

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Charles B. Simmons, Jr., Master-in-Equity

Appellate Case No. 2020-000669
Case No. 2016-CP-23-5905

Renewable Water Resources,..... Respondent,

v.

Insurance Reserve Fund, a Division of the
State Fiscal Accountability Authority of South Carolina,..... Appellant.

RECORD ON APPEAL - VOLUME 5 OF 5
(pp. 1714-2008)

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Certificate of Counsel

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1 second.

2 (Off-the-record discussion.)

3 MR. LINDEMANN: All right. Back on the
4 record.

5 BY MR. LINDEMANN:

6 Q. Mr. Jones, I don't have a whole lot more for
7 you, but there's a couple other areas that you were
8 designated for. Looking at number 17, it said, "The
9 need for legal and consulting fees as described in
10 paragraphs 18 and 21 of the Plaintiff's Complaint."

11 A. Um-hum.

12 Q. What specific attorney's fees were
13 charged -- or are being claimed by ReWa to be reimbursed
14 by the Insurance Reserve Fund?

15 A. We utilized legal counsel to give us an
16 opinion of enforcement we took on some of our users. We
17 vetted all that through our legal counsel to be sure we
18 were in good standing.

19 Q. And is that a reference to Tommy Lavender?

20 A. That is Tommy Lavender, I think, exclusively.
21 I could be wrong. I don't know if -- for most of the
22 period it was Tommy Lavender.

23 Q. Yeah. That was going to be my question. Was
24 there any other law firm or lawyer that was used, other
25 than Mr. Lavender?

1 A. Unless Rivers had some ancillary stuff.

2 MR. STILWELL: