE COURT:** I sustain that.

22 Q: But Mr. Stewart, you do have concern -- you
23 were concerned about observing personally dead
24 chickens being distributed on your property?

25 A: I saw that with my own eyes. And that lead to



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1 other, you know, coyotes, predators. They come
2 to that kind of thing. I'm a cattle farmer in
3 addition to having worked for USDA. So, I
4 don't want things that may put predator eyes on
5 my animals.

6 Q: Mr. Stewart, are you a member of SCRAP?

7 A: Pardon me?

8 Q: Are you a member of SCRAP?

9 A: Yes.

10 Q: What -- back to this exhibit here that's still
11 on -- your parcels are here and here. I guess
12 I could point to here as well. What do you use
13 these properties for?

14 A: Well, I lease both of those tracts to one
15 person for hunting and it's to cover deer and
16 turkey. His name is Kenny Jarrett. And then
17 my son and a friend of his also hunt the tracts
18 for -- mainly for deer. You know, through the
19 years I've -- there's an old cabin the tract.
20 My boys and I camped out in the cabin, you
21 know, we've hunted arrow heads, we, you know,
22 just enjoyed it in general. And, of course, as
23 my cousin said, I wanted them ---

24 MR. MUSTIAN: Objection, Your Honor. Hearsay.

25 A: --- to enjoy the property and just like ---



1 Q: Just speak to your own personal knowledge.

2 A: Okay.

3 (Multiple Voices at Once)

4 A: --- enjoy the property and learn how to respect
5 the property. It's under forest management
6 plans, Thompson Forestry Consultants out of
7 Greenwood in the timber management plans. And
8 so, I just wanted them to have an affection for
9 the land just like I do, hand it down
10 eventually to another generation. And I have
11 grandchildren now that I want to do the same
12 thing with. So, it's ---

13 Q: Do you want your grandchildren to be able play
14 in the Little River and not be afraid of
15 getting sick?

16 A: I want my grandchildren to be country girls and
17 boys and swim in the creek and swim in the
18 river and just enjoy the land.

19 Q: Do you -- just for clarification, you also hunt
20 on your own property?

21 A: I don't hunt anymore. I used to hunt when my
22 boys were small. I, you know, would go with
23 them because I was concerned for their safety
24 and wanted them to learn proper etiquette about
25 hunting. But once they got old enough to go on



1 their own, I don't go hunting much any more.
2 But I'm on the tract several times a year.

3 Q: Do you walk it?

4 A: Yeah, I walk it, because I like to see what my
5 timber's doing, you know, if I got any beetle,
6 pine beetle spots, that kind of thing. So,
7 yeah, I enjoy the management as much as I do
8 anything.

9 Q: Okay. All right. Do you -- the folks that you
10 lease your property for hunting, do they hunt
11 the property with a firearm?

12 A: Yes.

13 Q: Do you have any other concerns about these
14 proposed facilities as it relates to natural
15 resources?

16 A: I have concerns about water quality, in
17 particular soil erosion. I've been on the
18 tract -- not recently because it got put in a
19 hunt club several years ago, but, you know, the
20 land doesn't change a whole lot.

21 Q: Well, if this would help, I could put a map up
22 for you if that would help if you want.

23 A: That'd be fine.

24 Q: Okay. This is -- well this is Bates number
25 DHEC_003209, which was stipulated and submitted



1 into evidence. It's a soil -- it's just
2 actually a topographic map. I'm putting up
3 first Jim Young, as been prepared by Agri-Waste
4 Technology on behalf of Jim Young. It's not as
5 colorful and attractive as the earlier one.
6 Can you see that?

7 A: Yeah. Yes, I can see it.

8 Q: Okay. This is, as I understand it -- is this
9 the property, the parcel immediately adjacent
10 to yours?

11 A: Yes.

12 Q: All right. What does this map tell you in
13 terms of your concerns about soils?

14 A: Well, first of all, the soil behind the
15 proposed facilities is a Wilkes, that's the
16 soil name for it.

17 **MR. MUSTIAN:** Your Honor, objection. There hasn't
18 been a foundation for what the soil type is.

19 **MS. TAYLOR:** I have a soil map. We can get to that.
20 Can we just start with the ---

21 **THE COURT:** Well, let me just keep this thing in
22 order. I'll strike the testimony about the
23 Wilkes soil and then proceed ahead.

24 Q: So, let's just stick to topographic features of
25 this property.



1 A: Okay.

2 Q: You mentioned slope as a concern. So, I have
3 here for you a topographic map of the Jim Young
4 parcel. So, if you could just tell us what you
5 see and your concerns about this proposed
6 facility, please, sir.

7 A: Well, I see right behind the facilities a
8 fairly major drainage area, a drain disposal.

9 Q: Can you illustrate where that is on this thing?
10 Sorry for being untechnical.

11 A: Right there. It starts right behind the
12 proposed facilities, drops down into the
13 floodplain of Little River. It's got
14 approximately an 80-foot drop, which is
15 significant. I mean, there's an old gully
16 there that I observed over the years. It's
17 probably 150 feet wide at the top and maybe
18 twenty feet deep. There are two little
19 ephemeral streams ---

20 **MR. MUSTIAN:** Objection, Your Honor. He hasn't laid
21 a basis for -- to determine what an ephemeral
22 stream is and that's not apparent from this
23 map.

24 A: Ephemeral streams ---

25 Q: Well, first -- I mean, you have -- have you



1 walked this ---

2 **THE COURT:** Is an ephemeral stream as a technical
3 term?

4 **MR. MUSTIAN:** Yes, Your Honor, it is.

5 **MR. HIGHTOWER:** Yes.

6 **MS. TAYLOR:** An ephemeral stream ---

7 **THE COURT:** Well, to me it isn't, but I'll sustain
8 the objection if it's a technical term. But he
9 can certainly testify about his observations of
10 a stream; can he not?

11 **MS. TAYLOR:** Can I just lay a firmer foundation?

12 **THE COURT:** Yeah. Go ahead.

13 **Q:** Mr. Stewart, as part of your employment with
14 the NRCS, are you familiar with the terms
15 perennial and ephemeral streams?

16 **A:** Very much so.

17 **Q:** Were you trained as part of your position at
18 the NRCS to be able to identify these type
19 streams?

20 **A:** Yes.

21 **Q:** Are you -- were you able, as part of your
22 profession or position, to be able to see them
23 on a topographic map?

24 **A:** Yes.

25 **Q:** Okay. Can you tell us what a perennial stream



1 is?

2 A: A perennial stream is one that runs year round,
3 it doesn't stop flowing during the year.
4 Ephemeral streams run normally in the winter,
5 in wet times of the year, in times of year
6 where you don't have a lot of active vegetation
7 pulling the moisture away. So, ephemeral
8 stream may run on the surface, say, six, seven
9 months out of the year. Then during the summer
10 and the hot months of the year you won't see
11 any water there on the surface.

12 Q: Okay. Can you continue your describing an
13 ephemeral stream on this map here in front you?

14 MR. MUSTIAN: Your Honor, I'm not exactly clear on
15 this. So, there's not been a foundation laid
16 for how you can determine whether or not an
17 ephemeral stream exists from a topographic map.
18 He's testified that he can do that, but there's
19 been no basis as to how you do that. And I
20 don't know, based on this, just because there's
21 a topography change, that you can make a
22 determination how he can opine about whether or
23 not there's water there during certain months
24 of the year and whether or not it runs
25 underground and those types of things. To me



1 this is speculative testimony or opinion
2 testimony as opposed to factual testimony,
3 which is, you know, I have been on the property
4 this number of days, I have seen, you know, a
5 stream on the property this number of days. I
6 think there's a difference between opining
7 about, you know, could this be an ephemeral
8 stream verses I have actually gone out there
9 and visualized it.

10 **THE COURT:** Okay.

11 **MS. TAYLOR:** Your Honor, he has testified that he's
12 familiar with the property, he's walked it
13 himself, he knows how to read a topographic
14 map. Whether a perennial or an ephemeral
15 stream is or is not is a fact, that's not an
16 opinion. You seen it either physically ---

17 **THE COURT:** I agree with you on that. Can you
18 testify to your observations about this stream
19 or not?

20 **THE WITNESS:** Sir?

21 **THE COURT:** Are you able to testify about your
22 personal observations of this stream that
23 you're ---

24 **THE WITNESS:** Well, yes, I've seen it flowing.

25 **THE COURT:** Whoa, whoa, whoa. Go ahead. You can



1 ask questions.

2 **MS. TAYLOR:** Okay. Thank you.

3 **Q:** So, you were -- back to your concerns about
4 this property here, the Young -- the proposed
5 facility for Jim Young Broilers. If you could
6 get back to -- I know we've kind of gone back
7 and forth. Focusing your attention on the
8 concerns you have with this proposed facility
9 and you had mentioned an ephemeral stream.

10 **A:** Yeah. Well, my concern about these facilities
11 is you're going to have roof water, you going
12 to have the area in between each building that
13 are going to channel water ---

14 **MR. HIGHTOWER:** I'm going to make an objection, Your
15 Honor. These are matters that are stormwater
16 related. That's a separate permit. It's not
17 the agricultural facility's permit.

18 **MS. TAYLOR:** Your Honor, if you look at 61-43 Part
19 200.70 ---

20 **MR. HIGHTOWER:** F.

21 **MS. TAYLOR:** --- F ---

22 **MR. HIGHTOWER:** It talks about runoff.

23 **MS. TAYLOR:** Run off I think a common -- that's not
24 a defined term in the regulation, Mr. Hightower
25 and Your Honor. I mean, runoff is commonly



1 seen, defined as stormwater runoff. It is part
2 of the consideration within the regulations.
3 And I don't think simply Mr. Stewart here
4 expressing his concerns, primarily for the
5 purpose of establishing standing, you know,
6 should be disallowed to express his opinion
7 about water resources, whether it be stormwater
8 or water quality, because they are all the same
9 thing, quite frankly.

10 **MR. HIGHTOWER:** Well stormwater, though, is managed
11 by a separate permitting program and not
12 reviewed or considered as part of this program.
13 Runoff, in this program, is referred -- excuse
14 me, referring to runoff from fields, from land
15 application. And if I'm understanding what Mr.
16 Stewart is saying, he's talking about runoff of
17 the buildings. The buildings aren't there. We
18 do not -- when they permit, they don't have
19 construction drawings. That's only required
20 when you are seeking a construction stormwater
21 permit, which talks about what your grading is
22 going to be, what type of BMPs you're going to
23 use, what is going to be your method of
24 controlling stormwater runoff of the property
25 post-construction. But that's not an



1 agricultural facility's function.

2 **THE COURT:** All right. Hold on one moment.

3 **MS. TAYLOR:** One point I'd like to make ---

4 **THE COURT:** Hold on a minute. All right. Go ahead.

5 **MS. TAYLOR:** One point I'd like to make in response
6 to Mr. Hightower is he is referring -- he said
7 that the runoff provision -- or the criteria or
8 fact for runoff prevention, which is factor
9 number 9 under F, if you follow me, Your Honor.

10 **THE COURT:** I only had 6 under F. You had 200.7?

11 **MS. TAYLOR:** 70F9.

12 **THE COURT:** Okay. I cut it off at 6. My computer's
13 really going slow.

14 **MS. TAYLOR:** Well, I can I just read ---

15 **THE COURT:** Yeah. Go ahead.

16 **MS. TAYLOR:** My point is that, if you look at F, it
17 says, the Department shall evaluate the
18 proposed site. It doesn't say just land
19 applications sites. The site -- it doesn't --
20 it's not limited to land application, it's
21 limited to the facility itself.

22 **THE COURT:** Well, I can -- does that not mean that
23 that includes -- the Department should
24 evaluation the site both through this
25 permitting criteria and the stormwater



1 criteria?

2 **MS. TAYLOR:** I'm not quite -- to be honest with you,
3 I'm not sure if there is a stormwater
4 construction permit in Laurens County for
5 industrial livestock operations. And I --
6 there's a ---

7 **MR. HIGHTOWER:** There's no general permit or
8 anything like that. But there's the
9 Department's general stormwater permit for
10 construction. And the Department will review,
11 because Laurens County is not nemis (phonetic)
12 for county, so the Department will actually do
13 a review. And at that time we will receive a
14 stormwater pollution prevention plan along with
15 construction drawings, which are detailed
16 drawings, engineering drawings, that will tell
17 us the exact elevation that the different
18 buildings are going to be built on, the
19 thickness of the pad, what materials are going
20 to be used, is it going to compacted clay, is
21 it going be concrete ---

22 **THE COURT:** Well, your -- I've looked at F while you
23 were talking. I mean, it includes the setback
24 limits, so I'll -- I mean, shall include the
25 consideration. And Ms. Taylor's right, number



1 9 is runoff prevention. So, even though there
2 may be a stormwater analysis of this, it's set
3 forth as a criteria, so ---

4 **MR. HIGHTOWER:** Well, to the extent that the witness
5 is talking about runoff from buildings, that's
6 stormwater. And we would ask the Court to ---

7 **THE COURT:** Well, when it says runoff prevention,
8 what else would it mean?

9 **MR. HIGHTOWER:** Well, at the time ---

10 **MS. TAYLOR:** And I'd also like to point out ---

11 **THE COURT:** Go ahead.

12 **MR. HIGHTOWER:** At that time these regs were
13 promulgated, there wasn't a requirement for
14 agricultural facilities to get a stormwater
15 permit. They now have to get permits. They've
16 been getting them for the last four or five
17 years now. So, to the extent that you want to
18 argue that the regulations are ambiguous, the
19 Department has subsequently, because of
20 requirements from the EPA that says that
21 agricultural facilities, while fields
22 themselves are exempted from Clean Water Act,
23 NPDES permitting, buildings are not. And the
24 stormwater regulations even say that, that
25 buildings, if you're going to disturb more than



1 an acre, which these buildings -- I think each
2 facilities here is at least six barns, it's
3 more than an acre of disturbance will have to
4 get a storm -- a coverage, excuse me, ---

5 **THE COURT:** I'll -- go ahead.

6 **MR. TAYLOR:** Yeah. The only distinction I'd like to
7 make, which is -- because I think Mr.
8 Hightower, not intentionally, is -- there is an
9 important distinction here to make. But what
10 the Department's counsel is talking about is a
11 construction stormwater permit. And that is
12 for construction of the barns, for example.
13 And, you know, a stormwater construction permit
14 would simply require silt fencing or hay bails
15 or possibly a detention pond for construction.
16 It does not include stormwater management for
17 the operations itself. And so, what we're
18 looking at here, as far as 70F9, when you're
19 evaluating a permit application, which the
20 Department is required, this says shall
21 evaluate, it's short-sided and really not
22 fitting with the purpose and the intent of this
23 regulation to simply point to a construction
24 permit, which does nothing at all to look at
25 the -- what happens after the construction.



1 **MR. HIGHTOWER:** Well, actually, Your Honor, the
2 construction stormwater permit does have post-
3 construction requirements in it. So, there are
4 post-construction that you would have to ---

5 **THE COURT:** At this point I'm going to allow her to
6 ask about this and we could address this in the
7 proposed orders about the -- because we're
8 getting into legislative intent and all that.
9 And I just think she can pursue this line of
10 questioning and I'll resolve this later. I
11 will say that I get your point, Mr. Hightower,
12 but part of your point kind of works against
13 you. Since there were stormwater requirements
14 when 200.70 was enacted, then that would lead
15 me to think that -- if there were those
16 regulation in that regard, that would lead me
17 to think that that was something that was a
18 consideration then. But then now your argument
19 would be that it has been ---

20 **MR. HIGHTOWER:** It's part of another permitting
21 scheme.

22 **THE COURT:** Well, and you can make that argument.

23 **MR. HIGHTOWER:** There's nothing wrong with the
24 Department creating a different scheme.

25 **THE COURT:** I've ruled.



1 MS. TAYLOR: And now ---

2 MR. MUSTIAN: The only thing I would point out is,
3 Your Honor, in the permits it specifically says
4 that we are required to get a stormwater
5 permit. So, DHEC has contemplated this issue
6 as part of the permit.

7 THE COURT: Well, I'll take that into consideration
8 in making these decisions.

9 MS. TAYLOR: And, of course, in my proposed order, I
10 would disagree with that.

11 THE COURT: I would assume you would.

12 MS. TAYLOR: And also, I apologize for -- this is
13 late in the day and I've kind of lost track of
14 what the original question was.

15 THE COURT: It involved -- talking about stormwater.

16 MS. TAYLOR: Okay. Stormwater. Or let's call it
17 runoff prevention, if you may.

18 Q: Mr. Stewart, you -- if you could get back to
19 the concerns you were about to express
20 concerning runoff prevention.

21 A: Well, what I was saying was that the amount of
22 run off that will be produced from the proposed
23 construction would be at a level that, if it
24 happens to find it's way into that depression
25 there, the old gully, and drops down that



1 significant slope, it's going to open up ---

2 **MR. MUSTIAN:** Your Honor, we're getting into
3 opinion.

4 **MR. HIGHTOWER:** And more importantly, he said from
5 the proposed construction.

6 **THE COURT:** Yeah. Well, he is speculating at this
7 point. He said if it happens. And he's also
8 speculating about what -- how much the runoff
9 would be from the building.

10 **Q:** Can we just stick to your concerns, without
11 expressing an opinion, about any sort of
12 science or engineering?

13 **A:** Well, the way we would address this when I was
14 working, we would look at the existing land
15 use, which was forestry. We would look at the
16 amount of runoff that you would get from a
17 forest situation. When you have tree canopy
18 that filtrates water that falls in a storm and
19 then you have a forest floor that's covered
20 with leaves, pine needles, other debris, the
21 amount of runoff that you get from that is
22 significantly less than what you're going to
23 have later in the -- when those buildings are
24 constructed. So, if you don't address how
25 you're going to handle that water, you're going



1 to open up an old gully into an active gully.

2 **MR. MUSTIAN:** Objection, Your Honor.

3 **THE COURT:** You need to lay a foundation for that.

4 So ---

5 **Q:** Mr. Stewart, have ---

6 **THE COURT:** Wait a second. I strike the testimony
7 about the gully, but you can lay a foundation
8 and move on.

9 **Q:** In your experience during your employment with
10 NRCS, are -- were you -- was this a common type
11 circumstance in terms of loss of infiltration
12 by trees and result in gullies?

13 **A:** Yeah. You have charts that you go by that are
14 called curve numbers. And you look at the
15 curve number for good forest land and then you
16 look at whatever rainfall event you're trying
17 to design something for, whether it be a one
18 year storm, five year storm, ten year storm.
19 So, when you look at forestry, it gives you the
20 amount of runoff based on that curve number for
21 tree canopy and the cover of the ground. And
22 then if you do the same thing for whatever
23 change you're going to make in the land use,
24 and if it happens to be, for example, a farm
25 building and the pad around the building, that



1 curve number is going to be much higher than it
2 was for the forestry situation.

3 Q: And just for ---

4 A: So, that makes -- say in a three-inch rain,
5 instead of getting a half inch of runoff in
6 forestry, you may be getting 2.7 inches for the
7 building and the pad around the building
8 because of the impervious area and all. So,
9 that's my concern that you're going to have
10 that type of situation with these poultry
11 houses.

12 Q: And ---

13 A: Except it'll be six of them.

14 **THE COURT:** Hold on. She wants to ask you a
15 question.

16 **MS. TAYLOR:** No, I'm sorry. I interrupted.

17 **THE COURT:** I'd rather do a Q and A anyway. So,
18 this has turned into narrative.

19 **MS. TAYLOR:** Yes. I just want -- this is a DHEC --
20 the hole puncture knocked out the Bates number.
21 This is David Coggins topographic map within
22 the permit file. All I have is 00 -- sir, I'm
23 very sorry about that. Oh wait, it could be
24 000956 or 8. 8.

25 **THE MUSTIAN:** 958?



1 MS. TAYLOR: Yes.

2 MR. MUSTIAN: Okay.

3 Q: If you can see all this, this is a topographic
4 map of -- for David Coggins' proposed facility
5 on Lisbon Road. Looking at this topographic
6 map, do you have the same concerns you raised
7 about Tim Young proposed facility or are there
8 other concerns that you have?

9 A: Mainly the same concerns. With the slope
10 behind the buildings and then from personal
11 knowledge, I know that there's another
12 ephemeral stream that comes under the railroad
13 and goes off down the Little River. So, that
14 -- those would be the same concerns that I had
15 for the other set of houses.

16 Q: So, looking at these lines here, these
17 topographic lines, does that show a downhill
18 incline?

19 A: Yeah. And the closer they are together, the
20 steeper they are. That's about a 50 foot drop
21 right there.

22 Q: Could you -- I mean, just -- could you show us
23 ---

24 A: There's a 500 contour line going right here and
25 I believe this one here is the 550.



1 Q: All right.

2 MR. MUSTIAN: Your Honor, the map does not reflect
3 what the elevation is on that line.

4 A: Well, I'm trying to ---

5 THE COURT: Whoa, whoa, sir. Well, you can't
6 respond to that now. I don't need -- you're
7 just making a point?

8 MR. MUSTIAN: Well, I'm sorry. I ---

9 THE COURT: Is it an objection?

10 MR. MUSTIAN: Objection that he is speculating, Your
11 Honor. The map does not reflect that line is
12 550 on the topography. He is speculating as to
13 that.

14 THE COURT: Ms. Taylor.

15 MS. TAYLOR: The way I look at it, there's a number
16 in front of it that appears to be a 500, if I'm
17 reading this correctly.

18 THE COURT: Well, I'll tell you what, I'll just
19 state -- how about if we just go with that the
20 document speaks for itself.

21 MS. TAYLOR: Your Honor, that's okay. Thank you.

22 THE COURT: All right. His testimony will be
23 reflected in that regard.

24 MS. TAYLOR: And moving along, I'm now putting --
25 this is DHEC_002092. This Heath Coggins'



1 topographic map prepared for the nutrient plan
2 for Heath Coggins.

3 Q: Do you have the same concerns you've already
4 expressed concerning David Coggins and Jim
5 Young or do you see other concerns that you may
6 have concerning this particular proposed
7 facility?

8 A: This -- Heath Coggins there is probably -- has
9 a gentler slope than the other two, except when
10 you get back toward Little River, these last
11 little lines right here, it picks up a steep
12 slope right there. But otherwise, his are on
13 a, you know, a slope that you could probably
14 control the erosion on.

15 Q: In your experience with the NRCS, is it your
16 experience that this poultry farms that are
17 planned to be constructed are -- undergo a
18 grading plan?

19 A: Would they undergo a ---

20 Q: Would they be grading the property, in other
21 words?

22 A: Oh, yeah, yeah. They would have to, yeah.
23 Significant grading.

24 Q: And so ---

25 A: You've got to balance your cuts and your fills.



1 And with those kind of slopes, it's going to
2 take extensive grading.

3 Q: So, based on your personal knowledge, what does
4 that type of grading do in terms of a nearby
5 waterbody?

6 A: Well it can provide heavy ---

7 MR. MUSTIAN: Objection, Your Honor.

8 (Multiple Voices at Once)

9 THE COURT: Whoa. Stop, sir.

10 MR. MUSTIAN: He's providing opinion testimony.
11 He's not talking about factual things that he
12 has actually witnessed. Now he's talking about
13 what could occur.

14 MS. TAYLOR: I asked him about his personal
15 knowledge. I take that to be what he's
16 personally observed.

17 MR. MUSTIAN: Your Honor, she's taking a leap from
18 he's personally observed in the past verses now
19 he's saying what could happen in the future.
20 There's a difference between here's what he has
21 seen ---

22 THE COURT: I understand. If I could -- you can
23 testify to what you've observed in the past
24 concerning the water runoff. But is that
25 within the parameters of what you're asking?



1 MS. TAYLOR: Yes, Your Honor.

2 A: Well, similar situations that I've observed in
3 the past, if not properly constructed, they
4 would cause a significant erosion problem,
5 siltation movement, water quality damage.

6 Q: Relating to that, going back to -- I want to
7 put this up for -- I'm going to -- I'm just --
8 I realize I'm being repetitive. You're
9 familiar with the Little River. Am I right?

10 A: Uh-huh (affirmative response).

11 Q: Okay. Has the channel of the Little River
12 moved?

13 A: Well, the old channel ran along here and now
14 the channel is over here.

15 Q: Okay. And based on your personal observation
16 of this channel movement, do you have any
17 knowledge about why this occurred?

18 MR. MUSTIAN: Objection, Your Honor. That's ---

19 MS. TAYLOR: I think that's still personal
20 knowledge. I'm not asking for -- I mean, if
21 you observe it.

22 MR. HIGHTOWER: But asking why it occurred, that's
23 not an observation, that's ---

24 THE COURT: How can you observe how it ---

25 MS. TAYLOR: Over time, he ---



1 THE COURT: He can observe that it -- he's already
2 testified that it moved.

3 MS. TAYLOR: Yes.

4 THE COURT: But you're asking him why it moved.

5 MS. TAYLOR: I still think that could be answered
6 through personal observation based on how long
7 he's owned the property. I'm not asking for --
8 -

9 MR. MUSTIAN: Your Honor, what the movement of the
10 waterbodies, hydrology, and all those sorts of
11 things, those are special areas of expertise.
12 He's not been identified as a expert. He can't
13 opine as to why a water body would have moved
14 from one area to another. He can say I've seen
15 it move. And he can -- he might can say I've
16 seen the results of that, but he cannot testify
17 as to why that's occurred.

18 THE COURT: Yeah, I've has experts testify as to
19 hydrology.

20 MS. TAYLOR: Once again, I'm not trying to convert
21 this witness into an expert witness. So, I
22 mean, I'm not ---

23 THE COURT: Well, he can testified as to it's
24 movement. I -- but I will sustain the
25 objection as to why it moved, unless somehow



1 you can get there, but I don't know how. But
2 right I sustain it.

3 **MS. TAYLOR:** Okay. My thinking was that he could
4 establish that through personal observation,
5 but we can move on.

6 **Q:** To your personal knowledge, Mr. Stewart, this
7 former channel of the Little River, is it an
8 ephemeral or perennial stream?

9 **A:** Is it?

10 **A:** Uh-huh (affirmative response).

11 **Q:** I would say it still has a flow to it, it's
12 just the main river channel has moved over.
13 But this channel -- the old channel still has
14 a flow and it flows permanently.

15 **Q:** Okay. Let's see if we can move a little
16 quicker on some soil maps here. Mr. David
17 Coggins -- once again I have a hole punch
18 problem. It's DHEC_000956, I believe. Can you
19 see that, Mr. Stewart?

20 **A:** Yes, ma'am.

21 **Q:** All right. You had testified before that you
22 have knowledge concerning looking at soil maps.
23 This is a soil map for Mr. David Coggins'
24 facility. What concerns do you have as you
25 look at this map?



1 A: The steepness of the slope would be one. You
2 got some C-slope just to the north. You got C-
3 slope to the south and then on the back side of
4 the property you got Wilkes on a D-slope. So,
5 all that -- the C-slopes run 6 to 10 percent
6 and then the D runs 10 to 15.

7 MR. MUSTIAN: Objection, Your Honor. He hasn't laid
8 any foundation -- or Ms. Taylor has not laid
9 any foundation for what the percentage of slope
10 is over that run.

11 THE COURT: And that objection is for what purpose?

12 MR. MUSTIAN: Well, he's basically speculated as to
13 what the slope is. And I don't know ---

14 THE COURT: I'm asking you, we should strike his
15 testimony, what ---

16 MR. MUSTIAN: Yes.

17 THE COURT: What's the purpose?

18 MR. MUSTIAN: I believe you should strike the
19 testimony because it's speculative.

20 THE COURT: Strike what testimony?

21 MR. MUSTIAN: His testimony with respect to the
22 percentage of slope of the area that he's
23 discussing.

24 MS. TAYLOR: Your Honor, he's already looked at
25 topographic maps, which shows the slope.



1 MR. MUSTIAN: Your Honor, she hasn't laid any basis
2 as to how you would calculate the slope,
3 whether or not we've talked about the accuracy
4 of the maps, and what the scale of the maps is,
5 any of those types of things.

6 THE COURT: I sustain the objection at this point,
7 strike the testimony. But you can lay the
8 foundation.

9 Q: Mr. --- okay.

10 MR. HIGHTOWER: I'm going to object because, if I'm
11 understanding this, Ms. Taylor's going to show
12 the witness a document ---

13 THE COURT: Now you're speculating.

14 MR. HIGHTOWER: Well ---

15 THE COURT: She's going to object to that.

16 MR. HIGHTOWER: But if I understand correctly, she's
17 going to show him a soil a map and say from
18 that what is going on. And if I understood,
19 this is supposed to be based on his personal
20 knowledge. Not looking at a document,
21 interpreting that document for the Court, and
22 rendering an opinion.

23 THE COURT: Well he can't render an opinion.

24 MR. HIGHTOWER: It's coming very close to being an
25 opinion, Your Honor.



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1 **THE COURT:** As a fact witness, I thought fact
2 witnesses come in and just tell you their
3 personal observation.

4 **MR. HIGHTOWER:** And this is more than the
5 observation. He can say the slope looks steep
6 to me, I had difficulty walking down it,
7 whatever. That's an observation. But now
8 looking at other documents to interpret that
9 and then state what it is, to me that's an
10 opinion.

11 **MS. TAYLOR:** I do believe, Your Honor, that ---

12 **THE COURT:** Well, I'm going to answer where I
13 received this and then I'll let you respond,
14 okay? And that is Mr. Hightower is correct in
15 part, but if there is an exhibit into evidence,
16 the witness can publish that which is in the
17 exhibit.

18 **MR. HIGHTOWER:** We're okay if he's publishing what's
19 in the exhibit, but if he's going to interpret
20 it beyond what the document itself says.---

21 **THE COURT:** Okay.

22 **MR. HIGHTOWER:** --- we have a problem.

23 **THE COURT:** I agree with Mr. Hightower unless you
24 can tell me otherwise.

25 **MS. TAYLOR:** Well, one point I'd like to make. It



1 seems like what the Department is trying to
2 tell this Court is that Petitioners, citizens
3 of this state who have serious concerns about
4 environmental issue relating to a proposed
5 facility next to their property can't look at
6 documents that they may have sent a Freedom of
7 Information Act request for and reviewed the
8 Permittee's information and not drawn some
9 concern. I mean, all I'm trying to elicit from
10 this witness is what his concerns are. I'm not
11 asking him for an opinion to that affect. But
12 it seems like what the Department is trying to
13 is trying to do is preclude members of the
14 public from looking at this information and
15 being able to draw some view. I'm not asking
16 for an opinion. But if I understand you right,
17 Mr. Hightower ---

18 **MR. HIGHTOWER:** Well, Your Honor, this goes back to,
19 the Petitioner has a specific date by which
20 they had to identify an expert. And they did
21 not identify Mr. Stewart as an expert. So, by
22 not identifying him as an expert, we did not
23 question him in his deposition as an expert.
24 Now he's giving testimony that's, you know,
25 arguably what an expert would give. And that's



1 the problem. It's not that -- they didn't show
2 this to other witnesses, to Ms. Basel or to Ms.
3 Sparrow.

4 **THE COURT:** I think this may be a -- and I'm going
5 to use this term twice. This may be -- and in
6 a redundant context. This may be a concern of
7 my own making concerning concern and that is,
8 I allow parties to come in here and express
9 their concerns. Their concern -- just because
10 I want them to have their day in court. But
11 their concerns are not evidence. They're just
12 simply, I want to hear their concerns. So,
13 when we start moving from this is my concern to
14 this concern reflects evidence as -- or an
15 opinion as to why this permit should be denied,
16 then I think at that point in time I'm moving
17 beyond allowing citizens to come in here and
18 express their concerns to the evidentiary
19 aspects of -- they need to -- if a citizen
20 wants to come in here and give an opinion
21 testimony, they're required to notify
22 individuals that, I may be a citizen, but I
23 also have expert opinions. I think that's
24 where we're crossing the line here. So if we
25 could just start back up with not -- and my



1 request that we can pursue concerns, but that
2 those are only expressing his personal reasons
3 why he brought this case. But if we start
4 moving into opinions, need to lay the
5 foundation.

6 **MR. TAYLOR:** Thank you.

7 **Q:** Mr. Stewart, where were we?

8 **A:** Well, I was pointing out the different soils
9 and their particular slope. And that comes
10 from a soil survey that was done by a soil
11 scientist, so ---

12 **THE COURT:** Mr. Stewart is that -- those soils
13 identified on this document?

14 **THE WITNESS:** Yes.

15 **THE COURT:** Okay. So, you're -- are you just
16 telling me what the document reflects?

17 **THE WITNESS:** Yes.

18 **THE COURT:** Okay.

19 **A:** So when I, you know, look around these -- this
20 proposed site, I see those C-slopes and a D-
21 slope and I know that that percentage can range
22 from 6 to 10 on the C and 10 to 15 on the D.

23 **Q:** And what is C and D, just for the sake of
24 clarity?

25 **A:** They're just letters that they use to designate



1 the percentage of slope of a particular soil.

2 (Off the Record)

3 Q: I was hoping that would -- yeah, C, right here.
4 Right there. There's a number right there just
5 for ...

6 A: Yeah, the Cm is the soil symbol. It tells you
7 what the soil is. The C2 -- yeah, you just
8 moved off of it, but the C2 is the slope range,
9 the C is. And the 2 means the soil is eroded,
10 which means it was eroded at some point in time
11 and, you know, it's probably eaten down to the
12 sub-soil instead of having top soil there. But
13 that's what that all means.

14 Q: Okay. Any other soil symbols on here that ---

15 A: Yeah, there was one at the bottom of those
16 buildings. ClC2, that's the -- the name of
17 soil is C-soil and it's on a C-slope, which,
18 again, is 6 to 10 percent. And the 2 means,
19 again, it's already eroded to the point that
20 the top soil there, which they call the A
21 horizon, has been eroded away and you're down
22 to the sub-soil layers. And if you'll, that --
23 yeah, you had it right there. That WkD is a
24 Wilkes. That's a sandy loam. And it's on a D-
25 slope, which the D runs from 10 to 15 percent.



1 So, for a planner, what that's doing is it's
2 raising red flags that, you know, you're going
3 to have to do something extra. Just your
4 normal erosion control practices are not going
5 to be sufficient on those kind of slopes.

6 Q: I'm now moving over to the soil map for Heath
7 Coggins, DHEC_002094. All right. So, I see
8 over here this ---

9 A: Yeah, Heath site is really superimposed over
10 the buildings there. But like I was saying a
11 while ago, he has a site that, as far where the
12 buildings are going to be located, it's fairly
13 workable. That's a Hiwassee, HyB, which is a
14 B-slope, 2 to 6 percent. And, again, it's
15 eroded soil. He does have some Wilkes there on
16 one side on a D-slope. But right where the
17 buildings are going, his is really more
18 workable than the other two proposed sites.

19 Q: And we did -- we started with Young, I believe.

20 A: Right.

21 Q: Okay.

22 **MS. TAYLOR:** If you would just for a moment, let me
23 confer with my counsel to see if there's any
24 other questions. All right. I think we're
25 almost over, Your Honor.



1 Q: Mr. Stewart, I'm back to your service at the
2 NRCS. We had talked earlier about your work
3 with manure brokers. While you were at NRCS,
4 did you have the occasion to observe
5 performance of manure brokers when they brought
6 the manure to a field?

7 A: Yes.

8 Q: Did you observe manure brokers that just -- did
9 they ever ---

10 MR. HIGHTOWER: Objection, Your Honor. Leading.

11 THE COURT: Well, it's kind of hard to say, she
12 hasn't completed the question.

13 MR. HIGHTOWER: Okay.

14 Q: Have you observed or not the occasion in which
15 a manure broker would leave the pile of manure
16 on the pasture?

17 A: Yes.

18 Q: Would that mean that the owner of the pasture
19 would apply that manure himself?

20 A: He or somebody he hired to do it, yeah.

21 Q: In your personal experience at -- while you
22 working at the NRCS, was that a common
23 occurrence?

24 A: Fairly common.

25 Q: Was that something that you, as an employee of



1 the NRCS, would counsel against?

2 A: I would counsel landowners. I didn't
3 necessarily pick up the phone and call DHEC.

4 Q: Oh, no, no, no. That's not what I meant.

5 A: Yeah. But, yeah, I'd counsel landowners. I
6 don't -- you know, if you're talking about a
7 pasture situation, for example a cool seasoned
8 grass like fescue, it'll only take up so much
9 nitrogen at, you know, one application. So, I
10 would talk to them about the application rate
11 and, you know, checking the weather forecast,
12 making sure there wasn't an approaching storm
13 front that would cause a lot of runoff if, you
14 know, they spread that day. You -- I would
15 counsel them on, you know, making sure that the
16 plant was actively growing and not in a dormant
17 state. Because if it's dormant, it's not going
18 take the nutrients up. That would be things
19 I'd talk to them about. Staying away from a
20 water body.

21 Q: In your experience though, do you know if land
22 owners took that counsel or not?

23 MR. MUSTIAN: Objection, Your Honor. There's been
24 no foundation as to how he would know what an
25 owner did after he spoke with them.



1 MS. TAYLOR: Well, the question is do you know or
2 not. He may not know.

3 THE COURT: That argument goes into leading, but I -
4 - let's just go ahead.

5 A: Well, it would be kind of difficult to tell if
6 they actually followed that or not because, you
7 know, they might be spreading for a couple of
8 days, so I might be gone somewhere else. But,
9 you know, they would usually agree with you.
10 But followup would be the thing that you would
11 need to do to make sure, you know, that what
12 your recommendations were were actually
13 followed.

14 MS. TAYLOR: I think that's it for me. Your
15 witness.

16 THE COURT: You asked to leave at 6:00 and I agreed.
17 What is your position?

18 MS. TAYLOR: How long do y'all think you going to
19 be?

20 THE COURT: It's 5:50.

21 MR. HIGHTOWER: I don't think I'm going to be too
22 long.

23 MR. MUSTIAN: It might be 15, 20 minutes, not too
24 far down the road past 6:00.

25 MS. TAYLOR: You said you're going to be -- you've



1 got lots?

2 MR. HIGHTOWER: No. I said I don't think we're
3 going to be too long.

4 MS. TAYLOR: Oh, I thought you said it was going to
5 be long.

6 MR. HIGHTOWER: I'm thinking maybe 6:30, depending.
7 I can't speak about re-directs or anything like
8 that.

9 MS. TAYLOR: Well, let me confer with -- because my
10 witness has traveled here from Easley, and I'd
11 like to be able to make it more convenient
12 without -- can we just take a quick break?

13 THE COURT: Well that's going to further us down the
14 road, but we'll take very quick break.

15 MS. TAYLOR: Thank you.

16 (Off the Record)

17 MR. STEWART - CROSS EXAMINATION BY MR. MUSTIAN:

18 Q: Mr. Stewart, I just want to make sure I'm
19 clear. Now, you don't live in Mountville,
20 correct?

21 A: Correct.

22 Q: You live in Easley?

23 A: Yes.

24 Q: And how often would you say you visit the
25 property?



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1 A: Eight, ten times a year.

2 Q: And the property that Coggins purchased, T3
3 property, Dunlap property, I know it's changed
4 hands over the years, but the property that's
5 adjacent to yours, when's the last time you
6 would say you've been on that piece of
7 property?

8 A: Well, when T3 established a hunt club, I didn't
9 go back on it. So, I'm not -- I can't remember
10 exactly when that was. But I'd say I hadn't
11 been on the property in probably ten years.

12 Q: Okay. And so, prior to T3 establishing the
13 hunt club, how many times would you say you've
14 been on the property before then?

15 A: In my life?

16 Q: In your life, yes, sir.

17 A: Yeah. Maybe 20.

18 Q: Twenty. And how old of a fellow are you, sir?

19 A: Sixty-four.

20 Q: Sixty-four, okay. So, about how many times a
21 year would you say you'd go on the property;
22 once, twice?

23 A: No more than twice.

24 Q: Okay. So, these streams that you -- these
25 ephemeral streams, intermittent streams,



1 perennial streams, whatever we're calling them,
2 how often did you see those alleged water
3 bodies? Did you see them every time you went
4 on the property?

5 A: Not every time. But I'd say I saw them maybe
6 every other time. If it was in the winter, you
7 know, when I was on the property. I mean, you
8 might not necessarily see any water movement in
9 the summer.

10 Q: So, you can't say how much that alleged stream
11 was flowing or how often it flowed, can you?

12 A: I can't tell you whether it flowed six months
13 out of the year or seven or whether it flowed
14 like a garden hose or -- you know, if it was
15 during times when you had had a heavy rains, it
16 might be flowing, you know, at a greater rate.
17 But, you know, if it was dry, it wouldn't be
18 flowing much at all. It'd be more like a seep.

19 Q: But you can't tell me, can you, if it flowed
20 five days in a row?

21 A: Oh, yeah, in the winter it would.

22 Q: How can you tell me if it flowed five days in
23 a row if you only went on the property one time
24 during a year?

25 A: Well, I mean, if you see a stream and it's got



1 a good little flow to it, I mean, you know five
2 days later it's still going to be flowing.

3 Q: Did you come back five days later and look at
4 it?

5 A: I mean, I didn't have any reason to.

6 Q: So, you're speculating then? You don't know
7 that, do you?

8 A: I didn't come back five days later and see if
9 it was flowing, no.

10 Q: Okay. You talked early on with Ms. Taylor
11 about when you were with NRCS and you talked
12 about acceptable land application manure. Do
13 you remember that?

14 A: Yeah.

15 Q: Okay. And you talked about appropriate
16 setback. Do you remember that?

17 A: Yeah.

18 Q: Did NRCS -- if you know, did NRCS's setbacks in
19 those situations, were they the same as what
20 DHEC required as far as land application
21 manure?

22 A: That's correct.

23 Q: Did NRCS, in your experience, have any
24 disagreement with DHEC about those setbacks as
25 far as whether or not -- did NRCS ever propose



1 that those setbacks should be increased?

2 A: Not to my knowledge. That would have been
3 determined higher up than I was. But we didn't
4 get any directives saying, you know, that we're
5 changing the setbacks.

6 Q: Did NRCS, to your knowledge, ever submit
7 anything to DHEC saying that those setbacks
8 should be increased?

9 A: Not to my knowledge.

10 Q: Okay. I want to make sure I'm clear on
11 something. When you worked with NRCS, you were
12 primarily -- and I know that you moved around
13 a little bit. But the majority of your career
14 you were in Pickens County; is that right?

15 A: Yeah.

16 Q: And you primarily worked in Pickens County and
17 the surrounding area?

18 A: Uh-huh. (affirmative response).

19 Q: Did you work in Laurens County?

20 A: No.

21 Q: Okay. When you talked about these manure
22 brokers and you said that you had some concerns
23 about some of them, who was the manure broker
24 that you were most concerned about?

25 A: Well, the one I dealt with personally was Don



1 Bowman.

2 Q: Okay. Did you ever deal with L&M Manure
3 Brokers?

4 A: No.

5 Q: Okay. Do you know who L&M Manure Brokers is?

6 A: Only by name.

7 Q: Okay. But you've never had any problems with
8 L&M Manure Brokers?

9 A: I haven't, no.

10 Q: That you've experienced.

11 A: No.

12 Q: NRCS, so it's the -- tell me what it stands for
13 again. I apologize.

14 A: Natural Resources Conservation Service.

15 Q: And environmental concerns was part of NRCS's
16 mission; was it not?

17 A: It was.

18 Q: So, when you would call on these farmers and
19 you would see manure brokers dumping loads of
20 manure out, did you call DHEC?

21 A: No.

22 Q: Why not?

23 A: I didn't feel like it -- I was a policeman for
24 DHEC.

25 Q: Well, had you ever called DHEC when you saw an



1 alleged violation?

2 A: I think I did once or twice. I'm trying to
3 remember now what the circumstance was. But I
4 think I called one time when there was some
5 manure piled right next to a watershed lake
6 that we had in Pickens County.

7 Q: And when you called DHEC, what did they do?

8 A: Sent somebody from enforcement.

9 Q: They responded, didn't they?

10 A: Yeah.

11 Q: But when you saw the manure brokers delivering
12 loads of manure, you didn't feel it necessary
13 to contact DHEC and alert them?

14 A: Not every time.

15 Q: Well, how many times did you contact them about
16 a manure broker ---

17 A: Well, I just mentioned a couple of times, you
18 know, when I saw it next to a watershed lake.

19 Q: But when you called them, DHEC responded; did
20 they not?

21 A: Yes.

22 Q: Okay. Who was the manure broker that delivered
23 manure to your property up in Gray Court?

24 A: Don Bowman.

25 Q: Did you call DHEC about Don Bowman and tell



1 them that you had concerns with him?

2 A: No. I knew I wasn't going to -- I knew how to
3 apply it, I had my soil samples. I wasn't
4 going to do something that was going to damage
5 my own property.

6 Q: How long ago was it that you saw Don Bowman
7 dump this -- strike that. How long had it been
8 since Don Bowman put manure on your property?

9 MS. TAYLOR: Objection. What is the relevance?

10 MR. MUSTIAN: Your Honor, she's laid this entire
11 foundation -- or gone down this entire road of
12 the concerns that they have and it's based on
13 his experience with manure brokers. And my
14 point is, how long has this been? Was it last
15 week, was it 20 years ago? I think that
16 directly goes to the relevance of whether or
17 not his concerns are valid or not.

18 THE COURT: Any response?

19 MS. TAYLOR: If I understood the question right,
20 Mr. Mustian was asking about at what point in
21 time dealing with a particular transaction on
22 his own property. I'm not sure what the
23 relevance is as far as the issues in this.

24 MR. MUSTIAN: Your Honor, Ms. Taylor has
25 specifically brought those out on his Direct



1 Examination.

2 **THE COURT:** I'll overrule the objection. He's got
3 wide latitude on Cross too.

4 **MS. TAYLOR:** I understand.

5 Q: Mr. Stewart, when did Mr. Bowman deliver this
6 manure to your property?

7 A: Spring of 2008.

8 Q: So, approximately -- I'm doing math in my head
9 now. I'm sorry. Nine years ago?

10 A: About nine years.

11 Q: Okay. When you were working for NRCS, about
12 how long ago was it that you saw manure brokers
13 dumping loads of manure on farmers' properties?

14 A: Approximately five years ago.

15 Q: So, in the -- other than five years ago, have
16 you seen any manure broker violations relating
17 to dumping of manure and things like that?

18 A: I've heard of some. I didn't observe it.

19 **MR. MUSTIAN:** Your Honor, I would ask to strike that
20 with respect to what he's heard. If he hasn't
21 observed it, then ...

22 **THE COURT:** I sustain that and strike it.

23 Q: Mr. Stewart, you talked about, when Ms. Taylor
24 was talking to you, about the various erosion
25 concerns that you have. You recognize that the



1 property is going to need to be graded; is that
2 not correct?

3 A: Uh-huh (affirmative response).

4 Q: And grading of the property will change the
5 elevations that are shown on that topography
6 map; will it not?

7 A: It will.

8 Q: So, we don't know -- you can't tell me what the
9 final slope of that property is going to be,
10 can you?

11 A: Where the pads are or ---

12 Q: Well, the final slope. When the site is
13 graded, you can't tell me what the final slope
14 of that property's going to be, can you?

15 A: Well, I would have to, you know, see a grading
16 plan, you know, to tell you.

17 Q: But as you sit here today, you don't know what
18 the final slope of that property is going to be
19 ---

20 A: Not exactly.

21 Q: In your experience with NRCS, you worked on --
22 I believe you talked with Ms. Taylor, you
23 worked on various erosion problems that farmers
24 were having, didn't you?

25 A: Yes.



1 Q: And in that experience you've encountered
2 terrains that farmers had to deal with along
3 these -- the lines of what's on the Coggins
4 property, haven't you?

5 A: I have.

6 Q: And weren't you able to recommend to them soil
7 erosion control methods that would address
8 those problems?

9 A: In most cases, yeah.

10 Q: And some of those were terracing, right?

11 A: Could be. But if you're putting in terraces,
12 you've got to have stable outlets for the
13 terraces. You can't run that water and just
14 turn it loose down the side of a hill.

15 Q: Well, you can have pipe drops. Isn't that one
16 thing you told me you could have?

17 A: Yeah, pipe drops, you can have rock drops, you
18 can have a small detention that releases at a
19 slower rate.

20 Q: And so -- and there's high velocity fabric I
21 believe is one thing.

22 A: High velocity fabric that can be used.

23 Q: So, there are ways to address these issues,
24 correct?

25 A: There are if they're done properly.



1 Q: If they're done properly. Do you have any
2 reason to believe that they would not be done
3 properly?

4 A: Not at this time.

5 MR. MUSTIAN: Beg the Court's indulgence, Your
6 Honor. Your Honor, that's all the questions I
7 have.

8 THE COURT: Mr. Hightower.

9 MR. STEWART - CROSS EXAMINATION BY MR. HIGHTOWER:

10 Q: Mr. Stewart, when you received the manure from
11 Dan (sic) Bowman, since you -- since the driver
12 didn't take the information you gave him, why
13 did you allow him to place the manure on your
14 property?

15 A: Well, first of all, he had already dumped a
16 couple of loads prior to me getting there. A
17 guy that worked for me opened the gate and he
18 went in and dumped.

19 Q: Did you ever contact Mr. Bowman and tell him
20 that he had to come and remove it since ---

21 A: I didn't tell him he had to remove it, I told
22 him that the driver didn't want, you know, any
23 of my soil tests and all.

24 Q: Well, as a member of NRCS and as such knowing
25 federal requirements and state requirements for



1 this, why did you not insist that he not come
2 back and remove the manure?

3 A: Because I felt like I knew how to properly
4 apply it with my background.

5 Q: Well, but you also knew that the broker needed
6 to have this information for his records for
7 his permit; isn't that correct?

8 A: Yeah. He needed it, but, I mean, he -- as I
9 said, he wasn't worried about it.

10 Q: So, in the sense you were complicit in this,
11 you went along with it because ---

12 A: I went along with eight loads and I cut him
13 off. I had originally asked him for 18.

14 Q: So, approximately half the loads came to your
15 site and you didn't tell the Department about
16 this, did you?

17 A: No. I didn't call DHEC, no.

18 Q: When you worked with NRCS, did NRCS ever get
19 complaints from citizens about problems with
20 agricultural facilities?

21 A: Yes.

22 Q: And they would act upon that, wouldn't they?

23 A: Who were they?

24 Q: NRCS.

25 A: We usually referred it to DHEC.



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1 Q: Okay. So, you understood that in order for the
2 DHEC's enforcement to work, they need to know
3 about problems. Yet, when you had a specific
4 situation in which you knew of a violation, you
5 didn't refer it to the Department; isn't that
6 correct?

7 A: I didn't create the problem.

8 Q: Well, you may not have created the problem, but
9 you were complicit in the problem; isn't that
10 correct?

11 A: No. As I said, I knew how to apply it based on
12 my background.

13 Q: Does the DHEC regulations allow -- create an
14 exception for knowledgeable people to not have
15 to worry about providing the information that's
16 necessary for land application of manure?

17 A: Well, I provided the information. Whether they
18 took it or not was up to them.

19 Q: When did you stop working for NRCS?

20 A: Three and the half years ago.

21 Q: And when you were working with NRCS, you stated
22 that you knew about, from either observation or
23 just personal knowledge, that sometimes
24 facilities, in order to be built, they had to
25 do grading, correct?



1 A: Had to be?

2 Q: Had to do grading for the facilities
3 themselves?

4 A: Yes.

5 Q: And I believe you told -- in response to Mr.
6 Mustian's questioning, you say that if it's
7 done correctly, it shouldn't be a problem,
8 correct?

9 A: If it's done correctly it lessens the
10 possibility of the problem. Now, you know,
11 I've seen one where they were in the process of
12 grading and they got about a six-inch rain and
13 it blew the world apart because they had fresh
14 dirt, un-compacted dirt. You know, that can
15 happen too.

16 Q: Were you aware of what the stormwater pollution
17 prevention plan was for that particular
18 facility?

19 A: I thought it was inadequate in my opinion.

20 Q: Had you reviewed the plan?

21 A: Yeah; I looked at it.

22 Q: You had reviewed the stormwater pollution
23 prevention plan?

24 A: Right.

25 Q: And you thought there was something wrong with



1 it?

2 A: I didn't think it went far enough. It didn't
3 have -- as I said a while ago, the hard
4 engineering, it didn't have enough of that in
5 it to handle the rain of that magnitude.

6 Q: And this was a facility you worked on?

7 A: This was the facility that I visited. Now, you
8 know, a private engineer drew up the plan. But
9 we often reviewed plans at the conservation
10 district in Pickens.

11 Q: So, you were given a copy of the plans of this
12 facility and you reviewed them?

13 A: I reviewed the plan after they had the problem
14 out there.

15 Q: So, they gave you the construction drawing
16 plans and you reviewed it and made a decision?

17 A: Yeah, because they were asking for cautionary
18 money to fix the problem.

19 Q: Okay. And so, that was an inadequate plan?

20 A: I felt like it was.

21 Q: Do you know who reviewed that plan? And when
22 I mean who, I mean was it reviewed by the local
23 MS4 or was it reviewed by DHEC?

24 A: I would guess both, but I know the stormwater
25 person for Pickens County looked at it.



1 Q: Well, if there's a stormwater person for
2 Pickens County, probably it's an MS4.

3 A: That's correct.

4 Q: Okay. And MS4s do their own review, correct?

5 A: They do.

6 Q: Are you aware that Laurens County is not an
7 MS4?

8 A: Yes.

9 Q: That means that DHEC would be doing that
10 review; isn't that correct?

11 A: Right.

12 Q: Okay. When you were working on plans for NRCS
13 for agricultural facilities, did you ever have
14 to prepare a grading plan?

15 A: Are you talking about for poultry applications
16 or ---

17 Q: For poultry or another type of animal --
18 confined animal facility.

19 A: Yeah. Where we were providing cautionary
20 money, we often had to do the grading plan.

21 Q: And was that -- when you prepared the plan,
22 were you preparing that plan for submission to
23 DHEC or were you just doing that for cautionary
24 money with NRCS?

25 A: Usually for cautionary money with NRCS.



1 Q: Okay. Do you have any independent knowledge of
2 what requirements -- or I should say, what
3 documents an applicant must provide the
4 Department as part of an application for an
5 animal management facility?

6 A: For the grading part?

7 Q: No. I'm talking about in 61-43 do you know
8 what documents must be supplied to the
9 Department as it's set forth in regulation?

10 A: I'd have to check it. I can't tell you right
11 off.

12 Q: Okay. So, you wouldn't know whether or not
13 grading plans are a required document for
14 reviewing a facility application?

15 A: I would say -- I would say they would have to
16 have a grading plan at some point in time.

17 Q: Okay. They could have it at some point in
18 time, but that point in time could be after
19 they know whether or not they're going to get
20 a permit, then they would go out and get a
21 grading plan?

22 A: Well, some preliminary site work would need to
23 be done if you've got a site that just, say, is
24 unfeasible to do all the grading that's
25 necessary. If you had a site, say it had to



1 have 250,000 yards of dirt moved, that might be
2 unfeasible.

3 Q: Why would that be unfeasible? Is that a cost
4 issue?

5 A: Yes.

6 Q: So, but if -- are you saying that the
7 Department should consider whether or not it
8 may be financially ruinous, let us say, for an
9 applicant to finance the amount of grading
10 necessary for a particular site?

11 A: Well, what I am saying is that, if you look and
12 there's an extreme amount of dirt to be moved,
13 then, number one, your potential for erosion
14 would go up, number, two you've got to make
15 sure you've got enough soil on site that's
16 compactable soil to build those pads. And
17 somebody needs to do that in a preliminary form
18 rather than approve the sites and then later on
19 say, well, we're going to take your approval
20 away because, you know, there's not enough soil
21 to build these pads or, you know, you're going
22 to hit rock or things of those natures.

23 Q: Why would you think that that has to be? Is
24 there anything in any regulation that says that
25 the Department has to look at something



1 preliminarily to determine financial
2 feasibility?

3 A: Well, I just think it would be good for the
4 Applicant to know that up front, rather than
5 later down the road.. And y'all have gone
6 through all this motion to file an application,
7 the landowner has gone through a lot of motion,
8 the community's gone through a lot of motion.
9 Why would you do all that and then all of a
10 sudden say, you know, this site's not going to
11 work?

12 Q: Well, I guess let me ask one question here.
13 When you worked at NRCS -- strike that. Do you
14 know approximately what is the cost of a
15 grading plan?

16 A: Of the plan itself?

17 Q: Grading plans for stormwater.

18 A: It kind of depends on what's going to be
19 involved. But, you know, they could be
20 \$10,000, they could be \$50,000 with hiring a
21 private engineer to do it.

22 Q: And you think that a private engineer, an
23 applicant should pay that up front to determine
24 whether or not they should get the agricultural
25 permit?



1 A: Well, I'm talking about, you know, for a total
2 plan that has your cuts and fills and that type
3 of thing on it. You can do a preliminary just
4 by looking at topography, doing some brief
5 calculations, and, you know, letting the person
6 know. I mean, we use to do that all the time
7 on ponds, you know. Somebody will ask, well,
8 how much is this pond going to cost. We'd take
9 a topo map, figure up the yardage off the topo
10 map, and it's within a range, you know. And
11 then we would tell them, you know, the pipe's
12 going to cost this much, the earth moving's
13 going to cost this much, vegetation's going to
14 cost this much, and -- so, that would give them
15 something up front to know whether they even
16 need to take the next step.

17 Q: One last question. Do you have any knowledge,
18 personal knowledge as to whether or not any of
19 the Applicants' engineers provided them with
20 that information?

21 A: These Applicants?

22 Q: Yes. Do you know whether or not that's been
23 provided?

24 A: I wouldn't know, no.

25 Q: Okay. So, as far as you know, they may already



1 know how much it's going to be.

2 A: They could.

3 Q: And as far as you know, there's nothing in the
4 Department's regulations that require them to
5 produce that information up front.

6 A: To provide it to DHEC.

7 Q: To DHEC.

8 A: Yeah.

9 Q: As far as you know.

10 A: As far as I know, I don't know that they have
11 to provide it to you.

12 MR. HIGHTOWER: No further questions.

13 THE COURT: Ms. Taylor.

14 MR. STEWART - RE-DIRECT EXAMINATION BY MS. TAYLOR:

15 Q: Just one quick question for you, Mr. Stewart.
16 In your time working at the NRCS -- getting
17 back to Mr. Mustian's question about particular
18 stormwater management, long-term stormwater
19 management type preventative measures such as
20 terraces and the other type of techniques and
21 structures.

22 A: Engineering practices.

23 Q: Yes. Have you seen the application of those
24 type measures of poultry farm operations?

25 A: I have.



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1 Q: Where would those be?

2 A: Where have I seen them?

3 Q: Right.

4 A: Mostly in Oconee County.

5 Q: Okay. Do you think that -- in your experience,
6 is that a common practice of DHEC, to require
7 those as a condition to a permit?

8 A: I'm not absolutely sure. I don't know if DHEC
9 requires -- I would assume that they would.

10 Q: Do you know if these particular permits have
11 any conditions relating to terracing or other
12 stormwater ---

13 A: I brought that up at one of those meetings they
14 had and I didn't get much of a response. It
15 was kind of like, we're taking it under
16 consideration.

17 Q: Okay. But would you accept the actual permit
18 itself and the written conditions that were
19 issued by DHEC to be able to ascertain whether
20 or not those measures were, in fact, acquired
21 by DHEC?

22 A: I would want them to be part of the plan.

23 Q: Well, what I'm saying is, DHEC has already
24 issued these permits that have now been
25 contested.



1 A: Right.

2 Q: So, they've already provided conditions within
3 the permits. And so, to answer -- I thought I
4 heard you say you didn't know the answer to the
5 question. And all I'm saying is, would you
6 find the answer to that question within the
7 permits themselves for these facilities?

8 A: Well, it's possible that you would. I'd have
9 to look into it and see.

10 Q: Okay. But you haven't looked at them to know?

11 A: No.

12 MS. TAYLOR: Okay. That's all I was trying to
13 clarify.

14 MR. MUSTIAN: Nothing further, Your Honor.

15 THE COURT: You may step down.

16 (Off the Record on August 15, 2017 at 6:26 p.m.)

17 (On the Record on August 16, 2017 at 9:31 a.m.)

18 THE COURT: Let me knock one thing out first. Today
19 we're going to have to stop around 5:30. My
20 court reporter is going to be leaving at 5:30.
21 So, we will there end with our session for
22 today. Tomorrow, though, depending on what
23 happens today, I might be going late if need
24 be. Let's just see what happens today because
25 I want to make sure I get through this case.



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1 With that said, Ms. Taylor or Mr. Guild.

2 **MR. GUILD:** Good morning, Your Honor. Petitioners
3 call Kathy Lowman. Ms. Lowman, would you come
4 up please?

5 **KATHY LOWMAN,** having been duly sworn, testifies as
6 follows:

7 **COURT REPORTER:** Please state your full name for the
8 record.

9 **THE WITNESS:** Kathy S. Lowman.

10 **COURT REPORTER:** Thank you.

11 **MS. LOWMAN - DIRECT EXAMINATION BY MR. GUILD:**

12 **Q:** Ms. Lowman, can you tell the Court, please,
13 where you live, your address?

14 **A:** I live at 9375 Highway 72 West, Mountville.

15 **Q:** And are you more or less downtown Mountville
16 where you live?

17 **A:** Oh, yes.

18 **Q:** And are you a member of SCRAP, South
19 Carolinians for Responsible Agricultural
20 Practice?

21 **A:** Yes, sir.

22 **Q:** All right. Did you participate in the DHEC
23 permitting process for the three facilities,
24 the two Coggins facilities and the Young
25 facility?



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1 A: Yes. I missed one of the meetings.

2 Q: Now, your home in downtown Mountville, how
3 close is it to an existing operating poultry
4 facility?

5 A: I would say, as far as Mountville is concerned,
6 it's about two -- one and a half blocks.

7 Q: One and a half blocks?

8 A: Yeah. It's not far at all. I ride my bike
9 right to it.

10 Q: All right. And is it located on Highway 72 or
11 Old Highway 72, is that what you call it?

12 A: Yes, sir. Yeah. It's Old Highway 72.

13 Q: Old Highway 72.

14 A: Uh-huh.

15 Q: And are you able to observe that facility from
16 the public roadway?

17 A: Yeah, if you stand on the bridge.

18 Q: A bridge that's above the facility?

19 A: Yes, sir.

20 Q: All right. Now, when you -- how long have you
21 lived at that location, ma'am?

22 A: Thirty-seven years.

23 Q: Now, did you have occasion to express any
24 concerns about the proposed facilities to DHEC
25 or as a part of the DHEC permitting process?



1 A: Recently?

2 Q: No. During the permitting process. So, during
3 the period before DHEC issued the permits, when
4 they had the public hearings and they invited
5 comment, did you submit any comments to DHEC?

6 A: I don't remember if I did. I submitted
7 comments after that meeting.

8 Q: After the public meeting?

9 A: Public meeting. Because I wasn't aware that
10 there was going to be a meeting until the last
11 minute.

12 Q: All right. So, we know that -- we've had
13 testimony that there were two public meetings.
14 And I won't try to recall specifically when
15 they happened, but you attended at least one of
16 those meetings; is that right?

17 A: The September 15th.

18 Q: All right, September 15th. And so, at that
19 meeting did you communicate any comments to
20 DHEC?

21 A: Oh, yes, I did.

22 Q: And tell us what you said and what happened,
23 please.

24 A: Well, I did talk about the fact that the smell
25 is so bad that it comes in my house, it makes



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1 me sick, it wakes me up, it keeps me from
2 studying, it gives me migraines. And that
3 happens ---

4 **THE COURT:** It keeps you from what?

5 **THE WITNESS:** Sir?

6 **THE COURT:** It keeps you from?

7 **THE WITNESS:** Sleeping because it wakes me up.

8 A: An example is on Christmas Eve it woke me up at
9 11:00 and then it woke me up again at 7:00 that
10 morning. The smell is so bad that -- well, I
11 just say it makes me have a migraine. I am
12 prone to migraines and smells trigger
13 migraines. I also talked about ---

14 Q: I'm sorry. And did you communicate those
15 experiences to DHEC? Did you tell DHEC about
16 them?

17 A: Yes, sir.

18 **MR. MUSTIAN:** Robert, just along this line of
19 questioning and to follow up on yesterday, to
20 the extent that she's talking about a facility
21 that's not one of the Permittees that's at
22 issue, we would object on the basis of
23 relevancy.

24 **THE COURT:** Mr. Guild.

25 **MR. GUILD:** Do you need to hear arguments, Your



1 Honor? We've been talking about the experience
2 of living near a facility, observing the
3 facilities' operations. These facilities,
4 obviously we can't talk about how they will
5 perform because they haven't been permitted
6 yet. But we can talk about what the
7 community's experiences with existing
8 facilities. You will recall, Your Honor that
9 ---

10 **THE COURT:** That's fine. I'm going to let it in.
11 Probative weight, I do recognize that the logic
12 of your theory is that, if you can go and find
13 one under-performing facility, then logically I
14 should not permit any other facilities under
15 your theory.

16 **MR. GUILD:** No, sir, that's not our theory.

17 **THE COURT:** Okay. Well, then I'll just wait and
18 hear it later on.

19 **MR. GUILD:** Thank you, Judge.

20 **THE COURT:** No, I need to know that to determine the
21 probative value.

22 **MR. GUILD:** Yes, sir. Well, let's just say that we
23 only had one example of a facility that in some
24 form or fashion failed to comply with
25 regulatory requirements, an existing facility,



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1 you'd weigh that and you'd say that has limited
2 probative value, why should I assume that these
3 operators will -- you know, will fall into that
4 isolated trap or practice, if you will. But
5 there are a couple of points to make, Your
6 Honor. First, we have this issue of whether or
7 not these facilities have the potential to
8 discharge to the environment in such a fashion
9 as to exacerbate water quality problems in the
10 watershed we've been discussing. So, potential
11 to discharge is an issue that you're going to
12 have to wrestle with in terms of how the waste
13 product at the facility is managed on the
14 sites, how it's managed when it's hauled away
15 by either the farmers are going to apply it
16 themselves in Mr. Young's case or a manure
17 broker that's going to distribute it. And
18 then, Your Honor, just a more fundamental point
19 I want to make is, when you issue -- when we
20 issue a DHEC permit, it is a perspective
21 authorization to conduct activities -- I
22 apologize for not having the citation at hand,
23 but there's a -- it's a perspective authority
24 to operate on the assumption that you'll comply
25 with permit conditions and all regulatory



1 requirements, regulations and statutes. If in
2 deed there is a basis for doubting or
3 questioning the likelihood of compliance, DHEC
4 has a duty to do one of two things. This is
5 the Barker case. Either to condition the
6 permit under the Pollution Control Act to
7 ensure compliance, you know, add some more
8 measures as a check to make sure they'll
9 comply. Or, two, deny the permit. I mean,
10 DHEC has the authority to deny the permit based
11 on a past practice on the expectation that it's
12 not possible to ---

13 **THE COURT:** Okay. I don't know enough to make my
14 decision on the -- allow you to go forward. I
15 still -- will explore that later on.

16 **MR. GUILD:** And we'll make the argument in our final
17 proposal, Your Honor.

18 **THE COURT:** I'm still not sure logically, whether
19 you pick one or two or whether you pick the
20 potential for discharge, you're still picking
21 individuals that are not in this case and
22 saying those individuals didn't comply,
23 therefore logically I don't grant the permit.
24 There's a certain point where I have to analyze
25 that. And I guess you're saying that the



1 Barker case tells me that's acceptable and I'll
2 read it. Let's just argue that later.

3 MR. GUILD: Okay. Fine.

4 Q: Going back to what we were talking about. You
5 just said that you expressed to DHEC and you
6 testified to this Court that you have
7 experienced health problems that you associate
8 with the odors from the nearby facility.

9 A: Uh-huh.

10 Q: I think you said migraines. And did you
11 complete your answer? Are there other health
12 issues that -- health effects that you've
13 experienced?

14 A: Well, it does keep you from being able to
15 exercise because I ride my bike and it keeps me
16 from being able to ride.

17 Q: Why does it do that?

18 A: Because the smell is bad.

19 Q: All right. Now, the facility that we're
20 talking about that's a block and a half
21 approximately from your home on Highway 72, do
22 you know who the operator of that facility is,
23 what the name of the facility is?

24 A: The Alexander family farm.

25 Q: Okay. Now, again, bringing you up to attending



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1 that DHEC public meeting, did you make an oral
2 statement to them, did you stand up and talk to
3 them?

4 A: Yes, sir, I did.

5 Q: And did you relate any of your experience
6 observing the Alexander facility?

7 A: Yeah. I had my photographs that I had taken.

8 Q: Now, there was previous testimony, I think,
9 from Mr. Blackmon that you had a picture book,
10 I guess he called it, or a notebook; is that
11 correct?

12 A: Yes, sir.

13 Q: All right. And do you have that with you?

14 A: Yes, sir.

15 Q: Just hold it up, if you would, please.

16 A: (Complies).

17 Q: And is that the same notebook that you brought
18 to the DHEC public hearing?

19 A: Yes, sir.

20 Q: And did you offer that to DHEC? Did you show
21 that to DHEC?

22 A: Yes, sir. They asked for it.

23 Q: All right. And they examined it?

24 A: Yes, sir.

25 Q: And did you explain to them at that public



1 meeting what the contents of that notebook were
2 and how you compiled it?

3 A: Yeah. I called DHEC one day and they said --
4 and complaining about the stench. And they
5 said -- and I asked about manure piles, if they
6 were supposed to be covered, you know, why are
7 they leaving them out uncovered. They said
8 they aren't supposed to be left uncovered any
9 more than three days. So, I started taking
10 pictures. And it's just kind of random. I
11 started in '13 and just kind of randomly took
12 them. You can call DHEC and they will come out
13 and inspect and then they get covered for a few
14 days and then they stop covering them.

15 Q: Again, the Alexander facility you're speaking
16 of?

17 A: Yes, sir.

18 Q: Now, when you say you called DHEC, first, about
19 when did you start calling DHEC on these
20 issues?

21 A: I called them in 2013.

22 Q: All right.

23 A: But I wasn't disciplined enough to keep
24 calling. But I was disciplined enough to take
25 pictures.



- 1 Q: All right. And when you say you called DHEC,
2 did you call a particular person or a
3 particular office?
- 4 A: I talked with Chrissy Matthews.
- 5 Q: Say that name?
- 6 A: Chrissy Matthews.
- 7 Q: All right. And is it Ms. Matthews?
- 8 A: Uh-huh (affirmative response).
- 9 Q: And, Ms. Matthews, is she in the local office
10 or the Columbia office of DHEC?
- 11 A: She's local. She's in Greenwood.
- 12 Q: At the Greenwood office. And you said they
13 would come out and respond to your complaint?
- 14 A: Uh-huh (affirmative response). Yes, sir.
- 15 Q: And would it be Ms. Matthews or someone else
16 that came out?
- 17 A: From the way I heard from her, she called me
18 back and it was her, she went out.
- 19 Q: She went out. All right. And she responded to
20 your complaint by calling you back?
- 21 A: Uh-huh (affirmative response).
- 22 Q: And what did Ms. Matthews say in response to
23 your complaints?
- 24 A: That she talked with the grower and that they
25 would cover their ---



1 Q: And did she say that;-- did she, Ms. Matthews,
2 say that she observed the conditions at the
3 site?

4 A: Uh-huh (affirmative response). Yes, sir.

5 Q: What did she say she observed?

6 MR. HIGHTOWER: Objection, Your Honor. Hearsay.

7 MR. GUILD: Your Honor, exception to hearsay.
8 Admission to a party opponent, agent of the
9 party opponent.

10 THE COURT: Well, I don't think that Ms. Matthews
11 would be an agent of the ---

12 MR. GUILD: She works for DHEC, Your Honor.

13 THE COURT: Well, everyone that works for DHEC is
14 not a ---

15 MR. GUILD: She's authorized to enforce DHEC
16 regulations. She responded to a citizen
17 complaint.

18 THE COURT: She has to be authorized to speak on
19 their behalf. Doesn't she ---

20 MR. GUILD: Well, Your Honor ---

21 THE COURT: I kind of would like to think one of the
22 duties of the Judge is to follow the law.
23 Remember what -- 80 -- I'm going to let it in.

24 Q: What did Ms. Matthews say?

25 A: She just said that she visited the facility.



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1 Q: The Alexander facility?

2 A: Yes, sir. And that they would take care of the
3 problem.

4 Q: Did she recount to you what she observed,
5 manure piles? Did she tell you what she saw?

6 A: No. I didn't ask her.

7 Q: She just said they would take care of the
8 problem?

9 A: Uh-huh (affirmative response).

10 Q: Now, you began making those pictures, as you've
11 described?

12 A: Yes, sir.

13 Q: And, as you said, every so often would take
14 pictures of what you observed from the highway.

15 A: Yes, sir.

16 Q: Brought the book of pictures to DHEC's public
17 meeting, correct?

18 A: Yes, sir.

19 Q: And did DHEC take a copy of the book or ask for
20 copies of the pictures?

21 A: No, sir. But in one of my complaints after
22 that meeting I e-mailed some of the pictures to
23 DHEC.

24 Q: All right. So, even if DHEC didn't ask for
25 copies of the picture of the Alexander manure



1 piles, you sent electronic copies of those
2 pictures to DHEC thereafter?

3 A: Yes, sir. I only sent three or four pictures.
4 I made sure they were consecutive dates.

5 Q: Let me show you what's been identified for a
6 previous witness, marked at Petitioners'
7 Exhibit 4Z as in zebra. It's a multi-page
8 document that's been represented to be a
9 poultry facility. This is page 02223 Bates
10 number. And I don't know if you can see it
11 clear enough, but is that an example of one of
12 the pictures that you took?

13 A: Yes, sir.

14 Q: Now, do you have the original of that picture
15 in your book by chance?

16 MR. MUSTIAN: Your Honor, just for point of
17 clarification. I believe yesterday when he
18 offered the 4Z exhibits ---

19 THE COURT: Well, they haven't been admitted yet.

20 MR. MUSTIAN: Okay. That's what I was ---

21 MR. GUILD: Yeah. I just said for identification.

22 MR. MUSTIAN: Okay. I apologize.

23 A: Would you bring that down just a little bit so
24 I can see ---

25 Q: Sure. This way?



- 1 A: --- the top of it? Yes, sir.
- 2 Q: You have the original of that picture in one of
- 3 your -- in your books; is that right?
- 4 A: Yes, sir.
- 5 Q: Your exhibit. All right. Now, can you just
- 6 tell us this, is this a picture that you took?
- 7 A: Yes, sir.
- 8 Q: Or a series of pictures actually. There are
- 9 three; are there not?
- 10 A: Yes, sir.
- 11 Q: All right. And does it accurately represent
- 12 what it depicts, is that a good representation?
- 13 A: Oh, yes, it does.
- 14 Q: Now, I notice that there appears to be dates to
- 15 the lower right-hand corner of each of the
- 16 pictures.
- 17 A: Yes.
- 18 Q: What do those dates represent?
- 19 A: Those are the days that I took the pictures.
- 20 Q: All right. And do those dates accurately
- 21 represent the dates on which the pictures were
- 22 taken?
- 23 A: Oh, yes, sir.
- 24 Q: And is that an automatic dating on your camera?
- 25 A: Yes, sir.



1 Q: Now, I'm going to show you another page. It's
2 the same exhibit, but it's Bates number 02222.
3 And it has other dates on it. Is that also a
4 picture you took that accurately represents ---

5 A: Yes, sir.

6 Q: --- depicts what you saw?

7 A: Uh-huh (affirmative response).

8 Q: You have to answer yes or no.

9 A: Yes, sir.

10 Q: Okay. A third page, Bates 02221, three
11 pictures, your photographs of the Alexander
12 site. And do they accurately represent what is
13 depicted in the photos?

14 A: Yes, sir.

15 Q: And you're holding that original up for that
16 picture?

17 A: Yes, sir.

18 Q: Okay. Petitioners' 02239, another set of three
19 pictures. Are those your photos?

20 A: They're my photos, yes, sir.

21 Q: And do they accurately depict what's
22 represented in the photos?

23 A: Can you pull it down so I can see the date,
24 please?

25 Q: Yes, ma'am.



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1230 R. ~~677~~ ⁶⁷⁷ 6th Street / Columbia, SC 29201

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- 1 A: Down.
- 2 Q: Are those accurate representations of what you
- 3 observed?
- 4 A: Yes, sir.
- 5 Q: 02225 also part of the same group exhibit.
- 6 Again, your photos, ma'am?
- 7 A: Yes, sir.
- 8 Q: And do they accurately ---
- 9 A: Yes, sir.
- 10 Q: --- reflect what you observed at the time?
- 11 A: Yes, sir.
- 12 Q: And what are the dates on those photos? Can
- 13 you make that out?
- 14 A: Let me find it. 7, 8, and 12 of -- 2014/03/07,
- 15 2014/03/08. Also 2014/03/05, 2014/03/12.
- 16 Q: And the last page is 02228. Are those also
- 17 pictures that you took and do they fairly
- 18 represent what you observed?
- 19 A: Yes, sir.
- 20 Q: Now, on any -- in an instance did you observe
- 21 a photograph -- strike that. Tell us what you
- 22 saw -- I'm just picking the first of these
- 23 pages here of 223. And it bares a date of
- 24 December 23, 2013, December ---
- 25 A: 2013.



1 Q: And December 26th, 2013. You is see that?

2 A: I don't see that.

3 Q: Just look at the image on the screen, Ms.
4 Lowman, if you would.

5 **THE COURT:** You can blow it up a little bit.

6 Q: See that top picture, ma'am? Let's look at
7 that first. December 23rd, 2013 is that the
8 date that appears on that, do you see that?

9 A: I see it, but I'm not seeing it in my ---

10 **THE COURT:** On the screen, ma'am.

11 Q: Just look on the screen. Don't look in your
12 book, ma'am.

13 A: Oh, okay. Well, I can verify that. That is my
14 picture.

15 Q: Okay, good. Now, tell the Court what is ---

16 **THE COURT:** Is your picture not working?

17 **MS. FAIR:** Is your screen not working? Is your
18 picture not working?

19 **THE WITNESS:** I see it.

20 **MS. FAIR:** Oh, okay.

21 **THE WITNESS:** I was just trying to match those
22 dates. I've got so many dates in here, it's
23 hard for me to follow.

24 **THE COURT:** Listen to his questions and answer his
25 questions.



1 THE WITNESS: Yes, sir.

2 Q: All right. So, tell us first, what is that
3 photograph -- the December 23rd, 2013 dated
4 photograph, what does that show?

5 A: This is the manure pile with the water all
6 around it.

7 Q: All right. And is that what you observed at
8 the Alexander facility on that date?

9 A: Yes, sir.

10 Q: And the second photo in that series, when was
11 that taken, ma'am?

12 A: That was 2013/12/23.

13 Q: All right. And what does that depict?

14 A: Several manure piles with lots of water around
15 it.

16 Q: And is that what you observed at that time, was
17 water around the manure -- uncovered manure
18 piles?

19 A: Yes, sir.

20 Q: Now, in any instance that you document in your
21 -- first of all, strike that. In any instance,
22 did you observe uncovered manure piles at the
23 Alexander facility for more than three
24 consecutive days?

25 A: Yes, sir.



1 MR. HIGHTOWER: "Objection.

2 MR. MUSTIAN: Objection. Your Honor, I don't
3 believe that he has laid a foundation that she
4 has the ability to identify whether or not this
5 is a manure pile. She can say that -- I
6 believe she can identify that it is a pile. As
7 to exactly what it is, I don't -- unless she
8 has gone on the site and specifically seen it
9 or tested it, then I don't believe she's laid
10 a foundation to assert to her that this manure
11 pile.

12 THE COURT: Well, I guess I'll sustain that
13 objection, although it pretty well looks like
14 a manure pile. But you're right.

15 Q: Did you believe those were manure piles?

16 A: Yes, sir. I have seen trucks that were kind of
17 backed up in there at other times, maybe when
18 I didn't have my camera and I was on my bike,
19 there may be a truck up in there that you
20 would -- I mean, I think it's a manure pile.

21 Q: And what were the trucks doing that you
22 observed?

23 A: They weren't doing anything. They were just
24 sitting there. But it was just like a truck
25 that you would put something in and haul off.



1 THE COURT: How far away did you observe this?

2 THE WITNESS: It's about a stone's throw.

3 THE COURT: A stone's throw is not a definitive
4 term.

5 THE WITNESS: I would say ---

6 THE COURT: I mean, if you're a professional
7 baseball pitcher, a stone's throw is a lot
8 different.

9 THE WITNESS: Okay. Let's say maybe 20 yards, 20,
10 30 yards.

11 Q: So, just for the Court's help and our help as
12 well, Ms. Lowman, there's a -- Old Highway 72
13 is where you're telling us this facility's
14 located.

15 A: Yes, sir.

16 Q: You're on a bridge.

17 A: Yes, sir.

18 Q: Literally where is the facility in relation to
19 that bridge?

20 A: Right below it.

21 Q: Right below it?

22 A: Right below it, yeah.

23 Q: And you're up above the facility.

24 A: Yes, sir.

25 Q: How high would you estimate that you were



1 standing on the bridge, above the ground level?

2 A: Maybe 25, 30 feet.

3 Q: All right, ma'am. So, let me rephrase the
4 question. So, piles, whatever they were, did
5 you observe those piles at any time for more
6 than three consecutive days in an uncovered
7 condition?

8 A: Yes, sir.

9 Q: And did you document, in any instance with
10 photographs, piles that were left uncovered,
11 whatever those piles are, for more than three
12 days? Did you document in your photographs?

13 A: I do have some photos that are for four days.

14 Q: All right. And can you identify the dates of
15 those photographs?

16 A: I can't find those. There's one for 26 on ---

17 Q: Speak up, please, ma'am.

18 A: 2014/02/26 -- 2014/02/26, 2014/27, 2014/28.

19 That's only three.

20 **THE COURT:** Mr. Guild, you can keep it moving.

21 **MR. GUILD:** Yes, Your Honor, just bare -- one
22 moment. She's reviewing the --

23 Q: Are you reviewing the photographs in your book,
24 ma'am?

25 A: Yes. I'm just nervous. And it's hard for me



1 to do this. But I'm just not seeing my
2 consecutive ones.

3 Q: You mentioned an instance just now, did you
4 not, three days?

5 A: Yeah. I had three days. And one of these I
6 had four days, but I'm not finding it right
7 now.

8 Q: All right. And did you communicate that
9 information to DHEC, photographs depicting
10 three days or more ---

11 A: When I called, I told them that -- you know,
12 about the stench. And they said they're not
13 supposed to have that manure pile uncovered for
14 more than three days.

15 Q: Yes.

16 A: However, I would like to say that, after I had
17 called DHEC and they said they would come out
18 and look, I then did observe the pile covered.
19 So, that can make a difference. So, it
20 wouldn't have been covered had it not been
21 manure.

22 Q: So, when you observed the piles uncovered from
23 the bridge over the facility, did you observe
24 or notice any odor associated with the facility
25 at that time?



1 A: No. When they were uncovered or covered?

2 Q: Yes, ma'am.

3 A: When they were uncovered?

4 Q: Yes.

5 A: When I was standing up there taking the
6 pictures, I did not smell. I would smell more
7 down when I was at my ...

8 Q: You would smell more ...

9 A: I would smell more when you're down on the
10 ground, instead of above, if I could smell it.

11 Q: Let's go look at what's back up on the screen.
12 And, again, this is Petitioners' 02223, part of
13 that same group exhibit photographs. You've
14 described what you understood to be manure
15 piles or piles, shall we say, several piles of
16 water around it.

17 A: Yes, sir.

18 Q: And look at the lower right-hand corner of the
19 picture. That feature there I just marked on
20 the there, do you see that diagonal feature
21 that I just identified?

22 A: Yes, sir.

23 Q: Could you tell us what that is? Did you
24 observe something there?

25 A: I'd have to look at my photo, but I think it's



1 water because we have had really bad rain.

2 **MR. MUSTIAN:** Your Honor, objection. Unless she can
3 specifically say what that is, I mean, this is
4 -- and she has a factual basis for that ---

5 **THE WITNESS:** I'll find my photographs ---

6 **THE COURT:** Whoa, you've got to stop talking.

7 **MR. MUSTIAN:** She's offering an opinion as to what
8 that water body -- I'm assuming where we're
9 going with that is it's an alleged water body.

10 **MR. GUILD:** No, sir. We're asking her what she
11 observed. She's already said she observed the
12 water standing around the piles, we think
13 manure. And she's just now saying what she
14 observed. I don't want her to speculate, but
15 I want her, if she can, to answer the question,
16 what is the diagonal feature or linear feature
17 that appears in the lower right-hand corner of
18 the pictures, if she knows.

19 **THE WITNESS:** (Unintelligible).

20 **THE COURT:** Ma'am, you've got to stop talking.

21 **MR. MUSTIAN:** Your Honor, she started that answer
22 with I think. And I think calls for
23 speculation.

24 **MR. GUILD:** I'm going to ask her to clarify, Your
25 Honor.



1 **THE COURT:** Proceed.

2 **Q:** What is that feature, ma'am, if you know?

3 **A:** I can't say for sure.

4 **Q:** Did it appear different or the same as the
5 features that are standing around the base of
6 the three piles that you've described?

7 **A:** It appears the same.

8 **Q:** And you identified what's around the piles as
9 water?

10 **A:** Yes, sir.

11 **MR. GUILD:** Your Honor, with that, we move the
12 introduction of the group exhibit, Petitioners'
13 4Z, the group photographs identified now by Ms.
14 Lowman.

15 **MR. MUSTIAN:** Your Honor, based on the same
16 objections we've raised previously as far as
17 relevancy, we would object.

18 **THE COURT:** I'll recognize that. Mr. Hightower,
19 same thing?

20 **MR. HIGHTOWER:** Yes, Your Honor.

21 **THE COURT:** All right. They're admitted.

22 (Petitioners' Exhibit Number 4Z was admitted into the
23 record.)

24 **MR. GUILD:** Moment please, Your Honor. Ms. Lowman,
25 please answer any questions that the other



1 lawyers may have for you or the Court.

2 THE COURT: Mr. Mustian.

3 MS. LOWMAN - CROSS EXAMINATION BY MR. MUSTIAN:

4 Q: Good morning, Ms. Lowman. My name's Ben
5 Mustian. I represent David and Heath Coggins
6 and Jim Young in this matter. I know we
7 haven't had the opportunity to meet before.

8 A: Yes, sir.

9 Q: Just have a couple questions for you, Ms.
10 Lowman. I believe Mr. Guild stated that you
11 ride your bike to this facility; is that
12 correct?

13 A: I can.

14 Q: You can or that you do?

15 A: I do at times, but I also can drive on the
16 bridge.

17 Q: But you mentioned the odor at the facility.
18 That doesn't preclude you from riding your bike
19 to the facility; is that right?

20 A: There are times it does. It's not every day.

21 Q: And how often would you say that occurs?

22 A: Lately I have not ridden my bike because I
23 fell. But normally when I ride my bike, it
24 might be once a week.

25 Q: And how long has it been since you haven't been



1 able to ride your bike?

2 A: Two months.

3 Q: And I apologize you had that injury. Is that
4 an injury that will preclude you from riding
5 your bike in the future or is it just while
6 you're recovering?

7 A: Just while recovering.

8 Q: You took the pictures of -- we've talked about
9 the pictures. Did you ever go on Mr.
10 Alexander's facility to test that alleged pile
11 of manure?

12 A: No, sir, but I have a picture that probably
13 proves that it is.

14 Q: Okay. But you say probably proves, you're not
15 sure that it's ---

16 A: It proves.

17 Q: How does it prove it?

18 A: Because the day before -- couple of days before
19 we had your meeting, September 15th, the piles
20 were uncovered. The day that we had our
21 meeting the piles were covered.

22 Q: But, I mean, you can't tell me -- as you sit
23 here, you can't tell me definitively that those
24 were manure piles, can you?

25 A: I can say they were manure piles because I



1 believe it is.

2 Q: You believe that it is, but I'm trying to make
3 the distinction between what you believe that
4 it is and what you actually know for a fact
5 that it is.

6 A: My evidence shows that it is.

7 Q: Do you ---

8 A: I do believe it.

9 Q: Okay. You believe it?

10 A: Yes, sir.

11 Q: Okay. How long have you lived in the
12 Mountville area?

13 A: I've lived in the house where I am for 37 years
14 that I was raised in.

15 Q: Okay. So, you're familiar with the Mountville
16 area and the ---

17 A: Oh, yeah.

18 Q: Okay. Is there a stream that runs by
19 Mr. Alexander's facility?

20 A: I don't know because I have not been on that
21 ---

22 Q: Is there a stream that runs through Mountville?

23 A: There are streams. I know right below there
24 where their land is there's a waterfall.

25 Q: How far would you say that is?



1 A: I don't know.

2 Q: Quarter mile, half mile?

3 A: I don't know.

4 Q: Any other water bodies that are around Mr.
5 Alexander's facility that you know of?

6 A: There are ponds. He has ponds.

7 Q: Are they connected to streams or creeks that
8 you know of?

9 A: I'm not familiar with that.

10 **MR. MUSTIAN:** No further questions, Your Honor.

11 **THE COURT:** Mr. Hightower.

12 **MS. LOWMAN - CROSS EXAMINATION BY MR. HIGHTOWER:**

13 Q: Ms. Lowman, you stated you took the photographs
14 with a camera?

15 A: Yes, sir.

16 Q: What type of camera?

17 A: Just a small camera.

18 Q: Small camera?

19 A: A Canon.

20 Q: Small Canon. Okay. Thirty-five millimeter
21 camera or ...

22 A: Just a digital.

23 Q: Just a digital, small digital?

24 A: Uh-huh (affirmative response).

25 Q: Did your camera have a zoom feature on it?



- 1 A: Yes, sir.
- 2 Q: Did you take the photographs using the zoom
3 feature?
- 4 A: Sometimes I did, sometimes I didn't.
- 5 Q: With the pictures that were shown by Mr. Guild
6 on the overhead, were any of those taken with
7 the zoom?
- 8 A: I don't know. I'd have to look at them again.
9 But there's a possibility that some -- I can't
10 say yes or no when I don't know for sure.
- 11 Q: And the bridge that you were on, that bridge
12 spans what?
- 13 A: (No response).
- 14 Q: Isn't it correct that the bridge spans a
15 railroad track?
- 16 A: Oh, yes. Those piles are very close to the
17 railroad.
- 18 Q: It's not water underneath that bridge, correct?
- 19 A: Oh, no, there's not water underneath the bridge.
20 as in ---
- 21 Q: It doesn't span a body of water?
- 22 A: No, sir.
- 23 MR. HIGHTOWER: No further questions.
- 24 THE COURT: Re-Direct on new matter raised in cross?
- 25 MR. GUILD: Moment, Your Honor. No questions.



1 Answer any questions the Court may have.

2 THE COURT: There are none, so you can step down.

3 MR. GUILD: And may Ms. Lowman be excused?

4 MR. MUSTIAN: No objection, Your Honor.

5 MR. HIGHTOWER: No objection, Your Honor.

6 THE COURT: You're excused.

7 DAVID RICHARD COGGINS, having been duly sworn,
8 deposes and testifies as follows:

9 COURT REPORTER: Please state your full name for the
10 record.

11 THE WITNESS: David Richard Coggins.

12 COURT REPORTER: Thank you.

13 MR. COGGINS - DIRECT EXAMINATION BY MS. TAYLOR:

14 Q: Mr. Coggins, let me know when you've settled in
15 and had your ---

16 A: Need to see about catalogs to sit on. This
17 chair's a little short.

18 Q: Mr. Coggins, we've met before.

19 A: Yes.

20 Q: I'm Mullen Taylor, I'm co-counsel for the
21 Petitioners in this consolidated case. Please
22 state your full name for the record, please,
23 sir.

24 A: David Richard Coggins.

25 Q: Are you a poultry producer and grower?



1 A: Been that way since '02.

2 Q: Tell us your experience as a poultry grower.

3 A: It's been a good experience. But ...

4 Q: How many barns do you currently operate?

5 A: I have six chicken houses.

6 Q: Okay. And ---

7 A: Built them in 2002 and have six chicken houses.

8 Q: Okay.

9 A: They're 42-foot wide 500-foot long.

10 **MR. MUSTIAN:** Your Honor, just for the record, and I
11 don't want to belabor this throughout, but I
12 would ask for a standing objection on the
13 grounds to relevance as to his existing chicken
14 houses. Again, this is not what was before
15 DHEC, this is a new facility as it's defined
16 under 61-43. And so, therefore, his existing
17 chicken houses are irrelevant to these
18 proceedings.

19 **MS. TAYLOR:** Your Honor ---

20 **THE COURT:** I thought she was presenting his
21 background ---

22 **MS. TAYLOR:** Yeah, I mean, I've got two reasons for
23 presenting this witness. The first one is to
24 provide some general information about poultry
25 operations. And I think you've got to have a



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1 witness that is a poultry operator in order to
2 provide some basic information about, in
3 particular how the fans -- the existence of
4 fans on the barns, what occurs within the
5 barns, the watering system for the barns, the
6 ditching and other production area surrounding
7 the barns. I think those are all useful
8 information for this Court to have.

9 **MR. MUSTIAN:** Well, Your Honor, to the extent she
10 wants to just know kind of general background
11 of how a poultry farm works, then I don't know
12 that I object to that, but---

13 **THE COURT:** I didn't think you would.

14 **MR. MUSTIAN:** But that line of questioning where
15 she's getting into specifics about the watering
16 system in his barns, which is a different
17 facility, the ditches, the ponds, those types
18 of things, which I think is where we're going,
19 that's what I object to on the grounds of
20 relevance, because that was not what the issue
21 that was presented to DHEC. So, that's where
22 I'm objecting.

23 **MS. TAYLOR:** Well, the second ---

24 **THE COURT:** Well, when we get there I'll worry about
25 it then.



1 MR. MUSTIAN: Thank you, Your Honor.

2 MS. TAYLOR: Okay. Well, we're going to get to it
3 real quick, so.

4 MR. MUSTIAN: I'll be happy to raise the objection
5 at another time, Your Honor. I just wanted to
6 ---

7 THE COURT: Go ahead and ask the question and let's
8 see.

9 MS. TAYLOR: Well, the second reason I would -- I'm
10 interested in eliciting the testimony of Mr.
11 Coggins is because the earlier question and the
12 point that you raised as far as any sort of
13 evidence demonstrating that there either has
14 been a discharge under a permit that has not
15 been violated. The terms have been met, you
16 know, there's -- or that there have been a
17 potential -- if there is a discharge that has
18 occurred. And I can't demonstrate that through
19 evidence through a facility that doesn't exist
20 yet. I've got to look at examples such as what
21 we just did with the Alexander facility. It
22 doesn't matter if it's Alexander or Joe Smith
23 or ---

24 THE COURT: I'll ---

25 MR. MUSTIAN: Your Honor, if I could just raise one



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1 point on that. I mean, I thought we addressed
2 that with the motion for partial summary
3 judgement with respect to whether or not
4 there's a discharge. Again, DHEC's permit is
5 a no discharge permit. So, they are prohibited
6 from discharging. So, any evidence that she
7 intends to elicit regarding whether or not
8 there is a -- has been a discharge or not has
9 already been ruled on by this Court. That's
10 not an issue that's in this proceeding.

11 **MS. TAYLOR:** And I was under the impression -- and
12 please correct me if I'm wrong that we have
13 left open the door for us to enter evidence
14 indicating that discharges can and do occur.

15 **THE COURT:** My view of this, and I'll let y'all
16 respond, is that the evidence about other
17 facilities violating the law is not very
18 probative. But I'm not going to consider it.
19 But based on what I heard so far, it may not --
20 it doesn't look very probative right now. And
21 I haven't heard the rest of the case. But
22 whether Mr. Coggins is someone who complies
23 with the law is probative because he is the one
24 seeking to get the permit. So why would it not
25 be probative as to his operation of a current



1 facility as to whether he should get more
2 facilities?

3 **MR. MUSTIAN:** Well, Your Honor, I believe -- I mean,
4 first of all, the facility is not technically
5 owned by him. However, I mean, I will
6 recognize that he does manage it. However,
7 under DHEC regulations there is a difference
8 between a new facility and an expanding
9 facility. DHEC took this as a new facility
10 because it's not an adjoining property. So, as
11 a new facility, they're looking at a stand-
12 alone situation as to whether or not the
13 applications comply with the permit. So, first
14 I would say that. In addition, I would also
15 say that to the extent of that Ms. Taylor tries
16 to draw any inference with respect to Heath
17 Cogging and Jim Young's facilities, neither of
18 which are current poultry operators ---

19 **THE COURT:** I'll agree with you. Barely you are
20 back at the probative value of poultry
21 facilities and I would say it's still
22 admissible, but the probative weight of it may
23 not be nearly as much. But concerning
24 operation of this facility, it may carry
25 greater weight.



1 MR. MUSTIAN: Okay. Thank you, Your Honor.

2 MS. TAYLOR: And I would like to point -- not to
3 belabor the point, because I realize we're
4 trying to move forward, but I ---

5 THE COURT: And plus you're winning right now, so I
6 don't think you're going to lose now.

7 MS. TAYLOR: Just -- 70E, the Department shall act
8 on all permits to prevent, so far as reasonably
9 possible considering relevant standards under
10 state and federal laws, an increase in
11 pollution. I think does add to admissibility
12 to the reasoning behind that. But I ---

13 THE COURT: I'm not sure about that ---

14 MS. TAYLOR: Okay. I'll stick with what I got.

15 THE COURT: Yeah, I think you better stick with what
16 ---

17 MS. TAYLOR: Okay. Thank you, Your Honor.

18 Q: Mr. Coggins ---

19 A: Yes, ma'am.

20 Q: --- did you obtain training to become a poultry
21 grower?

22 A: Yes, ma'am.

23 Q: And describe that training.

24 A: When I first started growing, I grew for a
25 company called Columbia Farms. They had some



1 meetings that tried to help instruct new
2 growers on the equipment in the house and how
3 to operate the house. Then I also went to what
4 we called a certified manure management
5 technician course and did -- finished that.

6 Q: And is that conducted through Clemson
7 University?

8 A: Yes, it is.

9 Q: Okay. Is it called CAMM?

10 A: Yes, ma'am.

11 Q: Okay. Are you familiar with the training
12 manual that Clemson provides for its CAMM ---

13 A: Yes, ma'am. I've not read it word for word, so
14 don't ...

15 Q: But was that part of the materials ---

16 A: Yes, ma'am.

17 Q: --- you obtained in training? I'm going to
18 hand you an exhibit that was actually part of
19 your deposition ---

20 A: That'd be fine.

21 Q: --- an exhibit here. And can you identify this
22 photo?

23 A: It looks like a photo of my poultry operation.

24 Q: All right. What is the address of your
25 existing poultry operation?



1 A: 1094 Lisbon Road, Mountville, South Carolina.

2 Q: Okay. And these markings that you see on this
3 photo, did you take the -- did you make those
4 marks? During your deposition did you make
5 marks on this photo?

6 A: I don't remember, but if you say I did during
7 that, that's fine.

8 Q: Okay. I can ---

9 A: I'm fine with it, Ms. Taylor.

10 Q: Okay. All right.

11 A: I knew we drew on some stuff there that day ---

12 Q: Okay.

13 A: --- but, you know.

14 Q: Do you remember your deposition in which you
15 marked the black lines here, here, here, here,
16 and here, these black lines?

17 A: Yes, ma'am.

18 Q: Aren't those ditches?

19 A: Yes, ma'am. They start at the front of the
20 house and run to the end of the house and stop.

21 Q: And this is the end of the house right here?

22 A: Yes, ma'am.

23 Q: All right. This property between the barns
24 and this waterbody right here, doesn't that --
25 doesn't the land slope from your barns to that



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1 pond?

2 A: Yes, ma'am.

3 Q: Didn't you testify that water from the barns
4 runs into this pond?

5 **THE COURT:** And when you say -- I'd like to be clear
6 on the question. Are you asking him if water
7 -- stormwater that comes off the roof of the
8 barn or water that comes out of the barns?

9 **MS. TAYLOR:** I just -- either one.

10 A: Your Honor, there's no water that comes out of
11 the barn. The only water that runs in these
12 ditches are off the roof. And it dissipates at
13 the end of the houses because the ditch stops.
14 And it's grass from there on down to the body
15 of water that she's talking about. Probably a
16 couple hundred feet.

17 Q: Let me have you read certain pages of your
18 deposition, sir. This was a deposition taken
19 -- I took this deposition of you on June 6,
20 2017, Columbia, South Carolina at 1230 Richland
21 Street. These -- I know these are hard to read
22 and I -- they save paper and I just want to not
23 have a huge amount. But if you start on -- it
24 goes 33, 34, 35, 36. Okay. Do you understand,
25 33 -- so that's how it pages, it's up down, up



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A: These four pages?

Q: Well, no, I'm going to tell you when to start.
Okay. And we start on page 34, line 12. And
I'm going to be the ones asking -- I'm going to
saying the Q, the question, and you're going to
be stating what your answer was at the
deposition.

A: Okay.

Q: Okay.

MR. MUSTIAN: Your Honor, I would object under Rule
32. If she wants to use a very specific
portion of this for impeachment, then she's
obviously entitled to do that. But she cannot
use a deposition on -- to cross examine a
witness that is available for testimony here.
She needs ask him the questions and then if he
says something that is then contrary to what he
said in the deposition, then she can impeach
him. She hasn't identified anything yet.

MS. TAYLOR: But I first need to confront the
witness.

THE COURT: Yes, but not through the deposition.

MS. TAYLOR: I cannot ask him to read his deposition
as part of his -- the confrontation?



1 MR. MUSTIAN: Your Honor, under Rule 32, ---

2 THE COURT: Maybe you want to go look at the rules.

3 MS. TAYLOR: This is -- I've done it before.

4 THE COURT: If someone let you do it before, that
5 doesn't mean they did it right.

6 MS. TAYLOR: So, what rule are we talking about?

7 MR. MUSTIAN: Your Honor, under 32(a)(1), it says
8 that any deposition maybe used for the purpose
9 of contradicting or impeaching the testimony.
10 But it also says under Rule (a)(4), if only
11 part of deposition is offered -- I'm sorry
12 that's -- excuse me. There's also case law on
13 this that says that -- specifically citing
14 Wright & Miller that, where you got a witness
15 that is available for oral testimony, that is
16 preferable to deposition testimony. So, she
17 can only use this for the limited purpose of
18 impeaching him. Not to walk through a Q and A
19 with him where there has been no basis for
20 impeachment and what she's entitled to do is
21 ask him those same questions on the stand here.

22 MS. TAYLOR: I believe that what he answered in
23 response to my question was inconsistent with
24 what he said in the deposition.

25 THE COURT: Well, then your position is that you are



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1 now impeaching him ---

2 **MS. TAYLOR:** Right.

3 **THE COURT:** --- with that answer. Yeah, okay.

4 **MS. TAYLOR:** That's correct.

5 **MR. MUSTIAN:** Your Honor, then I would also object
6 under -- to the extent that she offers things
7 other than specific impeachment of this one
8 issue about the ditches, then I would object --
9 -

10 **THE COURT:** Well, you would object at that point in
11 time.

12 **MR. MUSTIAN:** Yes, Your Honor.

13 **MS. TAYLOR:** Okay. I was beginning to think I was -
14 --

15 **THE COURT:** No, you're ---

16 **MS. TAYLOR:** Okay.

17 **Q:** All right. If you look at page 34, starting at
18 line 10, I say, Okay. What is this right here,
19 this? And your answer is?

20 **A:** That's an old pond that we've drained.

21 **MR. MUSTIAN:** Your Honor, this is not -- he hasn't
22 said anything about whether or not it's a pond
23 or not. So, again, we're not limiting it to
24 what is impeachment. She specifically asked
25 about ---



1 MS. TAYLOR: I'm just trying to provide some context
2 here. I can start later. Would you -- I'll
3 start at ---

4 THE COURT: Let's just strike his previous answer.

5 MR. TAYLOR: Okay.

6 THE COURT: And start at a more appropriate ---

7 MS. TAYLOR: I think it is the appropriate ---

8 THE COURT: Well, then I'm sorry. If that's your
9 argument, then ...

10 MS. TAYLOR: It's where we start discussing the pond
11 and you got to identify the pond before you get
12 to the water that enters the pond ---

13 MR. MUSTIAN: Your Honor, he hasn't said anything
14 about a pond yet. She's entitled to ask him
15 about the pond on the stand. What she can't do
16 is ---

17 THE COURT: Well, let me say. What he's testified
18 to so far is that there were ditches.

19 MR. MUSTIAN: Correct.

20 THE COURT: The water drains into the ditches. He
21 used the phrase dissipates. He said it
22 dissipates before it enters the pond, because
23 the ditches stop 100 feet from the pond.

24 MS. TAYLOR: I'm not sure if he said 100 feet, but.

25 THE COURT: Well ---



1 THE WITNESS: Well, you said one to 200 feet.

2 MR. MUSTIAN: Your Honor, we go down this road ---

3 THE COURT: He said one to 200 feet.

4 MR. MUSTIAN: Okay. The section in the deposition
5 she's getting ready to read I do not believe
6 relates to the impeachment of that testimony.
7 So, I would ask for a standing objection while
8 she does this. At the conclusion, I would renew
9 that objection because I don't believe that this
10 has any relation to impeachment of what he just
11 said.

12 THE COURT: All right. How does this relate to what
13 he just testified to?

14 MS. TAYLOR: He just -- I asked him a question. We
15 can start over again if you like.

16 THE COURT: Okay. I think I remember what he said,
17 but ---

18 MS. TAYLOR: Okay.

19 THE COURT: Unless what I just recounted was
20 inaccurate, I don't need to hear it again.

21 MS. TAYLOR: Okay. All right. So, what I'd like to
22 do is walk him through his deposition testimony
23 ---

24 THE COURT: Regarding ---

25 MS. TAYLOR: --- in which his answer is consistent.



1 THE COURT: Okay. Regarding this issue.

2 MS. TAYLOR: That's correct.

3 MR. MUSTIAN: Your Honor, that's not a -- she's now
4 saying that she's doing it to see if it's
5 consistent.

6 MS. TAYLOR: No. I said ---

7 MR. MUSTIAN: That's different than impeach ---

8 MS. TAYLOR: --- inconsistent.

9 MR. MUSTIAN: But she's saying she wants to see if it
10 is inconsistent. Not that what he said on the
11 stand is inconsistent.

12 MS. TAYLOR: I believe it to be inconsistent. If he
13 had said ---

14 MR. MUSTIAN: If I could ask it this way, Your Honor.
15 If Ms. Taylor can identify what she believes
16 that was inconsistent with what he said in his
17 deposition, then maybe I would not object.

18 THE COURT: Yeah, maybe -- then I would understand it
19 better too.

20 MS. TAYLOR: Okay.

21 THE COURT: So, what are you seeking to impeach him
22 through ---

23 MS. TAYLOR: In the deposition testimony ---

24 THE COURT: And if y'all need you to step up here to
25 tell me.



1 **MR. TAYLOR:** Okay. In his deposition testimony he
2 testified, without any objection from his
3 attorneys, that he has this pond and he's got
4 these barns and the black lines shows ditches
5 and that the ditches -- the end have an incline,
6 a slope down towards the pond and that water
7 from the barns, stormwater, runoff water slopes
8 down the pond -- I mean, slopes down the incline
9 to the pond.

10 **MR. MUSTIAN:** Your Honor, nothing about what he just
11 said his contrary to what's reflected in the
12 deposition in that respect.

13 **MS. TAYLOR:** I thought I heard him say that none of
14 what I just described.

15 **MR. MUSTIAN:** He said that there are ditches. He
16 said that the water ---

17 **MS. TAYLOR:** Would you want me to ask him again?

18 **THE COURT:** Whoa, whoa. I don't want y'all arguing
19 with one another. The fact he said there were
20 ditches ---

21 **MR. TAYLOR:** That they did not run into the pond.

22 **THE COURT:** Yeah, then dissipate. Yeah. Does that
23 -- does the deposition testimony state that the
24 water runs out of the ditches into the pond?

25 **MS. TAYLOR:** Well, can I tell you what his deposition



1 ---

2 **THE COURT:** Yeah.

3 **MS. TAYLOR:** It says -- let's see.. There is between
4 the barns -- I mean, the barns here and this
5 pond, does the land slope?

6 Yes, ma'am. It's grassed.

7 The ditches that you mentioned earlier, do
8 they carry the water that's in the ditches?
9 Where does the water go?

10 The water off of these five houses, will
11 end up into that. And he pointed to the pond.

12 Into that which is?

13 The area right there, indicating the pond.

14 **THE COURT:** All right. I'll allow you to ask those
15 questions.

16 **Q:** Okay. Back to page 34, Mr. Coggins.

17 **MS. TAYLOR:** And if it's okay with you, Your Honor,
18 I'd like to start with him testifying that
19 there's a pond. I can shorten that, but I think
20 it does provide some context.

21 **THE COURT:** I know there's a pond.

22 **MS. TAYLOR:** Okay. All right.

23 **Q:** Okay. Well then, on page 34, your answer
24 starting on line 12.

25 **A:** That's an old pond that we've drained.



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1 Q: Is it drained currently?

2 A: Not at the moment.

3 Q: Well, your answer here says, Yes, ma'am. Just
4 read what the deposition says.

5 A: Yes, ma'am.

6 Q: Thank you sir.

7 So, it looks to me on this that this has
8 got water in it, right?

9 And we're talking about this photo right
10 here, which has water in it.

11 A: Yes, ma'am.

12 Q: And what was your answer after that?

13 A: Well, the problem I have is the beavers come dam
14 it up from time to time and I have to take a
15 machine over there and dig it out and get the
16 water out of it.

17 Q: That can be a problem can't it?

18 A: Yes, ma'am. That can be -- they can, and that's
19 a nice word.

20 Q: Okay. So, how is this pond fed?

21 A: There is a wet weather creek that actually
22 starts at the beginning of our property.

23 Q: Sir, I'm now jumping on the same page 35, down
24 to line 22. And my question there is: Okay.

25 And so, is there between the barns here and this



1 pond, does this land slope?

2 A: Yes, ma'am. But it's grassed.

3 Q: Okay. The ditches that you mentioned earlier,
4 where do they carry the water that's in the
5 ditches? Where does the water go?

6 You're on page 36, line 3 right there.

7 A: The water off these upper five houses, will end
8 up into that. And I pointed toward the pond.

9 Q: Into that which is?

10 A: The area right there. Which there again ...

11 Q: The pond?

12 A: The pond -- Ex-pond.

13 Q: Okay.

14 And this water and all would come down and
15 it would empty out right in there, indicating
16 the pond.

17 And your answer starting on line 12?

18 A: That's a question.

19 Q: Oh, I'm sorry. I just -- So, there's water that
20 remains in there from whatever is carried off
21 from the ditches that ends up here. So, it's
22 not as if the pond is dry all the time, right?

23 A: No. But I mean, the rain water just runs off.

24 Q: I'm skipping just so we're not -- saving a
25 little bit of time here. On line 19.



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1 I think I'm probably not saying it right.
2 So, you're saying you -- the water from these
3 ditches runs into this low lying area or pond?

4 And your answer on line 23 please, sir.

5 A: Yeah. Or a wet area.

6 Q: Okay. Is there a dam on that pond?

7 A: It is, but it's been broken.

8 Q: Do you not -- do you deny these statements made
9 in the deposition, Mr. Coggins?

10 A: No, I won't deny them. But the dam has been
11 broken, Your Honor.

12 Q: So, with the dam being broken, does the water
13 within the pond and during the times in which
14 there is pond, does that run into a perennial or
15 ephemeral stream?

16 A: I don't understand what you're asking.

17 **(Off the Record)**

18 Q: Mr. Coggins, do you see this black arrow from
19 the pond here down to here?

20 A: Yes, ma'am.

21 Q: Isn't this a -- some sort of perennial or
22 ephemeral stream?

23 A: I still don't understand what you're asking.

24 Q: Is it a stream or a creek?

25 A: A said in earlier, it's a wet weather creek.



1 Q: Okay. Thank you, sir.

2 A: When -- during the winter time or the rainy
3 season, it'll have water in it. This time of
4 the year there's no water there.

5 Q: Okay. On this ---

6 A: But I still don't understand what you're ---

7 Q: You answered the question. Thank you, sir.
8 Back to this photo here. I'll call your
9 attention to this right here. Do you see this?

10 A: Yes, ma'am.

11 Q: What is that?

12 A: Just an open an area at the time.

13 Q: Could this be a stockpile of manure?

14 **MR. MUSTIAN:** Objection, Your Honor. Calls for
15 speculation.

16 Q: Is it a stockpile for manure?

17 A: I have used it to put manure there.

18 Q: Do you store manure there temporarily?

19 A: I have.

20 Q: Do you store manure there for one day, two day
21 -- well, let me do this over. Do you store
22 manure there for one day?

23 A: When we're cleaning out the houses, it could be
24 there for three or four days depending on what's
25 going on with the operation. We do a process,



1 we crust out or we clean out.

2 Q: What was that first word? I didn't hear you.

3 A: We either crust out or clean out.

4 Q: Crush?

5 A: Crust.

6 Q: Crust. Crust.

7 A: Crust.

8 Q: For the benefit of the Judge, could you explain
9 briefly what crusting out is?

10 A: There's a machine like a small earth moving pan
11 that's small enough to get inside the chicken
12 houses. And it goes in and skims the top couple
13 of inches off the litter in the house. Gets in
14 it and crust or whatnot. Gets it back down to
15 good saw dust or shavings.

16 Q: During the time in which the chickens or the
17 little chicks are in the barn, the litter that
18 use gets saturated with the excretion of the
19 birds, correct?

20 A: Yes, ma'am.

21 Q: You water the birds to keep them alive; is that
22 right?

23 A: Yes, ma'am.

24 Q: And you have a watering system to do that.
25 Correct?



- 1 A: Yes, ma'am.
- 2 Q: Do those watering systems often leak?
- 3 A: Not often, but they do leak.
- 4 Q: They do leak?
- 5 A: Yes, ma'am.
- 6 Q: So, when you're talking about crusting, is that
- 7 the end result of water coming into contact with
- 8 the manure and the litter?
- 9 A: Yes, ma'am. But we crust the whole house from
- 10 wall to wall. It's just a term we use, but
- 11 there is crust up under the waterlines from
- 12 where the waterlines do drip, yes, ma'am.
- 13 Q: Okay. Is there ammonia emitting from your
- 14 poultry operation?
- 15 A: I can't answer that.
- 16 Q: Didn't, in your deposition, talk about ammonia
- 17 can kill your chickens?
- 18 A: No, ma'am. I said it could blind my chickens.
- 19 Q: Okay.
- 20 A: But not kill them.
- 21 Q: So, doesn't that indicate that ammonia is
- 22 present within your barns?
- 23 A: Yes, ma'am.
- 24 Q: Do you have fans on the -- do you have fans that
- 25 ventilate the barns?



1 A: But, Ms. Taylor, you're not -- when I said the
2 ammonia blinded the chickens, that was a -- that
3 had an issue right there in the first flock or
4 two that I had grown. And trying to learn the
5 process of how to grow chickens and do a better
6 job, that was one of my errors. And since then
7 we've got it corrected and I've not blinded a
8 flock since then.

9 Q: Okay. Thank you for the clarification, sir.
10 But isn't still true that there is ammonia that
11 natural is emitted from a poultry ---

12 A: If it's ventilated properly, no.

13 Q: So, you're saying if it's ventilated properly
14 there's no ammonia that is present at all? That
15 there's no ammonia that emanates from a chicken
16 or the chicken litter?

17 A: No, I don't say that.

18 Q: Are you saying -- I'm trying to just -- are you
19 saying that the benefit of the ventilation
20 eliminates the ammonia from accumulating within
21 your barn?

22 A: The ventilation is for two purposes. To bring
23 oxygen in for the chickens and take moisture out
24 of the houses.

25 Q: And where does the moisture come from?



1 A: From the chickens.

2 Q: Do you have any -- on these ventilation fans, do
3 you have any feature of -- filters or any other
4 pollution control measure on those ventilation
5 fans?

6 A: Didn't know we needed any.

7 Q: Concerning your existing facility, did you -- do
8 you have construction plans for constructing the
9 area here, the production area?

10 A: We laid out plans for the -- I had plans for the
11 grading, but not the barns themselves, no ma'am.

12 Q: Okay. So, you had grading plans?

13 A: Yes, ma'am.

14 Q: Okay. For this proposed facility, do you plan
15 on submitting grading plans? Tell me -- if I'm
16 -- if my question doesn't make ---

17 A: Submit them to who?

18 Q: DHEC.

19 A: I hadn't filed for the stormwater permit, so,
20 you know, whatever required in stormwater
21 permit, if that's what you're asking.

22 Q: Okay. Do you -- with your proposed facility, do
23 you also have a permit application for any
24 stacking shed?

25 A: Say again?



1 Q: Staking shed.

2 A: Repeat the question.

3 Q: I'll come closer to you, so ...

4 A: That will be fine.

5 Q: Stacking shed.

6 A: Okay. What about it?

7 Q: Do you have a permit application pending for a
8 stacking shed?

9 A: I think it was taken out.

10 Q: Okay.

11 A: From what I understand. I'm not 100 percent
12 positive, but I -- the stacking shed was taken
13 out because NRCS will cost share on that and as
14 your witness, Mr. Stewart, talked about
15 yesterday. So, it was taken out of the permit,
16 so -- and it would be re-entered later once we
17 go through NRCS.

18 Q: How kind -- what kind of process? How long does
19 that take?

20 A: I can't -- it took less than a year on the
21 existing operation.

22 Q: But you don't know how long it takes now?

23 A: I can't attest to what's going to happen with
24 the new operation.

25 Q: Okay.



1 A: I mean, it all -- there's government monies,
2 time, I -- you asking me questions I can't
3 answer.

4 Q: If you can't answer it, you can't answer it, Mr.
5 Coggins.

6 A: That's fine.

7 Q: That is an answer. So, during this time period,
8 assuming that your proposed facility is
9 constructed and approved and that sort of thing,
10 where are you going to put your manure that you
11 take out of the facility before you get your
12 stacking shed?

13 A: You're talking about the new facility?

14 Q: That's right, Mr. Coggins.

15 A: It would be -- we've contracted with L&M Manure
16 Brokers. And it would be up for them to take
17 care of the litter once it comes out of the
18 house.

19 Q: Okay. Do you intend to place -- stockpile your
20 manure outdoors during an interim temporary
21 period?

22 A: No, no, no. Don't put words in my mouth.

23 Q: I'm asking -- I can ask you a leading question.

24 A: That'll be up to L&M Brokers what they do.
25 We'll have a company come in and clean the



1 houses out. And between them and L&M Brokers,
2 they'll move the litter.

3 Q: Is it possible that, between the time that you
4 call L&M Brokers and the time they show up,
5 you'll have exposed manure stockpiles ---

6 A: No, ma'am.

7 MR. MUSTIAN: Objection, Your Honor. Calls for
8 speculation.

9 THE COURT: No, I'll overrule that. This is his
10 facility. The new facility, she's asking how
11 it's going to operate.

12 MR. MUSTIAN: Well, but she's asking about what
13 possibly could happen. And I don't know that
14 he's got the ability to speculate on that.

15 THE COURT: Well, if he can't speculate about how his
16 facility is going to operate, then you're
17 telling me I should give a permit to someone
18 that can't even speculate how the facility's
19 going to operate?

20 MR. MUSTIAN: No, Your Honor. She can ask him how
21 his -- how it is planned on operating. What she
22 is saying is, is it possible that it could
23 operate differently than how it's planned on
24 operating.

25 THE COURT: Well, okay.



1 MR. MUSTIAN: My point is that's speculation.

2 THE COURT: Okay. All right. Let me just -- can you
3 rephrase the question? We'll start again.

4 Q: Mr. Coggins, during the time period in which you
5 have to remove some crusted caked material or
6 litter ---

7 A: Out of the house.

8 Q: --- out of the house -- you with me?

9 A: Yes, ma'am.

10 Q: And you got the manure broker showing up at some
11 point, right? You're either going to ---

12 A: Wait a minute. Wait a minute. It will be a
13 coordinated effort between the cleanout people
14 and L&M Manure Brokers. Does that clear your
15 question?

16 Q: First, you're not letting me answer -- or ask
17 the entire question.

18 A: Okay.

19 Q: But I do appreciate your answer. Is it -- let
20 me try to rephrase this. Is it possible that
21 you ---

22 A: Is it possible that there's going to be manure
23 outside the house? Is that what you're asking?

24 Q: Ask that -- answer that question.

25 A: No.



1 Q: Why is that?

2 A: Because it'll be up to the man doing the
3 cleanout and L&M Brokers.

4 Q: So, explain to my why there is a manure pile
5 outside of the existing facility.

6 A: Because I do land application with this
7 facility. And when we're loading the spreader
8 trucks and tractor trailers going to different
9 parts of the farm there, it's just more
10 convenient for me to dump it right there and
11 load it right on a tractor trailer. But we also
12 -- and you didn't point this out, but I do have
13 a stacking shed there too, and I use it. In
14 fact, it's about 2/3 full of litter right now.

15 Q: And didn't you testify during the same time
16 period that you stored equipment in your
17 existing stacking shed?

18 A: I have a truck and a hay bailer sitting under it
19 right now.

20 Q: Are you aware that that's contrary to
21 regulations?

22 A: No, ma'am.

23 Q: So, are you saying here today that you see no
24 possibility whatsoever that you'll store any
25 manure outdoors with your proposed facility?



1 A: At this present time, no.

2 Q: Could that change later?

3 A: It may ---

4 **MR. MUSTIAN:** Objection, Your Honor. She's asking
5 him to speculate as to what may change down the
6 road, not what is his plan as far as this
7 facility.

8 **THE COURT:** Ms. Taylor, that does sound to be ---

9 **MS. TAYLOR:** Okay.

10 Q: Are you familiar with the effect upon poultry --
11 well, birds within a poultry farm that loud
12 noises may have upon birds within a poultry
13 farm?

14 A: Repeat the question.

15 Q: Are you familiar with the effect that loud
16 noises may have upon poultry within poultry
17 barns?

18 A: What kind of noises are you speaking of?

19 Q: Let's say I'm a hunter or there is a hunter who
20 has a firearm and they are within 900 feet of a
21 poultry barn and they fired guns, what would
22 that do to poultry within the barn?

23 A: Ms. Taylor, for your information, we -- I have
24 four children. Two of the son-in-laws are avid
25 hunters. And we -- first off, we shoot doves



1 right at the facility and within 100 feet of
2 barn number six. And we've been doing that ever
3 since the barns existed and that's not been a
4 problem. We zero rifles in right there behind
5 the stacking shed on a frequent basis, which is
6 right up against house one. And then there's a
7 train that runs within about 1500 feet or 1600
8 feet roughly. I don't know. I'd have to take
9 a -- but it sounded like it's coming through the
10 chicken houses when it's coming up through there
11 so. No loud noises, I don't foresee that to be
12 a problem.

13 Q: So, you have no concern about hunters hunting
14 with a rifle or some other ---

15 A: As long as they don't shoot me, I'm fine.

16 Q: I agree with you, Mr. Coggins. So your counsel
17 has -- and the counsel for DHEC has stipulated
18 that you and -- I'll just speak to you, since I
19 can't speak for (unintelligible), would release
20 the Petitioners and anyone that they lease their
21 property to from any -- you waive the ability --
22 you waive the restriction, let me say that
23 rather, based on the statute that prohibits
24 hunting with a firearm within 900 feet?

25 A: We wouldn't have a problem with that.



1 Q: You'd waive that?

2 A: Yes, ma'am.

3 Q: Then that waiver would be within the petition
4 (sic) or condition within the permit?

5 A: Be happy to do that.

6 Q: Would you also release the Petitioners and those
7 that they have conferred hunting rights on their
8 property from any liability if those birds
9 perished from anything happening to those birds
10 should they shoot within 900 feet?

11 A: Yes, ma'am. I'd be more than happy to. And you
12 talking about that, on my existing facility --
13 since you're talking about my existing new
14 facility, they'll be a railroad -- the railroad
15 track will be within 600 feet of my new houses
16 Judge. So noise is not a problem to the
17 chickens.

18 Q: Okay. So ---

19 A: And not only that, I don't believe you can do --
20 is it legal to shoot a firearm across the
21 railroad track or Lisbon Road?

22 Q: I believe so, Your Honor -- I mean, Mr. Coggins.
23 Sorry.

24 A: You're saying it is legal or it's not legal?

25 Q: I believe it is legal, Mr. Coggins.



1 A: To shoot across the railroad track and to shoot
2 across a highway?

3 Q: I'm not an expert on hunting and that may be
4 something -- I'm not sure if this is relevant,
5 but you -- my understanding is that you --
6 hunters can shoot on the highway.

7 MR. MUSTIAN: Objection Your Honor. Relevancy as to
8 what the laws in on this issue.

9 MS. TAYLOR: I'm just trying ---

10 THE COURT: Well I don't know if that's relevant and
11 I don't know ---

12 MS. TAYLOR: I understand. I ---

13 THE COURT: --- and having heard DNR appeals, I don't
14 think you want to go there.

15 MS. TAYLOR: Okay.

16 Q: So, for example, I just want to make clear. Ms.
17 Basel, I'll just use her as an example, not
18 necessarily the only example here. She is
19 hunting on her property, which borders adjacent
20 to the property which you plan on putting six
21 barns and she is using a firearm. She
22 discharges that within 900 feet of your barns.
23 And as a result, those birds rush to the other
24 end of the barns and smother and die.

25 MR. MUSTIAN: Your Honor, I'm objecting. This is --



1 this line of questioning is ---

2 **MS. TAYLOR:** I'm just trying to ---

3 **MR. MUSTIAN:** Your Honor, may I finish my objection?

4 **THE COURT:** Okay.

5 **MR. MUSTIAN:** This line of questioning has been asked
6 and answered. He said that he would
7 specifically waive the 900-foot setback. She
8 asked him if he would waive liability of
9 anything that happens to the chickens. He said
10 yes. And so, that -- this line of questioning
11 has been asked and answered.

12 **THE COURT:** All right.

13 **MS. TAYLOR:** I'm just simply trying to make sure that
14 he understands what I'm asking him. When he
15 says yes, I don't want any misunderstanding.
16 That's all.

17 **THE COURT:** Well, I'll allow you to pursue that. But
18 he's testified that won't happen, but you can --

19 -

20 **MS. TAYLOR:** I'll be quick.

21 **Q:** So, the birds rush over to the other side of the
22 barn because of the shots fired and you have
23 casualties, you have birds that die. That's my
24 -- would you release Ms. Basel from any
25 liability based on the death of those birds?



1 A: If you say I'm going to have dead birds, I ---

2 Q: Well, I just want to be ---

3 A: --- that's your comment. I just got through
4 telling you that we shoot at my existing
5 operation within 100 feet of one of the barns,
6 shoot doves and I've not had any to die there.
7 And then we zero rifles in down on the lower end
8 and do it on a frequent basis ---

9 Q: Well what ---

10 A: --- and we've not an existing problem.

11 Q: But what I hear you saying is that you think
12 there's going to be no liability at all because
13 you've never observed it yourself. If you are
14 going to ---

15 **MR. MUSTIAN:** Your Honor, objection. She's
16 characterizing the witness' testimony. He said
17 that he would waive any liability with respect
18 to chickens that may die if gunshots are next to
19 the facility. Again, asked and answered.

20 **MS. TAYLOR:** If Mr. Mustian just said that, then I
21 was trying to make sure that he understood what
22 I was referring to when I was talking about
23 liability.

24 **THE COURT:** All right.

25 **MS. TAYLOR:** One moment. One last question and I'll



1 be done. I promise.

2 Q: Back to the question of permit conditions. I
3 understood -- just to add some context here.
4 Currently you do not have a stacking shed for
5 your proposed facility. Would you agree as part
6 of your permit, for a condition that prohibits
7 you from storing any manure generated from those
8 barns outside?

9 MR. MUSTIAN: Your Honor, objection. I think there
10 has to be some context as to what she means by
11 storing manure outside. Does that mean that in
12 the process of loading them in and out that it
13 can't be placed on the ground for some period of
14 time, it can never touch the ground? I mean, I
15 think there's got to be some context for that.
16 And I mean I also think that's -- she's asking
17 him a legal conclusion as to what he would
18 allow.

19 THE COURT: Well, she's asking -- I don't perceive
20 that as a legal conclusion, but I think you can
21 you clarify that on cross examination. She's
22 promised that she would only ask only one
23 question and you're asking her to break her
24 promise. But I'll let her ask the question.

25 Q: What I'm referring to, Mr. Coggins, is not like



1 you have a truck and you load up manure from
2 within your poultry barns and then they
3 immediately get put into a truck and you drive
4 off. I'm talking about a condition that would
5 prohibit you from storing a pile or any sort of
6 manure located outdoors, you know, for any
7 length of time other than when a truck from your
8 manure broker ---

9 **THE COURT:** When you say any length of time, give us
10 a parameter so he'll -- so, I can understand the
11 question. Any length of time could be a second.

12 **MS. TAYLOR:** Right. Okay.

13 **MR. MUSTIAN:** I mean, Your Honor -- and I'm not
14 exactly sure what the objection is, but honestly
15 this is something that I believe my client needs
16 counsel on as far as the legal ramifications of
17 that. I don't believe that he's qualified to,
18 at this stage, make that ---

19 **THE COURT:** Well, you are asking him to make a
20 stipulation. I agree.

21 **Q:** Are you willing to do that?

22 **MR. MUSTIAN:** Your Honor, I don't know how he can say
23 what he's willing to do when he hasn't had the
24 opportunity to seek legal counsel as to what the
25 ramifications of that issue are.



1 **THE COURT:** What's your response to that?

2 **MS. TAYLOR:** I'm simply asking, gauging his interest
3 and willingness to consider that permit
4 condition. I mean, I would like that permit ---

5 **THE COURT:** Okay. Overruled.

6 **Q:** So, I would be -- I'm just looking at something
7 reasonable. I'm not looking for something
8 onerous, but some period of time that, you know,
9 during that loading process or that it may need
10 to be on the ground ---

11 **THE COURT:** Ms. Taylor, can you give me a time frame
12 again?

13 **Q:** Half a day.

14 **MR. MUSTIAN:** Your Honor, if -- this is something
15 that I'm certainly willing to discuss with
16 counsel during a break and try to come up with
17 something that we may or may not be willing to
18 stipulate to. To the extent that she is asking
19 is he willing to consider this ---

20 **THE COURT:** Yeah. That's what she said.

21 **MR. MUSTIAN:** Sure. Right. So, as long as we're
22 limiting it to will he consider it, then that's
23 fine.

24 **THE COURT:** Yeah.

25 **MR. MUSTIAN:** But if she's asking him to say



1 specifically is this something you will ---

2 **THE COURT:** Right.

3 **MR. MUSTIAN:** I know. And I'm just trying to make
4 sure I understand it.

5 **THE COURT:** She said consider, so.

6 **MR. MUSTIAN:** Okay. As long as it's limited to that
7 context, Your Honor.

8 **THE COURT:** Yeah. Ms. Taylor.

9 **Q:** I'm willing to discuss a reasonable period of
10 time and I could either do that with your
11 counsel or if you would like to offer what you
12 think would be a reasonable time ---

13 **A:** Why don't you take it up with him.

14 **Q:** All right. Very good, Mr. Coggins.

15 **MS. TAYLOR:** Can I take a quick break? It's 11
16 o'clock.

17 **THE COURT:** Well, are you through with ---

18 **MS. TAYLOR:** Well, I have one question, I just don't
19 want everybody to wait while I get the exhibit.
20 That's all. Or I can get the exhibit. Which
21 ever.

22 **THE COURT:** You've already asked your one question
23 and you promised.

24 **MS. TAYLOR:** Please indulge me, Your Honor.

25 **THE COURT:** Well, while you're doing that ---



1 MS. TAYLOR: Okay. I'll go ahead and do this. I'll
2 -- under Petitioners' Exhibit 2E, which is
3 DHEC_, let me make sure I've got all the zero's
4 right, 000001 (sic) through, oh; no, the hole
5 punch, DHEC_000013 -- it looks like actually
6 there's four zeroes, not five, so. I can't tell
7 ---

8 MR. MUSTIAN: 1-13?

9 MR. TAYLOR: Yes. Yes.

10 Q: I'm handing you what's Petitioners' Exhibit
11 here. Can you tell me what that is?

12 A: Let's see here. It looks -- where I send my
13 soil samples and litter samples to DHEC every
14 year. It's an annual report.

15 Q: Okay. So, are those annual -- what you're
16 looking at, is that -- are those annual reports
17 that you've submitted to DHEC? Those are what
18 the purport to be? Your signature is on that
19 page, I believe.

20 A: Yes, ma'am, it is. And that's manure samples,
21 yes ma'am. And then soil samples.

22 MS. TAYLOR: I move to enter those as evidence.

23 THE COURT: Any objection?

24 MR. MUSTIAN: Your honor, same objection on grounds
25 of relevancy.



1 THE COURT: Okay. Mr. Hightower.

2 MS. TAYLOR: I think -- I'm sorry.

3 THE COURT: Mr. Hightower.

4 MR. HIGHTOWER: I just wanted to verify.

5 (Off the Record)

6 MS. TAYLOR: Yeah, just for -- to correct an error.

7 I may have mis-spoke because of the hole punch.

8 But it's DHEC_0001 though 14.

9 THE COURT: One second.

10 MR. MUSTIAN: The Department has some ---

11 THE COURT: Whoa, whoa, whoa. Wait. Let my court
12 reporter -- okay, go ahead.

13 MS. TAYLOR: Got it. Okay. So, are we good on your
14 understanding of what the documents ---

15 THE COURT: Apparently not.

16 MR. MUSTIAN: Your Honor, and apologize. Previously
17 I know I objected on the grounds of relevancy.
18 Your Honor, I would also object on grounds of
19 hearsay. These are documents that purport to be
20 from Clemson University, and there's a letter
21 from DHEC. I don't believe they've been
22 authenticated, but I also state they're hearsay
23 without an exception.

24 MS. TAYLOR: The Clemson University documents are
25 public records, official records that are self-



1 authenticating and ---

2 **THE COURT:** Well, the ---

3 **MR. MUSTIAN:** The Department has no objection to them
4 other than they were received, by the
5 Department. But what they really say if
6 anything else ...

7 **COURT REPORTER:** Mr. Hightower, did you say they
8 weren't received ---

9 **MR. MUSTIAN:** They were received by the Department.

10 **THE COURT:** I don't believe this Clemson University
11 records are self authenticating. So, I'll
12 sustain -- but -- or I could be clear. Did the
13 Petitioner submit the Clemson records in his ---

14 **MR. MUSTIAN:** Permit application? Yeah.

15 **MS. TAYLOR:** He submitted them to DHEC. For his
16 existing facility.

17 **MR. HIGHTOWER:** For the existing facility.

18 **MR. MUSTIAN:** Not for the proposed facilities, Your
19 Honor. This is with respect to existing
20 facilities.

21 **MS. TAYLOR:** It was submitted last year.

22 **MR. MUSTIAN:** But, Your Honor, in addition, I would
23 say that, you know, under---

24 **THE COURT:** Whoa, so I can be clear. This 1-13.
25 What is it?



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1 MS. TAYLOR: They are annual reports for Coggins
2 Broiler Facility.

3 THE COURT: So, it's an annual report?

4 MR. HIGHTOWER: Yes.

5 THE COURT: And in that annual report are the Clemson
6 records submitted?

7 MS. TAYLOR: Yes, sir.

8 MR. HIGHTOWER: Yes.

9 THE COURT: All right. And you -- so it's an annual
10 report submitted by the Petitioner and you
11 object because it's hearsay, Mr. Mustian?

12 MR. MUSTIAN: Well, I'm objecting on two grounds.
13 One is on the ground of relevancy because these
14 are annual reports.

15 THE COURT: Okay. I grant that.

16 MR. MUSTIAN: Okay. And then the second thing is
17 that these are reports from Clemson. Now,
18 whether or not -- and I will concede they have
19 been submitted to DHEC. However, as they are
20 documents from Clemson, in order for it to meet
21 the public records exception under 803(8) ---

22 THE COURT: I understand that too. So, my ruling is
23 that I overrule your objection in part and I --
24 and I present a caveat as to their admission.
25 And here's the caveat. They are admitted.



1 However, the Clemson records are not admitted
2 for the truth of the matter asserted, but for
3 the fact that they were a component of a annual
4 report by the Petitioner.

5 **MR. MUSTIAN:** Thank you, Your Honor.

6 **THE COURT:** You have to lay a foundation to admit the
7 Clemson documents subject to the hearsay
8 objection.

9 Q: Mr. Coggins, are you required by DHEC under
10 regulation 61-43 to submit annual reports?

11 A: I don't know about 61-43, but I ---

12 Q: The regulations ---

13 A: --- am required by DHEC to send them an annual
14 report on litter and soil samples.

15 Q: And doesn't the litter -- you have to take
16 samples of the litter, that's the manure and the
17 saw dust and all that stuff.

18 A: Yes, ma'am.

19 Q: Take a sample of that.

20 A: Yes, ma'am.

21 Q: You do not have the technical capability of
22 taking a sample and returning results on terms
23 of it's composition, correct? In other words,
24 do you take it to a lab?

25 A: No, No. I take it to the local extension office



1 there in Laurens ---.

2 Q: That's what I was trying ---

3 A: --- and they send it to the lab.

4 Q: Okay. So, you rely upon Clemson University in
5 order to provide those soil reports to -- I
6 mean, the waste reports?

7 A: On the litter, yes.

8 Q: Yes. Okay.

9 A: But they also do it for cow manure and ...

10 Q: Right.

11 A: Because I do have cows too.

12 Q: So, Clemson University, or an extension office
13 of Clemson University, they typically provide
14 these reports to poultry growers, correct?

15 A: That's right. We pay to have it done.

16 Q: Okay. And is that -- is the same answer for the
17 soil reports of the fields in which you apply
18 manure?

19 A: I either have Clemson do it or a private lab.

20 Q: Okay.

21 A: And we pay to have that done.

22 Q: All right. Do you rely upon the results as
23 being accurate?

24 A: Somewhat. Yes, ma'am.

25 Q: Somewhat?



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1 A: Yes, ma'am.

2 Q: Do you or do you not reply upon them as being
3 accurate?

4 A: We generally consult with the extension agent
5 when I get them back.

6 Q: And do you consult ---

7 A: And we look at the crops that are being planted
8 and whether it be corn or Bermuda grass or oats
9 or, you know small grain ---

10 Q: But you and what are resources you use rely upon
11 those documents in order to take whatever action
12 ---

13 A: Yes, ma'am. Yes, ma'am.

14 Q: Okay. I think that's sufficient foundation.

15 **THE COURT:** What are you seeking?

16 **MS. TAYLOR:** I would like to move the soil reports
17 and Mr. Coggins -- well, Mr. Coggins' annual
18 report, which I think I left over here. Which
19 includes the Clemson University reports into
20 evidence.

21 **THE COURT:** Mr. Mustian?

22 **MR. MUSTIAN:** Your Honor, on the same basis. She's
23 offering it for the truth of the matter
24 asserted, which is -- if she's offering it for
25 that this was submitted to DHEC, I understand



1 the Court's ruling on that. If she's offering
2 it for, does he discuss these and rely on these,
3 then on that limited basis I understand that.
4 But what I believe she's getting ready to go
5 down the road though of is offering them for the
6 truth of the matter asserted, which is what it
7 is actually contained in these documents. Which
8 we would believe is hearsay and not subject to
9 the exception.

10 **MS. TAYLOR:** But there is an exception for public
11 records and reports. And that's an exception
12 for hearsay and that is Rule 803(8). And these
13 are records, reports, statements, or data
14 compilations, or any form of a public office or
15 agency that has the authority or duty to provide
16 these reports.

17 **THE COURT:** Well, it's reports setting forth the
18 activities of the agency, but I don't know if
19 this is an activity of the agency, or matters
20 observed pursuant to a duty imposed by law as to
21 which there is a duty to report. There's not
22 been a foundation laid that these were matters
23 observed pursuant to a duty imposed by law upon
24 Clemson and then that they have a duty to
25 report.



1 MS. TAYLOR: But under A it just simply requires the
2 activities of the office or agency.

3 THE COURT: Yeah.

4 MS. TAYLOR: Or, B, matters observed pursuant to the
5 duty ---

6 THE COURT: Yeah, that's what I just read. I just --
7 at this point in time, activities of the office
8 doesn't -- to me doesn't reach the level of an
9 evaluation of a soil sample or something like
10 that. But this reporting the activities of the
11 agency. So, I mean, unless the courts can
12 correct me on this above me, I don't see that on
13 -- for that, so I sustain the objection.

14 MS. TAYLOR: I just want to make sure that issue is
15 preserved.

16 THE COURT: Yes, ma'am.

17 MS. TAYLOR: I do ---

18 THE COURT: Yeah, like I said, if I'm wrong, I'm
19 wrong. But I don't perceive that as a component
20 of those section A.

21 Q: Mr. Coggins, would you propose -- or would you
22 ---

23 THE COURT: Whoa, whoa, whoa. Proceed.

24 Q: Would you consider a permit condition that
25 requires a bird composter?



1 MR. MUSTIAN: Your Honor, same objection as before --

2 -

3 MS. TAYLOR: I'm just asking if he would consider it.

4 THE COURT: Well, there shouldn't be an objection
5 because you didn't object to her asking would he
6 consider.

7 MR. MUSTIAN: And just for clarity, as long as it's
8 limited to that scope, then I'm okay.

9 THE COURT: Okay. Let's go with the English
10 language.

11 MR. MUSTIAN: Yes.

12 THE COURT: The words world, would you consider.

13 MR. MUSTIAN: Yes, Your Honor.

14 THE COURT: Okay.

15 MS. TAYLOR: That's all the questions I have.

16 THE COURT: All right. Do you want to take a break?

17 MR. MUSTIAN: Yes, sir.

18 MS. TAYLOR: Yes.

19 THE COURT: Even if you don't, I was going to go
20 anyway.

21 MR. MUSTIAN: Thank you.

22 MR. COGGINS - CROSS EXAMINATION BY MR. MUSTIAN:

23 Q: I guess we are still in morning. Good morning,
24 Mr. Coggins. How are you, sir?

25 A: Good morning, sir.



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1 Q: Mr. Coggins, this is kind of approaching this a
2 little bit differently since she offered you as
3 her direct witness, so I'm now crossing you.
4 But I'd like to walk through and just provide --
5 talk with you a little bit about kind of some
6 background, if I could. Mr. Coggins, can you
7 tell me a little bit about your family history
8 in farming, please, sir?

9 A: My granddaddy bought the farm in August of 1918.

10 Q: When you say the farm, are you talking about
11 your current farm?

12 A: The existing farm we're on now. Grandpa bought
13 it in 1918. We've been there ever since. We
14 dairied for 71 years. When he came down from
15 Spartanburg County, they brought, I don't know,
16 half a dozen milk cows with them and started
17 milking cows. Grandmother sold eggs. And we --
18 somewhere along the line we rowed crop, cotton,
19 corn, peaches. We had several hundred acres of
20 peaches at one time. Let's see. Got out of the
21 dairy business in '89. We still -- we grew
22 Holstein heifers for a period of years there.
23 Don't remember the baseline. We put on some
24 beef cows. In between that time I ran the --
25 had a little flour mill. They had a satellite



1 office in Greenwood, South Carolina. I ran that
2 plant for five years. After that, went to work
3 Fairway Outdoor, billboard company. Worked
4 there nine years. Had an opportunity to come
5 back to the farm, build chicken houses, my
6 existing operation, and been there ever since.

7 Q: Okay. So, you -- over the years you cattle
8 farmed at the property, the existing property,
9 right?

10 A: It's been cows on the farm ever since grandpa
11 purchased it.

12 Q: Okay. And how many head of cows -- you recently
13 sold some cattle, didn't you?

14 A: Yes, sir. I guess the most we've ever had was
15 about 1,300 head.

16 Q: Okay. And how is -- where is it in -- is it
17 part of the property that you got chicken farms
18 on?

19 A: Yes, sir. Actually the pasture comes up all
20 around the chicken farm.

21 Q: Okay. And you got -- you say you got pastures.
22 Do you also do some row cropping on that
23 property?

24 A: Yes, sir. I plant corn for silage to feed the
25 cows with.



1 Q: Okay. Do you use commercial fertilizer on those
2 fields?

3 A: Commercial fertilizer, that is correct.

4 Q: Okay. Do you hold any public offices currently?

5 A: Yes, sir. I am a soil water -- Laurens County
6 Soil and Water Commissioner. Been that way for
7 I think 14 or 15 years.

8 Q: What's your understanding of what the mission or
9 the purpose of that is to do?

10 A: Is to take care of the environment of Laurens
11 County and teach people how to take care of the
12 environment.

13 Q: Okay. Is that something that's important to
14 you?

15 A: Very, very important to me.

16 Q: Why is it important to you, Mr. Coggins?

17 A: Because I love the land and I enjoy the land and
18 I want it to ...

19 **THE WITNESS:** Your Honor, I'm a third generation on
20 that land. I have two more generations behind
21 me. I've got 12 grandchildren with the 13th one
22 on the way. And it, I want it to be in my
23 family as long as they want it to be. So, yeah,
24 it's very dear and near to me. No question
25 about that.



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1 Q: Tell me about chicken farming, Mr. Coggins, with
2 respect to -- how did you come to want to get
3 into poultry farming business?

4 A: We had actually tried back in the '80s. And at
5 that time Columbia Farms was not interested.
6 They didn't need the extra growers. And as the
7 time went on they needed -- their operations
8 were growing and so they were interested. And
9 that's how I got contracted, would grow -- as I
10 said earlier, I started off growing for Columbia
11 Farms. I grew with them to 2013, the end of
12 2013. And then started January 1, 2014 with
13 Amick and have been with Amick ever since.

14 Q: Okay. So, started right in 2003, is that what
15 you said?

16 A: Built houses in '02, put birds in January 27th
17 of '03.

18 Q: So, you've been growing chickens now for about
19 14 and a half years or so?

20 A: Yes, sir. That is correct.

21 Q: Okay. How do you do as a chicken farmer?

22 A: I'm in the top 20 percent of Amick growers. And
23 I was in the top 20 percent of Columbia growers.

24 Q: Okay. And is that by production wise? Is that,
25 has Amick ever expressed any concerns with you



1 about how you operate your facility?

2 A: None whatsoever.

3 MS. TAYLOR: Objection. Not part of my examination
4 of Mr. Coggins.

5 MR. MUSTIAN: Your Honor, first of all I'm not
6 limited to asking questions what she asked on
7 Direct Examination. I will withdraw the
8 question to the extent that I asked him about
9 what Amick said.

10 THE COURT: What Amick said? Did you fight this a
11 lot in Federal Court?

12 MS. TAYLOR: I have before.

13 THE COURT: Because that's the parameters of Federal
14 Court, is why I was asking.

15 MS. TAYLOR: I apologize.

16 THE COURT: That's fine. That's fine.

17 Q: Mr. Coggins, let me ask it this way. Is it your
18 understanding -- have you ever had to take steps
19 to address issues with your facility based on
20 concerns that were expressed by Amick Farms?

21 A: No, sir. I haven't.

22 Q: I don't want to go down this road too far, but
23 since Ms. Taylor asked you a little bit about it
24 ...

25 MR. MUSTIAN: Ms. Fair, can we switch us on over



1 here?

2 **MS. FAIR:** I think -- see if that one brings it up.
3 I'm not sure if you're right or left. Is it
4 coming up or ...

5 **MR. MUSTIAN:** I guess if you -- if I ...

6 **Q:** Mr. Coggins, do you recognize this document in
7 this ---

8 **THE COURT:** Hold on one moment.

9 **MR. MUSTIAN:** I'm sorry.

10 **THE COURT:** Go ahead.

11 **Q:** Mr. Coggins, do you recognize this document as
12 the one that Ms. Taylor discussed with you
13 previously?

14 **A:** Yes, sir.

15 **MR. MUSTIAN:** And, Your Honor, I'll be honest, I am
16 not entirely clear on which document this has
17 been identified. But it's PET-2196 is the Bates
18 number.

19 **Q:** Mr. Coggins, she also had you read part of your
20 transcript. And I'd like to have you read
21 another excerpt if I can.

22 **MR. MUSTIAN:** Your Honor, if I can approach and stand
23 next to him.

24 **Q:** We're going to start -- this is on page 31 of
25 your deposition. And I'm starting at line 9.



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1 I going to ask the questions, and if you can
2 answer the answer.

3 The question is, Could you write on there
4 and identify what those -- that those are
5 ditches?

6 And then what does it say? It says
7 witness -- in parentheses it says witness
8 complies.

9 The next question is, So, does it extend
10 all the way -- the ditches all the way down the
11 side, the length of the barn?

12 And what's the answer?

13 A: Yes.

14 Q: Okay. So, I want to make sure that I'm clear,
15 Mr. Coggins. When you were talking to Ms.
16 Taylor, you said that those ditches ran down
17 through and down along the barn; is that
18 correct?

19 A: That is correct.

20 Q: Okay. And that's what you said in your
21 deposition. Isn't that what you just read?

22 A: Yes, sir.

23 Q: Okay. And, can you tell me, where do those
24 ditches stop?

25 A: They dissipate at the end of the houses.



1 Q: What do you mean by dissipate?

2 A: They stop. They just -- it just spreads out.

3 Q: Okay. So, if I can clear this -- and I know
4 that you and I have attempted this a little bit
5 in practice, but could you try to draw on there
6 and tell me where those ditches end in relation
7 to the barns?

8 A: (Complies.)

9 Q: Okay. So, Mr. Coggins, those ditches do not
10 extend any further than that pink line that
11 you've drawn right there?

12 A: No, sir.

13 Q: Okay. And, Mr. Coggins, this area that Ms.
14 Taylor talked with you about, this alleged pond,
15 ex-pond, whatever it is we're calling it, what's
16 in between the pink line where the ditches end
17 and the pond?

18 A: That's all grass. The Bermuda grass and Fesque.

19 Q: Okay. So, do those ditches extend all the way
20 down to the pond?

21 A: No, sir. they don't.

22 Q: Okay. So, what happens to the water once it --
23 the water comes off the roof of the house; is
24 that correct?

25 A: That is correct.



- 1 Q: Collects in the ditch; is that correct?
- 2 A: That's correct.
- 3 Q: It is channeled down to the end of the barns; is
- 4 that correct?
- 5 A: That's correct.
- 6 Q: And then it hits that water -- excuse me, that
- 7 grassed-in sloped area; is that right?
- 8 A: Well, it's actually grassed in between the
- 9 houses too.
- 10 Q: Okay.
- 11 A: The way the barns are designed, there's a
- 12 driveway between every two houses. And if you
- 13 look close, you can see the feed bins and all
- 14 there. And the feed trucks drive down in the
- 15 middle there. And then, if you look at the --
- 16 then there's grassed areas run the length of the
- 17 houses.
- 18 Q: Okay. So, is there any manure that's in between
- 19 the houses where the ditches are?
- 20 A: Absolutely not.
- 21 Q: Is there any manure in this green grassed area
- 22 that's in between the end of the ditches and the
- 23 pond?
- 24 A: Not to my knowledge.
- 25 Q: Okay. And, so when the water ---



1 A: I don't know how it would get there.

2 Q: Okay. Based on your knowledge, if you know,
3 when the water that runs off the houses when
4 comes down the ditch, when it hits that grass,
5 are there any pollutants in that water?

6 A: No, sir.

7 Q: Mr. Coggins, she also talked with you about a
8 flock that you had that was blinded by ammonia.
9 Do you recall that?

10 A: Yes, I did.

11 Q: And I believe you said that was your first
12 flock; is that right?

13 A: It was either the first or the -- I think it was
14 the second flock.

15 Q: One of the first couple of flocks; is that
16 right?

17 A: Yes, sir.

18 Q: And at that point were you learning how to
19 poultry farm?

20 A: That is correct.

21 Q: Okay. Is that an issue that you've had any time
22 since that occasion?

23 A: Oh, no. Not since that time.

24 Q: Okay. Ms. Taylor asked you about watering the
25 chickens. Do you recall that?



1 A: Yes, I do.

2 Q: And the chickens are animals, they need water
3 just like anything else, right?

4 A: That's correct.

5 Q: And the amount of water that we're talking about
6 is -- it's a drip line, is that how that works?

7 A: Well -- and we don't have a picture to show.

8 **THE WITNESS:** But, Your Honor, there's -- in my
9 particular house, there's four drinker lines
10 from one end to the other end. And they have
11 little nipples on the bottom line and the birds
12 go up and peck it. And that's where they get
13 their water from. And on occasion, there might
14 be a speck of trash or something that would be
15 in it. We flush those lines from time to time
16 to make sure there's no -- and they're filtered.
17 But every now and then, they'll be -- and one
18 will drip.

19 Q: Okay. And when they drip, I mean, have you ever
20 estimated the amount of -- or have you ever
21 determined the amount of water that is leaking
22 when there's a problem with one of the nipples?

23 A: I can't swear to it, but I would say it would be
24 very minute. During a flock of chickens,
25 probably not over five gallons.



1 Q: Five gallons of ---

2 A: In 63 days.

3 Q: Five gallons over 63 days?

4 A: Yes, sir.

5 Q: Okay.

6 A: But I can't swear to that. That's just ...

7 Q: Do you have any equipment on the existing
8 facility that protects or alerts you if there is
9 a problem with the water line?

10 A: If we do have a problem with the water line, low
11 water pressure, it's dialed into my alarm
12 system. And once the water pressure -- I
13 believe once the water pressure goes under about
14 27 pounds of pressure, it'll alarm. It'll alarm
15 me.

16 Q: So, if there's a significant water leak then,
17 you get an alert; is that right?

18 A: That is correct.

19 Q: How do you get that alert?

20 A: By phone.

21 Q: And what do you do when you get that alert?

22 A: Get in the vehicle and -- if I'm not there on
23 the premises, get in the vehicle and get there
24 in a hurry.

25 Q: Okay. Mr. Coggins, let me ask you about, let's



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1 talk about your new facility now a little bit.

2 Why did you decide to build a new chicken farm?

3 A: Well, first off, son and son-in-law decided they
4 wanted to get into the poultry business. And I
5 was excited that they wanted to come back to
6 farm.

7 Q: And, Mr. Coggins, if I could, just for the
8 record, is this your son, Heath Coggins.

9 **MR. MUSTIAN:** Mr. Coggins, could you stand up, sir?
10 Thank you, sir. And who else?

11 A: Jim Young.

12 **MR. MUSTIAN:** Jim Young, could you stand up, sir?

13 A: Jim married my oldest daughter.

14 Q: Okay. And, Mr. Coggins, your wife is sitting in
15 the same row next to Heath; is that right?

16 A: Yes, sir.

17 Q: Okay. So, Heath is your son and Jim Young is
18 y'all's ---

19 A: Son-in-law.

20 Q: Right. Okay. So, you were excited they wanted
21 to get into the chicken farming business ---

22 A: Absolutely.

23 Q: Why was that?

24 A: Well, it's just they -- Heath has two children.

25 Jim has three and just, you know, the



1 opportunity to get them back at the farm. Let
2 those children grow up at the farm.

3 Q: Okay. It's family business?

4 A: That's exactly right. Next August it'll be a
5 family business of 100 years.

6 Q: Okay. Is that important to you?

7 A: Very important.

8 Q: Okay. So, the property that we're talking
9 about, and I'm just talking about this piece of
10 property, how did you come to select this site?
11 What was it about this site that was important
12 to you or was attractive to you?

13 A: We had been looking for some time and trying to
14 find a site that was very densely populated.

15 Q: Densely populated?

16 A: Yes, sir.

17 Q: Or not densely populated?

18 A: Not densely populated. Thank you. Let's just
19 say very few houses around me. How about that
20 correction?

21 Q: Okay. Property's not adjacent to your current
22 facility?

23 A: No, sir, it's not.

24 Q: About how far down the road would you say?

25 A: About five and a half miles.



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1 Q: Okay. So, you knew that you needed to get a
2 permit from DHEC; is that right?

3 A: That is correct.

4 Q: Okay. And, did you contract with somebody to
5 help you with that application?

6 A: Yes, sir. AWT.

7 Q: Okay. And, who with AWT did you put -- was in
8 charge of that application, if you know?

9 A: Repeat the question?

10 Q: Who with AWT was kind of in charge of that
11 application ---

12 A: Chris Mosley.

13 Q: Okay. To your knowledge, is Chris Mosley a
14 registered professional engineer in South
15 Carolina?

16 A: Yes, sir.

17 Q: Okay. Why did you choose AWT, Mr. Coggins?

18 A: I have used them with my existing operation.
19 NRCS -- when I built the operation in '02, NRCS
20 at that time, as Mr. Stewart said yesterday,
21 they were -- they started off doing waste
22 management plants. And as time progressed on,
23 the federal government offered grants to
24 engineering firms. And they redid my waste
25 management plan I think in '05 on my existing



1 operation. '04, '05...

2 Q: So, you've worked with them in the past?

3 A: Yes, sir.

4 Q: And you ---

5 A: Think a lot -- very highly of them.

6 Q: Okay. Now, do you have any expertise as far as
7 what DHEC requires as -- when it comes to an
8 animal facility permit?

9 A: No, sir.

10 Q: And, you relied on Mr. Mosley in that respect;
11 did you not?

12 A: That is correct.

13 Q: But, did you tell Mr. Mosley what you expected
14 or what you anticipated -- what you expected him
15 to do with respect to this application in DHEC
16 regulations?

17 A: We just gave him the coordinates of the property
18 and told him to see out the houses, put it all
19 together.

20 Q: Okay. Did you tell him to comply with DHEC
21 regulations?

22 A: Oh, absolutely.

23 Q: Was that your expectation that he would do that?

24 A: He complied with -- well, he did it in '04, '05,
25 so I had no reason to think different.



1 Q: Mr. Coggins, looking through the applications
2 and the DHEC record, it appears that originally
3 you had asked for -- and I believe Heath Coggins
4 and Jim Young as well asked for approval of two
5 stacking sheds and a composter on each facility;
6 is that correct?

7 A: That's correct.

8 Q: Okay. And did that make it into the final
9 permit that was issued by DHEC?

10 A: My understanding, it was not.

11 Q: Okay.

12 A: It was not. It was taken out of the permit.

13 Q: Okay. And, Ms. Taylor asked you a little bit
14 about this, but could you explain that a little
15 bit more to me? I'm not sure I understand that.

16 A: When you get cautionary money from NRCS, that's
17 the natural resources, federal money, it's
18 called EQIP money in that program, it can't --
19 you can't build or buy anything until they
20 approve it by their federal standards. And they
21 can't be built until after the chicken houses
22 are actually constructed and in operation. Once
23 they are in operation, then we're able to apply
24 and -- to get some government assistance to help
25 with building stacking shed or composter.



1 Q: Okay. Now ...

2 **MR. MUSTIAN:** Excuse me, Your Honor.

3 Q: So, until those stacking sheds are built, how do
4 you plan on dealing with the manure of the
5 facility?

6 A: Well, we've contracted with L&M Manure Brokers.
7 And so, we'll coordinate with them.

8 Q: Okay. And when you say you'll coordinate with
9 them, they'll be responsible for taking that
10 manure away?

11 A: Yes, sir.

12 Q: Okay. And when you say you coordinate, you said
13 there's a company I believe you hired that
14 actually crusts the houses out; is that right?

15 A: Yes, sir. We use -- we have -- right now at the
16 moment we use an outfit in Newberry called --
17 it's Bishop Farms, Ben Bishop and his dad.
18 They'll come up and crust. If we do a total
19 cleanout, there's a guy in Clinton, Tim
20 Copeland. And he comes over and does the total
21 cleanout if I decide -- deem to do a total
22 cleanout.

23 Q: Okay. And you say that you'll coordinate with
24 them. Explain to me what you mean by coordinate
25 with the two groups, two businesses.



1 A: Well, first off, have to get the chickens out of
2 the house. And once they're shipped, then we
3 look at the timeframe of how long we're going to
4 be out of chickens. Right now we're running
5 about 14 days between a mature flock and a brand
6 new flock coming. So, what we'll do there is
7 coordinate the time out and then see when they
8 can -- Mr. Copeland or Mr. Bishop can be there
9 to do what they need to do and then we'll
10 coordinate with L&M Manure Brokers to pick the
11 litter up and get it off the farm.

12 Q: So, is it your plan to operate the facility, at
13 least until you get a stacking shed, that the
14 crust out and the hauling away would occur, if
15 not simultaneously, immediately thereafter?

16 A: We would like for it to happen simultaneously,
17 but I'm sure there may be a time that, you know,
18 we may have a lull.

19 Q: Okay. And if there's a lull, would you operate
20 in compliance with DHEC regulations?

21 A: If we have to put manure on the ground, it will
22 be covered up over three days.

23 Q: Along those lines has -- what ...

24 (Interruption)

25 MR. MUSTIAN: Is that my time up?



1 THE COURT: I think that might be your computer.
2 Yeah. Yeah. That's your time up. Now that I
3 think about it, I ...

4 MR. MUSTIAN: I figured if somebody was going to say
5 it, Your Honor, I figured it might as well be
6 you.

7 Q: What's your interest in -- do you have an
8 interest in complying with DHEC regulations?

9 A: I like to think I'm environmentally responsible.

10 Q: I mean, is that something that you routinely do,
11 is try to do what DHEC tells you to do?

12 A: I think the record will reflect I've been in
13 business for 14 and a half years and I've
14 probably had less than five violations in 14
15 years.

16 Q: And when you've had those violations, what have
17 you done about them?

18 A: If there's a violation and we correct it
19 immediately. Everything that's ever been wrong
20 has been corrected. And the file will show
21 that, Your Honor.

22 Q: And if DHEC, if they've approached you and -- or
23 if they do approach you and tell you to correct
24 something, what would you do?

25 A: I would correct it.



- 1 Q: Okay.
- 2 A: Mr. Chaplin's here in the courtroom today and I
- 3 think he'll attest that I've honored DHEC's
- 4 rules and regulations without any problems.
- 5 Q: Mr. Coggins, who is the land -- make sure I'm
- 6 clear. I think you said this earlier. But
- 7 who's your manure broker you're planning on
- 8 using?
- 9 A: L&M Manure Brokers.
- 10 Q: Okay. To your knowledge, are they permitted by
- 11 DHEC as a manure broker?
- 12 A: Yes, sir.
- 13 Q: Do you know where they're planning on taking the
- 14 manure that's in this ---
- 15 A: I absolutely have no clue.
- 16 Q: They can actually take it to any of their land
- 17 application sites; is that your understanding?
- 18 A: That is correct.
- 19 Q: And did you enter into a contract with them as
- 20 part of your application?
- 21 A: Yes, sir.
- 22 Q: And what did that contract say; do you recall?
- 23 A: No, sir. But, I mean, to my understanding is we
- 24 entered into an agreement that they would take
- 25 the litter from the house and be responsible for



1 it and do the DHEC regulations.

2 **MR. MUSTIAN:** Sorry, Your Honor.

3 Q: But it's your understanding that they have
4 agreed to take responsibility for that litter
5 once it leaves your farm; is that right?

6 A: Yes, sir.

7 Q: Okay. Mr. Coggins, there's been some discussion
8 about a stormwater -- stormwater issues on the
9 facility. What steps do you plan on taking in
10 that regard?

11 A: Whatever DHEC rules in the stormwater plan is
12 what we will do.

13 Q: If there are issues with erosion and things like
14 that, what do you plan on doing to address those
15 issues, if anything?

16 A: They will be adhered to.

17 Q: I mean, is it your intent to prevent erosion and
18 prevent things like that from happening?

19 A: Absolutely. Absolutely.

20 Q: Okay. And if a stormwater plan requires you to
21 install things such as terraces or pipe drops or
22 high velocity fabric, is that something that you
23 are willing to do?

24 A: Whatever the stormwater plan tells us to do,
25 along with the general contractor that will be



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1 doing the grading, that's what we'll do. We did
2 that on my existing facility and we'll do that
3 on the new facility.

4 **MR. MUSTIAN:** Your Honor, I apologies. If I could
5 just beg the Court's indulgence real quick.

6 **Q:** Mr. Coggins, let me show you a document. This
7 is -- was produced in discovery. This is Bates
8 number DCB 199. Do you recognize that document?

9 **A:** Yes, sir. I signed it.

10 **Q:** Okay. And ---

11 **MR. MUSTIAN:** Your Honor, if I could approach and
12 read over his shoulder a little bit.

13 **Q:** Mr. Coggins, could you tell me, is this a
14 contract for a purchase of waste between you and
15 L&M Litter Brokers?

16 **A:** Yes, it is.

17 **Q:** Okay. And is this for your current facility or
18 for the proposed facility?

19 **A:** For the proposed new facility.

20 **Q:** Okay. And if you could read to me the paragraph
21 down at the bottom -- not at the bottom, excuse
22 me. Where it starts with broker will provide,
23 can you read that for me?

24 **A:** Broker will provide necessary equipment and
25 services to remove waste from the facility.



1 Upon removing the waste, broker accepts all
2 waste utilization responsibilities ensuring that
3 the waste is handled, transported, stored,
4 and/or applied in a manner consistent with South
5 Carolina DHEC Regulation 61-43, thus relieving
6 the producer of this responsibility.

7 Q: Okay.

8 **MR. MUSTIAN:** Your Honor, we would move this into the
9 record as the next hearing exhibit.

10 **THE COURT:** Mr. Hightower?

11 **MR. HIGHTOWER:** No objection, Your Honor.

12 **MS. TAYLOR:** No objection.

13 **THE COURT:** What's it marked as?

14 **MR. MUSTIAN:** Well, this has not been previously
15 marked as it's cross exhibit, so I'm not
16 entirely sure.

17 **COURT REPORTER:** Will it be yours?

18 **MR. MUSTIAN:** Yes, ma'am.

19 **COURT REPORTER:** So, it's going to be
20 Respondent-Permittee 22.

21 **THE COURT:** Respondent-Permittee 22 is admitted.

22 (Respondent-Permittees' Exhibit Number 22 was marked
23 and admitted into the record.)

24 Q: So, Mr. Coggins, based on that document, it is
25 your understanding that L&M will take



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1 responsibility for that manure once it leaves
2 your property?

3 A: Yes.

4 Q: Okay. Mr. Coggins, let's talk a little bit
5 about the application process. From the time
6 the original application was filed to the time
7 that it was issued, were any adjustments made to
8 the plan, the location of your facility or
9 Heath's and Jim's facility?

10 A: I think per DHEC's request from -- I think, Mary
11 Basel had talked to Mr. Chaplin. And per their
12 request, the 400-foot buffer up next to Lisbon
13 Road, the houses were moved back so we could
14 actually, you know, completely maintain that
15 400-foot buffer.

16 Q: When you say completely maintain the 400-foot
17 buffer, what do you mean by that?

18 A: Well, the 400-foot buffer does not
19 necessarily -- the only thing the 400-foot
20 buffer does is says you cannot construct a
21 poultry house with less than 400-foot. So, we
22 could use 150 foot of that 400 foot for a
23 load-out area in front of the houses. So, that
24 would cut the buffer down to, what, 250 feet
25 from the road there. And per Bill's request



1 through Mary, we moved the houses -- had AWT
2 move the houses back to where we would leave
3 that full 400-foot buffer there.

4 Q: And when you say where you can leave it there,
5 do you mean that it's vegetated?

6 A: Yes, it is. It's in pine trees on brush as we
7 speak now.

8 Q: Okay. So, have you done some timbering on the
9 property?

10 A: Yes, sir. We have attentively removed the
11 timber where the existing poultry sites are
12 going to go. And that acreage is 255 acres and
13 we've only cut about 75 acres of timber, Your
14 Honor.

15 Q: Okay. But when you timbered it, did you leave
16 that 400-foot vegetative buffer?

17 A: Absolutely.

18 Q: Okay. And it's your understanding that was done
19 at the request of DHEC?

20 A: Yes, sir.

21 Q: And is that something that you opposed, you
22 objected to?

23 A: Oh, no. We want to be good neighbors. We want
24 to comply.

25 Q: When you say you want to be good neighbors, I



1 mean, what's your intention as far as operating
2 these facilities and their impact on the
3 surrounding ---

4 A: To the best of our ability.

5 Q: Best of your ability what?

6 A: To operate the poultry houses. We want to be a
7 good neighbor.

8 Q: Is that important to you?

9 A: Yes, it is.

10 Q: Why is that?

11 A: I just like to be an upstanding person in the
12 community.

13 Q: You lived in the area long? Or you lived in
14 Laurens County long?

15 A: Lived in Laurens County for 65 years.

16 Q: And have known the adjoining property owners,
17 have you known them for some period of time?

18 A: Went to school with Margaret Sparrow. And her
19 dad worked with my uncle at the courthouse
20 for -- I don't know, for an extremely long time.

21 Q: So, these are people that you see from time to
22 time; is that not correct?

23 A: I hadn't seen them in years, to be honest with
24 you. I haven't seen either one of them since
25 high school.



- 1 Q: But you know that you have -- I mean, you could
2 see them around obviously. They're from that
3 area too, right?
- 4 A: Yes, sir.
- 5 Q: Okay. And is it your intention to move away
6 from Laurens County at any point in time?
- 7 A: No, sir.
- 8 Q: Okay. Are you planning on staying in the area
9 and making sure those houses are operated
10 properly?
- 11 A: Yes, sir.
- 12 Q: With respect to cutting the trees, have you
13 talked with anybody about a timber plan on your
14 property?
- 15 A: Yes, sir.
- 16 Q: Who have you talked with?
- 17 A: NRCS and the South Carolina Forestry Service.
- 18 Q: What was the reason that you did that? Why did
19 you talk with them?
- 20 A: We want to leave that 255 acres of what's --
21 after we build the poultry houses, we want to
22 leave it left of vegetated -- we want to operate
23 it as a timber forest and not as cattle farm
24 where my existing operation's at.
- 25 Q: Since you brought that up, let me make sure I



1 understand. The cattle farm that used to be on
2 your existing property, I'm assuming there was
3 cow manure that was deposited on those fields.

4 A: Been there a hundred years.

5 Q: So yes?

6 A: Yes, sir.

7 Q: Mr. Coggins, you talked about -- were you
8 present the day that I presented the stipulation
9 to the Court with respect to the 900-foot
10 hunting setback?

11 A: Yes, sir.

12 Q: Okay. Is -- do you recall me saying that you
13 and Heath and Jim would specifically stipulate
14 to and request that, as a special condition of
15 your permits, that you would be required to
16 grant permission to all of the adjoining
17 property owners, their guests, invitees,
18 lessees, anybody that goes on that property,
19 that you would be willing to grant them a waiver
20 that they could discharge weapons within
21 900 feet of your poultry houses?

22 A: Be happy to.

23 Q: Any conditions that you would put on that?

24 A: None whatsoever.

25 Q: Do you understand that, if you ever revoke



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1 that -- that if the Court were to do that, that
2 if you ever revoke that permission, that you
3 would be in violation of your permit?

4 A: I understand that.

5 Q: Do you understand that if you revoke that
6 permission, then you would no longer be able the
7 operate those poultry houses?

8 A: I understand that.

9 Q: Do you have any problem whatsoever with anyone
10 discharging weapons within 900 feet of your
11 poultry houses?

12 A: No, because I'm sure we will once we get
13 situated.

14 Q: Why do you say that, Mr. Coggins?

15 A: Well, as I said, my son, son-in-laws, and their
16 guests, they love to deer hunt too. So, we will
17 enjoy the property.

18 Q: Going to leave a stand for me somewhere?

19 A: Yes, sir. Certainly will.

20 **THE COURT:** You can charge him like he charges you.

21 **THE WITNESS:** Your Honor, will you attest to that,
22 please?

23 **MR. MUSTIAN:** Now, Your Honor. Attorneys got to make
24 a living.

25 **THE WITNESS:** How well, Your Honor?



1 MR. MUSTIAN: I would move to strike that.

2 Q: Ms. Taylor -- there was some objection going on
3 at the time. Ms. Taylor asked you about would
4 you be willing to consider an additional special
5 condition of your permit releasing the adjoining
6 property owners, lessees, all those people,
7 would you consider releasing them from liability
8 of what would happen to the chickens; do you
9 recall that?

10 A: Yes.

11 Q: Is that something you're willing to consider,
12 depending upon what the terms of that is?

13 A: Yes, sir.

14 Q: Throughout this process, applying for the
15 permit, going through DHEC, any of that, were
16 you ever contacted by anyone asking you if you'd
17 be willing to adjust your operations in any way?

18 A: No, sir. And if we had have been, we would have
19 been more than happy to headed this issue off a
20 long time ago, if this is an issue.

21 Q: Okay. Is this something you're willing to
22 consider, any type of offering, in order to --
23 as a condition of the permit in order to address
24 these issues? I'm not saying that you would
25 agree to it, but is that something you're always



1 willing to consider?

2 A: We'll take a look at anything they offer.

3 MR. MUSTIAN: Your Honor, that's all I have.

4 THE COURT: Mr. Hightower.

5 MR. COGGINS - CROSS EXAMINATION BY MR. HIGHTOWER:

6 Q: Mr. Coggins, good afternoon.

7 A: We're there. We're there.

8 Q: I just have a few questions. When you
9 constructed your barns, your current facility
10 ---

11 A: Yes, sir.

12 Q: --- that was back in 2002, correct?

13 A: That's correct.

14 Q: Do you remember at that time whether or not you
15 were required, as a condition of your permit, to
16 get a stormwater management plan ---

17 A: At that time we didn't have to have it, Your
18 Honor -- I mean, Stephen.

19 Q: So, the facility would have been constructed
20 just as however the contractor would have built
21 the land and everything else, correct?

22 A: Correct. But I used a reputable contractor, so
23 it was -- which was built to very good
24 standards.

25 Q: Okay. And you're aware that, since that time,



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1 the Department now requires all poultry
2 facilities to get a stormwater plan after they
3 get their agricultural permit from DHEC,
4 correct?

5 A: Yes, sir.

6 Q: Okay. You were asked by Ms. Taylor -- or I
7 should say, in response to a question by Ms.
8 Taylor, you acknowledge that you have trucks and
9 equipment in your current stacking shed at your
10 current facility, correct?

11 A: Yes, sir.

12 Q: Okay. Are you aware that DHEC has no
13 requirements prohibiting storage of equipment or
14 vehicles in stacking sheds?

15 A: I didn't remember that in the previous CNMP back
16 in '05.

17 Q: Okay. And if I told you that it's really NRCS
18 that has those requirements, in part because
19 they provide the money to build them, would
20 you -- do you -- let me strike that. If I told
21 you that, would you find -- would you state that
22 that's incorrect?

23 A: I didn't understand.

24 Q: I know. And I confused myself.

25 A: That's fine.



1 Q: Just do a -- are you aware that NRCS has a
2 requirement that you shouldn't keep vehicles or
3 equipment in the stacking shed, which is
4 predicated on the fact that they provide the
5 money to build the facility, that ---

6 A: I didn't realize that, Mr. Stephen. The only
7 thing that I do know is that for a period of
8 years you can't alter the facility. But I did
9 not know that you couldn't store a vehicle under
10 there. And they had actually been there on the
11 farm and done site inspections.

12 Q: Have you ever been cited by NRCS for any ---

13 A: No, sir.

14 Q: --- failures? Okay. Thank you.

15 A: No. None whatsoever. In fact, with being on
16 the Soil and Water Conservation Board, I've been
17 to NRCS office there on frequent -- several
18 times a week. I'm treasurer, so I go in and
19 write checks and pay bills for the Laurens
20 County association. Plus I'm also chairman of
21 the Joe Adair Outdoor Center, which is owned
22 by -- property is owned by the Laurens County
23 Soil and Water Conservation District, which is
24 leased to school districts in Laurens County 55,
25 56 for the education of children on



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1 environmental issues.

2 Q: And my last questions are just that -- in
3 response to your attorney's questions, you
4 stated that you had agreed to have the barns
5 moved from the original site location in order
6 to maintain a full 400 feet of vegetative
7 buffer.

8 A: That is correct.

9 Q: And because of that request, actually the barns
10 were moved closer to where the river is; isn't
11 that correct?

12 A: That's exactly correct.

13 Q: And I know I have discussed this with your
14 counsel, but if it was determined that you
15 actually needed to move the barns back away from
16 the river some portion or distance would you
17 have a problem with that?

18 A: Don't think so, Your Honor.

19 Q: Thank you for the promotion, but Judge Anderson
20 is Your Honor.

21 A: I'm sorry.

22 MR. HIGHTOWER: Thank you. No further questions.

23 THE COURT: I'm glad you feel that would be a
24 promotion. Sometimes I wonder.

25 MS. TAYLOR: If I may, just briefly.



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1 THE COURT: Your not making any promises this time?

2 MS. TAYLOR: I'm not going to make any promises, but
3 I'll do my best. How's that?

4 THE COURT: Last time your one question had
5 multi-grandchildren.

6 MR. COGGINS - RE-DIRECT EXAMINATION BY MS. TAYLOR:

7 Q: Mr. Coggins, I just want to make clear, I -- and
8 during our -- the time in which I was asking you
9 questions, I had put before you your deposition
10 testimony dealing with water running from your
11 ditches, down the slope, into the pond. And you
12 did not dispute that deposition testimony; is
13 that correct?

14 A: Yes.

15 Q: If I understood correctly, in questioning from
16 your attorney. Mr. Mustian, you said that the --
17 whatever water was in the ditches were
18 dissipated and did not enter the pond. Did I
19 understand that correctly?

20 A: That's probably -- I may have not meant to say
21 -- I mean, it's on a slope, so at some point in
22 time it may get there, but it's on a slow slope.
23 So, the ditches stop at the end of the houses.
24 Now, where the water goes, it goes through a
25 grassed area. And if you'll check DHEC



1 regulations, anything over 100 feet in grass is
2 not an opposing discharge, which I don't have
3 any discharge whatsoever. We're talking about
4 rainwater. That's an act of God.

5 Q: So, whatever -- well, do you take as true
6 whatever DHEC regulation says as far as it's
7 regulations applicable to your operation?

8 A: I don't understand.

9 Q: You had just mentioned in your last answer some
10 DHEC regulations. Did I understand you
11 correctly?

12 A: Yes, ma'am.

13 Q: Okay. So, you were describing them and I'm just
14 asking if you would accept whatever those
15 regulations state as being ---

16 A: I try to adhere to them now.

17 Q: Okay. I just want to ask if you would accept
18 those regulations as being what they are ---

19 A: I try to adhere to them now.

20 Q: Okay. I understand that. The deposition
21 testimony that you took seems to me to be
22 different from when Mr. Mustian asked you
23 questions. Are you disavowing your agreement to
24 this testimony in your deposition?

25 A: Don't put words in my mouth. That's not



1 sanitary. I mean, what's been said has been
2 said.

3 **MS. TAYLOR:** Your Honor, may I put in evidence the
4 portions of his transcript?

5 **MR. MUSTIAN:** Your Honor, objections as far as
6 exhibits. She's read it in as testimony.

7 **THE COURT:** Yeah, it's been published, so it's part
8 of the record.

9 **MS. TAYLOR:** Okay. As long as it's considered.

10 **THE COURT:** Yeah.

11 **Q:** You had also in your deposition testimony
12 described barn ventilation.

13 **MR. MUSTIAN:** Your Honor, I don't believe I addressed
14 anything with barn ventilation with respect to
15 my Cross Examination.

16 **MS. TAYLOR:** I believe you did.

17 **MR. MUSTIAN:** I don't believe I did, Your Honor.

18 **THE COURT:** You asked about -- I'm not sure if you
19 did or not.

20 **MS. TAYLOR:** There was some testimony about no
21 pollution that leaves the barns and enters the
22 environment.

23 **MR. MUSTIAN:** Your Honor, I believe that was in the
24 context of water pollution, not in the context
25 of any air issues.



1 MS. TAYLOR: I think there is a relationship with
2 water pollution. If I may ask the question.

3 THE COURT: Well, you can ask him with regard to
4 water pollution.

5 Q: You had testified at your deposition that there
6 are barns, this is your existing facility,
7 located from one end to the other on the houses,
8 the barns, correct? I think it may be helpful
9 to put this back. I'm not trying to -- it's
10 easier to -- okay. If I understood your
11 testimony correct here, and we have this map in
12 front of us, do you have barns on each end of
13 these -- I mean, do you have exhaust fans,
14 ventilation fans on each end of these barns,
15 correct?

16 A: Yes, ma'am.

17 Q: All right. So, they exhaust litter, correct?

18 MR. MUSTIAN: Your Honor, objection. I did not do
19 anything -- did not ask him any questions about
20 exhausting of litter. My question was about
21 rainwater sheeting off the roofs of the houses
22 getting in ditches and then going to the pond.
23 How -- she did not ask him either in her Direct
24 Examination and I certainly didn't ask him on
25 his Cross Examination about what happens to



1 exhaustings from the facilities.

2 **THE COURT:** Ms. Taylor?

3 **MS. TAYLOR:** I am tired today, I understand that.

4 But I believe I did ask questions relating to

5 ---

6 **THE COURT:** You asked questions in your Direct. The
7 issue is whether he asked in his Cross
8 Examination.

9 **MS. TAYLOR:** I understood him to ask about whether or
10 not there was any pollutant that entered water
11 resources from his barns.

12 **MR. MUSTIAN:** And, Your Honor we're not talking about
13 water resources. We're talking about exhausting
14 and ---.

15 **THE COURT:** You're asking about exhaust fans.

16 **MS. TAYLOR:** Well, what I'm trying to get at here is
17 that there are fans on this side of the barn,
18 which exhaust litter, manure, dust, et cetera.
19 And then there is a waterbody right here, which
20 he has already stated in his deposition, which
21 I believe he is adhering to that the ---

22 **THE COURT:** So, what your point is, that goes into
23 the waterbody?

24 **MS. TAYLOR:** That's correct.

25 **THE COURT:** All right.



1 MR. MUSTIAN: I mean, Your Honor, my objection still
2 stands. I think this goes to air issues, I
3 mean, how the air flows and all that sort of
4 thing.

5 THE COURT: It would be air out of the -- I sustain
6 the objection.

7 MS. TAYLOR: Can I say one more thing?

8 THE COURT: Yeah.

9 MS. TAYLOR: I mean, we do have literature from EPA
10 and other authorities that do talk about how one
11 of the many ways in which poultry barns
12 contribute to water pollution is the dust,
13 litter, which includes manure, emanating from
14 barns and entering waterways. I'm not making --
15 this is not something I'm pulling out of a hat.

16 MR. MUSTIAN: Your Honor, first of all, that is not
17 in the evidence of the case as of yet. Second
18 of all, you know, there was no discussion in my
19 examination as far as EPA guidelines or studies
20 about air quality and movement of litter.

21 THE COURT: I haven't precluded you from testimony
22 about that in the future. The only issue now is
23 was that within the scope of Re-Direct as far as
24 the questions that he has already asked.

25 MS. TAYLOR: And my contention is it falls within the



1 scope of what he examined ---

2 **THE COURT:** I believe he was asking about stormwater
3 runoff going into the water system and you're
4 asking about air being exhausted out of the
5 facilities with contaminants contained therein
6 going into the water system. And you perceive
7 that as the same.

8 **MS. TAYLOR:** I perceive that discussion was more
9 contaminants leaving the barn entering
10 waterways.

11 **THE COURT:** I sustain his objection on that.
12 Anything else?

13 **MS. TAYLOR:** Yes.

14 **Q:** Mr. Coggins, this is part of the exhibit, which
15 I'm not trying to enter into evidence again.
16 This is the DHEC_000004, which is an animal
17 waste analysis report from the Agricultural
18 Service Laboratory of Clemson University. If
19 you could just take a look at that for a moment
20 and tell me what the moisture level is.

21 **MR. MUSTIAN:** Your Honor, I didn't ask about anything
22 on that on Cross Examination.

23 **THE COURT:** Ms. Taylor?

24 **MS. TAYLOR:** I object. You were talking about dry
25 manure.



1 MR. MUSTIAN: I don't believe the words dry manure
2 ever left my -- I don't believe I ever said
3 anything about dry manure.

4 MS. TAYLOR: I'm not sure if it has to be the exact
5 phrase, but my understanding was you were
6 talking about dry -- I mean, manure that was not
7 coming into contact with waters of the state or
8 waters in general.

9 THE COURT: I don't know -- asking him that, but he
10 did ask about the cleaning out of the facilities
11 and individuals coming and doing the total
12 cleanout of -- I forgot what ...

13 MR. MUSTIAN: Crusting out.

14 THE COURT: Crusting out.

15 MS. TAYLOR: I think we can get this in another way.

16 THE COURT: Okay.

17 Q: Mr. Coggins, there was some question about a
18 grading plan for the your existing facility as
19 I understand it. Is that correct?

20 A: No, ma'am.

21 Q: You didn't have any discussion with Mr. Mustian
22 about a grading plan?

23 A: For the existing facility?

24 Q: Correct.

25 A: That -- well, if the contractor would have had



1 one, yes.

2 Q: You've confused me now. Are you talking about
3 there are -- will there be or is there now
4 currently a designed grading plan for your
5 proposed facility?

6 THE COURT: You moved from existing to proposed. I
7 think that's where the confusion was.

8 MS. TAYLOR: I'm sorry. I meant proposed.

9 THE COURT: Okay. There you go.

10 Q: Okay. So, is there an existing grading plan ---

11 A: No, ma'am.

12 THE COURT: For the proposed facility.

13 MS. TAYLOR: For the proposed facility.

14 THE COURT: Okay.

15 A: That's what I thought you said.

16 Q: Okay. And the answer is?

17 A: No.

18 Q: Okay.

19 A: Hadn't got a permit yet.

20 MS. TAYLOR: That's all I have.

21 THE COURT: New matter -- okay.

22 MR. HIGHTOWER: Nothing, Your Honor.

23 THE COURT: You may step down. Would now be a good
24 time to take a break for lunch?

25 MS. TAYLOR: Yes, Your Honor.



1 MR. HIGHTOWER: Yes, Your Honor.

2 THE COURT: I do want to be clear. On my ruling
3 concerning the public records document, I looked
4 up case law on that. And if I can find the
5 case. It would be Fowler versus Nationwide
6 Mutual Fire Insurance Company. But the document
7 could come in, but not for the truth of the
8 matter asserted regarding any opinions,
9 judgments, or conclusions made therein.
10 Therefore any conclusion about soil types, which
11 I've had those cases before me where expert
12 witnesses testify one way or the other, but that
13 the truth of that soil type could not be set
14 forth or would not be proper. So, I just want
15 the record to be clear on that. No -- once
16 again, opinions, judgments, or conclusions are
17 improper, public records exception. All right.

18 MR. MUSTIAN: Thank you, Your Honor.

19 MR. HIGHTOWER: Thank you, Your Honor.

20 THE COURT: Thank you all very much for your time.

21 (Off the Record)

22 MS. TAYLOR: Your Honor, Petitioners call Dr. David
23 Hargett.

24 DAVID LINDSAY HARGETT, Ph.D., having been duly sworn,
25 deposes and testifies as follows:



1 COURT REPORTER: Please state your full name for the
2 record?

3 THE WITNESS: David Lindsay, L-I-N-D-S-A-Y, Hargett,
4 H-A-R-G-E-T-T.

5 COURT REPORTER: Thank you.

6 DR. HARGETT - DIRECT EXAMINATION BY MS. TAYLOR:

7 Q: Dr. Hargett, I may be moving around a lot. I've
8 got a lot of paper over here, as you were well
9 aware. And I may move over here. I'm going to
10 try to stick to this podium and as close as I
11 can to this paper, okay? Also, if you need any
12 breaks during this testimony, please let me
13 know. Let Respondents' counsel know as well.

14 A: Thank you.

15 Q: All right. We're going to start here with your
16 resume, Dr. Hargett, with your educational
17 background. Tell me where you received your BS
18 degree.

19 A: North Carolina State University.

20 Q: And what was the major for that BS? What was
21 your ...

22 A: It was in conservation, which was a program
23 offered jointly by the Department -- the School
24 of Agriculture and the School of Forestry at the
25 time.



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1 Q: What were your courses of study for this
2 bachelor's of science?

3 A: I had an extensive course work in soil science
4 and forestry and biological sciences,
5 agricultural related activities, subjects, that
6 was the technical basis.

7 Q: And do you recall what year you graduated?

8 A: I started in NC State in 1969. I spent three
9 years in the Army and finished in 1976.

10 Q: Did you graduate with any honors?

11 A: Yes, I graduated with honors.

12 Q: All right. Did you receive any advanced
13 degrees?

14 A: I have two advanced degrees. I have a master's,
15 a master of science in soil of science, also
16 from North Carolina State. And I have a Ph.D.
17 in land resources from the University of
18 Wisconsin-Madison.

19 Q: All right. Let's start with your M.S. in soil
20 science. Tell us what your course of study
21 and/or focus of academic research was.

22 A: My course work was predominantly in the various
23 sub-disciplines of soil science to includes soil
24 fertility, soil chemistry, soil mineralogy, soil
25 classification, soil theories. And my minor for



1 my master's program was in landscaping
2 architecture.

3 Q: Same question for your Ph.D. in land resources.

4 A: Excuse me, I didn't finish my response on the
5 first. You asked me about my research program?

6 Q: Yes.

7 A: That was on erosion sediment and stormwater
8 control from drastically disturbed construction
9 sites, specifically on highway roadsides. And
10 then on the Ph.D. program?

11 Q: Yes.

12 A: The course work for that, that started at the
13 University of Wisconsin-Madison to get a Ph.D.
14 in soil science. And by that time I realized
15 that there really weren't any soil courses left
16 to take. I had pretty much all of them. And I
17 was developing a broader interest in
18 environmental applications. I ended up
19 switching to the land resources program, which
20 is one of three academic programs in what's now
21 the Gaylord Nelson School of the Environment.
22 And the other two were water resources and
23 remote sensing. I took a broad spectrum of
24 courses, a lot of geology, hydrogeology courses,
25 engineering courses, agricultural engineering



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1 course. I even took some law classes at the
2 University of Wisconsin Law School. And water
3 resources related courses, in terms of quality
4 and quantity and policy related issues. My
5 research was on land application of waste and
6 how large scale applications of waste,
7 particularly wastewater to land, was processed
8 through soils, some of the policy issues related
9 to that and the permitting process.

10 Q: Thank you.

11 **THE COURT:** What law classes did you take?

12 **THE WITNESS:** I took an environmental law class, a
13 land use law class, and water rights law. The
14 professor for two of those was a fellow named
15 Jim McDonald, fabulous fellow.

16 Q: Okay. Let's move on to your academic
17 appointments. I see here that you have an
18 appointment at the Strom Thurmond Institute at
19 Clemson University. Could you tell the Court
20 about that?

21 A: I became involved with the Strom Thurmond
22 Institute through collaboration on some research
23 programs about 2000. And that really is an
24 adjunct arrangement. I was a partner on
25 research, so I would be involved in meetings and



1 scoping and performance of research related
2 topics, particularly with regard to water
3 resources. And Water Resources Institute is
4 also listed, I think, there in that affiliation.
5 And that is housed -- or at that time was housed
6 in the Strom Thurmond Institute. I think I
7 answered that.

8 Q: Are you still a senior scholar with the South
9 Carolina Water Resources Center?

10 A: I've not been very active for the last several
11 years. You know, that research initiative,
12 which was pretty major research initiative on
13 the Saluda-Reedy Watershed, was completed about
14 2007. And I still collaborate occasionally and
15 invited to Clemson to lecture students on
16 various topics and to collaborate on research
17 ideas.

18 Q: And what were some of the issues in which you
19 worked on topics that you worked on during your
20 time there?

21 A: The Saluda-Reedy Watershed Consortium work
22 started about 2000 and ran until about 2007.
23 And we had many different disciplines, many
24 different departments in the university
25 involved, as well as private sector firms. I



1 was really one of the private sector consultants
2 involved in that. We looked at water supply.
3 We looked at water quality. One of the key
4 things that I led was a data mining project,
5 which basically we looked at all the historical
6 water quality data that they had captured in the
7 Saluda-Reedy Watershed going back through its
8 entire history and looking at water quality
9 trends going forward. We also did
10 characterization of the point and non-point
11 sources of contamination, assessing those
12 programs, assessing the hot spots and special
13 concerns, whether they were municipally-based or
14 rural-based concerns. We looked at policy
15 issues regarding dams in, you know, the
16 watershed. We looked at sedimentation,
17 particularly sedimentation to public water
18 supply reservoirs like Lake Greenwood. We
19 looked at some of the social size watershed
20 concerns, like does the community actually
21 understand what watersheds are and what their
22 place in the watershed is and what the
23 appropriate perspective is on their individual
24 stewardship. That was enlightening.

25 Q: Watershed management was included in that?



1 A: Yes.

2 Q: Do you -- it states here that you are an adjunct
3 associate professor at Clemson University since
4 2002. Tell me about your professorship and what
5 your role was and subject matter in terms of
6 professorship.

7 A: Well, I have an adjunct associate professorship
8 in two different departments. And you have to
9 forgive me, because departments keep changing
10 names in a bureaucratic system like Clemson. I
11 think it's now called the Earth Science and
12 Environmental Engineering Program. And it's a
13 blend of what it sounds like, includes the earth
14 science, geology, hydrogeology disciplines, as
15 well as environmental engineering and the broad
16 spectrum of sub-topics under that. I've served
17 on numerous graduate-student committees,
18 advisory committees and collaborated on research
19 in areas ranging from water resources to
20 toxicology. The other appointment is in
21 forestry and natural resources. And in that
22 I've collaborated on land cover change studies,
23 looking -- for example, one study looked at the
24 I-85 corridor from Anderson County to
25 Spartanburg County and established a baseline



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1 information of how much land is developed, how
2 much is not. And that has lots of ramifications
3 in terms of water quality and water use and
4 stresses on the environment.

5 Q: Can you tell us all your professional
6 registrations or certifications?

7 A: Today I don't have any. I've let them all
8 lapse. And that's by design. Like attorneys,
9 they all require CEUs. And I'm now at an age,
10 almost 65 in two weeks, where I don't need to
11 sustain a lot of professional education
12 programming anymore. I have been certified as
13 a certified groundwater professional through the
14 Association of Groundwater Scientists and
15 Engineers. That's a national certification
16 based on experience and education credentials.
17 I also have been a licensed soil classifier in
18 South Carolina and served on the advisory board
19 under Department of LLR for that agency for
20 three years, I believe it was. I have been a
21 certified professional soil scientist, certified
22 professional soil classifier, I've also been a
23 professional project manager, project management
24 professional PMP is the credential. So those
25 have -- I think I've answered the question.



1 Q: Yes. I'm going to touch now on a few relevant
2 projects that you have worked on in the course
3 of your professional and possibly academic
4 career. I see that you had worked for Duke
5 Energy Corporation relating to the Lee Nuclear
6 Station. Can you describe the scope of the work
7 that you performed for Duke Energy?

8 A: Yes, ma'am. I was engaged by Duke Energy in
9 about 2008-2009, I believe it was, to be what
10 they called the subject matter expert for
11 hydrology and hydrogeology, which my
12 responsibilities were basically to oversee
13 projects and studies and reports that were
14 related to the Nuclear Regulatory Commissions
15 licensing requirements for that plant.
16 Interestingly, it was basically the same kind of
17 plant that was just terminated here in Fairfield
18 County. Same technology was intended to be
19 applied. I really doubted it'll ever be built,
20 but fascinating study. A lot of very technical
21 work, fascinating history for that particular
22 site in that it was started as a nuclear
23 development site in the '70s and was abandoned
24 due to the economy and due to things like Three
25 Mile Island at that time in the early '80s. And



1 it was resurrected as a potential nuclear
2 development site in 2002 or '03. So, Duke went
3 back in, reacquired the site and started the
4 process of doing all of the necessary studies,
5 which became a lot more rigorous in the process.
6 Even while we were conducting these studies the
7 Fukushima incident occurred and we had to go
8 back and redo a lot of things much more
9 conservatively. But the scope of work that I
10 was involved in basically involved site
11 characterization, understanding the surface
12 hydrology, where water goes on the site, how
13 potentially contaminants, to include
14 radionuclides, might behave in the case of an
15 accidental release from the site. So, we had to
16 basically game or model all of those parameters
17 and understand and demonstrate to both DHEC and
18 the Nuclear Regulatory Commission what would
19 happen in the case of an accident. And that was
20 all formative to the design process in terms of
21 how the plant would be built, what the
22 protective measures would be. And that
23 involved, you know, an array of disciplines,
24 numerous consultants, numerous experts from a
25 variety of fields.



1 Q: Did that project involve developing permit
2 applications?

3 A: Yes.

4 Q: All right. And in the course of developing
5 permit applications, did you review the
6 regulations relevant to the permit application?

7 A: Yes, both the state and federal.

8 Q: Okay. And just correct me if I'm wrong. You
9 did mention surface water use and modeling as a
10 part of that project?

11 A: Yes.

12 Q: Okay. How about -- I see that you had done some
13 technical litigation support and analysis for
14 the Southern Environmental Law Center out of
15 Chapel Hill, North Carolina.

16 A: Yes.

17 Q: Can you briefly tell me the subject of that
18 project and how that relates to the work that
19 you've done here in this case?

20 A: Well, it's a different environmental application
21 from this particular case, but the common ground
22 is -- SELC case was a lawsuit by Upstate
23 Forever, I think, and Savannah Riverkeeper were
24 the plaintiffs addressing the surface water
25 impacts from a very large gasoline spill,



1 underground pipeline spill. And it was also a
2 groundwater issue. I was also involved in a
3 Companion case related to impacts to the
4 landowner. And that case was, you know, settled
5 recently. The SELC case, I think, is in appeal
6 based on some procedural issues. But it was
7 really a surface water -- runoff and surface
8 water impact case.

9 Q: I see that you have provided some services to
10 the Metcalfe law firm in Greenville, South
11 Carolina providing technical assessment and
12 permitting support. Can you tell me briefly
13 about that project?

14 A: That was a case where an old surface water pond
15 had been partly filled by a landowner. And the
16 City of Greenville had fined the party. And it
17 was not a large case, not a very long-running
18 case. I was able to demonstrate that the city
19 was completely wrong in their understanding of
20 the site hydrology and how the dam came to be.
21 And we were able to get that case settled pretty
22 quickly.

23 Q: Did that project involve violations to the Clean
24 Water Acts and to municipal stormwater issues?

25 A: Potentially, yes.



1 Q: McCall Environmental in Greenville County, you
2 had provided some technical analysis and
3 consultation relating to a TMDL. Can you tell
4 us about that project?

5 A: Right. Had a very long history there. And that
6 goes back to some of the Reedy River work that
7 I had done in a variety of different capacities.
8 Greenville County and the City of Greenville
9 and ReWa, which formerly was Western Carolina
10 Regional Sewer Authority, all have TMDL issues
11 related to the Reedy River dealing with
12 nutrients in particular. And, you know, some of
13 that's function of those large MS4 programs in
14 the city and county of Greenville, as well as
15 ReWa's NPDES discharges. I've been involved in
16 numerous studies, to include some for DHEC as a
17 contractor to DHEC and also in litigation
18 regarding water quality dealing with the large
19 component of nutrients that goes down Reedy
20 River and ultimately into Boyd Millpond and Lake
21 Greenwood, which resulted in 1999, I believe it
22 was, in a pretty spectacular algae growth on the
23 Reedy arm of Lake Greenwood. And that was
24 involved -- at the time there was litigation by
25 ReWa's predecessor, Western Carolina Regional



1 Sewer Authority, versus DHEC over DHEC's
2 classification of water quality in Lake
3 Greenwood. And I was a partner with DHEC,
4 testified on DHEC's behalf in that. Anyway,
5 that goes to a long history that I had of
6 knowledge of conditions affecting water quality
7 in the Reedy River and in the particular project
8 that I worked with Gene McCall on. I was
9 basically an advisor and a consultant to the
10 city -- excuse me, to Greenville County on its
11 role in the development of a TMDL.

12 Q: I see that you have provided professional
13 services to Upstate Forever and Allied
14 Conservation organizations in Greenville County
15 providing technical consultation. Can you tell
16 us a little bit about that project briefly?

17 A: Well, there really were numerous projects. Some
18 of those dealt with opposition permits dealing
19 with development or trying to encourage
20 development be done in a way sensitive to the
21 environment. For example, one was a development
22 on the North Saluda River, which has receded.
23 It's a Gary Player resort now. And we were able
24 to negotiate, based on technical analysis, which
25 I was involved in, and provide a lot of changes



1 to the nature of the development with the degree
2 of intrusion to the North Saluda River,
3 increasing buffers, protecting the river, and
4 reducing numbers of play-overs for golf courses,
5 bridges for golf courses, those kind of things.
6 Other work that I did for Upstate Forever
7 involved conservation properties I've done for
8 Upstate Forever, as well several other land
9 trust organizations. I've done Phase 1
10 Environmental Site Assessments on over 10,000
11 acres of conservation properties predominantly
12 in northern Greenville County, Pickens, Oconee
13 counties. I've also done that kind of work for
14 South Carolina DNR and South Carolina PRT.

15 Q: I see that you have you performed some work for
16 the North Carolina Department of Justice out of
17 Raleigh, North Carolina. Can you briefly
18 describe the scope of that work?

19 A: Yes, that was a case about a dozen years ago
20 where the North Carolina Department of
21 Environment and Natural Resources. DENR in
22 North Carolina is conflicted with a property
23 owner over the classification of the streams.
24 This was in the Neuse River, which had some very
25 stringent requirements for the developers



1 because of the historical sensitivity of the
2 Neuse River to, among other things, agriculture
3 and animal waste. But that reached all the way
4 up into the Raleigh area into headwater streams.
5 And so, the Department of Justice was trying to
6 settle that particular dispute and hired me as
7 a consultant to come in as an independent third-
8 party and render an opinion on whether streams
9 should be classified as intermittent or
10 perennial. And that was the subject for
11 settlement of the case.

12 Q: Okay. You may have touched on this earlier, but
13 I see that you had provided some work dealing
14 with riparian assessment for the Reedy River
15 watershed in South Carolina.

16 A: Yes, that was a Section 319 study funded by the
17 DHEC. And basically my job was to orchestrate
18 a study and perform the study. Lots of field
19 work on the entirety of the Reedy River from its
20 headwaters to Lake Greenwood and all of its
21 major tributaries. And basically we looked at
22 all forms of non-point pollution including
23 agricultural stormwater, the riparian condition
24 of buffers along all those streams. And that
25 work was reported to DHEC.



1 Q: You have done some work associated with
2 permitting merchant power plants in Greenville
3 County. Can you tell us briefly about the
4 subject matter and scope of that work?

5 A: Yes. That was an interesting case. I was
6 approached by citizens to help them defend
7 against three merchant power plants. Merchant
8 power plants were, I'll characterize it as
9 speculative energy plants that burned natural
10 gas. And they needed a location where they had
11 transmission capacity, they had water and they
12 had a natural gas supply line available. And
13 there was a perfect location in southern
14 Greenville County. These individuals,
15 residents, neighborhood associations and so
16 forth asked me to assist them in appealing what
17 looked like a certain permitting of these
18 plants. They're were three of them proposed.
19 And the dispute that I presented to the South
20 Carolina Public Service Commission and testimony
21 was that the proposal to provide 10 million
22 gallons to each of those three plants is going
23 to come from Western Carolina Regional Sewer
24 Authority. They basically were going to divert
25 100 percent of their wastewater flows and sell



1 that water to these power plants to cool the
2 plants. What that would have done is basically
3 dry up the Reedy River, cause it is an affluent
4 dependent stream. And so, on my testimony that
5 case was basically rejected. First power plant
6 ever turned down in South Carolina.

7 Q: I see that you've done some work concerning
8 stormwater runoff for the Hitchcock Foundation
9 in Aiken, South Carolina. Can you briefly
10 describe that scope of work?

11 A: Yes. There's a spectacular historically park
12 just on the southwest side of downtown Aiken
13 that has a stream called the Sand River that
14 flows through it. And it has very pronounced
15 topographic break from the downtown area down to
16 Sand River and has developed a pretty colossal
17 canyon down through the park... And so, I
18 consulted with Hitchcock Woods, which is the
19 owner of that parkland, several thousand acres,
20 and tried to assist them in putting together
21 plans and programs and working with the city to
22 try to mitigate that problem.

23 Q: The Reedy River litigation involving the Clean
24 Water Act, can you tell us a little bit about
25 that -- your role in that project?



1 A: That was the one I mentioned earlier where
2 basically it was Western Carolina suing DHEC.

3 Q: So, which side did you work on?

4 A: I was on DHEC's side on that.

5 Q: I see you worked for Greenwood County, the
6 county administrator and the County Council for
7 Greenwood on some issues relating to Lake
8 Greenwood. Can you tell us briefly about that?

9 A: Yes.. Excuse me, let me go back to the
10 litigation with DHEC. The outcome of that was
11 that the -- was basically a negotiation that
12 there would be a TMDL for the Reedy River. So,
13 that's how that lawsuit was -- that dispute was
14 settled between Western Carolina Regional Sewer
15 Authority and DHEC. Greenwood County had their
16 council and their county administrator hired me
17 to give them some briefings and educational
18 insight on issues potentially effecting Lake
19 Greenwood to include nutrient discharges, non-
20 point impacts, point source impacts, and also
21 specifically issues relating to Lake Conestee
22 and the Lake Conestee dam, which I was involved
23 in.

24 Q: Now, you've done some work for Burroughs &
25 Chapin company in Myrtle Beach. Can you tell us



1 briefly about what that work involved?

2 A: Yes. They were involved in a perspective major
3 resort development project in northern
4 Greenville County on the South Saluda River
5 about a, if I recall correctly, 2700 acre tract
6 and mountainous rugged terrain. And I was part
7 of a consulting team of scientists and engineers
8 that were evaluating different technologies, how
9 they would deal with their wastewater drainage
10 from something on the order of 1500 homes I'm
11 thinking it was, where that might go. Could it
12 go into surface water discharge? And the answer
13 to that was no. Or how, if you went to land
14 disposal, would you achieve that? So, we looked
15 at an array of technologies. And then the
16 economy blew up and that project went away.

17 Q: I see here that you -- a part of that project
18 was consulting involving soils and also
19 including serving as a liaison for permitting
20 issues. Is that ---

21 A: Yes.

22 Q: North Carolina Department of Transportation. I
23 see that you have provided some consulting
24 services to them from briefly -- I think you may
25 have mentioned this before. I just want to make



1 sure.

2 A: Well, part of that was my master's work. But I
3 also was engaged by NCDOT to consult with them
4 on follow-on work, in terms of how the learnings
5 from my master's research could be implemented
6 in their roadside stabilization programs.

7 Q: And did that work involve research on soil
8 erosion of disturbed lands?

9 A: Yes.

10 Q: You have several professional memberships here.
11 Are you a -- tell me about the American Society
12 for Testing and Materials, your membership in
13 those various committees.

14 A: ASTM is basically the technical standards
15 agency, not only in the US, but worldwide that
16 writes technical standards for anything from
17 soil testing procedures to materials testing
18 procedures, siting guidance for how to conduct
19 any particular kind of site evaluation for any
20 kind of facility, be it a wastewater treatment
21 plant or landfill, a aquifer test, very broad
22 spectrum of testing. They test anything from
23 football helmets to skis to technical
24 applications related to areas that I was
25 interested in. I was involved in several



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1 committees, mostly in the '80s and '90s, during
2 the development of standards, environmental
3 standards in particular, on how various
4 environmental conditions might be evaluated.

5 Q: Are you a member of the Soil Science Society of
6 America?

7 A: I am still a member of that, yes.

8 Q: Are you a member of the Soil and Water
9 Conservation Society?

10 A: I let that lapse.

11 Q: Okay. I see that you have received various
12 awards and recognitions for community service.
13 Tell me about the recognition you received from
14 the Greenville County Soil and Water
15 Conservation District.

16 A: One of my jobs presently is as executive
17 director of the Conestee Foundation. It owns
18 a nature park of over 400 acres in the center of
19 Greenville County that includes Lake Conestee,
20 which is a former industrial lake. It also
21 includes three former farms. And that park has
22 been open 11 years. It also -- I utilize, like
23 any farmer, every resource available. And one
24 of those is in NRCS. I have a long history of
25 working with NRCS and using their expertise,



1 using their programs. Their environmental
2 quality improvement program, for example, is one
3 of the funding programs. So, it helps
4 landowners, helps farmers do things in an
5 environmentally appropriate way. So, the park
6 is a farm. So, they recognize some of the
7 innovative things that we were doing in the park
8 in terms of soil and water conservation
9 practices, forest management practices,
10 eradication of invasive species and those kinds
11 of things. And they awarded me the
12 Conservationist of the Year Award that
13 particular year.

14 Q: I see that your -- from your employment history
15 from 1976 to 1979 you served as a soil scientist
16 for the Soil Conservation Service of the USDA.
17 Tell me about your tenure there briefly, what
18 your duties involved?

19 A: That's ancient history. Soil Conservation
20 Service was what the agency was called before it
21 became the Natural Resource Conservation
22 Service. We were -- Mr. Stewart talked about
23 this, his 30 some years. So, I had interned
24 with SCS back in the mid '70s when I was still
25 a student and stayed on the roster with them,



1 involved in some related projects, for three
2 years.

3 Q: And you've mentioned this before. I just want
4 to recap kind of your employment history.
5 Following Soil Conservation Service, you were a
6 research associate at North Carolina State
7 University, is that ---

8 A: Yes.

9 Q: Tell me about your associate position at the
10 University of Wisconsin.

11 A: I was involved in EPA funded research on land
12 application of wastewater to land and
13 understanding how those systems of worked, what
14 their environmental consequences were and how to
15 manage them better.

16 Q: And following the University of Wisconsin, it
17 looks like you entered the private sector as far
18 as consulting. So, you've got Resource
19 Scientist and Engineers, Inc. Could you tell me
20 just briefly -- run through the various
21 consulting positions you've held to the present?

22 A: Sure. RSC was a firm I was a partner in, in
23 collaboration with a couple of civil engineers
24 I had been involved in research with at the
25 University of Wisconsin. And we had done a lot



1 of work for US EPA, Municipal Environmental
2 Research Lab in Cincinnati. And we continued to
3 do that as a private entity afterwards. We also
4 worked for developers. We worked for state
5 agencies. We did a lot of training of state
6 agencies across the country and federal
7 agencies, as well, in how to evaluate sites, how
8 to design systems that would help dispose of
9 wastewater and waste residuals. After RSC, I
10 was with Ayres Associates doing pretty much the
11 same work. We sold the firm to Ayres and that
12 was until about 1989 when I came to South --
13 came back to the Carolinas. I grew up in North
14 Carolina. And went to work for Sewee (phonetic)
15 Environmental, which changed names about every
16 two weeks over the nine years I was with them,
17 and became heavily involved. I was managing
18 what became a very large group of
19 hydrogeologists, civil engineers, environmental
20 chemists, and related disciplines doing site
21 assessment of mostly hazardous waste sites, also
22 a lot of work related to landfill siting,
23 landfill management, landfill monitoring, and I
24 was doing some expert witness work throughout
25 that period. After leaving that organization of



1 -- I think it was at that time -- it became ---

2 Q: Earth Tech?

3 A: --- Earth Tech, yes, by '98, then I started
4 another firm that became Pinnacle Consulting
5 Group. That group had contracted with a variety
6 of developers with agencies doing -- for
7 example, we did the source water protection
8 assessment for DHEC early on. And I was briefly
9 involved in that. I did some contract work for
10 DHEC. I was hired by DHEC to do an assessment
11 of wastewater systems on the coast to determine
12 impacts to groundwater on coastal barrier
13 islands. That was through the Bureau of Water.
14 We did work for Charleston Commission of Public
15 Works, at their long-term wastewater planning
16 for the upper Cainhoy Peninsula. We also did
17 quite a bit of hazardous waste assessment and
18 site management related work. And I was with
19 that firm -- it became North Wind in 2005. I
20 was with them until 2006. And since then I've
21 operated as an independent contractor doing a
22 variety of related site assessment, expert
23 witness, special studies, the Saluda-Reedy
24 Watershed Consortium work and a variety of
25 things. I also have been heavily involved since



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1 about '98 in the work related to Lake Conestee,
2 which became a seven -- actually a eight-year
3 study under DHEC authority through the
4 Brownfields Program assessing a large, you know,
5 industrial impacted site that has become the
6 focus for the nature park, it's just like a --
7 it has all the qualities that would have become
8 a federally-led superfund site, had we not gone
9 in as a non-profit. And I founded the non-
10 profit that purchased it, assessed it, and
11 turned it into a nature park instead of
12 employing hundreds of lawyers for many years.
13 So, that site also involves a dam, a major dam
14 that is of key state interest, such that
15 presently in the process of negotiating a major
16 grant from DHEC to do final engineering
17 assessment of this historic 1892 stone masonry
18 dam, which holds back millions of cubic yards of
19 contaminated sediment, keeps it from moving
20 downstream to Lake Greenwood.

21 Q: Have you done any sort litigation support or
22 consulting relating to poultry farms?

23 A: I did one case about four years ago. And it was
24 related to two different farms. Actually only
25 one of those actually went to Administrative Law



1 Court review. And that was the Summerel case
2 located north of 385 in northern Laurens County.

3 Q: And any other work that you have provided either
4 through your consulting business or in academic
5 positions dealing with -- concentrated animal
6 feeding operations, animal feeding operations?

7 A: There was a Companion case in that same
8 community that, I think was also ultimately
9 permitted. It was the Deckett (phonetic) case,
10 but that one did not go to legal review. The
11 other related experience I had through my
12 University of Wisconsin experience, I worked
13 with a team of researchers and professors who
14 did broad spectrum assessment of what happens
15 when you put waste and waste residuals on the
16 land. And so, I have a broad foundation in
17 those issues.

18 Q: I see you have an extensive list of published
19 materials. And so, in the interest of brevity,
20 I don't think I will run through every one of
21 these. Is there any that you recall that stand
22 out that would be relevant in addition to the
23 positions and projects and degrees, et cetera?

24 A: Well, those that would be relevant to this case,
25 of these three cases, deal with site assessment,



1 how do you assess the qualities of a piece of
2 land in terms of the soils, the water resources,
3 the vulnerabilities of water resources to
4 constituents and the pollutants that you're
5 putting on land. So, I have very broad
6 experience in looking at those kinds of sites,
7 parameters. Was involved in writing EPA
8 guidance documents for how you go about
9 developing an assessment for those kinds of
10 sites. So that's -- in terms of the research
11 papers, those are the kinds of things that would
12 be relevant.

13 **MS. TAYLOR:** Your Honor, I move this witness to serve
14 as an expert on the subjects of soil and water
15 resource management. Any questions?

16 **MR. MUSTIAN:** Your Honor, can I be permitted to voir
17 dire the witness?

18 **THE COURT:** Soil and water resource management?

19 **MS. TAYLOR:** Yes, Your Honor.

20 **THE COURT:** That's kind of broad, isn't it?

21 **MS. TAYLOR:** Well, I would include within that
22 stormwater management. But he does have
23 extensive expertise in water resource
24 management.

25 **THE COURT:** Okay.



1 MS. TAYLOR: We've already gone through the soil
2 expertise.

3 THE COURT: Okay. Go ahead.

4 MR. MUSTIAN: Thank you, Your Honor.

5 DR. HARGETT - VOIR DIRE EXAMINATION BY MR. MUSTIAN:

6 Q: Good afternoon, Dr. Hargett. How are you, sir?

7 A: Fine, thank you.

8 Q: Because I do agree that is a little bit broad,
9 I want to make sure I narrow it down exactly
10 what it is that you purport to have expertise in
11 and what you don't. You don't present yourself
12 as an air quality expert, do you?

13 A: No, sir.

14 Q: Okay. And you haven't taken any courses or have
15 any specific education in air modeling, those
16 type of things?

17 A: No, sir.

18 Q: Okay. You're not an expert with respect to
19 human health issues?

20 A: No, sir.

21 Q: You're not an expert in epidemiology?

22 A: No. The only relevance there is that many of
23 the projects I've been involved in, both as a
24 consultant and as a researcher, were for looking
25 at technologies and measurements and metrics of



1 what happens when you put waste constituents on
2 the land to include pathogens. So, in that
3 context and in terms of general environmental
4 monitoring, I'm familiar with the terminology
5 and the kinds of methodologies you employ to
6 assess that. Water quality, for example, the
7 fact that this Little River watershed has a TMDL
8 for fecal coliform and what that means and how
9 is that relevant. So, in that context I'm very
10 comfortable and capable to address those kinds
11 of issues.

12 Q: But that's with respect to introduction of
13 pathogens in the water. That doesn't go to what
14 impact that would have on the health of ---

15 A: Not on the human health side. Other than, you
16 know, the reason we have fecal coliform or E.
17 coli as indicated parameters is because that a
18 metric that tells us, are the waters suitable
19 for recreational contact.

20 Q: Well, I mean, I'm trying to be clear on this.
21 I mean, in your deposition, and we can pull it
22 if we need to, but you told me that you weren't
23 an expert in human health issues, right?

24 A: No, not in terms of human response to those
25 exposures:



1 Q: And you are not an expert in epidemiology?

2 A: No, sir.

3 Q: Okay. So, the extent that whatever pathogens,
4 whatever effect that those pathogens have on the
5 human health, you would not be an expert in
6 that. Would you agree with that?

7 A: That's correct.

8 **THE COURT:** What's that last -- to the extent that if
9 ...

10 **MR. MUSTIAN:** Well, Your Honor, I guess the
11 distinction I'm trying to ---

12 **THE COURT:** I didn't hear you well.

13 **MR. MUSTIAN:** Oh, I'm sorry.

14 **THE COURT:** To the extent that ---

15 **MR. MUSTIAN:** To the extent that he would say what
16 effect those pathogens would have on the human
17 health of the surrounding areas.

18 **THE COURT:** Okay.

19 Q: You're not offering an opinion or you're not an
20 expert in respiratory health issues then, are
21 you?

22 A: No, sir.

23 Q: You're not an expert on health conditions of
24 workers in poultry farms, are you?

25 A: I'm sorry. I didn't understand that.



1 Q: Health conditions of the workers in poultry
2 farms?

3 A: No, sir.

4 Q: Entomology, with respect to insects. You're not
5 an expert with respect to entomology?

6 A: Other than in my broad agriculture academic
7 experience, I've had one entomology course.
8 And, you know, pest management is a field that
9 every agronomist, every soil scientist that
10 works with the land is aware of. But, no, I'm
11 not an expert. I'm not an entomologist.

12 Q: Okay. You're not an attorney? You're not an
13 attorney?

14 A: No, sir.

15 Q: Other than the three legal classes I believe
16 that you've discussed to Ms. Taylor, you have
17 not taken any other legal classes other than
18 those?

19 A: No, sir.

20 Q: Okay. With respect to property values, you
21 don't present yourself as an appraiser, do you?

22 A: No, sir.

23 Q: You do not have expertise in rendering opinions
24 about impacts of property values on residential
25 properties?



- 1 A: Not directly. Not as an appraiser. As I
2 pointed out, I have a lot of experience in doing
3 environmental assessments of properties. And
4 that's one of the things that lending
5 institutions, insurers, developers, anyone
6 involved in land as an investment looks at. So,
7 I've looked at those kinds of issues and
8 frequently they do have a very important
9 financial impact to decisions that are made.
- 10 Q: But you don't have any expertise in evaluating
11 those impacts, do you?
- 12 A: Not in the financial context, no, sir.
- 13 Q: And you aren't presented yourself as an
14 expertise with respect to groundwater, are you?
- 15 A: I can. I have extensive experience in
16 groundwater. I don't think groundwater issues
17 are a major concern, as I have evaluated the
18 information for this case. But, yes, I am a --
19 have been certified as a groundwater
20 professional. I've testified in many cases
21 dealing with groundwater impacts, groundwater
22 transport of contaminants, and have performed
23 studies for DHEC in looking at groundwater
24 quality.
- 25 Q: Maybe I can cut to the chase. Do you plan on



1 offering an opinion about groundwater in this
2 case?

3 A: I don't think there will be significant issues
4 on groundwater unless y'all ask me questions.

5 **MR. MUSTIAN:** Your Honor, with those limitations. I
6 can't recall now what he was offered as, but we
7 would ---

8 **THE COURT:** Stormwater expert and soil and water
9 resource management.

10 **MR. MUSTIAN:** Okay. With those limitations, Mr.
11 Hightower may have some additional questions,
12 but we would not object.

13 **THE COURT:** Okay.

14 **MR. HARGETT - VOIR DIRE EXAMINATION BY MR. HIGHTOWER:**

15 Q: Dr. Hargett, you're not an expert on the health
16 of animals, specifically poultry?

17 A: No, sir.

18 Q: Okay. And you're not going to render any
19 opinions regarding that?

20 A: No, sir.

21 Q: With regard to groundwater, do I understand
22 that, if asked, you will provide an opinion
23 about groundwater impacts from these facilities?

24 A: I don't plan to. Let me mention how groundwater
25 might be relevant in some of my comments. You



1 know, I can't anticipate the questions that
2 direct and indirect are going to come my way.
3 But groundwater is criterium for siting these
4 kinds of facilities in terms of separation
5 difference between land application fields, for
6 example, or separation distance from a chicken
7 house and the shallow groundwater table, in that
8 context only. But in terms of your question of
9 impacts to groundwater from the constituents
10 that might be associated with this kind of
11 permit, I don't anticipate that.

12 Q: Do you remember during your deposition that I
13 had asked you specifically whether or not you
14 were going to render any opinions about
15 groundwater impacts?

16 A: I vaguely recall that, yes.

17 Q: Okay. In that context you had not explained
18 that you were going to give any opinions on
19 that.

20 A: Well, I consider, respectfully, impacts to be
21 different from site suitability. You know, site
22 suitability criteria -- you know, when DHEC
23 looks -- you know, requires information
24 regarding what is the proximity to groundwater
25 and provides for setback requirements, vertical



1 or from surface water it's horizontal, those are
2 simply standard precautions in selecting a site
3 that are appropriate. That has nothing to do
4 with impacts. Impacts suggest that you have a
5 pollutant entering the groundwater system that
6 is concernful, whether that's a nutrient or a
7 pathogen or what have you. So, I'm not sure I
8 understand the concern.

9 Q: Well, I guess I'm not understanding yours. So,
10 are you saying that, except for maybe stating
11 what is the minimum setback from waters of the
12 state or, you know, with groundwater, how deep
13 or, I should say, how far above the seasonal
14 high water mark, that you may place some --
15 let's say like burying birds or something like
16 that, except for that, you're not going to give
17 any opinion. Is that my understanding?

18 A: I think that's fair. That's still vague. But
19 the burial parameters are a good example because
20 there has been a site evaluation to the permit
21 in which case, I think the DHEC onsite waste
22 staff has gone out and evaluated these sites to
23 assess are the soil conditions conducive to a
24 dead poultry burial site. And they look at soil
25 conditions. They look at proximity to



1 groundwater. And that's just part of the site
2 screening process that DHEC executes. So, I
3 would potentially comment on if that is accurate
4 or not accurate, if it comes up.

5 Q: Well, that seems to be different than when I
6 asked you specifically, talking about
7 groundwater impacts. Because an impact from the
8 facility would be, is there going to be
9 something -- will the facility, where it's
10 located, meaning it's properly sited, create a
11 problem. And if you're stating you're going to
12 give an opinion regarding groundwater, then
13 that's contrary to your prior statement in your
14 deposition.

15 A: Well, Mr. Hightower, let me remind you that,
16 when I did that deposition, I had been involved
17 in the case all of four days and I was in the
18 process of evaluating thousands of pages of
19 documentation. More importantly, the -- you
20 know, connection between groundwater and surface
21 is indisputable. You can't unhinge the two. If
22 you impact surface water, you can impact
23 groundwater. So, just as DHEC looks at the site
24 suitability in terms of proximity to surface
25 water, they also look it appropriately in terms



1 of proximity to groundwater. So, I don't see
2 the reason to parse that particular issue. I
3 don't think it's a big issue.

4 **MR. HIGHTOWER:** Your Honor, the Department would
5 object to ---

6 **THE COURT:** I'll wait until that comes up.

7 **MR. HIGHTOWER:** Okay.

8 **THE COURT:** I mean, it depends on the context of
9 which he's offering. He said that groundwater
10 will not be a concern, that he will not testify
11 to the impacts of groundwater. But if there's
12 some kind of nuance there, I'll deal with that
13 down the road.

14 **MR. HIGHTOWER:** Okay, Your Honor. It's just that I
15 ---

16 **THE COURT:** The issue is right now is whether he's an
17 expert. And that's what your voir dire is all
18 about.

19 **MR. HIGHTOWER:** True. But it's also to find out the
20 scope of what opinions he's going to give.

21 **THE COURT:** I know that. I'm ---

22 **MR. HIGHTOWER:** And Department tailored its case
23 based on statements made by the expert as to
24 whether or not the Department was going to
25 designate its own expert to come in and render



1 any opinion ---

2 THE COURT: Well, I'll address that when the time
3 comes.

4 MR. HIGHTOWER: Okay.

5 THE COURT: All right. He's been tendered as an
6 expert in soil and water resource management.
7 Any objection to that? Mr. MUSTIAN, with the
8 qualifications he's set forth in his voir dire,
9 you're comfortable with that with the
10 limitations?

11 MR. MUSTIAN: Yes, sir. Subject to those
12 limitations.

13 MR. HIGHTOWER: The Department would also, subject to
14 the limitations with regard to the voir dire by
15 Mr. Mustian and by myself adhere to the Court's
16 ruling.

17 THE COURT: All right. So qualified. 2:25.

18 MS. TAYLOR: Look at all these notebooks, Your Honor.

19 DR. HARGETT - CONTINUE DIRECT EXAMINATION BY MS.

20 TAYLOR:

21 Q: Let me start, Dr. Hargett, with a question about
22 how did you -- what did you do to prepare and
23 formulate your expert opinions in this case?

24 A: I have reviewed extensive documentation to
25 include the applications for the three sites,



1 the DHEC review documentation on each of the
2 sites, the comprehensive nutrient management
3 plans for each of the three sites, the relevant
4 regulations. I've also reviewed numerous
5 technical articles, some of those published by
6 agencies, some in the referee journal domain by
7 academics, some of those coming from
8 environmental scientist, some of them coming
9 from poultry science disciplines. And in the
10 processing of reviewing those documents, I've
11 come up the curve with the specifics to these
12 three cases that also -- because, you know, I
13 say that I've also read a lot of background
14 literature that is relevant. And that helps
15 inform my opinion and furthers my knowledge of
16 issues that similar experts would utilize in
17 assessing a situation like this.

18 Q: Let me start -- we have a lot of paper. I'll
19 try to make this as painless as possible. Just
20 so the folks can have something to look at -- is
21 this the front page of a DHEC application for
22 Jim Young Broilers?

23 A: Yes.

24 Q: Did you review the application that Jim Young
25 Broilers submitted to DHEC?



1 A: Yes. I reviewed this one as well as both of the
2 Coggins applications.

3 Q: Okay. So, you reviewed the --

4 MS. TAYLOR: if you'd like, if this will be helpful
5 to you guys, I can get the Bates number for the
6 application. We've got DHEC_000922. That's
7 your starting Bates number. And the ending
8 Bates number is DHEC_000927. That's David
9 Coggins, by the way. Jim Young, first page is
10 up here, starting DHEC_003118 (sic). Ending, I
11 believe, at DHEC_003192. And Mr. Heath Coggins,
12 DHEC_002067 through DHEC_002072. And I
13 apologize in advance for just how tedious this
14 is. Am I missing a Bates number?

15 MR. MUSTIAN: Well, I think I got David Coggins and
16 Heath Coggins. For Jim Young I thought you said
17 3118 through 3192. That's just a lot more pages
18 than the other two, so I just wanted to make
19 sure that I'm right on the page numbers.

20 MS. TAYLOR: Okay. What I've got starts on 3188.

21 MR. MUSTIAN: 88, okay. All right.

22 MR. TAYLOR: And then it ends on 3192. I think I may
23 have mistakenly added those stacking shed that
24 got deleted, so.

25 MR. MUSTIAN: Thank you.



1 Q: Okay. Let's put this back up. Dr. Hargett, you
2 reviewed these applications?

3 A: Yes, ma'am.

4 Q: Did you also review the comprehensive nutrient
5 management plans associated with each of these
6 applications?

7 A: Yes.

8 Q: Did you review the internal DHEC checklist for
9 permit review for each of these applications?

10 A: Yes.

11 MS. TAYLOR: I can identify those Bates numbers if
12 you guys would like? It's within the permit
13 within 2 -- 1B, 2C, 3B.

14 MR. MUSTIAN: I guess -- Your Honor, if I can. So,
15 are you planning on using these as -- are you
16 going to show it to him?

17 MS. TAYLOR: I may. I'm just trying to get all three
18 of those up front as identified that he
19 reviewed. And in the course of my questioning,
20 he may need to actually look at a page or the
21 entire document.

22 MR. MUSTIAN: Okay. I guess, would you mind
23 identifying those?

24 MS. TAYLOR: Sure.

25 MR. MUSTIAN: No, no, no. Well, either now or when



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1 he talks about it I guess is what I'm getting
2 at.

3 MS. TAYLOR: Okay. Let's just do it now, how's that?

4 MR. MUSTIAN: That's fine.

5 MS. TAYLOR: I'll try to keep it to order. Starting
6 with Jim Young, his comprehensive nutrient
7 management plan starts at DHEC_003184 and ends
8 at DHEC_003352. David Coggins, DHEC_000917 to,
9 I believe, DHEC_001030. And then Heath Coggins,
10 DHEC_002062 to DHEC_002204. Let's just start
11 with those.

12 MR. MUSTIAN: Thank you.

13 MS. TAYLOR: You're welcome.

14 Q: Okay. Starting with the applications and the
15 comprehensive nutrient management plans, in the
16 event that it makes more sense as far as
17 efficiency, et cetera to talk about both of
18 them. Let's start with the issue of the
19 completeness of each of these applications.
20 Let's start with Jim Young Broilers. And then
21 I'm trying to find the most efficient way to go
22 through this, since we are having consolidated
23 case of three of them. If your evaluation, your
24 analysis of Jim Young Broilers is the same as
25 David Coggins and Heath Coggins, we still need



1 to have some statement to that effect. But
2 let's just start with Mr. Young, Jim Young
3 Broilers. So, can you give us your assessment
4 of completeness and accuracy of the applications
5 -- let's just start with the applications and
6 nutrient plans.

7 **MR. MUSTIAN:** Your Honor, and maybe this will bear
8 out down the road, but I'm going to object at
9 this time. He's been offered as an expert in
10 soil and water resource management ---

11 **THE COURT:** And now we're asking about the ---

12 **MR. MUSTIAN:** Completeness of the application.

13 **THE COURT:** --- accuracy ---

14 **MR. MUSTIAN:** Yes, Your Honor.

15 **MS. TAYLOR:** Well, I believe that the application and
16 the comprehensive nutrient management plans
17 address soil and water resources.

18 **THE COURT:** How about if I can make it easier for
19 everybody. If you're going to ask him about the
20 completeness and accuracy of the application, it
21 would be the completeness and accuracy of the
22 application as far as soil and resource
23 management.

24 **MS. TAYLOR:** That's fine. I'm not intending to go
25 beyond that, so ...



1 MR. MUSTIAN: My only limitation on that would be,
2 Your Honor, to the extent that he is offering
3 legal opinions as to whether or not the
4 application complies with regulations ---

5 THE COURT: Well, that's true.

6 MR. HIGHTOWER: That would be the Department too.

7 MR. MUSTIAN: I think to the extent that he looks at
8 the soil resources plan or the CNMP and he gives
9 an opinion about concerns that he may have with
10 respect to those documents, that's one thing.
11 To the extent that he's opining as to whether or
12 not they comply with the requirements, the legal
13 requirements of the application, that's another
14 thing.

15 MS. TAYLOR: Well, I do think that a professional
16 such as Dr. Hargett, part of his professional
17 life and expertise is to review permits in terms
18 of regulations. I don't think that's
19 exclusively a legal expertise that you need to
20 have. For example, Mr. Chaplin does that for a
21 living every day.

22 MR. HIGHTOWER: Well, Your Honor, with regard to --
23 first of all, the witness has only been -- if I
24 wrote it down correctly, was only offered as an
25 expert solely in soil and water resource



1 management, not in permitting. Because really
2 what -- if I'm understanding counsel is -- she
3 would like to have the witness opine on the
4 completeness of the permitting process, whether
5 or not it meets a requirement. I don't mind if
6 he says, well, I've reviewed this document and
7 the classification means this to me, as opposed
8 to what it means to DHEC. That's okay. That's
9 an opinion that he can render. He cannot
10 render, well, my reading of the DHEC regs say
11 that you have to do this. That's not his
12 purpose to make that calling. And it's not the
13 same as what Mr. Chaplins's position is, because
14 that is his job. That is what he is employed by
15 the Department to do. And if he has a legal
16 questions, he can get legal advice. That's not
17 the same for this expert witness.

18 **MR. MUSTIAN:** Your Honor, I would go off that and say
19 also, to the extent Mr. Chaplin is performing
20 his job as a ---

21 **THE COURT:** I see Mr. Chaplin's difference. Y'all
22 don't go into that.

23 **MS. TAYLOR:** I plan -- okay. When I refer to
24 accuracy within the application, I intend to
25 point out issues dealing with soil and water



1 resources.

2 **MR. MUSTIAN:** And that's why I started this because
3 I'm not sure where we're going. We starting on
4 page one and ---

5 **MS. TAYLOR:** I haven't even asked my first question.
6 You want to take a break?

7 **THE COURT:** No.

8 **MS. TAYLOR:** I'm just ...

9 **THE COURT:** What's your first question?

10 **MS. TAYLOR:** My question is dealing with the
11 applications in terms of their measurements for
12 the distance between the facilities and the
13 femoral and intermittent.

14 **THE COURT:** Well, then let's just start there.

15 **Q:** Take a look at the applications in terms of the
16 distances that are measured for the proximity
17 between waters of the state, which includes
18 perennial and intermittent and femoral streams,
19 and tell me if you see anything of concern to
20 you.

21 **A:** You have shown me page one of the application,
22 which doesn't have that particular information
23 on it.

24 **Q:** All right.

25 **A:** I won't render an opinion on whether page one is



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1 complete other than there's no date on it. But
2 that's not a soil/water issue.

3 **MR. MUSTIAN:** Your Honor, move to strike as far as
4 the date comment.

5 **THE COURT:** I strike that.

6 **MS. TAYLOR:** It would be nice if we take -- can we
7 just take a quick -- so I don't have to be
8 standing here waiting to pull all these
9 documents out, if that's okay, Your Honor.

10 **THE COURT:** A five-minute break?

11 **MS. TAYLOR:** Yes. Thank you.

12 (Off the Record)

13 **THE COURT:** We're back on the record.

14 **Q:** Dr. Hargett, I'm looking here, just to keep us
15 focused and moving along, the application for
16 Jim Young Broilers. And in terms of this very
17 same application, you have the facility
18 separation distances. Can you see that on the
19 screen?

20 **A:** Yes, ma'am.

21 **Q:** All right. Tell me what your issues are
22 concerning this Section 5 - Facility Separation
23 Distances.

24 **A:** In Section 5 there are actual measurements that
25 are presented as actuals at the site. I assumed



1 that that means, for example, on the third line
2 under Section 5, waters of the state, distance
3 from the nearest part of the facility to the
4 nearest water of the state, is indicated as 1760
5 feet. And in the next line, I'll skip that.
6 The next line down, fifth line, ephemeral or
7 intermittent streams located downslope, 426
8 feet. The line, ditches or swales, 113 feet.
9 I can't testify to the methodology that DHEC
10 staff employed in determining this. I assume
11 this is not information generated by the
12 Applicant. I think -- my sense is that when
13 DHEC does a preliminary site inspection, a PSI,
14 they make a determination of this or else it's
15 done by DHEC staff using GIS tools. So, I don't
16 know the answer to that. But looking at the
17 same kinds of soil and water and topographic
18 information that is required to make those
19 determinations, I have some degree of question
20 about the accuracy of those numbers. And one of
21 the things that I've looked at to try and better
22 understand that, is the topographic maps, which
23 I think are embedded in the comprehensive
24 nutrient management plan.

25 Q: Would you like to look at the topo right now?



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1 A: Yes, please.

2 Q: Before we move on to this, I do have a question
3 for you about these measurements. There's a
4 distance between the animal growing area and
5 waters of the state located downslope. And
6 here, for example, for Mr. Young's application,
7 1786 feet, I believe.

8 A: That's the potable well line.

9 Q: Oh, I'm sorry. Close enough. So, 1,760 feet
10 from waters of the state. In your opinion, is
11 that an error to consider that distance as
12 providing safety for water resources?

13 A: Well, the minimum required, per the regulations,
14 is stated in the column beside that. For waters
15 of the state the minimum required is 100 feet.
16 But I'm simply trying -- you know, when I look
17 at a form like this and looking at, you know,
18 the generally global objective of all of these
19 regulations is to protect public health and the
20 environment. That's preamble to all these
21 regulations. And these setbacks are the
22 mechanism by which DHEC attempts to provide that
23 security, by buffering that sense of the
24 environment, surface waters for example, from
25 the potential source of pollution.



1 Q: But wouldn't the location of ditches or swales
2 make more of a difference as far as impacts on
3 waters of the state?

4 A: Well, that's where you have to look at --
5 holistically at the facility and where water is
6 going to go.

7 Q: Okay.

8 A: Because the objective is to prevent release of
9 pollutants to waters of the state. The ditches
10 and swales are how they get there.

11 Q: All right. Okay. Is that good segue to the
12 topo map?

13 A: Yes, ma'am.

14 Q: Is that in a location -- oh, wait.

15 A: If you don't mind turning that sideways, I can
16 see the scale better that way. The scale's
17 located in the lower right hand part of that
18 figure. And you can -- the other scale that you
19 can readily discern is the length of these barns
20 is 660 feet. So, the distance from, for
21 example, that right corner. This is kind of
22 oriented so that it's pointing to the northeast,
23 in terms of the barns go from southwest to
24 northeast, and you can see the topographic lines
25 projected on the background. A couple of things



1 I will point out that jump out to me is the
2 magnitude of this facility in terms of the area
3 that will have to be disturbed and graded to
4 build a pad for these six barns and also for all
5 of the ancillary buildings, to include the
6 manure storage sheds and other operations. You
7 obviously also have to have an area, basically
8 a barnyard, where you can move materials, move
9 chickens in and out, move feed in and out. So,
10 that guides me to think about the magnitude of
11 these facilities relative to these sites, which
12 kind of touches on the issues that Mr. Stewart
13 testified on yesterday afternoon, with regard to
14 what is the general site suitability of these
15 sites. And that's something that I've helped
16 with all kinds of permitted facilities, from
17 landfills to wastewater systems, historically.
18 If you look at the background, at the very
19 northwest corner of that building number six,
20 you have a faint topographic line. If you go
21 down to the northeast, to the upper right, you
22 see a more bold line. That's -- I think that's
23 the 500-foot contour line. These are ten-foot
24 contour lines on this map. And this is probably
25 taken -- it looks like it's taken from a



1 standard USGS 7 and a half minute quad map. So,
2 these are standardized, certified, accurate
3 maps. So, if you come back from the 500 line,
4 that next faint line is 510, the next line is
5 520, and the one going right through the corner
6 of building number six would be 530.

7 Q: Mr. Hargett, can you point on the -- or indicate
8 to us which lines you're referring to?

9 A: Yes. The 530 line -- well, that's the 510,
10 that's the 520, and that's the 530. As you come
11 on back in the footprint of the pad to-be, that
12 would be the 540, then this is the 550 is the
13 next bold line.

14 Q: Okay. You're moving with a little pencil.

15 A: Yes.

16 Q: Can you touch the screen and it'll show a line.
17 Like I just did one accidentally.

18 A: Well, I -- what I'm trying to illustrate is the
19 elevation differential across the footprint of
20 the proposed facility.

21 Q: Okay.

22 A: So, if you go from right there parallel to line
23 six, you get a sense of the amount of
24 topographic relief or differential across the
25 site. And that -- so, that goes from 530 to



1 beyond 550, 560, and about 570. So, that tells
2 me that there's 40 feet of relief across that
3 site. Now, when you build these barns,
4 typically they're built at about the same
5 elevation. You don't have a barn that follows
6 the slope down hill or the chickens would
7 basically fall out of one end of the barn. But
8 you would grade this site. And that's important
9 to me for several reasons. A key one is just
10 the magnitude of disturbance that's going to be
11 necessary to build these things. Let me also
12 point out that, you know, these are 660-foot
13 long barns. The barns are each 60-feet wide.
14 And -- no, 66-feet wide. I think that's right.
15 And have -- or, no, they're 60-feet wide and
16 they have a 60-foot space between them. So, the
17 width -- you know, it's generally a big square.
18 So, the distance from one end of the barn to the
19 other, 660. The width from barn six on the
20 right to barn one on the left is about the
21 similar dimension. And around that, when you
22 grade, you're not going to grade just up to
23 where you're going to have a wall of a barn.
24 You're going to grade an apron around that. So,
25 allow for, say, a 40-foot strip around the



1 parameter of the barn. What that produces is a
2 footprint for this complex of about 13 and a
3 half acres. That's a big raw area. And that's
4 important to think about because that area is
5 going to be radically graded. It's going to be
6 essentially impervious. Part of it is tin roofs
7 on the barns. But the area between is also
8 going to be highly compacted. And it's not
9 necessarily going to be natural soils. It's
10 going to be soils that have been cut or have
11 been filled to level the site. I've run some
12 numbers, roughly, in my head. And anybody can
13 deduce the same numbers. But in that 13.8
14 acres, that's not all of the impervious area and
15 all the area that's going to be disturbed.
16 You're probably going to need about another 20
17 percent to grade in the area of the waste
18 management barns up in this area. And you're
19 also going to have roads and other areas that
20 are going also have to be graded in the process.
21 So, all total you end up with something along
22 the order of 15 or 16 acres of disturbed land.
23 Now, just going back to the square, the 660-foot
24 by roughly 700-foot footprint of just the
25 building compound, the amount of cut that you



1 would have to make to balance the earth moving
2 on the site is going be on the order of 125 to
3 150,000 cubic yards, cubic yards.

4 Q: Is that a lot of soil?

5 A: That's a huge amount of soil. If you think of
6 this -- you know, actually measured the
7 footprint of this building that we're in, the
8 Edgar Brown Building, and it's about 30,000
9 square feet if you look at it from an aerial
10 photograph. And if you look at one of these
11 barns, the area of the barn is about 39,000
12 square feet. So, those barns are bigger than
13 this building. If you think about the volume of
14 soil that you've got to cut from the uphill half
15 of that site, basically from about a midpoint
16 back up in here, all that would be cut and
17 leveled. And that material would then be put
18 into this area on the downhill side. Cut and
19 filled. And that's got to be balanced. That's
20 what you need an engineering plan for, for the
21 cut and the fill. The volume of that cut is
22 more than twice the entire volume of this
23 building if you want to try and picture that,
24 assuming this building is something like 60 feet
25 tall. I think it's got five floors. So, it's



1 a huge amount of soil. This entire area -- this
2 entire disturbed area is one and a half times
3 the size of this compound, this capital compound
4 in this southern half of the capital compound
5 that includes six major buildings. This is a
6 huge earth moving activity. This is relevant in
7 a couple of ways. One, is you're going to
8 create a impervious footprint bigger than your
9 average Wal-Mart. And I actually scaled off a
10 couple of Wal-Marts that are -- including all
11 their parking areas, they're typically about 15
12 to 18 acres, about the same size as this. I've
13 scaled off a couple that are near my home in
14 Greenville. So, it's a big grading operation.
15 That tells you it's going to produce a lot of
16 stormwater. So, part of the DHEC objective in
17 the context of water resources and protecting
18 those water resources ---

19 **THE COURT:** When you say it's going to produce a lot
20 of stormwater ...

21 **THE WITNESS:** Yes, sir.

22 **THE COURT:** Okay. The rain falls equally on grounds,
23 so it's not going to produce stormwater. It may
24 produce -- it may produce more stormwater
25 runoff, but it's not going to produce



1 stormwater..

2 **THE WITNESS:** Point well taken. It's going to
3 produce runoff that has to go somewhere.

4 **THE COURT:** Okay.

5 **THE WITNESS:** That was my context. I'm sorry.

6 A: The question then becomes, where does that go?
7 And I understand from previous testimony and
8 discussions that, yes, there will be some sort
9 of a construction stormwater permit that will be
10 developed by DHEC, I understand. And my
11 impression is that that is a construction period
12 permit. The -- with this much stormwater, which
13 from my involvement in these kinds of things
14 historically, I -- as Mr. Stewart pointed out
15 yesterday, there are tools that a
16 conservationist, such as he was a county --
17 district conservationist, or that I, as a
18 consultant, look at and in terms of anticipating
19 how much stormwater is going to run off from the
20 site. And you look at designed storms. For
21 example, a 10-year frequency 24-hour duration
22 storm. And that enables you to anticipate how
23 much water is going to be produced. In this
24 case, you're talking about something on the
25 order of 25 to 28,000 cubic feet of water for a



1 10-year, 24-hour storm. That's a lot of
2 stormwater. So, the question is, will that
3 construction period, erosion sediment, and
4 stormwater control plan be adequate to keep
5 water from moving and pollutants from moving
6 down into the receiving tributaries and
7 ultimately to the Little River. It's such a
8 magnitude of grading that it really causes me a
9 lot of concern. I can't -- I don't know what
10 that plan's is going to be. I haven't seen it.
11 It hasn't been developed yet. But this is a big
12 impact for this area. On top of that, you also
13 have these gully features that are, you know,
14 indicated here in the topography. These are
15 areas that have developed from land of use
16 historically. Most of this land, like much of
17 the southern Piedmont, was in cotton 100 to 150
18 years ago. Cotton was the worst possible crop
19 you could possibly have on the land in terms of
20 soil conservation. It allows water to runoff
21 aggressively and to deeply erode the landscape.
22 In fact, from my experience and some of my
23 research, I know that the southern Piedmont,
24 from Maryland to Alabama, as a physiographic
25 province, has been documented to have lost over



1 a foot of soil. So, in the Piedmont, there
2 generally isn't much topsoil left. It's gone
3 downhill. And in this case, these gullies have
4 been the vehicle for how that -- that sediment
5 and all that historical water has moved down
6 into the floodplain. And I think a question had
7 came up yesterday that Mr. Stewart I don't think
8 really answered is what might have contributed
9 to the river moving. It's that kind of loading
10 of sediment from the uplands to the lowlands.
11 And that literally pushed the river away. You
12 still have ephemeral drainages and intermittent
13 drainages. And these -- the reason DHEC asked
14 about gullies and swales is recognition that
15 those are the small pipes that lead to the
16 bigger pipes, that is runoff from a facility
17 like this will go to this gully or other gullies
18 and swales and will load to ultimately the
19 river. So, that sort of emphasizes the
20 importance of measuring accurately all of these
21 setbacks to make sure that you know where that
22 vulnerable point is and that you engineer
23 appropriately and design for appropriate soil
24 and sediment and stormwater runoff from these
25 sites. Let me -- let me make a general point



1 and then I'll be quiet. This also goes to the
2 fundamental question of site suitability for
3 these sites. This is a rugged Piedmont
4 situation. As Mr. Stewart pointed out, you have
5 some of the slopes back up towards Lisbon Road
6 that are B-slopes. That means they're between
7 two and six percent. Six percent means that
8 over 100 feet you would have six feet of
9 elevation differential. But a lot of the slopes
10 on the areas away from Lisbon Road -- the old
11 timers are smart. They put the roads on the
12 ridges for a reason. They were going to stay in
13 better condition. And so, you have slopes that
14 have C, D, and F slopes, as much as 40 percent.
15 The slopes around these gullies, if you measure
16 them -- and you measure them with a clinometer.
17 It's a specialized leveling device that tells
18 you what the percent slope is or what the degree
19 of slope is. And in those areas, it's extremely
20 steep. That means you've got to do all that
21 cutting, all that filling to create a level
22 site. It's not really a well-suited site to put
23 18 chicken houses. It's, you know, almost
24 prohibitively expensive. And I haven't run any
25 numbers on the cost to grade, but it's going to



1 be an unusually expensive site to put these
2 things on. And it creates the ongoing
3 challenges of the potential release of
4 pollutants to waters of the state. And of
5 course, these waters are impaired and have a
6 TMDL for fecal coliform. So, it's a tough
7 situation to put this kind of facility on.
8 There are better sites. The ideal site would be
9 an A or B slope, a slope that's relatively flat
10 where you don't have to do all this massive
11 cutting and filling.

12 Q: If you look at page six of the DHEC checklist
13 for their review of Jim Young Broilers' permit.
14 It's DHEC_003177.

15 A: Is that in this stack?

16 Q: If you look at the top where it says Jim Young
17 and it's page six, it should be at the top.

18 A: Bare with me a second. That's in the review
19 document?

20 Q: I guess. I looks like ---

21 A: Let me get this other stack.

22 Q: It looks like this.

23 A: Okay.

24 Q: It should be at the top of the stack that I gave
25 you.



1 A: Heath Coggins' is on top.

2 Q: Oh, no, no. There's three different stacks.

3 A: Okay. Then it must be this stack. Okay.

4 Q: So, page six of that checklist. Do you see at
5 the top of the checklist -- unfortunately these
6 review factors are not numbered, but it's the
7 very first one at the top of the page. In which
8 it asks -- instructs the permit reviewer to
9 insert the map -- topo map layer and determine
10 the drainage routes and slope for the proposed
11 site. Do you see the writing there from the
12 DHEC reviewer and ---

13 A: Are you talking about the first set of entries?

14 Q: Yes.

15 A: Yes.

16 Q: Do you have any opinion as to whether DHEC's
17 assessment of this factor was in error?

18 A: Well, you start at the beginning, where is
19 runoff going to be coming from and moving. And
20 it doesn't instantaneously get to the Little
21 River. It's got to get there. And I think
22 relevant information in this case would be, you
23 know, a map that shows where drainage is going
24 to be after the site is graded. And I don't
25 believe DHEC has the site engineering plan.



1 And, you know, without that you don't really
2 know how the final grade of the pad and the
3 compound will relate to the current drainage
4 features. You know, that also goes for, you
5 know, the description of site slope. It's six
6 percent. That may be an average slope across
7 the entire tract. But, you know, the sensitive
8 issue there is what is the steepest slope. What
9 -- and especially proximal to the gullies on
10 that northeast corner of the Young compound.
11 And those slopes are -- you know, they're mapped
12 I think as Wilkes F slopes, if I'm recalling
13 that correctly. They're very steep. They're 15
14 to 40 percent slopes. And so, they're extremely
15 vulnerable to runoff. And, you know, the
16 steeper the slope, the harder it is to control
17 water. And gravity is a power thing. But the
18 appropriate way to look at the drainage -- that
19 first proposed facility drainage route doesn't
20 really describe what's coming off the site or
21 where it's going. And that's why you really
22 need a detailed engineering drawing ultimately
23 to make those kinds of decisions. You know,
24 recognizing that it's in the Little River
25 watershed and the Saluda watershed and it



1 ultimately goes to the Atlantic Ocean is all
2 good to know, but that really doesn't have any
3 direct implication for making decisions on sites
4 that are built.

5 Q: So, if you -- I can bring this to you if you
6 want to look at it. Just -- I'm looking at the
7 reg 61-43. 200.70F.

8 A: Yes.

9 Q: Are you familiar with that?

10 A: Yes.

11 Q: Okay. So ---

12 A: And F has several sub parts that identify the
13 factors to be considered in the ---

14 **THE COURT:** If you could answer her questions. Your
15 answers are going off into -- a little further
16 than you need.

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Stay on one point.

19 A: I am familiar.

20 Q: Okay. So, if you look at F, these are required
21 factors the Department must evaluate to
22 determine if additional setback distances are
23 necessary. And you have slope of the land as
24 number seven an runoff prevention as number
25 nine. Do you have an opinion to a reasonable



1 degree of certainty that DHEC failed to properly
2 evaluate these factors for Jim Young?

3 **MR. HIGHTOWER:** Objection, Your Honor.

4 **MR. MUSTIAN:** Your Honor, objection. Calls for a
5 legal opinion. Under Dawkins v. Field this goes
6 -- steps in the province of the Court, which is
7 -- the ultimate question is to be decided by
8 this Court, which is whether or not DHEC
9 properly conducted its evaluation. He's not an
10 attorney, putting aside the fact that legal
11 opinion is not admissible in court. So, we
12 object on those grounds.

13 **MR. HIGHTOWER:** Those would be my grounds, Your
14 Honor.

15 **MR. TAYLOR:** I feel like he's got some scientific
16 explanation that we've been going through in
17 terms of whether or not DHEC's review of these
18 particular factors -- I mean, maybe I can look
19 at this without even referring to the
20 regulation. But if DHEC is supposed to be
21 looking at runoff prevention and slope of the
22 land, and according to the testimony here of Dr.
23 Hargett, they're looking as pre-development
24 conditions. And he's shown the impact of
25 grading and what that will do as far as ---



1 THE COURT: All that you've said you can put into a
2 question without referring specifically to
3 regulation.

4 MR. TAYLOR: Okay.

5 THE COURT: It just appears to me. So, could you ask
6 the question again?

7 MR. TAYLOR: Sure.

8 Q: Dr. Hargett, do you have an expert opinion to a
9 reasonable degree of certainty concerning the
10 runoff and erosion impacts associated with
11 construction of Jim Young Broilers' site as you
12 see in this application?

13 A: As it's proposed in the application and also
14 reflected in the plan views of where the
15 facility is to be placed, I have grave concerns
16 that, once constructed, those facilities will be
17 a very significant threat to waters of the state
18 as well as the tributaries, intermittent,
19 ephemeral, and the ditches and swales that will
20 have to convey that water.

21 Q: So, based on DHEC's checklist, do you see any
22 analysis at all in terms of what the slope would
23 be or the runoff post construction of these
24 barns?

25 A: No, I don't. I don't believe the review



1 criteria asks for a calculation of how much
2 runoff will occur under any particular scenario.
3 But the review process and the objectives of
4 going through all of the application and review
5 process sort of beg the question, have we fully
6 anticipated how these facilities may impact
7 waters of the state. And then until you do
8 those analyses, you don't really have a handle
9 on that. So, I think that's not -- there's not
10 foundation for making a decision on those issues
11 presented in the application.

12 **MR. HIGHTOWER:** Objection, Your Honor.

13 **MR. MUSTIAN:** Objection, Your Honor. He can tell his
14 concerns to the extent that he says there's no
15 foundation upon which you can make that
16 determination. He's, again, getting into the
17 province of DHEC and a legal opinion as to
18 whether or not they properly followed the
19 regulations.

20 **THE COURT:** Well, he didn't refer to regulations. He
21 just said that the foundation ---

22 **MR. MUSTIAN:** Well, he's ---

23 **THE COURT:** --- on which DHEC can make a decision as
24 to ---

25 **MR. HIGHTOWER:** Well, first of all, there's no



1 foundation that shows, period, whether or not
2 the Department is required to look at ---

3 **THE COURT:** Well, that would be a subject of cross
4 examination. I overrule that objection. Next
5 question.

6 Q: Taking a look at the same issue for David
7 Coggins facility. If we could -- I ask the same
8 question as it relates to David Coggins. And I
9 -- and some brief -- I mean, if the issues are
10 the same that you see as far as the topo and all
11 that for David Coggins -- I can put David
12 Coggins up. We need to move on for the same
13 issue.

14 **THE COURT:** But remember she said brief.

15 **THE WITNESS:** Yes, sir.

16 **MR. TAYLOR:** I'm sorry. Excuse me?

17 **THE COURT:** I was just emphasizing your question.

18 A: If I may suggest, if you'll put up the
19 topographic map for David Coggins.

20 Q: That's what I'm looking for without getting
21 everything messed up over here.

22 **THE COURT:** If you want to blow it up a little bit.

23 A: Thank you. The scale and magnitude is slightly
24 different on David Coggins' because his barns
25 are only 40-feet wide. But they do have the



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1 same 60 feet between them, so the footprint
2 across the site east to west across the
3 longitudinal axis of the barns is going to be a
4 little bit less. But generally it's a very
5 similar large square, similar large magnitude of
6 grading. In this case you go from -- this area
7 right here is the 530 contour and back here --
8 excuse me, that's the 520 contour. And back
9 here you have the 500 contour. So, you've go 20
10 feet across that site.

11 **THE COURT:** Whoa, I don't -- where'd you say back
12 here?

13 **THE WITNESS:** I'm sorry.

14 **THE COURT:** You said 520?

15 **THE WITNESS:** On the south-end side of the site in
16 this area right here, sir.

17 **THE COURT:** Oh, there we go. Okay. Now I see it.

18 **A:** You've got, you know, at least 20 feet of grade
19 across that site, probably more because you've
20 also got a little ridge that runs out through
21 the center of the left side of the site. So,
22 you're going to have a massive grading site
23 there too. You have existing drainage that goes
24 to the northeast, this way, you know, that
25 drainage. And you have a tributary -- unnamed



1 tributary and drainage will go here. Once you
2 level that site, I would surmise from
3 experience, that some of that drainage is going
4 to go in both of those directions. So, they're
5 -- you have potentially two avenues on this
6 site. And that's probably true for all three of
7 them in terms of where the water is ultimately
8 going to go. The information in both the
9 application and in the review form are very
10 similar for all three of these sites. I don't
11 think my concerns are substantially different
12 for any of these three sites with regard to the
13 footprinting, the impact on soil and water
14 resources, and potential release of pollutants
15 from the site to the waters of South Carolina.

16 Q: This is Heath Coggins topo map. Just briefly --

17 -

18 A: Can you erase my marks, please?

19 Q: Yes.

20 A: Thank you. In this case you have the 480
21 contour line intersecting here and coming out
22 over on this corner. You have the 500 right
23 here. And this would be the 520 right here.
24 So, you have, again, like the Young site,
25 roughly 40 feet of contour across the site, a



1 very massive grading that would have to be done
2 here. You also have manure management, manure
3 storage barns in this north end of the site.
4 So, once the site's graded, it's not going to
5 look anything like this contour suggests today.
6 It's going to have an average elevation
7 somewhere in the middle. So, this is all going
8 to be cut on the left side and filled on the
9 north side to make that a level workable site.
10 And that grading operation is going to go on out
11 and have to accommodate these manure management
12 barns. And you're also going to have a buffer
13 around all of this. So, a very major grading
14 operation. And you have -- you'll notice, this

15 ---

16 **THE COURT:** When you say buffer around all this, you
17 mean around the barns?

18 **THE WITNESS:** Barnyard, basically sir. Simply
19 because you aren't going to grade only up to
20 where the barn is. You're probably going to
21 have a 40-foot parameter around that compound.

22 **A:** If you look up in this area, you'll see a line
23 with dots between it. That suggests that is a
24 stream of waters of South Carolina. Whether
25 that's a flowing stream -- I think Mr. Stewart



1 testified yesterday that he's seen it and it is
2 a flowing stream. That suggests that it's a
3 perennial stream. And that is -- if you look at
4 the scale at the bottom ---

5 **MR. MUSTIAN:** Your Honor, I'd object to the extent
6 he's characterizing Ross Stewart's testimony.
7 The testimony will speak for itself as to what
8 Mr. Stewart said.

9 **THE COURT:** I sustain that.

10 **Q:** You can speak directly to what you see on the
11 map.

12 **THE COURT:** And I'll strike his testimony as to what
13 Mr. Stewart stated.

14 **A:** I have not been on the site, so I don't know
15 whether that's a perennial stream or an
16 intermittent stream, but it is waters of South
17 Carolina and it would receive potentially runoff
18 and pollutants from this particular site. And
19 that's only located about -- looks like, based
20 on the scale to the lower right, about 200, 250
21 feet. There are probably drainages, such as
22 this one on the south side, that drain to that.
23 And you probably are going to end up, once you
24 scalp this site, having drainage in this
25 direction as well. So, similar concerns for



1 potential for pollution leaving the site via
2 runoff along those tributaries.

3 Q: And is that your opinion to a reasonable degree
4 of certainty for both Mr. David Coggins facility
5 and Heath Coggins facility?

6 A: Yes.

7 Q: I believe you had mentioned earlier that you had
8 reviewed the Little River TMDL.

9 A: Yes, ma'am, I have.

10 Q: Just explain what a TMDL is first.

11 A: Contrary to mythology, it does not mean too many
12 damn lawyers. It means total maximum daily load
13 for a particular pollutant parameter that has
14 been identified in waters of the U.S. or waters
15 of South Carolina in our case. And it is a
16 process by which, once a stream is on the
17 303(d) list, which is the list of impaired
18 waters that DHEC has to publish every two years
19 to EPA through their ambient water quality
20 monitoring program. They go out and they have
21 stations all over the state. They have several
22 in the Little River basin. They evaluate
23 nutrients, they evaluate fecal coliform
24 historically, now they use E coli as the
25 indicator parameter for fecal contamination.



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1 And based on standards for each of those
2 parameters, they evaluate whether the stream is
3 impaired. In the case of Little River, there
4 are -- either have been historically -- I think
5 that TMDL goes back to 1998, if I recall
6 correctly, or about that time. There were five,
7 if I recall correctly, monitoring stations in
8 the Little River ---

9 Q: I was -- I can put this up ---

10 A: --- going -- yes, please. Yes. The upstream-
11 most sampling station on the Little River is
12 this S34, which is in Laurens, and it -- one
13 would surmise, due to the proximity basically
14 loading from the Laurens Municipal Wastewater
15 Treatment Facility, that that was the source of
16 fecal contamination historically. But all of
17 these other sites down here, including 38, 99,
18 and 305, have -- also had fecal contamination
19 above the screening standard, which is in
20 exceedance of 10 percent of the samples above
21 400 MPM per milliliter or whatever the units
22 are. The point is that it was severe enough
23 that this watershed was assessed for how do we
24 make these surface waters cleaner and EPAs
25 developed and DHEC has implemented a TMDL review



1 process where they assess where does this
2 contamination come from, how can we reduce it,
3 and as it, in the case of fecal contamination in
4 the Little River basin, does that come from
5 municipal sources, does it come from non-point
6 sources, to include land application of waste or
7 poultry operations or other livestock
8 operations, or does it come partly from natural
9 sources, wildlife and what have you. And so,
10 the TMDL was developed and a load allocation was
11 developed. I don't know the details of that,
12 but that has been in process of implementation
13 over the past ---

14 Q: Okay. So ---

15 A: --- almost 20 years.

16 Q: --- just make clear, these points on -- that are
17 here, these are points in which water quality
18 monitoring stations conducted by DHEC,
19 maintained by DHEC are showing impaired --
20 impairments at that particular segment of the
21 Little River?

22 A: Yes. And I think that's 297 was historically --
23 sometimes monitoring stations get retired or
24 replaced by other stations simply because of
25 convenience. I do recall that in the DHEC



1 review of these facilities, there's a section
2 where -- let me find it. There's a query on the
3 DHEC review form of where is the nearest
4 impaired water monitoring station. And the
5 response was S305, which is way down in the
6 bottom of the watershed, I think at Highway 34.
7 And the accurate answer would be S308. The
8 proposed facilities are about right here in the
9 watershed, maybe a little bit to the west of
10 that. And I'll also add that both Beaverdam
11 Creek, which is within this, I think Beaverdam
12 runs on this side of the site and up in the
13 northern part of the watershed, North Creek I
14 think it's called, both of them also have water
15 quality monitoring stations indicating fecal
16 bacteria too. I'll add one additional
17 amplification. And that is, just because we
18 monitor the specific location and we get an
19 indication of bad stuff there, doesn't mean that
20 other locations where we don't monitor are not
21 also polluted. So, you have to approach these
22 -- this data with some discretion and
23 interpretation of, you know, it's a guide, but
24 it's not a complete portfolio. The absence of
25 evidence is not evidence of absence of a



1 pollutant. So, in the case of the Little River,
2 which is hard to see on this drawing the course
3 of the Little River, but it's something like
4 this and eventually comes into Silverstreet down
5 here, near Silverstreet. The tributaries very
6 well are -- may be impaired as well, to include
7 these tributaries that are very close to the
8 proposed facilities. It's also interesting that
9 DHEC encourages protection of the impaired
10 waters. Well, you know, philosophically, why
11 wouldn't we want to protect the clean waters
12 too. So, I think that -- you know, all of these
13 waters are waters of the state, they're all of
14 our waters, and they all deserve protection from
15 pollution wherever we can implement practices
16 that avoid pollution.

17 Q: I'm going to -- this is a checklist for Heath
18 Coggins -- and I'm just trying to -- if you look
19 on -- it talks about 303(d) and the proposed
20 sites located within a TMDL. And then the
21 checklist further states that no setbacks are
22 required since ag facilities are not considered
23 contributors to the TMDL. And examining the
24 TMDL for the Little River, are agricultural
25 facilities considered to be contributors to the



1 impairment of Little River?

2 A: I believe they were listed in a narrative
3 description of potential sources, to include
4 poultry operations. There was recognition that
5 there was a wide variety of potential
6 agricultural sources that likely contributed.
7 That's not a smoking gun necessarily, they're
8 not -- you know, that language recognizes
9 categories of potential inputs.

10 MR. MUSTIAN: Your Honor, I would to object to his
11 characterization of the TMDL as agricultural
12 facilities are the likely sources. Again, the
13 document can speak for itself as to whether or
14 not they are or not or are likely sources.

15 THE COURT: Any response?

16 MS. TAYLOR: The document can speak for itself.

17 THE COURT: Okay. I sustain that objection.

18 THE WITNESS: I was trying to be delicate, Your
19 Honor. I believe my best recollection of
20 looking at that document is that it did say that
21 they were. But, you know, the document will
22 speak for itself.

23 MR. MUSTIAN: Objection, Your Honor.

24 MS. TAYLOR: The document is in the record or it will
25 be.



1 A: If I may point out, Ms. Taylor, this was what I
2 was referring to earlier. This measurement that
3 was reported in the review form of 16.8 miles to
4 station S305, that is the one farthest away from
5 the site. There are two others that are
6 approximately five and maybe seven miles
7 downstream that are not noted here. That
8 doesn't change the statement at the end, that
9 this proposed site is located within the TMDL,
10 it is. And so, it is a tributary to waters that
11 are already impaired.

12 Q: Would your same concern that you've just
13 expressed also apply to all three of the
14 proposed facilities?

15 A: I believe the analysis and review, to the best
16 of my recollection, on each of the three farms,
17 each of the three review documents was the same.

18 Q: In your opinion does a TMDL for an impaired
19 river, that's impaired for bacteria I might add,
20 raise concern as far as permitting additional
21 animal, agricultural facilities within that
22 impaired watershed?

23 A: Yes, ma'am.

24 Q: Let's see. I think maybe -- if you could look
25 on your stack, Dr. Hargett, for the soil maps.



1 You touched on this before. I just want to make
2 sure we've gotten through the soil issues.

3 A: I'm looking at the Heath Coggins stack, to give
4 you an example.

5 Q: Sure. I had this pulled up and now it
6 disappeared. Okay. This is the soil map for
7 David Coggins. And also call your attention to
8 the ---

9 **MR. HIGHTOWER:** What is the Bates stamp number?

10 **MS. TAYLOR:** It's another one of those with the hole
11 punch. DHEC_000956..

12 **MR. HIGHTOWER:** So, this is David Coggins, correct?

13 **MS. TAYLOR:** This is David Coggins, yes.

14 **MR. HIGHTOWER:** Okay. Yeah, I was confused because
15 the witness said Heath Coggins.

16 Q: So, looking at this map, which is part of David
17 Coggins comprehensive nutrient management plan,
18 which also includes a soil report; am I correct?

19 A: Yes. Each of the CNMPs have a several page, I
20 think it's on the order of 25 to 30-page report
21 on soil conditions at the sites. And as much as
22 I'm a fan of using soils information to make
23 decisions, in the immediate area of the
24 production facilities, that is the barn complex,
25 this information ends up being largely useless.



1 And I say that simply because of my points
2 earlier about the massive grading. Soils are
3 mapped, based on the characteristics of the soil
4 profile, to a depth of about four to six feet.
5 So, these symbols on this map, you know the
6 Cecil C2 for example, the Wilkes D for example,
7 all of these indicate the natural condition that
8 was mapped by NRCS soil scientists in a
9 published soil survey. That's great information
10 to have. It's important for agricultural
11 production, for understanding what the potential
12 productivity of the soil is for forests or for
13 agriculture. But once you adulterate the site
14 by massive grading, that information is
15 literally been homogenized on the site. It's no
16 longer relevant. So ---

17 Q: So, what does that mean? I mean, what does --
18 if the soil report that's in the management plan
19 is not longer accurately representing the soils,
20 what impact does that have in terms of the
21 effects for erosion, runoff prevention, soil
22 types ---

23 A: There is indirect information you might get from
24 that information. You know, if you take a body
25 of Cecil sandy loam, which has a clayey subsoil



1 and a sandy loam substrate, or you have Wilkes,
2 which is -- has a less distinguishable subsoil
3 zone and is typically somewhat shallow to
4 bedrock, you kind of get a sense of the general
5 nature of the soil medium that's going to be on
6 the site. But when you push it around with
7 bulldozers and homogenize it all, it becomes the
8 same. Some of the information, you know, is
9 useful in terms of relative erodability. And
10 NRCS does publish tables of relative
11 vulnerability of soils to erosion based on the
12 nature of the soil profile. But in the
13 immediate footprint of the building, you know,
14 its going to be obliterated. And this big chunk
15 of the CNMP report, 25 or 30 pages of it, it's
16 simply information. That has no particular
17 relevance to the decision making that DHEC has
18 to make on site suitability.

19 **MR. HIGHTOWER:** Objection, Your Honor, as to the
20 characterization of the suitability that DHEC
21 has to make regarding a site. He can state his
22 concerns, but now he's making a legal
23 conclusion.

24 **THE COURT:** Well, I don't think that's a legal
25 conclusion, but he's speculating about DHEC.



1 And if we could strike that, the DHEC, comment,
2 it would be suitability of the site.

3 **MS. TAYLOR:** Yeah. I mean, shortcomings as far as,
4 you know, the soil report contained within the
5 nutrient management plans.

6 **THE COURT:** So, I just trike the DHEC comment and let
7 the testimony stand.

8 **A:** If I may on this subject. The soils report on
9 the Young site is -- provides the same kind of
10 information regarding the footprint of the
11 production area. But it also provides soils
12 information that are relevant to the proposed
13 land application sites in that case. And so,
14 that is useful information. And that also goes
15 to my understanding that the manure produced
16 from the Young operation will be land applied by
17 the Permittee themselves. I looked at exactly
18 where that's going to go per the information
19 provided in the application and the CNMP. And
20 that -- those application sites are outside the
21 Little River basin, so they aren't subject to
22 the Little River TMDL, but they are in the Bush
23 River watershed, which is the next watershed to
24 the east. They're located roughly two to five
25 miles or so, you know, south -- due south of



1 Clinton. Clinton, as they say. And those sites
2 are all located in a watershed which also has a
3 fecal impairment on Bush River. Not at all the
4 sites, but some of the downstream sites are
5 impaired for fecal. So, you have the same set
6 of concerns in a different watershed. So, that
7 applies in all three cases in terms of land
8 application. The other relevant point of that
9 is, we don't know where the land application
10 sites are for the two Coggins sites. And that
11 is a core concern. I know that they are
12 specified in the application that that will be
13 going through a broker, but, you know,
14 distributing the responsibilities of the
15 Permittee to perform to second and third parties
16 seems a really vulnerable way to manage the ---

17 **MR. MUSTIAN:** Your Honor, objection. We're getting
18 outside the scope of land and soil.

19 **THE COURT:** Actually he's commenting about the very
20 aspects of the statute and regulations of ...

21 **MS. TAYLOR:** I don't -- he's talking about soil and
22 water resource management, Your Honor.

23 **THE COURT:** He's getting into whether he agrees with
24 the regulatory process, is what it sounded like
25 to me. If I could just get you -- I'll sustain



1 your objection ---

2 **MR. MUSTIAN:** Thank you, Your Honor.

3 **THE COURT:** --- and get you back on. If you could
4 just answer her questions ---

5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** --- I think we might be able to avoid
7 some of the ---

8 **THE WITNESS:** Yes, Your Honor.

9 **Q:** Do you have any opinion concerning the land
10 application sections within Jim Young's
11 comprehensive nutrient management plan?

12 **A:** The land application sites that are identified
13 in the CNMP for Young appear to be reasonably
14 well-suited sites. There were some items of
15 information in that plan that did cause some
16 concern for me. For example, some of that land
17 was, I think, proposed to be managed for corn
18 production. And the amount of nutrients you put
19 on land is a function of what you're anticipated
20 yields may be. And they had yields projected of
21 150 bushels per acre of corn. And if I could
22 grow that kind of corn on Piedmont land, I'd be
23 a rich man. You know, it could be twice as much
24 corn projected and twice as much nutrient
25 applied as is historically possible on these



1 similar soils. So, those kinds of things in
2 terms of the precision with which the
3 information is rendered and the accuracy that
4 you can achieve that performance. So, that
5 means he may need more land than he's
6 projecting. I didn't dwell in that detail for
7 too long.

8 Q: This has already been entered into evidence with
9 a note that the number of barns for Jim Young
10 Broilers and Keith Coggins Broilers is not
11 eight, but six. But I put this up as an
12 illustration to show all three of these
13 facilities on what was one parcel that was
14 subdivided includes the water -- the Little
15 River and I guess some wetlands associated with
16 that. Do you have any opinion to a reasonable
17 degree of certainty as far as the environmental
18 impacts of putting three facilities totaling 18
19 barns in this proximity to the Little River and
20 its ephemeral and intermittent streams?

21 A: Yes, ma'am. Let me -- let me point out
22 something else important. First of all, these
23 ---

24 THE COURT: Whoa, whoa, if you could answer her
25 questions now, I would prefer that.



1 THE WITNESS: My point, Your Honor, is this drawing
2 is either inaccurate or it's wrong.

3 THE COURT: Okay.

4 THE WITNESS: It's not consistent with the previous
5 drawings that we've looked at. For example, the
6 Young facility is now projected somewhere up in
7 this area. Remember it was close to this gully
8 system up here.

9 Q: Okay. How about if I do this. This may not fit
10 all, but these are -- this might not work. No,
11 this is not going to work. But you have seen --
12 these are color copies of the nutrient
13 management plans for each facility. They are --
14 shows they are located on one parcel that was
15 subdivided. So, my same question -- I don't
16 want to get you to -- you know, distracted as
17 far as that map here. So, do you have an
18 opinion as far as the environmental impact to
19 water resources by locating 18 barns on this
20 parcel to be subdivided in the proximity that
21 these have to the Little River or tributaries,
22 et cetera?

23 A: You're essentially tripling the potential risk.
24 In a probability point of view, if there are
25 pollutants released from one of these sites, if



1 you've got three times as many sites, you really
2 are pushing the probability in a direction that
3 you will almost certainly have issues with
4 released pollutants and polluted stormwater to
5 the river. So, the answer is yes, I have
6 serious concerns about this density of
7 facilities on this kind of acreage on such
8 rugged land proximal to impaired waters.

9 Q: It's been about a little over an hour, you want
10 to take a break?

11 A: I'm okay for a bit.

12 Q: Going back to the soil plan. I think I
13 interrupted you. If you could -- if there's
14 anything else briefly that you missed as far as
15 our prior conversation related to the soil
16 management plan or the soil classification, the
17 soil permits within these nutrient management
18 plans for each facility. Is there anything else
19 that's lacking, missing, causing you concern?

20 A: In the case of Young, as a basis of comparison,
21 you have a complete picture of appraisal to
22 grade, if you will, where the manure's going to
23 be produced and where it's going to go. And so,
24 we have a complete picture of that process. The
25 nuances of whether that releases pollutants



1 either at the production site or at the land
2 application sites, you know, you can assess all
3 of that. In the case of the two Coggins sites,
4 we don't know, again, what that complete cradle-
5 to-grave picture is. We don't know where it's
6 going -- where the manure's ultimately going to
7 be land applied. We can't make that assessment.
8 We are trusting second and third parties to do
9 that. And ---

10 **MR. MUSTIAN:** Your Honor, again we're going into a
11 regulatory scheme and not a land and water
12 issue.

13 **THE COURT:** Any response? He's saying we're trusting
14 authorities to apply the manure properly, as
15 basically a narrative of his testimony.

16 **Q:** Dr. Hargett, can you restate that without
17 reference to a particular regulation?

18 **A:** Yes, ma'am. If I were a poultry farmer, a
19 broker looks like a very attractive mechanism to
20 be relieved of some of the responsibility.
21 Young carries all of that responsibility, for
22 the ultimate disposal according to the
23 regulations. So, a broker system is very
24 convenient. I hope it works. I hope this is
25 the best broker there is. But, you know, in



1 terms of the permittees stated obligations to
2 avoid ---

3 **MR. MUSTIAN:** Your Honor, objection. Again, we're
4 getting into legal conclusions and legal
5 analysis ---

6 **MR. HIGHTOWER:** He stated obligation.

7 **THE COURT:** He does seem to be continually commenting
8 on the regulatory process as opposed to this --
9 his stated expertise is soil and water
10 management. Now, he's speaking about manure
11 management, basically, his opinion in that area.

12 **MS. TAYLOR:** Well, I do believe when we discussed --
13 went through his areas of expertise, he does
14 have expertise in terms of waste management,
15 which also includes manure application to land.
16 I think that's within his purview of expertise.

17 **MR. MUSTIAN:** Your Honor, the distinction is is we're
18 not talking about what the impact of applying
19 manure to land is, now we're getting into the
20 permitting structure and the regulatory
21 structures of how brokers and producers
22 interact.

23 **MR. HIGHTOWER:** Who has responsibility ---

24 **THE COURT:** He does seem to be getting too far field.
25 I strike that testimony.



1 MR. MUSTIAN: Thank you, Your Honor.

2 Q: Dr. Hargett, do you have concerns as far as land
3 application of manure within the Little River
4 watershed, which as we've already noted is
5 impaired for fecal bacteria?

6 MR. HIGHTOWER: I'm going to object, Your honor,
7 because, as the witnesses has stated, the land
8 application site is not in the Little River
9 watershed. So, this would be not relevant to
10 the inquiry.

11 THE COURT: Ms. Taylor?

12 MS. TAYLOR: I believe it would be relevant for
13 manure brokers who were hired by the Coggins.

14 MR. MUSTIAN: Your Honor, I believe he's also said
15 that he doesn't know where the manure's going to
16 be spread. So, whether -- he doesn't know
17 whether it's -- based on his testimony, he
18 doesn't know if it's going to be spread in the
19 Little River watershed or not.

20 THE COURT: Well, it doesn't matter what he knows, it
21 matters -- is her question pertinent to the
22 facts of this case? So, I don't ---

23 MR. HIGHTOWER: Well, unless they could show where
24 the manure is going to be placed, yes. It's not
25 relevant to this inquiry. It's more of an



1 argument against how the Department regulates
2 manure brokers versus farmers themselves and not
3 what is happening here. As David Coggins and
4 Heath Coggins have contracted with a manure
5 broker, they have a contract that states that
6 the manure broker's going to be responsible for
7 all of the waste and where it goes and making
8 sure that it is done in accordance with DHEC
9 regulations. That should end any inquiry as to
10 the Little River watershed. With regard to the
11 land application sites, I think it was the Bush
12 River watershed, that's different, that would be
13 relevant. But that's not what the question was.

14 THE COURT: Okay. Ms. Taylor?

15 MS. TAYLOR: We can move on. How's that?

16 THE COURT: Okay.

17 MS. TAYLOR: And, actually, I would like a break.
18 I'm feeling a little ---

19 THE COURT: Okay.

20 MS. TAYLOR: --- a little -- caffeine -- maybe 10
21 minutes or something? Thank you.

22 (Off the Record)

23 THE COURT: All right.

24 MS. TAYLOR: All right.

25 Q: This is a page from text from a comprehensive



1 nutrient management plan for David Coggins
2 Broilers, which is the waters of the state. Do
3 you see this is the nutrient management plan,
4 Dr. Hargett?

5 A: Yes, ma'am.

6 Q: In your opinion to a reasonable degree of
7 certainty, will the issue of the permit here for
8 David Coggins increase water pollution?

9 A: In my opinion, yes.

10 Q: Can you explain?

11 A: The grading for the site, as I commented
12 earlier, is going to have to cover all of the
13 areas where buildings are being built. That
14 changes the drainage from the current natural
15 drainage to an artificial manmade drainage
16 system. That means that there will be likely,
17 in my opinion, as best I can speculate, not
18 having seen a engineering plan for this final
19 condition, that there will be drainage going
20 into this network, possibly into that one, and
21 certainly into this. And even if this were an
22 industrial site, if it were a Wal-Mart where you
23 have measures and practices that are used to try
24 and reduce the amount of pollution, you only
25 design those for a certain amount of rain, for



1 a certain design storm. And any storm beyond
2 that is going to be allowed to pass. If that
3 water passes, and it will, then that will carry
4 whatever pollutants originate at this site. In
5 the process of learning more and advancing my
6 base of knowledge of how these facilities
7 operate and facilities elsewhere in the United
8 States -- all over the United States, there's an
9 incredible mount of literature out there and
10 there are federal agency literature reviews on
11 the kinds of issues, the kinds of pollutants,
12 going toward your question, that emanate from
13 these facilities. There's an abundance of
14 documentation that these sites produce
15 pollution. They produce them through the
16 emissions, be they water or other, that come
17 from these sites and they enter the environment,
18 they enter water resources. And that will
19 happen here. It will certainly happen. You
20 aren't going to stop and you aren't not going to
21 retain all of the stormwater. Some of it will
22 leave the site and it will follow gravity. It
23 will follow the course of least resistance and
24 find its way into waters of the state. So, my
25 answer is yes, definitively there will be an



1 increase in pollution from these sites.

2 Q: If you assume, hypothetically, that there is an
3 open -- a stockpile of manure outside any one of
4 these facilities for one day, two day, three day
5 -- I'm not suggesting an exceedance of the
6 regulatory period of time in which these
7 permitees are allowed to keep stockpiles of
8 manure uncovered. But hypothetically is it your
9 opinion that, if rainwater hits that open
10 stockpile, will that cause fecal bacteria to run
11 into water of the state?

12 A: In the hypothetical you've outlined, yes. And
13 not only fecal bacteria, but other contaminants
14 of concern, nutrients in particular.

15 Q: And which nutrients would that be?

16 A: The primary nutrients are nitrogen, phosphorus,
17 and potassium.

18 Q: If you've noted, I'm just -- for brevity sake,
19 the fans for these are facing or ventilating
20 towards the Little River, northeast if I
21 remember correctly. Do you recall that from the
22 nutrient management plan?

23 A: I believe that's correct.

24 Q: Okay. So, the fans blow air outward and they --

25 -



1 MR. MUSTIAN: Objection, Your Honor.

2 MR. HIGHTOWER: Objection, Your Honor.

3 MS. TAYLOR: I'm getting to the water resources.

4 MR. MUSTIAN: Your Honor, where we're getting ready
5 to go is that the fans are blowing out
6 pollutants and then ---

7 MR. HIGHTOWER: Right.

8 MR. MUSTIAN: --- they get into the water resources.
9 I asked him specifically if he was an expert in
10 modeling air quality and he said no.

11 THE COURT: Any response?

12 MR. TAYLOR: I still think if manure is blowing out
13 of the barn and hits the soil and travels to
14 waters of the state, that's within this -- he's
15 not modeling air, he's not talking about ---

16 THE COURT: But he's talking about fans blowing,
17 that's air blowing. Unless I can hear something
18 else, I sustain the objection.

19 MR. TAYLOR: Okay.

20 Q: Are there other ways besides blowing air that
21 manure -- chicken manure can reach the outdoors
22 and the waters of the state?

23 A: Yes, ma'am. 100 percent of the manure that's
24 going to be produced in those barns is going to
25 have to leave those barns. And in the process



1 of the handling, many, times you'll come out and
2 go into these manure storage areas for periods
3 of time, it's going to be spilled. I mean,
4 there's no way you move bulk material -- and I
5 don't recall the total number from each of these
6 operations, but it's incredible numbers of tons
7 per year of manure and bedding materials and
8 waste materials that are going to be moved
9 around the site. You're going to have spillage.
10 And all of this entire area is going to be
11 essentially impervious. That means that nearly
12 all the rainwater that falls on those impervious
13 surfaces is going to run off. It's going to
14 pick up that manure, those residuals that are
15 associated with manure, and it's going to take
16 it where the water goes. So, the answer is yes,
17 ma'am.

18 Q: This is the same location map for Jim Young. In
19 your opinion to a reasonable degree of
20 certainty, will issuance of this permit to Jim
21 Young Broilers increase water pollution?

22 A: Yes, ma'am. It's a very similar situation,
23 similarly rugged terrain with to-be-defined
24 future drainage. 100 percent of the drainage
25 will go to the Little River, it's just a



1 question of exactly how it will get there.

2 Q: Is your opinion the same for Heath Coggins
3 Broilers?

4 A: Yes, ma'am, it is.

5 Q: You had mentioned earlier literature that you
6 have reviewed. We had mentioned before the
7 Little River TMDL as a document that you had
8 reviewed in the course of rendering your
9 opinion, correct?

10 A: Yes, ma'am.

11 Q: And that is -- I don't want to enter it into
12 evidence, I'm just pointing out that it's
13 Petitioners' Exhibit 4B. Did you review a EPA
14 -- excuse me, EPA document entitled, Non-Water
15 Quality Impact Estimates for Animal Feeding
16 Operations dated December 2002?

17 A: Yes, I believe I did.

18 Q: Did you review a document from Pew Environmental
19 Health entitled Understanding Concentrated
20 Animal Feeding Operations and Their Impact on
21 Communities?

22 A: Yes, ma'am.

23 Q: Did you review an EPA document entitled,
24 Producer's Compliance Guide for CAFOs?

25 A: Yes. All of these documents are -- you know,



1 some of them are extensive documents. I
2 reviewed them briefly. Don't ask me to recite.

3 Q: Well, I'm not asking you to recite. I just want
4 just make sure we have identified that documents
5 that you have reviewed. EPA document dated July
6 2013, Literature Review of Contaminants in
7 Livestock and Poultry Manure and Implications
8 for Water Quality?

9 A: Yes, ma'am.

10 Q: I don't think this is repetitive. There's
11 another document by Pew Environmental Group
12 called Big Chicken, Pollution and Industrial
13 Poultry Production in America?

14 A: Yes, ma'am.

15 Q: A journal article from Environmental Health
16 Perspectives entitled Impacts of Waste from
17 Concentrated Animal Feeding Operations on Water
18 Quality?

19 A: Yes.

20 MR. MUSTIAN: Objection, Your Honor. Relevance as
21 to what articles he's reviewed. I'm not clear
22 where this is going.

23 THE COURT: Okay.

24 MR. TAYLOR: I just want to make sure that the record
25 reflects the documents that he's reviewed in



1 order to have formed his opinion.

2 **THE COURT:** You're not seeking to introduce those?

3 **MR. TAYLOR:** No.

4 **THE COURT:** The case law's pretty clear on that, so

5 ...

6 **MR. TAYLOR:** Well, some of these would be admissible,

7 I believe. But I'm not there yet.

8 Q: Environmental Health Impacts of Concentrated
9 Animal Feeding Operations: Anticipating
10 Hazards-Searching for Solutions.

11 A: Yes.

12 Q: Which is a journal article from Environmental
13 Health Perspectives.

14 A: Yes, ma'am.

15 Q: A report the United States Government
16 Accountability Office entitled Concentrated
17 Animal Feeding Operations, EPA Needs More
18 Information and a Clearly Defined Strategy to
19 Protect Air and Water Quality from Pollutants of
20 Concern?

21 A: Yes.

22 Q: To the extent that you reviewed the quality ...

23 A: Yes, ma'am.

24 Q: The Clemson University Poultry Training Manual?

25 A: Yes, ma'am.



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1 Q: Any other documents I'm missing as far as your
2 help -- helped to form your analysis and
3 opinion?

4 A: I believe those are key documents.

5 Q: Just a moment. Are these customarily relied
6 upon in experts of your field?

7 A: Yes, ma'am.

8 Q: Okay. All right. I have no further questions
9 for you at this time.

10 **THE COURT:** Mr. Mustian. You ready to go?

11 **MR. MUSTIAN:** Probably not, but do I have a choice?

12 **THE COURT:** I'll give you a five-minute break if you
13 want, but we just had one, so.

14 **MR. MUSTIAN:** I think I can get through it, Your
15 Honor.

16 **THE COURT:** All right.

17 **DR. HARGETT - CROSS EXAMINATION BY MR. MUSTIAN:**

18 Q: Mr. Coggins -- I mean ...

19 **MR. MUSTIAN:** I was just saying hey to him over
20 there. How you doing? I apologize, Your Honor.
21 I went through a three-week trial one time and
22 I called somebody the same -- the wrong name for
23 about two weeks out of it. So, I apologize.

24 **MS. TAYLOR:** Make sure I get my stuff out of your way
25 over here.



1 MR. MUSTIAN: Okay. You want me to wait until you
2 finish or you -- either way is fine.

3 MR. TAYLOR: It'll buy you a little bit more time if
4 you wait for me.

5 MR. MUSTIAN: Sure. That works.

6 MR. TAYLOR: All right.

7 Q: Dr. Hargett, we had your -- we took your
8 deposition before this case began; did we not?

9 A: Yes, sir.

10 Q: And you remember me going through that
11 deposition and asking you what your opinions
12 were on a variety of different things. Do you
13 agree with that?

14 A: Yes.

15 Q: And you would agree with me that a lot of the
16 opinions that you've presented today, you didn't
17 -- you hadn't formed those opinions at the time
18 of the deposition; is that correct?

19 A: That is fair. I had only been involved in the
20 case for a few days at that point.

21 Q: Okay. Well -- and I understand the position you
22 were in as far as when you were retained. But
23 you would agree with me that that's a function
24 of when the Petitioners were able to secure
25 somebody, correct?



1 A: Yes, sir.

2 Q: Okay. But you would agree with me that the
3 majority of the opinions -- and we'll walk
4 through them. But the majority of the opinions
5 that have given here today, you had not told me
6 about and you had not formed as of the
7 deposition, correct?

8 A: I don't know that I'd say the majority. But I
9 think the themes are similar.

10 Q: Okay. All right. Well let's talk about --
11 let's first talk about the TMDL. And I'm
12 talking about the Little River TMDL, okay? I
13 believe you said -- and correct me if I'm wrong.
14 I believe you said that agricultural facilities
15 do contribute to the fecal coliform bacteria
16 level in the Little River. Did you not say
17 that?

18 A: I believe that's the language in the TMDL.

19 Q: Okay. Well, in your deposition, and I'm happy
20 to pull that out, but you agreed with me that
21 agricultural facilities may not be a source of
22 contamination. Do you remember saying that?

23 A: That's also possible.

24 Q: So, can it -- it is a source, but it also may
25 not be a source. Explain those two things to



1 me.

2 A: In any particular TMDL, any particular
3 impairment situation, you look at the specifics
4 that are going on that watershed and are
5 potential sources. So, in the broad context,
6 you may have situations where some agricultural
7 operations are doing just fine and are not
8 causing a problem, others may indeed cause a
9 serious problem.

10 Q: Well, I mean, I'm trying to make sure that I
11 understand. In the report that was issued in
12 the TMDL report for the Little River watershed
13 -- you've read that report, correct?

14 A: Yes.

15 Q: Okay. Does that report say that agricultural
16 facilities are a source of fecal contamination
17 for the Little River?

18 A: I believe that is definitive language that is
19 used in the report.

20 Q: Okay. I'm going to show you -- this is the EPA
21 finalized TMDL from 2004. And it's -- I want to
22 point your -- to 3.2.2. Can you read that first
23 sentence for me, please?

24 A: It says, Agricultural land can be a source of
25 fecal coliform bacteria.



1 Q: Okay. So, can be, does that mean that it is?

2 A: I believe this a broad brush preamble to a
3 discussion that follows.

4 Q: But you would agree with me that that says it
5 can be -- agricultural land can be?

6 A: That is what that says.

7 Q: So, that also means that it cannot be, correct?

8 A: Yes, sir. That is a reasonable deduction.

9 Q: And that's what you said in your deposition,
10 isn't it? You said that agricultural facilities
11 may not be a source of contamination in the
12 Little River.

13 A: Depending on the circumstances, that's a fair
14 statement.

15 Q: Did you qualify it in your deposition? Do we
16 need to pull it out and look at it?

17 A: I don't recall if I qualified it. It depends on
18 the context in which the question was asked and
19 answered.

20 Q: I'm going to have you read -- this is
21 deposition, your page 136 and we'll start at
22 line 17. I'm going to read the question and you
23 read the answer, okay?

24 A: Very good.

25 Q: Question, You said that agricultural facilities



1 can potentially be a source of contamination.
2 The TMDL doesn't specify that it a source, does
3 it?

4 And you answered?

5 A: I said, I think the term used is maybe.

6 Q: So, that also means that it may not be, wouldn't
7 you agree with that?

8 A: Yes.

9 Q: Okay. You talked about ephemeral streams today
10 on the proposed piece of property. Do you
11 recall that?

12 A: Yes, sir.

13 Q: Okay. And you talked about you had looked at
14 whether there were particular drainages that
15 would incise the property. Do you recall that?

16 A: I believe I did.

17 Q: At the time of your deposition had you formed an
18 opinion as to whether or not there were
19 ephemeral streams on the property?

20 A: I don't recall how the questions were presented.
21 But to the best of my recollection of the
22 deposition roughly one month ago, I probably
23 said that there were. There almost have to be.

24 Q: Okay. But what did you say that you were going
25 to do -- you said that you were going to look at



1 soil maps and topography maps in order to make
2 that determination, did you not?

3 A: And I have done quite a bit of that analysis.

4 Q: But at the time I took your deposition, you had
5 not made that analysis and that opinion ---

6 A: It was incomplete.

7 Q: So, you still had not formed -- fully formed
8 your opinion at that time?

9 A: Not fully.

10 Q: Okay. And you said that the best way to make
11 that determination was to do what? Do you
12 recall?

13 A: To inspect the site on the ground and to GPS
14 each one of those relevant points that could be
15 part of the surface water flow system.

16 Q: Okay. Have you gone on the property?

17 A: I have not.

18 Q: Okay. Have you done GPS points on he property?

19 A: No, I have not.

20 Q: So, in fact, that's what you do in other
21 situations, isn't it? In the other projects
22 that you've done, you actually go out there and
23 you put eyes on the ground, don't you?

24 A: Not only that, but you collect the data to
25 specify exactly where a point of interest is.



1 Q: But you haven't done that in this case, correct?

2 A: I haven't done it and I'm not sure if anyone
3 else has done it either.

4 Q: In your deposition we talked about flood plains
5 and soils. Do you recall that?

6 A: Yes.

7 Q: Do you recall saying at the time of your
8 deposition you will still assessing those
9 issues?

10 A: Yes.

11 Q: Do you recall telling me that you had not
12 formulated an opinion with respect to those
13 issues at that time?

14 A: That makes sense.

15 Q: Do you recall telling me at the time of your
16 deposition that you wanted to scrutinize the
17 soil report further?

18 A: Yes. Would you like for me to elaborate on
19 that?

20 Q: Well, I mean, I'm -- my point is you had not
21 evaluated it to the point, at the time of your
22 deposition, that you were able to formulate an
23 opinion at that time, were you?

24 A: Well, I think the context that I provided at the
25 time was that there was some information that



1 confused me. For example, on the table that's
2 in each of the three comprehensive nutrient
3 management plans in the soils report, it has a
4 total acreage of 141,000 acres. So, that I was
5 aware of at that time and I said -- and I think
6 I had said in my deposition that I had pointed
7 out that I'm not sure what this represents. And
8 I think it was a lack of specificity by whomever
9 did the query in NRCS's web soil survey review
10 website. And they somehow didn't define
11 precisely exactly what the area of interest was.
12 In fact, there's a map on the cover page of that
13 section of the CNMP in each case and it goes all
14 the way up to Greenville. So, that evidently
15 was what the 141,000 acres was. The
16 information, once I got back into it and
17 scrutinized it, it was the right soil survey
18 information for each of the there CNMPs for the
19 production areas. But I, you know, remind you
20 of my testimony earlier, that in terms of the
21 plant -- of the production sites, that's nice
22 information, but it's going to vary -- you know,
23 it is certainly going -- if these things are
24 built, going to be obliterated. So, the utility
25 of that information I'm not sure of. And that's



1 part of what I have discerned since my
2 deposition. It's got nice information, but so
3 what?

4 Q: You discerned that after your deposition, but
5 that was not an opinion that you had drawn at
6 the time I took your deposition; is that
7 correct?

8 A: That is correct. I had not made the rough
9 calculations of what the volume of cut and fill
10 was going to be on the site. Again, I was four
11 days into the project and had a lot of
12 information to digest.

13 Q: Well, when you're talking about cutting into a
14 site and you're doing preparation and all those
15 sorts of things, have you ever been involved in
16 one of those?

17 A: Absolutely.

18 Q: And what is required in order to go out there
19 and to develop a stormwater construction plan
20 for that site?

21 A: Detailed engineering. And I -- to correct
22 myself, I have not done it for poultry
23 operation. I've done it for landfills, which
24 are vastly more complex. But you basically have
25 to have a very detailed survey and develop the



1 CAD maps, the computer-based engineering maps
2 that help you understand what the site
3 conditions are before, during, and after
4 construction, and how you phase that
5 construction, where water's going to go. That's
6 what you have to ultimately develop, is the
7 engineering guidance for how to construct.

8 Q: And you need that very detailed plan, more
9 detailed than what's in the CNMPs, correct?

10 A: Yes.

11 Q: And you need that very detailed information
12 because you need to know exactly what's going to
13 happen to that water; isn't that correct?

14 A: That's correct.

15 Q: So, you can't make that determination with any
16 specificity based on the information that's in
17 the CNMP; isn't that correct?

18 A: I cannot, and I would surmise that DHEC cannot.

19 Q: But you cannot, you're sitting -- you haven't
20 given an opinion regarding the stormwater --
21 your stormwater concerns. But because that
22 specific survey has not been done, you can't
23 make that decision, can you? You can't render
24 that opinion, can you?

25 A: No, sir. I cannot. And I think I qualified my



1 comments earlier, that I can't anticipate what
2 that's going to look like.

3 Q: In your deposition you understood that Mr.
4 Coggins and -- and Heath and Jim are going to
5 have to get a stormwater permit, correct?

6 A: That's my understanding.

7 Q: And you agreed with me, did you not, that when
8 they go through that process, that they can
9 address site specific issues at that time?

10 A: I would certainly hope so.

11 Q: Including surface drainage and those types of
12 things?

13 A: Yes.

14 Q: And you would agree with me that there are ways
15 to control stormwater and sediments on the site?

16 A: Yes.

17 Q: There are ways to -- even with the way the
18 facilities are cited currently in this plan,
19 there are ways to address those stormwater and
20 runoff issues; are there not?

21 A: Yes. There are a variety of best management
22 practices that can be engaged.

23 Q: And so. do you have any reason to believe that
24 Mr. Coggins and Heath and Jim wouldn't do that?

25 A: I trust that that will happen. I don't know



1 that it's going to happen. I don't that the
2 facilities are actually going to be built. But
3 it's an appropriate measure to follow through.

4 Q: Okay. Well, I mean, if you don't have any
5 concern that they're going to do it and if
6 that's what's required to address these issues,
7 then your concerns about stormwater runoff and
8 erosion, they're not applicable, are they?

9 A: On the contrary. They're highly applicable.

10 Q: Why is that?

11 A: It adheres to the last questions that Ms. Taylor
12 asked me. Even if you use the best management
13 practices available, you design stormwater
14 containment, retention, and treatment at any
15 kind of site, whether it's a Wal-Mart or poultry
16 operation, to contain a certain design storm.
17 Any storm beyond that is going to be allowed to
18 pass through. That means that water, that
19 excess beyond the design storm magnitude of
20 flow, is going to pass through and carry with it
21 any contaminants that it has contacted. So,
22 it's still absolutely relevant.

23 Q: So, I mean, what are you supposed to plan for
24 then? Are you supposed to plan for the 1,000
25 year flood event? Is that what you think is



1 reasonable?

2 A: The core objective of this body of regulations,
3 I'm not rendering an opinion, that why we're all
4 here is we're interested in mitigating and
5 avoiding and eliminating, to the extent
6 practical, and that's language that comes right
7 out of the regs, any pollutant, any discharge of
8 pollutants to waters of South Carolina.

9 Q: To the extent practicable. Is it practicable --
10 have you ever developed a stormwater plan for a
11 piece of property based on a 1,000 year flood
12 event? Is that practicable?

13 A: Well, I understand the dam that I manage may
14 require that I design for the storm -- the
15 probable maximum flood, which is like a 10,000
16 year flood. So, there are such standards out
17 there.

18 Q: Okay. We're talking about a hydroelectric dam,
19 is that we're talking about?

20 A: Well, it's a dam.

21 Q: Okay. Have you ever worked on a project, on a
22 land-based plot project where you're planning --
23 and you plan for 1,000 year flood event?

24 A: I have not. But there are situations where,
25 because of particularly sensitive waters or



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1 sensitive environments, that higher levels of
2 standard are considered. Now, whether that's
3 applicable here, I doubt. But the customary
4 design storm is on the order of 10 year, 24 hour
5 frequency storm. That's not an extremely
6 conservative level of protection. You could go
7 to a 50 year, 24 hour or a 50 year -- I mean,
8 we had to do this for the Duke Energy plant. We
9 had to ---

10 Q: For a nuclear plant.

11 A: Well, it's the same analogy. Because of
12 concerns for what might happen, we had to use a
13 higher level of rigor and we had to anticipate
14 basically what was the flood of record. And it
15 was the tropical storm Jerry flood from 1996.

16 Q: So, you're comparing a nuclear facility to a
17 poultry plant?

18 A: It was -- no. It was a stormwater plan, where
19 does the stormwater go if we had that kind of
20 plant. But, yes, it was for a nuclear plant.

21 Q: Okay. Have you ever worked on a stormwater plan
22 that was based on a 10-year, 24-hour flood
23 event?

24 A: I have reviewed plans that were more rigorous
25 than that particular design storm standard, yes.



1 Q: I'm not asking you that. I'm asking you have
2 ever worked on a stormwater plan that was for a
3 10 -- that was based on a 10-year, 24-hour flood
4 event, rain event.

5 A: I have been involved in those, yes.

6 Q: And did you recommend that those stormwater
7 plans be approved or implemented?

8 A: Projects that I have consulted on are like this
9 project or any other project. You use what is
10 required by the code, by the ---

11 Q: Dr. Hargett, I'm asking -- I would ask you to
12 answer my question, yes or no. Have you ever
13 worked on a plan that established a 10 -- that
14 was based on a 10-year, 24-hour rainfall event
15 and it was something that you recommended?

16 A: Yes. I've used that standard before.

17 Q: You remember talking to Ms. Taylor about your
18 concern about pollutants reaching the Little
19 River; do you recall that?

20 A: Yes, sir.

21 Q: And as I understand it -- you correct me if I'm
22 wrong. As I understand it, your concern is
23 that, if there is this major rain event, then
24 pollutants will reach the river. Is that
25 correct?



1 A: Yes, sir. That's my opinion.

2 Q: Okay. And what pollutants are we talking about?

3 A: We're talking about the primary pollutants of
4 concern associated with manure. Those are
5 nutrients and fecal bacteria.

6 Q: Fecal bacteria. What nutrients are we talking
7 about?

8 A: Nitrogen, phosphorous, potassium, and any other
9 compounds that may be associated with that
10 manure. That may include hormones, it may
11 include pharmaceuticals, it may include a
12 variety of things that are not regulated.

13 Q: Okay. And -- sorry. I lost my train of thought
14 for a second. You said that one of your
15 concerns is that chicken litter is going to be
16 spilled -- well, strike that. You would agree
17 with me that during normal operations, the
18 chicken litter stays within the houses; would
19 you agree?

20 A: For the most part, yes. There's probably a
21 little bit of trafficking in and out.

22 Q: Okay. Are you aware of whether not there's any
23 sort of chemical that you walk in and out of
24 when you go into and out of a poultry facility?

25 A: Yes, sir. I'm familiar with biosecurity.



1 Q: And do you think -- are you familiar with
2 whether or not those types of things would be in
3 place at the Coggins and Jim Young facility?

4 A: I don't have any specific knowledge. I assume
5 Amick, their aggregator, would require such
6 things.

7 Q: Okay. So, as far as tracking in and out, you
8 would agree with me that biosecurity measures
9 are designed to address some of those things;
10 wouldn't you agree?

11 A: Yes.

12 Q: Okay. So, now what are we -- now we're talking
13 about how else would chicken litter get outside
14 of the house?

15 A: In the process of clean-out.

16 Q: Okay. How much chicken litter, on average, is
17 spilled when it gets outside of a house; do you
18 know?

19 A: I don't have a specific answer for that, no,
20 sir.

21 Q: Okay. I mean, have you -- is that something
22 you've looked at? Do you know how many pounds
23 are spilled?

24 A: I've watched similar kinds of materials moving
25 operations and it's a pretty sloppy process.



1 I've been involved in some of that. I've had
2 projects that I've managed where contractors
3 went in and they were moving earth and moving
4 waste materials of various kinds. And there's
5 a lot of spillage and you have to be careful and
6 clean up after yourself.

7 Q: What kind of equipment did they use to transport
8 chicken litter out of a chicken house?

9 A: It varies. It may be a bobcat, it may be a
10 specialized piece of equipment that -- I think
11 on the average farm it's whatever's available.

12 Q: Okay. Do you know what the Coggins or Mr. Young
13 are going to do?

14 A: Not specifically, no.

15 Q: Okay. So, you can't tell me today what the
16 average rate of spillage is from cleaning out a
17 chicken house, can you?

18 A: In terms of a volume, no, I cannot.

19 Q: Okay. And you can't tell me whether or not
20 chicken producers, what would happen if they
21 went and cleaned up any spillage that had
22 occurred? I mean, is that a possibility that
23 they could go and clean up spillage?

24 A: It's a function of the stewardship of the
25 particular operator.



1 Q: Okay.

2 **THE COURT:** Wait a second. Did you answer -- you
3 just said it was a function. I don't know if
4 you answered the question.

5 **THE WITNESS:** If it was a yes/no question, the answer
6 is no, I don't know.

7 **THE COURT:** Okay.

8 Q: Well, let's assume for the sake of argument.
9 Let's do a hypothetical then. Let's assume that
10 there is some chicken manure that has spilled.
11 Let's assume that there's been some chicken
12 litter spilled and let's say that it rains.

13 A: Yes, sir.

14 Q: How is that chicken litter going to get into the
15 Little River?

16 A: A proper context for that is in 61-9, where it
17 characterizes and provides a definition for
18 process waste in wastewaters. And that includes
19 stormwater that may contact anything that has,
20 you know, been involved in the operation, to
21 include manure. The same -- the answer to your
22 question is, it's the same mechanism.

23 Q: What mechanism is that, Dr. Hargett?

24 A: The rain water contacting manure or materials --
25 and there may be other materials, there may be,



1 you know, poultry carcasses, you know. Anything
2 involved in the operation of it is contacted by
3 rain water and runs off the site is going to
4 carry pollutants.

5 Q: Okay. So, it's going to run off the site?

6 A: Yes, sir.

7 Q: And that's ultimately what we're talking about,
8 right? It's going to -- you think it's going to
9 rain -- this is what your concern is, that it's
10 going to rain, it's going to get in contact with
11 chicken litter, and then it's going to wash down
12 into the Little River, correct?

13 A: I'm not only my concerned, I virtually guarantee
14 it. I've worked on lots of kinds of industrial
15 sites, agricultural sites. And, you know, it's
16 part of what you just plan for and you deal
17 with.

18 Q: Okay. Well, you say you can guarantee it.
19 Well, didn't you tell me in your deposition that
20 one -- well, strike that. We'll come back to
21 that one. What's the -- you told me in your
22 deposition that one of the best ways to control
23 stormwater and sediments was through riparian
24 buffers; did you not tell me that?

25 A: Yes, sir.



1 Q: And did you not also tell me that one of the
2 ways to control it was natural vegetative -- a
3 natural vegetative ribbon?

4 A: Yes, sir. That's an appropriate best management
5 practice to employ.

6 Q: And so, isn't the point of that, that that
7 stormwater would flow through that riparian
8 buffer or that vegetative buffer and would
9 filter out those pollutants and contaminants?

10 A: It would be an appropriate practice to employ.
11 It's effectiveness really depends on site to
12 site conditions. And I simply haven't had any
13 information available on what those practices
14 are going to be.

15 Q: Okay. Well, in your deposition, you -- we
16 talked about a natural vegetative ribbon of
17 buffer vegetation and ecosystems. And do you
18 recall telling me that it was very effective in
19 reducing the direct impact of stormwater and its
20 constituents that it carries?

21 A: I said that. And that was in a very early
22 context before I had full appreciation of just
23 how massive the site disturbance is going to be
24 at the site. That set of calculations, which I
25 made after my deposition, you know, causes me a



1 lot of concern for the ability of any customary
2 best management practice to address this on a
3 site that's so rugged and will produce so much
4 runoff. So, the magnitude of the problem is all
5 that I'm acknowledging I have grasped since the
6 deposition.

7 Q: But you acknowledge riparian buffers and natural
8 vegetative ribbons of buffer vegetation and
9 ecosystems can directly reduce or are very
10 effective in reducing sediment and nutrients and
11 other constituents of concern; wouldn't you
12 agree with that?

13 A: They can be, yes, sir.

14 Q: Okay. And so, if those types of buffers or
15 setbacks if they were, if those types of buffers
16 were installed and planted, there's grass
17 planted and things like that, wouldn't that
18 address some of your concerns?

19 A: Some of them, yes, sir.

20 Q: Okay. So, what other concerns would there be
21 then?

22 A: That there are ---

23 Q: So, if we've got a stormwater plan that you say
24 that you can address through different methods,
25 now we've got a vegetative plan that we can



1 address to control nutrients and prevent that
2 from getting into the Little River, so there are
3 ways to address those things, what other
4 concerns do you have, Dr. Hargett?

5 A: Those are provisions that have not been made --
6 not been documented by any party yet. They were
7 not part of documentation that I reviewed. It's
8 not available. So, you know, the key is to make
9 sure that whatever measures that you engage are
10 adequate. You know, a bulletproof vest will
11 stop a bullet, but it won't stop a howitzer.

12 Q: But, I mean, the honest answer is you don't know
13 because you haven't looked at those things,
14 correct?

15 A: No one else has either, that's correct.

16 Q: Well, you don't -- do you know exactly what DHEC
17 has looked at and what they haven't looked at?
18 I mean, are you -- do you work at DHEC?

19 A: I have not worked at DHEC. I've worked very
20 closely with DHEC on a variety of projects.

21 Q: Did you work with DHEC on this project?

22 A: No, sir.

23 Q: You talked with Ms. Taylor about Jim Young's
24 application, do you recall that with respect to
25 his land application, manure land application?



1 A: Yes, sir.

2 Q: And you told me as I -- well, you testified, as
3 I understand it, that you had concerns about his
4 land application sites; is that correct?

5 A: Yes.

6 Q: And tell me again what those concerns are.

7 A: Well, to basically achieve the same objectives
8 that we just talked about in the context of the
9 production houses, that your setbacks are
10 adequate, that your riparian buffers, your grass
11 filter strips are adequate to address runoff
12 from the sites. The other question is that too,
13 you know, has a variety of issues. That's in a
14 TMDL receiving watershed too, with fecal
15 coliform as well as nutrient impairments
16 downstream. And whether, you know, the
17 provisions, the measures, the collection of
18 practices that you employ to protect water
19 resources from what's going on the ground, you
20 know. I also mentioned that some of the
21 prescription, if you will, of how much nutrient
22 was going to go on some of those sites seemed to
23 be extreme. A hundred and fifty bushel of corn
24 requires a lot more nitrogen than, you know, a
25 site that can produce only 75 bushels of corn.



1 And so, that suggested to me that potentially
2 they haven't thought through this thoroughly and
3 maybe they're putting too much manure on some of
4 these sites. There's, you know, any -- the
5 basic premise of applying manure to land is that
6 you're going to achieve beneficial reuse of
7 those nutrients as opposed to conventional
8 fertilizers.

9 Q: Well, let me ask you this, how much manure do
10 you think that Mr. Young is proposing to apply
11 is too much? I mean, do you have an opinion as
12 to how much he can apply and that that would be
13 an appropriate amount to you?

14 A: The standard of care would be that you apply no
15 more than can be agronomically utilized. If you
16 say you're going to produce twice as much crop
17 as the land can possibly produce, you're putting
18 on too much manure. So, that was simply the
19 flag, that was one example that may only apply
20 to one field. But, you know, when you say
21 you're going to grow 150 bushel of corn in
22 Piedmont, I doubt if Mr. Coggins or anybody else
23 has ever made that unless they're doing it on
24 bottomland.

25 Q: Well, would it surprise you to know there's



1 somebody in Piedmont that grew 250 bushels of
2 corn an acre?

3 A: Oh, you can do it on bottomland.

4 Q: Not in bottomland.

5 A: Irrigated land.

6 Q: Would it surprise you -- yes or no, would it
7 surprise you?

8 A: It would be extraordinary.

9 Q: But it can occur, you would agree with me?

10 A: It can occur with an extraordinary manner.

11 Q: Okay. Putting aside how much corn you can grow,
12 you would agree with me that, when you land
13 apply, pursuant to the regulations, when Mr.
14 Young applies land -- applies manure to those
15 land application sites, he's got to take soil
16 samples, doesn't he?

17 A: That's the idea.

18 Q: And he sends them into DHEC, the results of
19 those tests, doesn't he?

20 A: That's my understanding.

21 Q: And doesn't DHEC monitor to determine whether or
22 not an appropriate amount of manure is being
23 applied to those sites?

24 A: That's what you have reported to me, yes.

25 Q: Do you have a reason to disagree with that?



1 A: I have no reason not to believe that happens.

2 Q: Okay. So ---

3 A: Or that it does happen.

4 Q: Well, so, then wouldn't that address your
5 concern about if he's -- if he's applying too
6 much manure, then DHEC's going to tell him to
7 stop.

8 A: I believe that's the system as you have
9 outlined, yes.

10 Q: With respect to -- you also talk about -- you
11 also talked about setbacks. What's the setback
12 that you think is appropriate for Mr. Young's
13 land applications sites?

14 A: It depends on the resource that may be effected.
15 For surface waters, I believe it's 100 ---

16 Q: But you haven't looked at it, right?

17 A: I've looked at it in the context of the setbacks
18 in the form on Young's site, there are
19 stipulations for setbacks. And the other two
20 sites it simply says not applicable, not
21 applicable. So, I know more about Young's
22 situation than I do on the two Coggins'
23 situations.

24 Q: And I'm talking about Mr. Young. I'm not
25 talking about Mr. Coggins or Heath Coggins. I'm



1 talking about Mr. Young. And I'm asking you, do
2 you -- what do you think other than -- do you
3 think that the DHEC setbacks are appropriate on
4 his land application sites or do you think
5 there's some other number that's appropriate?

6 A: The situation with having an opinion on each of
7 these sites, whether it's the production houses
8 or the land application sites, requires really
9 intimate understanding of the site. And there's
10 ---

11 Q: And you haven't done that, have you?

12 A: No, I haven't. And I'm not sure anyone else has
13 either.

14 **MR. MUSTIAN:** Beg the Court's indulgence, Your Honor.

15 Q: Dr. Hargett, at the time of your deposition, you
16 didn't have an opinion on whether additional
17 setbacks for these facilities was needed; is
18 that correct?

19 A: No, sir. Not at that time.

20 Q: And did you tell me that you agree that Mr.
21 Coggins' application complied relative to what
22 the required setbacks were with what the actual
23 measured setbacks are?

24 A: Based on the data that were entered on the form,
25 they exceeded the minimum requirement, yes.



1 Q: Okay. And do you have reason to disagree with
2 the data that's on that form?

3 A: In some cases, I do. I have serious concerns.
4 I have not been on the site. That's the only
5 way to resolve my concern, would be to go GPS
6 those locations, also understand the engineering
7 endpoint. What is this site going to look like?
8 Where is that water going to go? Where's the
9 outfall going to be? What are the practices
10 going to be? All that is an unknown. So, you
11 know, in terms of unknowns as affecting my
12 confidence in what's been applied for, I can't
13 affirm that that's adequate.

14 MS. TAYLOR: And if I may. I'd like to enter an
15 objection here. Your objections were sustained
16 when I was asking questions about comparing
17 setbacks and regulations, and was told that that
18 is not something that this witness can address.
19 And it seems to me, Mr. Mustian, that you are
20 now asking the expert witness to do something
21 that you certainly objected that I do.

22 MR. MUSTIAN: Your Honor, I think there's a
23 difference between me asking whether or not the
24 setbacks comply with DHEC regulations versus me
25 asking him if he thinks that additional -- in



1 his opinion, if setbacks beyond that which were
2 required by DHEC are required. That's what I'm
3 asking.

4 **MS. TAYLOR:** No, you had first started with a
5 question of whether or not DHEC setback
6 regulations were adequate in this case.

7 **MR. MUSTIAN:** No, I don't -- if that's the question
8 that I asked, Your Honor, then that is not what
9 I intended to ask. I think the ---

10 **THE COURT:** Well, ask another question and I'll ...

11 **Q:** The line of question that I'm going down is the
12 setbacks that are shown on the form.

13 **A:** Yes, sir. You mean the minimum setback or what
14 was measured or both?

15 **Q:** I'm talking about what was measured. I'm not
16 talking about what the minimum setbacks are, I'm
17 talking about what was measured. And I'm asking
18 do you disagree with the accuracy of those
19 measurements? That's what I'm asking.

20 **A:** Let me first respond by saying that it's my
21 understanding, I believe -- I read Mr. Chaplin's
22 deposition. And I believe he affirmed that
23 those distances were determined by using a GPS
24 process of looking at maps and developing those
25 numbers. If I'm wrong, then I apologize, that's



1 what I recall from the record. As I stated a
2 couple of times today in my testimony, the best
3 way to do that is to go to the field and
4 identify those relevant water components of the
5 water drainage system on a site and GPS those.
6 And then take that back and download it and
7 integrate that into your map in proximity to the
8 buildings. Then you would have an accurate --
9 a much more accurate number.

10 Q: And so, if -- let's say hypothetically that a
11 registered professional engineer that put
12 together an application, that they went and
13 looked at that site, and they actually did
14 measure those and they did integrate them into
15 those maps, then you would agree that those were
16 accurate numbers then, wouldn't you?

17 A: Or either an engineer or surveyor or another
18 qualified person, yes.

19 Q: Okay. And I apologize for bouncing back and
20 forth on you. I promise you this is not
21 intentional. I know attorneys say that all the
22 time, but this time I'm being honest.
23 Stormwater permitting -- strike that.
24 Stormwater plans, you said as part of your
25 testimony that it can be prohibitively



1 expensive. Do you recall that? For these
2 sites, that it could be prohibitively expensive.

3 A: Yes, sir. That's a possibility.

4 Q: Okay. But it can be done, correct?

5 A: Yes, sir.

6 Q: Okay. Now, if it winds up being prohibitively
7 expensive, you would agree with me, would you
8 not, that that would be something that the
9 Coggins and Mr. Young would take into
10 consideration as to whether or not they move
11 forward with the project?

12 A: Yes, sir.

13 Q: But if they're willing to spend the money to
14 address these issues, then that's something that
15 they can do, correct?

16 A: That is basically not DHEC's problem..

17 **MR. MUSTIAN:** Beg the Court's indulgence, Your Honor.
18 Sorry, Your Honor. I'm getting old, I need my
19 glasses.

20 **THE COURT:** I'll take judicial notice of the first
21 part of your comment.

22 **MR. MUSTIAN:** And I can't read my handwriting.
23 That's all the questions I have, Dr. Hargett.
24 Thank you, sir.

25 **THE COURT:** Mr. Hightower, can you finish your cross



1 examination in 30 minutes?

2 MR. HIGHTOWER: I think I can.

3 THE COURT: You think you can?

4 MR. MUSTIAN: The little engine that could.

5 THE COURT: I'll help you.

6 MR. HIGHTOWER: If the witness will help, I think I
7 can.

8 DR. HARGETT - CROSS EXAMINATION BY MR. HIGHTOWER:

9 Q: Dr. Hargett, You stated on both Direct and Cross
10 Examination that you had some concerns about the
11 accuracy of the application.

12 A: Yes, sir. There are details in the application,
13 that ---

14 Q: Okay.

15 MS. TAYLOR: Your Honor, I thought that this was --
16 this area of questioning was prohibited for me
17 to ask him as an opinion. So, I object to you
18 asking him questions about an opinion that he
19 doesn't have an opinion on, because it wasn't
20 the subject of ---

21 MR. HIGHTOWER: I was only going to ask about ---

22 THE COURT: That's an interesting objection, but ---

23 MR. HIGHTOWER: Yes.

24 MS. TAYLOR: That's not a -- I'm sorry if ---

25 MR. HIGHTOWER: I'm only going to ask him about the



1 measurements.

2 Q: And specifically counsel had asked you about the
3 distances being measured. And you have had
4 discussions with Petitioners' counsel and with
5 Mr. Mustian about how you go about doing these
6 things and your concerned about the accuracy,
7 correct?

8 A: Yes, sir. That's a reasonable characterization.

9 Q: Okay. And I would like you to look at -- okay.
10 I'm going to ask you to look at regulation 61-43
11 Part 200.50B2.

12 A: Yes.

13 Q: And specifically that states there, doesn't it,
14 that a management plan must be produced by a
15 registered professional engineer in South
16 Carolina or by an NRCS engineer; isn't that
17 correct?

18 A: That's what it says, yes, sir.

19 Q: Okay. And you have before you, I think, page --
20 well, you should have the comprehensive nutrient
21 management plan for David Coggins. And I'm
22 specifically looking at DHEC -- and I'll
23 dispense with the zeroes, but it ends in 918.

24 MS. TAYLOR: Can you show me what it looks like?

25 MR. HIGHTOWER: Sure.



1 THE WITNESS: That's the signature page.

2 MR. HIGHTOWER: It's the signature page.

3 MS. TAYLOR: Okay. Okay. Got it.

4 Q: Okay. And the signature page is signed by
5 Chris, I guess it's Mosley.

6 A: Yes, sir.

7 Q: He's a registered professional engineer,
8 correct?

9 A: Yes.

10 Q: Okay. So, if he's attesting there to the
11 accuracy of the different matters, specifically
12 the comprehensive nutrient management plan, the
13 manure handling and storage, and nutrient
14 management sections that were submitted to the
15 Department; isn't that correct?

16 A: Yes, sir.

17 Q: And I will represent to you that for Heath
18 Coggins and for Jim Young Broilers, Mr. Mosley
19 similarly signed on those, correct?

20 A: Yes, sir.

21 Q: Okay. And you had stated before that an
22 engineer would be the type of person who could
23 go out and, if they walk the site, use the GPS
24 system and accurately reference where there are
25 features on the site; isn't that correct?



1 A: An engineer or a surveyor.

2 Q: Okay. You had mentioned with the TMDL, it had
3 been -- you were cross examined on the fact that
4 in the 2004 Little River TMDL, the TMDL stated
5 that agricultural lands could be a source of
6 pollution, of non-point pollution; is that not
7 correct?

8 A: Yes.

9 Q: Okay. And actually, if you -- okay. If you
10 read the second point, the second sentence, it's
11 -- well, I should say, have you had an
12 opportunity to read this before?

13 A: I have. But don't ask me to recite it.

14 Q: And you reviewed it -- okay. I won't. But
15 isn't it true that the TMDL also stated that
16 runoff -- that it was concerned about runoff
17 from grazing pastures, improper land
18 application, or livestock operations, but it's
19 not really talking about poultry facilities, per
20 say; isn't that correct?

21 A: That is, from my experience, pretty typical
22 language that you'll find in just about every
23 TMDL. And so, that's -- you know, this is the
24 array of potential sources of the contaminants
25 of concern in this watershed. That is not a



1 smoking gun or an indictment of any particular
2 operation. And if it were, I would think there
3 would be citations of inappropriate practice.

4 Q: But -- and if you will answer yes, or no.
5 Specifically the language does say it's talking
6 about runoff from fields, pastures, land
7 application sites, livestock operations. It's
8 not talking about poultry facilities ---

9 A: Production facilities, you mean?

10 Q: Correct, yes.

11 A: Yes. They're not specifically named, that's
12 correct.

13 Q: Okay. If ...

14 MR. HIGHTOWER: One moment, Your Honor.

15 Q: Dr. Hargett, are you aware of the Department's
16 view on facilities permitted under -- or I
17 should say the current view on facilities
18 permitted under -- excuse me, regulation 61-43,
19 with regard to TMDL's concern of fecal coliform?

20 A: In general. I'm not sure I understand your
21 question.

22 Q: Okay. Well, you stated you're familiar with
23 TMDLs, correct?

24 A: Yes.

25 Q: And you know how they're put together?



1 A: Yes, sir.

2 Q: And that the Department does analysis with
3 regard to potential sources, correct?

4 A: Right.

5 Q: Okay. And you had noted that in the 2004 TMDL
6 dealing with fecal coliform, the TMDL
7 specifically states that pasture lands and other
8 types of agricultural uses could be a source,
9 correct?

10 A: Non-point sources.

11 Q: Non-point source. Okay. Are you familiar with
12 how the Department looks at agricultural
13 facilities permitted under 61-43 now?

14 A: Elaborate.

15 Q: Meaning, has the Department changed its view on
16 whether or not a facility permitted under 61-43
17 can be a potential non-point source?

18 A: When would any change have happened? I can
19 reference other documents I've looked at ---

20 Q: Yes. I'm going to show you a document.

21 MS. TAYLOR: Which I'm going to object to. I believe
22 it's a TMDL that's dated ---

23 MR. HIGHTOWER: It is dated 2015---

24 MS. TAYLOR: --- 2015 for an entirely different
25 basis.



1 MR. HIGHTOWER: Yes.

2 MS. TAYLOR: So, I object based on its relevancy
3 here. And while DHEC may have evolved its
4 thinking on agricultural animal facilities, the
5 fact remains that this Little River TMDL has not
6 been revised. And by the way, it does state
7 DHEC also permits a number of animal feeding
8 operations, including broilers ---

9 MR. MUSTIAN: Objection, Your Honor. Now, she's
10 testifying.

11 MS. TAYLOR: I'll ask the witness to read that.

12 MR. HIGHTOWER: But, Your Honor, the question is is
13 that on Direct it was asked whether or not
14 agricultural facilities -- in fact, as Mr.
15 Mustian had stated, on Direct it was stated that
16 they are a source of non-point source pollution.
17 And for impeachment, I am going to show the
18 witness a more current TMDL for fecal coliform.
19 Yes, it's not in the same basin, but it contains
20 the Department's view on agricultural facilities
21 permitted under 61-43 ---

22 THE COURT: Well, her point was that it's not
23 relevant because it's not the same area.

24 MR. HIGHTOWER: Well, it's not the same area, but
25 it's the same type of facility. And the



1 argument was is that these facilities can be a
2 source of non-point pollution for fecal
3 coliform. And what I'm trying to show is that
4 the Department has done studies and it has
5 determined that it's -- well, I don't want to
6 state whether it says, but that's what I want to
7 show.

8 **THE COURT:** Well, Ms. Taylor, I'm going to take a
9 similar approach I used when I allowed you to
10 go into certain areas. And that is, I'm not
11 sure of its probative value because -- or how
12 significant its probative value is, but I'm
13 going to allow him to see at this point in time
14 and weigh that later. But your objection is
15 noted.

16 **MS. TAYLOR:** Thank you, Your Honor.

17 **Q:** Okay. I'm going to show you page 19 of this
18 document, where in section 3.2.2.1, Agricultural
19 Animal Facilities. I'd like you to read that
20 section. Please let me know when you finish.

21 **A:** Yes, sir. I've read it.

22 **Q:** Okay. Now, this document, which I'll show you
23 the front cover, was prepared by the Department
24 when?

25 **A:** May '15.



1 Q: Of which year?

2 A: 2015.

3 Q: 2015. Okay. Isn't it correct that the
4 Department now looks at facilities permitted
5 under regulation 61-43 not to be a source of
6 fecal coliform bacteria and pollution?

7 A: Well, this ---

8 **THE COURT:** You're asking him to speak for what --
9 the Department's viewpoint?

10 **MR. HIGHTOWER:** Well, I'm asking him, doesn't the --
11 doesn't the Department's position, hasn't it
12 changed since 2014. So, in approximately 11
13 years, the Department has made a different
14 analysis as to whether or not facilities
15 permitted under 61-43 are considered sources of
16 non-point pollution, specifically with regard to
17 fecal coliform. And in '04, they had stated
18 that it can be. Now they have made a different
19 statement. And I just want to show what -- and
20 I want the witness to state whether or not the
21 Department still considers that to be the case,
22 that they can be a source of non-point pollution
23 -- non-point source pollution with regard to
24 fecal coliform.

25 A: If I may read the next to last sentence in that



1 paragraph.

2 Q: Sure.

3 A: It says these permitted operations are not
4 allowed to discharge to waters of the state and
5 are covered under no discharge, ND, permits.

6 Q: That's correct.

7 A: That, to me -- and I'm not supposed to be
8 rendering legal opinions or addressing the
9 regulations. But to me that seems like a
10 bureaucratic decree, that this is how we're
11 going to handle it and that's the way it is.
12 That doesn't change the physics of how
13 pollutants get into streams.

14 Q: Well, let's go back into that. You've stated
15 that one of your big concerns was the amount of
16 cut and fill that would have to be done on this
17 site, correct?

18 A: These are mass grading sites.

19 Q: Okay. And so, with cut and fill, what is the
20 pollutant of concern?

21 A: Sediment.

22 Q: Sediment. So, a poultry facility, in it's
23 normal operation, produces sediment. Is that
24 your argument?

25 A: In the course of construction. And the reason



1 for the construction stormwater permit is to
2 control that.

3 Q: But this permit is -- yes, it's about the
4 construction, but it's mostly about the
5 operation of this facility. And when the
6 facility is in operation -- let's say the
7 facilities are built and they're in operation,
8 are they going to be discharging sediment?

9 A: I can't answer that until I see what post-
10 construction conditions are and what the
11 practices are that would control those issues.

12 Q: As a function of having birds in the facilities,
13 are they going to -- do birds produce sediment?

14 A: Not to my ---

15 Q: It's a yes or no.

16 A: Not to my experience, no.

17 Q: Okay. So, the birds are not going to produce
18 sediment, correct? Sediment would only be from
19 stormwater hitting the ground and perhaps moving
20 some type of un-stabilized soil; isn't that
21 correct?

22 A: Yes, sir. Let me point out that with that soil,
23 sediment has phosphorous, it has other nutrients
24 associated with it, it has fecal coliform can
25 run onto sediment and actually reproduce in that



1 environment.

2 Q: Well, you really weren't answering my question.
3 And, please, I will ask you yes or no -- to
4 answer the questions yes or no. If your counsel
5 wants to elaborate, she will ask you to
6 elaborate, okay? Specifically, when -- okay.
7 The sediment, undisturbed -- or I should say --
8 let's go back. You get -- the facility is now
9 in operation, you have stormwater. The manure
10 is inside the building. We're not at clean out
11 or anything like that. Is the pollution of
12 concern sediment or is it something else? And
13 if so, what is that pollutant of concern?

14 A: Pollutants of concern that may be carried with
15 the stormwater would include constituents of
16 manure, including nutrients and fecal material,
17 and sediment obviously goes -- any time you have
18 erosive power, you move sediment.

19 Q: Where is the manure going to come from, I said
20 -- and my hypothetical was that you're in
21 operation, the flock is in there, there's no
22 clean out, no crusting, or anything else. What
23 is the pollutant of concern at that time?

24 A: At that point, when you're in your hypothetical,
25 there is none.



1 Q: Okay. Now, you're aware that animal facilities
2 have to get coverage under the Department's
3 stormwater construction permit, general permit,
4 correct?

5 A: That's my understanding.

6 Q: Okay. And in fact, that was an issue in a case
7 that you talked about earlier, Summerel; isn't
8 that correct?

9 A: It was one of those, yes.

10 Q: Okay. And you stated, I believe in that case,
11 but I think you even stated here, that you have
12 familiarity with stormwater requirements,
13 correct?

14 A: Yes, sir.

15 Q: Okay. Let me show you ...

16 **THE COURT:** You looking for your ---

17 **MR. HIGHTOWER:** One moment, Your Honor.

18 **THE COURT:** You looking for your book over here on
19 the counsel's table?

20 **MR. HIGHTOWER:** No, no. Yes, this is mine, but this
21 is actually not -- okay, that explains where it
22 went.

23 Q: Okay. I'm going to show you a review checklist
24 for the design professionals with regard to
25 stormwater management and sediment and erosion



1 control plans. It's for design professionals.

2 **MS. TAYLOR:** For clarification, is this for
3 construction or -- is this for a construction
4 stormwater permit? I don't see what this is.
5 If you can identify that.

6 **MR. HIGHTOWER:** Yes. It says a portion of the NPDS
7 General Permit for Stormwater Discharges from
8 Construction Activities.

9 **Q:** Okay. Now, would you look through there. In
10 the first part it talks about plans and maps.
11 It says one, current and completed application
12 form, notice of --- okay. Copies of plans and
13 calculations, location map, project narrative,
14 topographical map, soils information, flood way
15 and floodplains, site plans checklist. It then
16 goes into waters of the state, navigable waters,
17 TMDLs. Have you seen this document before?

18 **A:** I've seen various versions very similar to this,
19 I don't know if it's this particular document.

20 **Q:** Isn't it true that, with regard to stormwater,
21 that the engineer who is providing the document
22 has to do the calculations as to regarding --
23 and I should say, for the construction phase as
24 well as for post-construction, that they have to
25 describe the sequencing of the construction?



1 A: Yes.

2 Q: Isn't that correct? And sequencing means that
3 you don't just do everything at one time. You
4 do one portion at one time, then you go to
5 another portion and so on; is that correct?

6 A: Post-operations.

7 Q: And in your experience, isn't it true that when
8 you do that, you have BMPs for each of those
9 particular sequenced events; isn't that correct?

10 A: That's correct.

11 Q: Okay. Now, have you ever seen the stormwater
12 construction permit, general permit?

13 A: Yes.

14 Q: Okay. Now, you stated before that you didn't
15 believe that the construction permit deals with
16 post-construction stormwater; isn't that
17 correct?

18 A: I'm trying to recall the context of the
19 question, and my response. I think my point at
20 the time was that I haven't seen the plan for
21 this, I don't know what the post-construction
22 provisions are.

23 Q: Well, you stated you dealt with a landfill,
24 correct?

25 A: Yes, sir.



1 Q: At the time -- did the landfill -- the company
2 that wanted to develop the landfill, did that
3 company have the construction drawings and
4 grading for that facility at the time that they
5 applied for the landfill permit itself?

6 A: Customarily they wouldn't have that level of
7 detail, but they would know basically what the
8 pathway was going to be and what they would be
9 doing and understand the magnitude of what would
10 be required.

11 Q: But the question that I want to make sure that
12 the Court understands is that, in that landfill
13 that you've worked on, when they applied for the
14 permit from DHEC to construct that landfill,
15 they didn't have their complete grading plans
16 with all these calculations dealing with what
17 type of fill they may or may not have needed to
18 construct it, how they were going to deal with
19 post-construction stormwater discharges; isn't
20 that correct?

21 A: That's correct.

22 Q: Okay. So, if you understand that with
23 landfills, why do you think that a farmer who
24 wants to build a poultry house should have a
25 grading plan before they know they're going to



1 be able to even have a permit to construct a
2 farm, that they need to go out and have this
3 detailed construction grading plan along with
4 all the sequencing that they would need and how
5 much fill and all this other stuff? Why do you
6 think that you should have those documents now
7 from the Applicants in this case, when you
8 acknowledge that in a landfill case where you
9 were party to it, that wasn't the case?

10 A: Sir, I don't believe I testified that they
11 should have to have it. The point of this
12 entire case, from my charge is, will these
13 facilities release pollutants to waters of the
14 state, will they -- do they have the potential
15 to release pollutants to waters of the state.
16 To answer that question, you understand we have
17 to know ultimately what is the condition of the
18 facility going to be? That was the context in
19 which I said we can't answer the first question
20 until we know what the final details are going
21 to be.

22 Q: Well let's look at the regulatory scheme.

23 THE COURT: Mr. Hightower, I think -- it's 5:27.

24 MR. HIGHTOWER: Oh, okay. I will ---

25 THE COURT: I think we will break today, unless --



1 because you're going to want to Re-Direct?

2 MS. TAYLOR: Yes, Your Honor.

3 THE COURT: All right.

4 MR. HIGHTOWER: I guess we'll pick it up tomorrow.

5 MR. MUSTIAN: Yes, sir.

6 (Off the Record on August 16, 2017 at 5:31 p.m.)

7 (On the Record on August 17, 2017 at 9:03 a.m.)

8 THE COURT: All right, Mr. Hightower. You're still
9 under oath.

10 THE WITNESS: Thank you, sir.

11 Q: Good morning, Dr. Hargett.

12 A: Good morning, sir.

13 Q: Just as a preliminary thing, you haven't spoken
14 to anybody since you were on the stand last
15 night regarding this case?

16 A: No, sir.

17 Q: Okay. I just wanted to get it out there.

18 THE COURT: What'd you say, he hadn't spoken with
19 anybody?

20 MR. HIGHTOWER: Well ---

21 THE COURT: Because I spoke to him a while ago.

22 MR. HIGHTOWER: --- I should say -- yes.

23 A: Not about the case.

24 Q: Not about the case. And you didn't speak to
25 your attorneys or anything?



- 1 A: Other than to say goodnight.
- 2 Q: That's fine. Okay. Yesterday we were talking
- 3 about the South Carolina NPDES general permit
- 4 for stormwater.
- 5 A: Yes, sir.
- 6 Q: I think I had shown that to you.
- 7 A: Yes, sir.
- 8 Q: And you -- if I remember correctly, you stated
- 9 you're familiar with that document?
- 10 A: Yes. I examined that whole batch of guidance
- 11 and documents that are on the DHEC website.
- 12 Q: Okay. If you could, I'd like you to turn to
- 13 page 107.
- 14 A: Is that in -- I don't have those documents.
- 15 Q: Oh, I thought I had given -- yes, the NPDS
- 16 stormwater permit. Page 107. And I'm
- 17 specifically looking where it says 72-307,
- 18 Specific Design Criteria, Minimum Standards and
- 19 Specifications. Now, you had testified on
- 20 Direct you had some concerns about what would
- 21 happen during the construction phase and what
- 22 would happen post-construction; is that correct?
- 23 A: Yes, sir. Primarily post-construction was my
- 24 concern.
- 25 Q: Okay. Well, let's look at the requirements that



1 they have there. Isn't it true that it requires
2 in the plans an existing and proposed topography
3 overlay on a current plat showing existing and
4 proposed contours?

5 A: Yes, sir. Let me comment. I actually read this
6 last just night to refresh. And these are very
7 rigorous requirements, no question about that.

8 Q: Okay. Well, I do want to make sure the record
9 reflects that these are the requirements that
10 the Applicant will -- designer will have to
11 meet when they submit a stormwater permit
12 application to the Department. So, you
13 acknowledge that it does require information
14 concerning the topography, both current and
15 proposed by the project itself and it talks
16 about the contours, correct?

17 A: Yes, sir.

18 Q: Okay. And doesn't it also require that the
19 information contain the information about
20 proposed grading, earth disturbance including
21 surface area involved, limits of grading
22 including limits of mass clearing and grading
23 and such?

24 A: Yes, sir.

25 Q: Okay. Further, doesn't it require that the plan



1 include stormwater management, stormwater
2 drainage computations that will include both pre
3 and post-development velocities, peak rates of
4 discharge, inflow and outflow, hydrographs of
5 stormwater runoff at all existing and proposed
6 points of discharges from the site?

7 A: Yes, sir. And I believe it actually goes so far
8 as saying that post-construction runoff
9 essentially be equal to or less than pre-
10 construction.

11 Q: Okay. And that was a concern that you had?

12 A: Yes.

13 Q: Okay. So, you would acknowledge that this
14 stormwater permit will address that particular
15 issue that you have about the velocity, where
16 the points are going to be, how the Applicant
17 intends to manage the stormwater, such -- all
18 the things that I believe you had mentioned on
19 Direct and in Cross Examination that you stated
20 were concerns because this plan didn't have it?

21 A: Well, the hypothetical that you lay out that all
22 of these performance objectives would be met, if
23 they are, then that would be -- provide
24 considerable comfort. But we can't project how
25 the permittees' going to perform those and how



1 the stormwater protection, pollution protection
2 plan is going to be implemented. We can only
3 speculate on it, that that would happen.

4 Q: Well, isn't it true that -- in your experience
5 with the landfill you stated that the Applicant
6 in that case sought their permit to construct
7 the landfill first -- construct and operate the
8 landfill and then after that applied for, and I
9 gather received, stormwater permit coverage for
10 the actual construction and then post-stormwater
11 management from that site. Wasn't that ---

12 A: Yes, sir. That's the process.

13 Q: Okay. So, your experience shows that the
14 Department does bifurcate these different types
15 of permitting decisions; isn't that correct?

16 A: Yes.

17 Q: Okay. Because ---

18 A: It's logical.

19 Q: --- it's logical. All right. So, for here, you
20 would agree that, if these things are going to
21 be address at a future date in a separate
22 permitting scheme, that the fact that they may
23 not be in this particular application, doesn't
24 mean that the Department is not going to look at
25 it?



1 A: No, sir. I didn't say that.

2 Q: Okay. Well, but if I understood you, the
3 inference of your testimony is is that the
4 Department shouldn't permit these sites without
5 knowing this information. But you've just
6 stated that you acknowledge the Department
7 basically bifurcates the total permit process,
8 i.e. yes, you're going to first get a permit to
9 -- that authorize you to construct and then
10 later operate the facility under certain
11 parameters and then you get a more specific
12 permit that talks about how you're going to
13 address issues of stormwater, both during the
14 construction phase and later when the facility's
15 in operation; isn't that correct?

16 A: Let me distinguish. I don't have any argument
17 with the way the general permit program works
18 for something like this. I was charged with
19 rendering an expert opinion on the question of
20 whether this -- these proposed facilities would
21 indeed be no-discharge facilities. That is,
22 would they allow potentially pollution or
23 actually a discharge. And even with the
24 implementation fo the NPDES permit to the
25 highest standard, you still only design those



1 stormwater detention programs to a certain
2 design storm and any storm greater than that has
3 the potential to release pollutants. That does
4 not disagree with the spirit and intent of the
5 general permit.

6 **THE COURT:** Under your theory, could you ever have
7 any facility that would be no discharge?
8 Because you could always have -- if you pick a
9 30-year event, then you could come along later
10 and pick a 50-year event. If somebody picks a
11 50-year event, you could come along later and
12 pick a thousand-year event.

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** Someone could always pick a greater event
15 that would create a discharged.

16 **THE WITNESS:** Yes, sir. That's correct, Your Honor.
17 The context is, this entire permitting process
18 is centered around the determination the
19 Department has that these are all no-discharge
20 facilities. That is, in my mind from scientific
21 point of view, not a holistic, accurate
22 portrayal of what they are. They will give off
23 pollutants in a variety of ways and it will
24 commingle with stormwater. Now, is that a
25 nature problem or a de minimis problem? And



1 that really depends on the stewardship of the
2 permitee and the operator. There are a lot of
3 things that can go wrong. And so, even with
4 full and meticulous implementation of the
5 general permit, there is still the potential for
6 a lot to go wrong here. And so, that emphasizes
7 my point that the stewardship and the rigor with
8 which these facilities are managed is really
9 critical. I believe in the entire process. The
10 potential is that there's a lot that can go
11 wrong, the details are important. In the course
12 of the various testimony, and I've heard most of
13 it at this week, we've heard of examples where,
14 you know, the practices are not what they should
15 be. There has, you know, historically been
16 issues of performance on these kinds of
17 facilities. You know, Mr. Coggins and Mr.
18 Coggins and Mr. Young are probably wonderful
19 folks and I dearly honor their role in our
20 society as farmers. But, you know, things can
21 go wrong and we need to be extremely careful in
22 how we implement these programs.

23 Q: Well, you keep mentioning discharge. Again,
24 what if -- strike that. For an NPDES permit,
25 what constitutes a discharge?



1 A: I think the concern with the general permit and
2 the standard of care that is the objective form
3 is that there be no discharge greater than
4 preconstruction conditions.

5 Q: And that's stormwater though, right?

6 A: Yes.

7 Q: So, the NPDES permit is dealing with discharges
8 of stormwater?

9 A: Yes, sir.

10 Q: Okay. And with the -- and isn't it true that an
11 NPDES permit deals with discharges as a function
12 of the operation of the facility, correct?

13 A: Yes.

14 Q: Okay.

15 A: That's the purpose in the Clean Water Act.

16 Q: So, you're getting rid of the waste by
17 discharging it; is that correct?

18 A: That's correct.

19 Q: Okay. In this -- for the agricultural
20 facilities, except for land applying, the
21 Applicants are not discharging waste to get rid
22 of it into the environment?

23 A: That's -- I would agree that's not their intent.
24 But in the process of operations, as we
25 discussed yesterday and I think as I've



1 testified, you know, there will be spillage,
2 there will be residuals from the operation on
3 the impervious 15-acre or so facility that will
4 commingle with stormwater. That goes beyond the
5 basic concern of the NPDES stormwater permit.
6 And, you know, many -- there are many
7 contaminants that are regulated, there are a lot
8 of contaminants that are not regulated. And
9 that's, you know, well documented in the
10 literature in terms of viruses, of hormones, of
11 pharmaceuticals, of all sorts of chemistry that
12 is added to the process of producing chickens.

13 Q: All right. Well, nonetheless, you would agree
14 that the manure in this facility is not being
15 disposed of into waters of the state as a
16 function of the proper operation of the
17 facility?

18 A: I would agree with that.

19 Q: Okay.

20 A: That is not the purpose of these NPDES permits.

21 Q: So, if you had any spillage or anything like
22 that, that's not proper operation; isn't that
23 correct?

24 A: In an ideal world.

25 Q: Well, you've worked on -- as you stated, with



1 the landfill and other projects like that.
2 Wouldn't you agree that the permitting process
3 looks at how you intend to run the facility in
4 accordance with the applicable statutes and
5 regulations; isn't that correct?

6 A: Yes, sir.

7 Q: And it does not look at whether or not you
8 either negligently or intentionally violate it;
9 isn't that correct?

10 A: Well, I think if there's an intentional release
11 of pollutants, that's an actionable item by the
12 Department.

13 Q: Right. Well, but that wouldn't be part of the
14 permitting process, that'd be part of
15 enforcement; isn't that correct?

16 A: That's correct.

17 Q: Okay. So, you would agree that if a permitting
18 process looks at what an applicant is suppose to
19 do and you would agree that you're rendering a
20 decision based on if they do everything they're
21 suppose to do, does this create a problem?

22 A: Well, the framework of regulation, to include
23 the permitting of poultry production facility
24 and permitting of the NPDES, is intended to be
25 comprehensive. But it is, you know, somewhat an



1 act of faith in the operator and in DHEC's
2 capability to support and enforce that
3 performance to make sure that that happens.

4 Q: Okay. Well, you keep talking about 15 acres I
5 believe of impervious surface.

6 A: Yes, sir.

7 Q: Okay. Now, you would agree that the area where
8 the barns specifically sit on, the exact
9 footprint of each barn, that area is impervious,
10 correct? You have a ---

11 A: The area under a roof is totally, absolutely,
12 incontrovertibly, you know, that is impervious,
13 yes.

14 Q: Now, between these barns, that area doesn't have
15 structures; isn't that correct?

16 A: No, sir. But the process is mass grading and
17 the way runoff volumes are calculated, you take
18 into consideration what is the natural soil, the
19 natural soils disturbed, once that is laid back
20 down and finalized, that is a pad across the
21 entire production construction site, it's going
22 to be highly compacted. And the amount of
23 runoff that's generated is a function of the
24 design storm, which is always much greater than
25 the natural hydraulic conductivity in the soil



1 underneath. So, the capacity of that compacted
2 soil is going to be lessened considerably from
3 what the natural condition is.

4 Q: Okay. You keep -- have you ever been involved
5 in the construction of any type of animal
6 facility?

7 A: Not a facility exactly like these, but I've been
8 involved in lots of grading, contracting,
9 construction activities and I know what happens
10 to the ground and I know what happens in terms
11 of runoff before and after those kinds of
12 activities.

13 Q: You were in the courtroom when Petitioners'
14 counsel was showing, I believe it was overhead
15 satellite photographs of Mr. Coggins' existing
16 facility.

17 A: I've seen those. I don't think I was actually
18 in the courtroom when they were shown.

19 Q: Okay. You've seen them, right?

20 A: Yes, sir.

21 Q: There's, I believe, a line of six barns somewhat
22 set diagonally?

23 A: Yes, sir.

24 Q: In between those barns is that impervious
25 surface?



1 A: For the purposes of how they -- those soil
2 conditions would function during a storm event,
3 they are substantially reduced in their
4 hydraulic conductivity. I wouldn't say -- no,
5 they are not totally impervious. But their
6 hydraulic capacity after they have been graded
7 and compacted, it's going to be a completely
8 different basis for producing runoff from the
9 natural condition.

10 Q: Now, and as you just were -- I just asked you
11 earlier some questions about the requirements,
12 the minimum requirements of a plan that would be
13 submitted to the Department for stormwater
14 permit coverage. And in there it requires
15 information about the grading and disturbance,
16 the limits of it, the existing and proposed
17 topography including contours, the pre and post-
18 development velocities, peak rates of discharge,
19 inflow and outflow hydrology of the stormwater
20 runoff both at existing or proposed -- and I
21 should say existing and proposed points for all
22 surface water discharges, correct?

23 A: Yes, sir.

24 Q: So, that permit is going to address the issues
25 that you may have; isn't that correct?



1 A: It should, that's correct.

2 Q: Okay. Do you have any concerns about that
3 landfill that you worked on, the grading plan?

4 A: Well, I've worked on many landfills in many
5 states, so ...

6 Q: Okay. But the one that you were specifically
7 talking about that you had done some stormwater
8 consulting work, I believe it was, about the
9 construction of the landfill?

10 A: Well my role was in helping conceive the general
11 design. And stormwater was a component of that,
12 but I'm familiar with it.

13 Q: All right. Do you have any problem -- at the
14 time did you have any concerns like you're
15 raising now that perhaps these plans are not as
16 good as they should be?

17 A: Well, yes. And I've done quite a bit of
18 consulting work on landfills that have been
19 problematic in terms of impacting surface water
20 and groundwater. And the water management is
21 always the biggest challenge on any of these
22 disturbed sites.

23 Q: Well, but on the one that you worked on, since
24 then do you have any -- do you feel that maybe
25 you shouldn't have worked on it, that the



1 grading wasn't done correctly or something like
2 that?

3 A: Well, in those cases, the standard of care
4 appropriately to engineer the containment and
5 detention and treatment, if required, of
6 stormwater was specified in the permit. And
7 whether that was an ideal situation, no.
8 They're never perfect situations.

9 Q: Specified in which permit?

10 A: I've been involved in the waste management
11 landfill operation in Spartanburg.

12 Q: Well, but please answer my question. I asked
13 which permit were you talking about. You said
14 it was specified in a permit with this landfill
15 that you were working on. Which permit?

16 A: Yes, sir. I understand. I was referring
17 generally to the suite of permits that are
18 required both for the landfill in component
19 permits including stormwater management.

20 Q: But which permits specifically had those
21 requirements? Was it the landfill permit or was
22 it the stormwater permit?

23 A: It would be the stormwater permit.

24 Q: Okay.

25 A: Yes.



1 Q: Let's say hypothetically -- if I understand your
2 concerns, you have a concern about, I guess, the
3 amount of area that has to be disturbed, you
4 believe it would be kind of cost prohibitive for
5 the Applicant to do the grading?

6 A: I said it may be.

7 Q: It may be..

8 A: That's up to the investor, operator, owner.

9 Q: But you believe it would be expensive, correct?

10 A: It's a lot of earth to move.

11 Q: Okay.

12 A: It's not an ideal site. If I were charged with
13 going and finding a suitable site, I don't think
14 this is one I'd be recommending.

15 Q: Well, you -- are you aware that the original
16 proposed location of these facilities on the
17 250-acre parcel that all three of them would be
18 built, that they actually were further away from
19 the Little River than they are now current
20 shown?

21 A: Yes, sir. I completely understand that. That's
22 the process of trade offs of, you know, how
23 visible are these things going to be to the
24 neighbors and how intrusive they're going to be
25 to the neighbor's festivities.



1 Q: So, if the facilities were moved back from
2 Little River, let's say approximately 100 feet,
3 would that help to alleviate some of the
4 concerns you have concerning the amount of fill
5 because now it's not so close to the contour
6 line area and you would have an additional 100-
7 foot buffer between the facility and these
8 contour lines?

9 A: Yes, sir. Those are -- in terms of the
10 potential for impact to water resources,
11 additional buffer, lessened slopes, that is
12 slopes that require less cutting and filling, is
13 a more attractive situation. If you can
14 position these things, the footprint that are on
15 the A and B slopes, you're going to have minimal
16 cut and fill. But if -- you know, the tradeoffs
17 are that you push them back closer to a public
18 road and to neighbor's properties, they're
19 tradeoffs.

20 Q: But for stormwater, it would be more beneficial
21 for the stormwater, correct?

22 A: Yes, sir. It would provide an additional
23 conservatism in protecting the water resources.

24 Q: And you're here today to provide the Court with
25 expert opinions about ---



1 THE COURT: Hold on one moment. Go ahead.

2 Q: You're here today to provide expert opinions
3 about -- to the Court about stormwater, impacts
4 to -- excuse me, impacts to surface water,
5 correct?

6 A: To put that in the proper context -- well, the
7 answer is yes.

8 Q: It's a yes or no.

9 A: To put it in a proper context, stormwater is the
10 medium by which pollutants are conveyed.
11 Whether that is sediment that's running off the
12 site, that's a pollutant. Whether it's
13 nutrients or bacteria or bio-materials or other
14 contaminants, yes, that's where stormwater is
15 relevant to this decision process.

16 Q: But I guess just to end, if the facilities -- if
17 it was -- let me rephrase that. If the
18 Applicants were willing to move the locations of
19 the barns approximately 100 feet away from the
20 Little River, that would help you feel more
21 comfortable concerning any impacts to Little
22 River; isn't that correct?

23 A: Yes, sir. Part of the dilemma here is putting
24 three facilities, three permits on one tract of
25 land. It would be a lot less impact too if you



1 only had one. Then you'd have more buffers,
2 more -- you know, between roads, between
3 neighbors, and so forth. So, part of this is
4 the saturation of that site with the 18 barns.

5 Q: That's something different.

6 A: Okay.

7 Q: Okay. And we've not discussed anything about
8 saturation; isn't that correct?

9 A: It's related to everything we've talked about.

10 Q: Well ---

11 A: In terms of the total impact when we're looking
12 at these -- this case is about three permits,
13 not one. And, you know ---

14 Q: Those three permits, three separate facilities.
15 And once -- if, I should say, the permits are
16 granted, they'll be subdivided into three
17 separate tracts.

18 A: That's correct.

19 Q: So, they'll all be -- it won't be one parcel of
20 land. We're considering them one parcel for
21 right now just because that's the state that
22 they are. But they intend to be separate
23 parcels of land; isn't that correct?

24 A: Yes, sir. That's my understanding.

25 MR. HIGHTOWER: No further questions.



1 THE WITNESS: Would you like this packet back or ...

2 MR. HIGHTOWER: Sure.

3 THE COURT: Re-Direct on new questions asked.

4 MS. TAYLOR: May I?

5 THE COURT: Yes.

6 MS. TAYLOR: Is it okay if I stand here? I've got --

7 -

8 THE COURT: Yeah.

9 MS. TAYLOR: Okay.

10 DR. HARGETT - RE-DIRECT EXAMINATION BY MS. TAYLOR:

11 Q: Dr. Hargett.

12 A: Yes, ma'am.

13 Q: Mr. Hightower was questioning you about this
14 document here, the NPDES general permit for
15 Stormwater Discharges from Construction
16 Activities. What does this type of permit
17 cover?

18 A: It's my understanding the primary permit -- the
19 primary intent of that permit program is to deal
20 with construction activities. There are
21 provisions for post-construction, but that's an
22 ongoing issue that the Department is -- DHEC is
23 responsible for it enforcing the performance of
24 that, hypothetically. But I think I have
25 answered your question.



1 Q: Is it intended to detain or contain sediment
2 during a construction ---

3 A: Sediment as well as stormwater during
4 construction, yes. Sorry.

5 Q: Right. And during the construction process,
6 isn't the pollutant of concern sediment?

7 A: It is.

8 Q: Okay.

9 A: At that time the facility's obviously not been
10 constructed and brought into operation.

11 Q: Okay. So, by design if you've reading -- have
12 you've read the design requirements within this
13 permit, is it intended to contain all the
14 sediment from entering waters of the state?

15 A: I don't think programs like that and the best
16 management practices that are interwoven in to
17 them ever attempted to be 100 percent absolutely
18 effective. There are standards of care and
19 standards of performance and there are practices
20 and measures that are implemented. And through
21 experienced agencies and contractors have
22 learned what works well. There also is the
23 potential that, during construction, you can
24 have an unusual precipitation event, storm event
25 that can overwhelm those practices. That



1 happens with some regularity.

2 Q: Just to clarify by -- what I was trying to get
3 at, which I guess I didn't do a very good job
4 with my question, is the design requirements for
5 detention or retention of stormwater that would
6 run off during a construction process, by design
7 it allows essentially 20 percent of stormwater
8 to be released into waters of the state. In
9 other words, it does not -- it's not intended to
10 capture 100 percent of the runoff; am I correct?

11 A: Yes. There are standards of care and they
12 depend on practices that are employed and how
13 many redundancies are built into those practices
14 on a given site. But, yes, there is always
15 potential for some stormwater and some sediment
16 to leave the site.

17 Q: But isn't it more than potential? We're talking
18 about a design that allows to really capture
19 around 80 percent of sediment -- of stormwater
20 sediment.

21 A: Yes. I mean, assuming that during construction
22 they'll be ordinary precipitation events you
23 would have that forms -- those forms of
24 pollutions leaving the site.

25 A: All right. Can you give us an estimate, based



1 on your review of these maps and our discussion
2 yesterday, of how big of a detention pond each
3 facility would need in order to meet their
4 requirements of this construction ---

5 **MR. HIGHTOWER:** Objection, Your Honor. I didn't go
6 in to designing of the system. And then he's
7 not been qualified to give an opinion on design
8 of stormwater ---

9 **THE COURT:** What's your response to that?

10 **MS. TAYLOR:** He was qualified as an expert in soil
11 and water resource management. And I believe
12 part of -- a lot of his testimony yesterday,
13 certainly what we've seen on the CV deals with
14 and analyzing runoff.

15 **THE COURT:** But it doesn't appear to me that he has
16 any qualifications in engineering design of a
17 facility. You can ask him about that.

18 **MS. TAYLOR:** Do you -- I think we did go through
19 this, but let's do it again.

20 **Q:** Do you have any experience through your project
21 -- past project management, for example, that
22 Lee nuclear reactor or the Burroughs & Chapin
23 construction projects or any other construction
24 projects, in terms of analyzing and estimating
25 the detention pond capacities?



1 A: The answer is yes in terms of what the need is,
2 the volume of water that will have to be
3 detained in general. I wouldn't pretend to
4 offer design an engineering with a response to
5 the question. But generally it would be a
6 substantial ---

7 **THE COURT:** Whoa, whoa.

8 A: --- based on my experience with similar
9 facilities.

10 **THE COURT:** Okay, thought he wasn't going to ask a
11 question.

12 **MS. TAYLOR:** Follow up quickly with. ---

13 **THE COURT:** At this point I sustained the objection.

14 **MR. HIGHTOWER:** Thank you, Your Honor.

15 Q: So, realizing, just to remind everyone, the
16 number of barns on here is inaccurate.

17 A: I'm not sure the footprint location is accurate
18 either, but -- we've seen several different
19 versions of these drawings, but ask your
20 question.

21 Q: Do you recall the drawings that -- the
22 topographic maps? I mean, I can put those back
23 ---

24 A: Yes.

25 Q: --- up on there. Where would these ponds be



1 placed?

2 **MR. HIGHTOWER:** Objection, Your Honor. That's an
3 engineering function, not -- if I understood ---

4 **MS. TAYLOR:** It's a function of the site.

5 **MR. HIGHTOWER:** No.

6 **THE WITNESS:** I would offer that it's a hydrology
7 question and I'm ---

8 **THE COURT:** Well, sir, you can't respond. I strike
9 that. And I will tell you, I like you, but if
10 you do that again, I'm going to hold you in
11 contempt.

12 **THE WITNESS:** I understand, Your Honor.

13 **MR. HIGHTOWER:** But, Your Honor, where to place the
14 particular stormwater outfalls or detention
15 ponds, no one even stated that detention ponds
16 is the only way of dealing with it. All those
17 are engineering things. And none of my
18 questions was how you deal with it. It was just
19 whether or not you could move -- either move the
20 facility or could you -- could an engineer
21 design something. What the design was, I never
22 touched and I don't believe he's qualified.

23 **MR. MUSTIAN:** Your Honor, I would also point out, Dr.
24 Hargett has testified that he has not seen any
25 engineering plans with respect to stormwater --



1 how stormwater would be dealt with on the site.
2 And so, regarding where outfalls may or may not
3 be or whether or not there would be a -- we've
4 talked -- he's acknowledged that you can use
5 terracing, you could use pipe drops, you can
6 use high velocity fabric, all those types of
7 things. All that would play into to potentially
8 where a detention pond may be or whether or not
9 it would be needed. He's testified he hasn't
10 seen any of those things, so I don't believe
11 there is a foundation upon which he can render
12 an opinion where on this site an alleged
13 detention pond would be.

14 **MS. TAYLOR:** Can I just rephrase the question that
15 hopefully will avoid this?

16 **THE COURT:** Yeah.

17 **Q:** Based on the soil, the maps, not this one, but
18 other maps that you've seen for each of these
19 facilities, do you believe that a detention pond
20 can be placed in a floodplain?

21 **A:** Yes, they can technically. Should they be is
22 another question. I mean, in a case where ---

23 **Q:** Should they be?

24 **A:** Based on the topographic map you've referred to
25 and the guidelines that Mr. Hightower's had me



1 take a look at here, there are actually
2 provisions to put, in some situations, a
3 detention facility or other treatment --
4 detention treatment processes in a floodplain.
5 And I think the Department discourages that.
6 But one of the challenges here, based on where
7 these proposed facilities are footprinted, so
8 close to the break point down to the floodplain,
9 I think any person, whether they're a
10 hydrologist or an engineer, would understand
11 that hydrologically it's going to be downhill.
12 There's not much ---

13 **MR. MUSTIAN:** Objection, Your Honor. Again we're
14 getting into the location of the detention pond.
15 And I would also point out that detention ponds
16 and their locations in floodplains none of those
17 issues were brought up on cross examination.
18 So, we've gotten beyond the scope of what she's
19 permitted to ask in her Re-Direct.

20 **THE COURT:** I don't remember detention ponds being
21 brought up, but how would you ---

22 **MR. HIGHTOWER:** I didn't bring it up.

23 **MS. TAYLOR:** I do think that this general permit here
24 raises detention ponds.

25 **THE COURT:** By the way, we're calling it detention.



1 It's retention pond.

2 **MS. TAYLOR:** I'm sorry.

3 **MR. HIGHTOWER:** Well, retention or detention. But I
4 -- the part that I asked Dr. Hargett to look at
5 on page 107, I did not go into the specific
6 structures. It just said that what a plan must
7 have at a minimum and it went in to factors such
8 as pre and post ---

9 **THE COURT:** Okay. I get that.

10 **MR. HIGHTOWER:** --- construction calculations and
11 things like that.

12 **THE COURT:** Sustained.

13 **MS. TAYLOR:** I'm sorry. Could you -- I was just
14 listening to two people at the same time ---

15 **THE COURT:** One of them was real close to your ear
16 and the other one wasn't. He was basically
17 explaining that what he went into only -- did
18 not go into the specific design.

19 **MS. TAYLOR:** And what page are we talking about, Mr.
20 Hightower?

21 **MR. HIGHTOWER:** 107 of the permit.

22 **MS. TAYLOR:** And that was the only page that you
23 mentioned ---

24 **MR. HIGHTOWER:** That was the only page that I
25 mentioned.



1 MS. TAYLOR: Well, I see it refers to Federal
2 Emergency Management Agency flood maps, talks
3 about Specific requirements for the erosion and
4 sediment control portion of the stormwater
5 management and sediment control plan, it talks
6 about All plans shall include details and
7 descriptions of temporary and permanent erosion
8 and sediment control measures.

9 MR. HIGHTOWER: Which, actually, Your Honor, I did
10 not ask him about that. We spoke about -- I
11 believe it is -- hold on a second. Excuse me,
12 106 actually. I'm sorry. We were on 106. And
13 it was looking at the vicinity of the -- yes,
14 okay, it was 106 because actually it was about
15 the existing and proposed topography, overlaying
16 it on a current plat. Listed there underneath
17 that is proposed grading and earth disturbance,
18 we discussed that. Stormwater management and
19 stormwater drainage computations that would
20 include pre and post-development velocities,
21 peak rates of discharge, and inflow and outflow
22 hydrology of the stormwater runoff at all
23 existing and proposed points of discharge from
24 the site. And that's all ---

25 MS. TAYLOR: You Honor, I think a fair reading of



1 that includes detention ponds and rates of
2 calculation and locations of them.

3 **THE COURT:** You can ask him in general about this.
4 I just overrule you on -- you can ask him in
5 general, but I -- as far as getting into the
6 design, the engineering design, I don't find him
7 qualified on that at this point. And he wasn't
8 tendered as that, so I don't think we can do
9 that on the back end. So, generally ---

10 **MS. TAYLOR:** So, just to make sure before I -- I
11 don't want to wait and repeat everybody's
12 question and arguments, but the question here is
13

14 **Q:** Is there a location -- do you find a location
15 that is suitable for a detention or retention
16 pond on these sites?

17 **MR. MUSTIAN:** Your Honor, same objection. I believe
18 that goes to design.

19 **MR. HIGHTOWER:** That's the Department's objection to
20 it.

21 **THE COURT:** I would sustain that.

22 **Q:** Mr. Hightower was talking about this permit for
23 stormwater construction activities. Contrast
24 that, if you will, with an NPDES permit for
25 operation of a facility. What's the difference



1 between those two types of NPDES permits?

2 A: My understanding is that the operation post-
3 construction of that set of runoff control
4 practices, detention may be included, treatment
5 may be included. Those are under the umbrella
6 of what's called the stormwater pollution
7 prevention plan that continues to operate for
8 the life of the project. That's the
9 distinction. And that is the plan that has to
10 be developed as a part of the NPDES general
11 permit for a given facility.

12 Q: And it's the Department's position that these
13 proposed facilities do not require an NPDES
14 permit for their operation ---

15 MR. HIGHTOWER: Objection, Your Honor.

16 MR. MUSTIAN: Your Honor, we object as well. I'll
17 first point out that this -- the Court has dealt
18 with this issue in its motion for partial
19 summary judgement.

20 THE COURT: Well, she just said -- all she said was
21 so far it's the Department's position that these
22 facilities do not require an NPDES permit. Do
23 y'all dispute that?

24 MR. MUSTIAN: No, sir, Your Honor. But we'll see --
25 I have a feeling I'll be standing back up in a



1 minute, though.

2 **THE COURT:** You may be, but right now ---

3 **MR. HIGHTOWER:** The Department's position is they do
4 require an NPDES stormwater permit.

5 **MS. TAYLOR:** But that's not what I'm talking about.

6 **THE COURT:** Well ---

7 **MR. HIGHTOWER:** Okay. Well, he's only been qualified
8 in water ---

9 **THE COURT:** Water and soil.

10 **MR. HIGHTOWER:** --- water and soil -- I'm sorry.

11 **THE COURT:** Resource management.

12 **MR. HIGHTOWER:** Right. And that has nothing to do
13 with any other type of discharge other than
14 water. And I think that you're ---

15 **MS. TAYLOR:** But we are talking about water.

16 **THE COURT:** Okay. Your question missed the
17 stormwaters aspect of it, so let's just give it
18 one more shot.

19 **MS. TAYLOR:** Okay. I just lost train of what my
20 question was.

21 **THE COURT:** It was about it required -- that the
22 Department doesn't ---

23 **Q:** The Department's position is that facilities
24 that are the subject of this challenge do not
25 require an NPDES permit for operations. Is that



1 your understanding?

2 A: If I understand the question, they do not
3 require an individual NPDES permit, even an
4 individual stormwater permit. What Mr.
5 Hightower has point out is that these kinds of
6 facilities come under DHEC's general NPDES for
7 stormwater and that stormwater permitting is
8 part of that program.

9 Q: Yeah. I'm moving on from stormwater altogether.

10 A: Okay.

11 Q: And what I'm trying to elicit is that there is
12 in existence, the EPA recognizes for example, an
13 NPDES permit not just for the stormwater
14 operation for construction purposes of an animal
15 feeding facility or concentrated animal feeding
16 facility, but an NPDES permit that addresses the
17 operation of such a facility; am I right?

18 MR. MUSTIAN: Your Honor, I would object on the ---

19 MR. HIGHTOWER: Objection.

20 MR. MUSTIAN: --- first of all the basis to the
21 extent that she's testifying. Second of all,
22 she isn't ---

23 THE COURT: She's asking the questions.

24 MR. MUSTIAN: Okay. To the extent that that's a
25 question, but it sounded to me like it was --



1 she was testifying as to EPA requirements. So,
2 to the extent that it's limited as a question,
3 I withdraw my ---

4 **MS. TAYLOR:** I was just simply trying to clarify,
5 because it appeared that Dr. Hargett was still
6 on the subject of stormwater and I was trying to
7 move him in to another subject. And discharge
8 of pollutants into waters of the state certainly
9 deals with water resource management. And
10 there's more than -- sediment is only one type
11 of pollutant. So, that's the basis for my
12 question.

13 **THE COURT:** Proceed.

14 **MS. TAYLOR:** Thank you.

15 **Q:** So, have you -- are you familiar with the
16 differences between an NPDES permit for
17 operating a facility and a stormwater NPDES
18 general permit for construction activities?

19 **A:** Yes. And if I may, I'd like to respond in the
20 framework that I understand that there are
21 federal requirements that DHEC does not feel
22 apply in South Carolina in terms of CAFOs.
23 These are not considered by the Department as
24 CAFOs but as AFOs and that those requirements,
25 in some states under some situations in federal



1 context, federal code, do require discharge put-
2 outs akin to a point source discharge to provide
3 for controls and monitoring and performance of
4 those discharges.

5 Q: Okay. And those types of discharges would be
6 the wastewater emanating from these facilities?

7 MR. MUSTIAN: Your Honor, objection again. This is
8 an issue that the Court dealt with in the motion
9 for partial summary judgement with respect to
10 NPDES discharge permits, so this line of
11 questioning is irrelevant, has already been
12 addressed by the Court.

13 THE COURT: All right.

14 MS. TAYLOR: I'm just trying to distinguish between
15 the line of questioning that the Department had
16 dealing with stormwater.

17 THE COURT: You're not trying to introduce a new
18 subject, you're just trying to distinguish?

19 MS. TAYLOR: Exactly.

20 THE COURT: All right.

21 Q: In your opinion, will the proposed facilities,
22 as approved by DHEC -- you've reviewed the
23 permit application and the nutrient management
24 plans. Will these proposed facilities, as
25 approved by DHEC, cause discharge of pollutants



1. in to waters of the state?

2 A: Yes.

3 MR. MUSTIAN: Your Honor, objection.

4 MR. HIGHTOWER: Objection, Your Honor.

5 MR. MUSTIAN: That calls for a legal conclusion and
6 that is an issue that is in the purview of this
7 Court as to whether or not that is a term of
8 art, that is asking to draw a conclusion that
9 the Court will do based on facts in the record.
10 He is being asked to give a legal opinion on
11 those lines.

12 MR. HIGHTOWER: And further, Your Honor, my Cross
13 Examination was solely on stormwater issues.
14 There were not about any other type of issue.

15 MR. MUSTIAN: Your Honor, I would also point out
16 that, as we've argued in the motion for partial
17 summary judgement ---

18 THE COURT: I disagree with Mustian. I see Mr.
19 Hightower's point. But go ahead, you were going
20 to point out ...

21 MR. MUSTIAN: DHEC issues a no permit -- no-discharge
22 permit. So, by definition we are not permitted
23 to discharge pollutants into waters of the
24 state. So, to the extent that he's saying that
25 we're going to do that, then we're going to be



1 in violation of our permit and we would be
2 subject to enforcement requirements. What Mr.
3 Hightower's point earlier was is DHEC looks at
4 these applications based on how they are
5 designed and whether or not they meet the
6 requirements of the regulations. As designed,
7 there will be no discharge.

8 THE COURT: Okay.

9 MS. TAYLOR: You sustained that motion?

10 THE COURT: No. I ---

11 MS. TAYLOR: I must say it was a long evening.

12 MR. HIGHTOWER: I get that.

13 MS. TAYLOR: And I did not write down every single
14 question you asked, Mr. Hightower, but my
15 recollection was you had a very broad ranging
16 line of questions dealing with Dr. Hargett's
17 opinions. So, if that is not the case and it is
18 not the subject of my Re-Direct, I apologize for
19 that. I'm certainly not trying to exceed the
20 bounds here. But I do believe that your
21 questions were more than just simply your
22 questions pertaining to this -- to the
23 stormwater issue. I do believe that this -- Mr.
24 Mustian's incorrect here. I'm not asking him a
25 legal question. We went through this yesterday



1 I believe about whether or not he has the
2 ability to render an opinion concerning increase
3 in pollution from these proposed facilities.

4 **MR. MUSTIAN:** Your Honor, there's a difference
5 between an increase in pollution versus a
6 discharge of pollution. Discharge is a term of
7 art that is used in NPDES regulations and in the
8 EPA regulations as to what is a discharge. That
9 is not something that's a legal conclusion that
10 this Court would have to draw in that he's being
11 asked a legal opinion.

12 **THE COURT:** Rephrase the -- go ahead.

13 **MS. TAYLOR:** I mean, the 61-43 does not define a
14 discharge. I think discharges is not ---

15 **MR. MUSTIAN:** Your Honor, she's asking him about
16 NPDES permits under 61-9, not under 61-43. The
17 permit she's talking ---

18 **MS. TAYLOR:** I didn't reference any regulations.

19 **MR. HIGHTOWER:** But you referenced NPDES ---

20 **MS. TAYLOR:** Well, no, in my question I didn't relate
21 it to a particular ---

22 **THE COURT:** Okay.

23 **MS. TAYLOR:** --- statute or regulation.

24 **MR. HIGHTOWER:** The only place in South Carolina law
25 where it discusses NPDES permits is in 61-9.



1 It's not in 61-43.

2 **MS. TAYLOR:** But my question wasn't -- I moved on
3 from that subject. I simply asked him a
4 question being ---

5 **THE COURT:** Will the facility result in the discharge
6 of pollutants.

7 **MR. MUSTIAN:** Which, Your Honor, our contention is
8 that is a legal conclusion because that then
9 gets to the question of does a -- does the
10 facility need a NPDES permit, which this Court
11 has already addressed in the motion for partial
12 summary judgement. And it's asking him to draw
13 a legal conclusion as to whether or not there is
14 a discharge to a pollutant. And it's not a
15 fact, but you have to ---

16 **THE COURT:** Okay.

17 **MS. TAYLOR:** I believe it is a fact

18 **MR. MUSTIAN:** It's not a fact because there has --
19 there has not been a foundation laid for what
20 constitutes a discharge under 61-9. That is a
21 very specific set of facts that have to be
22 determine; whether or not there are conveyances,
23 whether or not there is pollutants that are
24 actually emitted from the facility, whether or
25 not they hit waters of the state ---



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1 **THE COURT:** I'm going to allow her to ask the
2 question. Y'all can -- if it opens the door for
3 you, you're subject to Cross Examination. But
4 let me hear the question one more time.

5 **Q:** In your opinion, will the proposed facilities,
6 as approved by DHEC, discharge pollutants into
7 waters of the state?

8 **THE COURT:** I'll overrule the objection. Answer the
9 question.

10 **A:** Yes.

11 **Q:** One other question ---

12 **THE COURT:** Remember last time you made a promise.

13 **MR. TAYLOR:** I understand. I understand.

14 **Q:** There was some mention earlier by Mr. -- some
15 question by Mr. Hightower about whether or not
16 a proposed facility that meets all these
17 regulations, that whether or not there would be
18 any release of manure or other pollutant in to
19 the environment. Do you recall that question?

20 **A:** Yes.

21 **Q:** If you -- I can just walk over and show you if
22 you don't mind. If you look at 61-43, Part
23 200.100 21. If you could just read the
24 highlighted portion.

25 **A:** Out loud?



1 Q: Sure.

2 A: If the manure is stockpiled for more than three
3 days, the manure shall be stored on a concrete
4 pad or other approved pads, such as plastic or
5 clay lined, and covered with an acceptable cover
6 to prevent odors, vector attraction, and runoff.
7 The covers should be properly vented with screen
8 wire to let the gases escape. The edges of the
9 cover should be properly anchored.

10 Q: Okay. So, does this -- as you read it, doesn't
11 this require -- or allow, rather, open
12 stockpiles of manure to be stored outside
13 uncovered and without any sort of pad for three
14 days and not violate these regulations?

15 A: That appears to be allowed to that extent, yes.

16 Q: Wouldn't that contribute to entry of pollutants
17 into the water resources?

18 A: It has the potential to. If the right rainfall
19 event occurred during that period, it would have
20 the potential for rainwater, stormwater
21 commingling with those constituents.

22 Q: One last question. Back to this NPDES general
23 permit for Stormwater Discharges from
24 Construction Activities. Is there anything that
25 Mr. Hightower brought up concerning this permit



1 that he neglected to mention that you believe to
2 be an important thing to raise for this Court?

3 A: In the context that he presented it and I think
4 I responded to him, trusting in the very
5 rigorous provisions of that guidance and
6 requirements that are stipulated in that
7 guidance, if everything works perfectly, it's a
8 strong system. But there's a lot of factors
9 that can go wrong. It really relies on an act
10 of faith in the operator of the facility and in
11 DHEC to enforce the requirements. And that goes
12 into the stormwater pollution protection plan
13 and implementation and stewardship of that going
14 forward. So, there's a substantial leap of
15 faith. There's a lot that can go wrong.
16 Farmer's have lots of challenges and things do
17 go wrong. So, it's a matter of individual
18 stewardship and conditions.

19 Q: Thank you. That's all I have.

20 THE COURT: Well, wouldn't that not be true for every
21 permit and practically for every environmental
22 permit that DHEC would ever issue?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right.

25 DR. HARGETT - RE-CROSS EXAMINATION BY MR. MUSTIAN:



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1 Q: Dr. Hargett, you would agree with me that if
2 they operate in compliance with their DHEC
3 permit, they are prohibited from discharging
4 pollutants?

5 A: That is the intent. I think we just discussed
6 whether discharge is defined in 61-43.

7 Q: Well, but it is a no-discharge permit, correct?

8 A: That is the position of the Department.

9 Q: And therefore that means the position of the
10 Department is is that the facilities, as
11 proposed, should and would not discharge
12 pollutants, correct?

13 A: That answer is yes and that's why we're here as
14 to that question.

15 Q: And if that facility does discharge pollutants,
16 then it's going to be in violation of its
17 permit, correct?

18 A: Not necessarily.

19 Q: Well, you just said it was a no-discharge
20 permit. And now you're telling me if they
21 discharge, they won't be in violation of the
22 permit?

23 A: Yes, sir. And Ms. Taylor just illustrated a
24 scenario in which uncovered manure for less than
25 three days is a performance parameter that is



1 allowed by the Department. And there is the
2 potential for rainwater to mix with that manure
3 and be released.

4 Q: And when you say released, you mean discharged?

5 A: Yes, sir.

6 Q: So, there's a difference between release and
7 discharge then, isn't there? As a term of art,
8 there's a difference between water that's
9 released from a manure pile as opposed to a
10 discharge, which what is the context of an NPDES
11 permit, correct?

12 A: Point of distinction, yes. A discharge suggests
13 intentional, but it isn't always. I have been
14 involved in numerous situations -- I actually am
15 the permit manager, the owner's agent on a
16 permit, where we have ongoing un-permitted
17 discharges. And that's the term the Department
18 uses. So, un-permitted discharges do occur from
19 a variety of environmental permitted facilities.

20 Q: Isn't your understanding that in an NPDES
21 context that a discharge is talking about an
22 actual discharge of wastewater through some sort
23 of conveyance?

24 A: In an NPDES stormwater act context, yes, sir.

25 Q: Okay. So, we're talking about a ditch that



1 directly discharges into a water of the state,
2 right?

3 A: Yes, sir.

4 Q: A pipe, those types of things, correct?

5 A: Yes. A resource.

6 Q: Is there anything that is in their application
7 that has a conveyance under -- as it will be
8 used in the context of an NPDES permit?

9 A: No, sir. Not as presented in the application or
10 supplemental materials. And that was one of my
11 concerns in reviewing those is the question
12 remains unanswered is to how all this is going
13 to be addressed. Saying that there's going to
14 be a general permit for stormwater, that's
15 reassuring. But, you know, how can you affirm
16 the Department's position on any particular
17 permit application that there will be no
18 discharge until you've answered those questions?

19 Q: But you're not really talking about discharge
20 here. You're talking about runoff and you're
21 talking about emissions from that sort of thing,
22 correct, releases? Not discharges as it's used
23 in NPDES permitted under the EPA regulations or
24 under 61-9, you're talking about releases from
25 stormwater, correct?



1 A: That would be the primary conveyance for those
2 releases or discharges, whichever you want to
3 call them; to the environment, yes.

4 Q: Okay. Didn't you and I talk about yesterday
5 that you acknowledged in your deposition that
6 one of the best ways to address those issues was
7 through riparian buffers and vegetative buffers,
8 correct?

9 A: Those are among a whole portfolio of practices
10 and best management practices that can be
11 implemented.

12 Q: So, before you can render an opinion on whether
13 or not a release of water from a manure pile is
14 going to pollute the waters of the state, don't
15 you have to know whether or not there's a
16 riparian buffer in between that manure pile and
17 the water of the state or if there's a
18 vegetative buffer between the manure pile and
19 the water of the state?

20 A: Yes, you do. And my testimony went to the
21 uncertainties and the unknowns about how this
22 facility's ultimately going to be situated on
23 the site post-construction and how all that's
24 going to work. We simply don't know. We can't
25 say that it is going to pollute or that it is a



1 no-discharge situation.

2 Q: Well, no, that's not what you said, Dr. Hargett.
3 You said that it was going to pollute. You said
4 that it was going to discharge. Now you're
5 telling me that you don't know. So, which one
6 is it? Do you know that it's going to pollute?

7 A: Yes.

8 Q: Or do you not know that it's going to pollute?

9 A: I know that it is.

10 Q: Why do you know it's going to pollute?

11 A: Because the design standards for stormwater
12 pollution prevention after construction only
13 perform to a certain standard. There will be
14 stormwater that leaves the site and it's my
15 expert opinion that constituents of the
16 operation will go with that. That is a simple
17 question. I'm not saying it's a gargantuan
18 problem. I'm not saying it a de minimis
19 problem. You don't know until the facility's in
20 operation. And the only thing we can gauge
21 against is other similar facilities. And we
22 know that they're imperfect.

23 Q: But you also just told me that riparian buffers
24 and vegetative buffers can address those issues,
25 right?



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1 A: They can be some of the tools that are employed.

2 Q: And you told me that you needed to know that
3 before you could make a decision as to whether
4 or not pollutants would be released to waters of
5 the state.

6 A: And I do not know that and the Department does
7 not know that.

8 Q: So, then you can't sit here and tell me today
9 that there actually will be pollutants issued to
10 waters of the state when these facilities are
11 built and are operating.

12 A: On the contrary. I can for the reasons I just
13 described. The practices, whatever they are,
14 are not perfect. They will only perform to a
15 certain level. Whether it's sediment, whether
16 it's stormwater, there will still be releases
17 from the site above those design standards.
18 That is the convention that's what's customary.

19 Q: Dr. Hargett, you just told me that you needed to
20 know whether or not there would be riparian
21 buffers and vegetative buffers in order to make
22 that decision. That's what you just told me.

23 A: Well, put it in proper context, Mr. Mustian. I
24 said that those are tools that can be employed,
25 like many best management practices. But we



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1 don't know how they're going to be deployed at
2 the site until you're done, until the full
3 stormwater permit, the stormwater pollution
4 prevention plan is implemented, and you have
5 that array of solutions for addressing those.
6 Even with those -- I think you're taking my
7 response out of context. By saying I don't know
8 until I have those, I don't know how effective
9 they can be, but I can guarantee they will be
10 imperfect. We don't design, as discussed
11 earlier, for the perfect storm. We design for
12 a generally accepted design storm. Beyond that,
13 there are uncertainties about what's going to
14 happen. My previous statement also is, I
15 believe in this process. It can be very
16 effective, but it will not be perfect.

17 Q: But you would agree with me that you can design
18 the site, you can install riparian buffers, you
19 can install vegetative buffers, and you can
20 design a site such that it would preclude and
21 prevent pollutants from reaching the waters of
22 the state, you would agree with me that you can
23 do that, correct?

24 A: Vast majority of pollutants, not absolutely all.

25 Q: But you don't know that because you don't know



1 how the site's is going to be designed; is that
2 correct?

3 A: I don't know if it's going to be 100 percent
4 effective, which I think is impossible, whether
5 it's going to be 90 or 95 percent effective.
6 None of us can anticipate that. And to process
7 a permit, assuming everything's perfect, is
8 really a bit disingenuous, in my opinion, to say
9 that it's no-discharge. That's really not
10 accurate.

11 **MR. MUSTIAN:** That's all the questions I have.

12 **DR. HARGETT - RE-CROSS EXAMINATION BY MR. HIGHTOWER:**

13 Q: Dr. Hargett, Ms. Taylor asked you on Re-Direct
14 about the fact that 20 percent of the stormwater
15 post-construction is allowed under the
16 stormwater general permit, do you remember that?

17 A: She asked me a question along those lines,
18 that's right.

19 Q: Okay. Right now 100 percent of the stormwater
20 that falls on that land is discharging; isn't
21 that correct?

22 A: Well, to put that in proper context -- first of
23 all, it's not a yes-or-no question.

24 Q: Well, it was a yes ---

25 A: Historically ---



1 Q: I asked you was that correct. And that's either
2 yes or no.

3 A: Yes, with the qualification that it is a
4 function of the land use and land management
5 that is present on the site today.

6 Q: Okay.

7 A: Which is a mix of timber and just harvested
8 timber land.

9 Q: And you even acknowledged -- when I asked you
10 some questions about the permit, you
11 acknowledged that the Department -- in fact the
12 permit wants to make sure that stormwater
13 discharges are equal to or less than what they
14 are pre-construction; isn't that correct?

15 A: Yes, sir. Those are stated objectives.

16 Q: Okay. So, the fact that there could be 20
17 percent of the stormwater being allowed to
18 discharge is perfectly contemplated by the
19 permit and the permit is the governing order;
20 isn't that correct?

21 A: Yes. I think her question actually was about
22 release of sediment, not stormwater.

23 Q: Well, and release of the sediment. This
24 currently -- you would agree that there could be
25 currently erosion that would just happen



1 naturally ---

2 A: Yes, sir.

3 Q: --- at a site, right?

4 A: Yes.

5 Q: And ---

6 **THE COURT:** Would you consider that erosion a
7 pollutant?

8 **THE WITNESS:** In a spirit of sense, Your Honor. A
9 forest landscape that's stable and has old
10 gullies, as this landscape does, would have a
11 minimum of release. A forest is a sponge. And
12 once you remove the vegetative capacity of that
13 ecosystem to intercept the water and to
14 attenuate the power of raindrops, which is
15 pretty incredible if it's not attenuated, you've
16 radically changed the potential for runoff.
17 That goes to the curve numbers that have been
18 referred to in Mr. Stewart's testimony and mine.
19 You have indices of runoff that will occur based
20 on the landscape. Impervious obviously 100
21 percent runs off. In a forest land it's very
22 little.

23 **THE COURT:** There are animals in the forest.

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** If they defecate in a forest ---



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1 THE WITNESS: It happens, yes, sir.

2 THE COURT: And some type of rain event, that would
3 run off ---

4 THE WITNESS: Yes, sir. And those sources are
5 identified in TMDLs. It's acknowledged that
6 there are certain natural sources that are
7 impossible to control from a regulatory point of
8 view. Deer and bears and whoever defecates in
9 the woods, you know, are not permitted and they
10 are potentially sources, as are waterfowl in
11 some settings.

12 THE COURT: Okay. Go ahead.

13 MR. HIGHTOWER: Thank you, Your Honor.

14 Q: Dr. Hargett, do you have a copy of the 61-43
15 regulations?

16 A: Not in front of me, no, I don't.

17 Q: Okay. Well, I'll let you look at this. I'm
18 going to show you 61-43, Part 200.140 it's
19 entitled Other Requirements. I'd like for you
20 to read Section A and Section E.

21 A: Section A, There shall be no discharge of
22 pollutants from the operation in to surface
23 waters of the state, including ephemeral and
24 intermittent streams. There shall be no
25 discharge of pollutants into groundwater, which



1 could cause groundwater quality not to comply
2 with groundwater standards established in R61-
3 68. And then Part E, No manure may be released
4 from the premises of an animal facility to
5 waters of the state, including ephemeral and
6 intermittent streams, unless the permit pursuant
7 to Section 402 or 404 of the Clean Water Act has
8 been issued by the department.

9 Q: Okay. So, you had been asked questions on
10 whether or not runoff from a manure pile could
11 be a violation. You would agree that the
12 Department -- that the Department's regulations
13 do address these issues and make it a part of
14 the overall scheme that you have duties -- yes,
15 you can have manure outside for three days
16 uncovered. But if something happens, then
17 you're responsible for that action and the
18 Department can take an enforcement action; isn't
19 that correct?

20 A: Yes, sir, absolutely.

21 Q: Okay. But if these -- because you acknowledge
22 that a manure pile just sitting out there and it
23 doesn't rain is not likely to impact waters of
24 the state.

25 A: That is correct.



1 Q: Okay. So, you would agree that, under this
2 scheme, the Applicants are allowed to do certain
3 practices. But if they do them, they're
4 responsible for the consequences that could
5 happen based on weather events or some other
6 event. And if they do allow these discharges,
7 you would agree that they could be considered by
8 the Department as a violation of the regulation
9 and a basis to take enforcement action; isn't
10 that correct?

11 A: Yes, sir.

12 Q: Okay.

13 MR. HIGHTOWER: No further questions.

14 THE COURT: Any Re-Direct?

15 MS. TAYLOR: I think we've been re-directing for a
16 while. I think some of the issues that have
17 been raise I can address just ...

18 THE COURT: Okay.

19 THE WITNESS: Your Honor, I appreciate your
20 indulgence. And my haircut was not designed to
21 influence Mr. Hightower in any way.

22 MR. HIGHTOWER: I take that as a compliment.

23 MR. MUSTIAN: Yes. I like your haircut.

24 MR. GUILD: Can we take a brief break, Your Honor?

25 THE COURT: Yes. Y'all are through with your



1 witnesses; is that correct?

2 MS. TAYLOR: Yeah. Yeah.

3 THE COURT: Okay. We'll take a brief break, Mr.
4 Guild, in celebration.

5 (Off the Record)

6 THE COURT: Back on the record.

7 MS. TAYLOR: Your Honor, I would just like to offer
8 into evidence a few exhibits that were either --
9 most of them were referenced by Dr. Hargett.
10 And I realize I'll have some objections. We'll
11 just have to work through them.

12 THE COURT: Okay. Offer away.

13 MS. TAYLOR: All right. Petitioners' Exhibit 4E,
14 which is entitled Non-Water Quality Impact
15 Estimates for Animal Feeding Operations by the
16 EPA dated December 2002. I believe under --
17 this is self-authenticating under 80 -- 902(5).
18 And it meets the hearsay exception under 803(8).

19 THE COURT: Hold on one moment, y'all.

20 MR. MUSTIAN: I'm sorry. Mullen, what's the Bates
21 number?

22 MS. TAYLOR: Starts with DHEC_000550 produced by
23 DHEC, obviously.

24 THE COURT: All right. What was the hearsay rule
25 that you cited?



1 MS. TAYLOR: Hearsay exception, this is Rule 803(8).

2 THE COURT: That was the one we dealt with the other
3 day. Okay.

4 MS. TAYLOR: Public records and reports.

5 THE COURT: Okay. All right. I'll hear from y'all.

6 MR. MUSTIAN: Your Honor, I don't believe that this
7 document relates to matters observed to -- a
8 duty imposed by law as to which matters have a
9 duty to report. I don't believe any foundation
10 has been laid along those lines.

11 With respect to the self-authentication
12 requirements, I don't know whether this is
13 considered a book, a pamphlet, or other
14 publication. What I would note, Your Honor,
15 though, is that this is a document from 2002.
16 As we pointed out in our motion for partial
17 summary judgment, the EPA has amended its
18 regulations multiple times since 2002. So, to
19 the extent that this document relates to
20 regulations in effect at that time, number one,
21 it's irrelevant because it's no longer
22 applicable; number two, Ms. Taylor specifically
23 acknowledged in her arguments on the motion for
24 partial summary judgment that she was not
25 addressing EPA regulations, she was addressing



1 state DHEC regulations. So, this document is
2 irrelevant to the extent that it purports to be
3 from an EPA, which she has said is not related
4 to her arguments in this case.

5 Your Honor, I would also say that I believe
6 that all these documents that she's getting
7 ready to move to introduce into evidence are --
8 they are hearsay. And the basis of -- we can go
9 through each one, but the foundation that she's
10 laid is that Dr. Hargett looked at each one of
11 these. Your Honor, under the cases of Allegro
12 vs. Scully, which is 400 S.C. 33, and Jones vs.
13 Doe, which is 372 S.C. 53, the Court
14 specifically held that -- it's the Court of
15 Appeals in those cases, that Rule 703 does not
16 allow the admission of hearsay simply because an
17 expert used it in forming his opinion. The Rule
18 only provides the expert can give an opinion
19 based on the facts or data that were not
20 admitted into evidence.

21 **THE COURT:** I'm familiar with those cases. I think
22 I made a ruling in that regard before those
23 cases came out. What was the date on them?

24 **MR. MUSTIAN:** Allegro was 2012.

25 **THE COURT:** Yeah. I recognized that foundation

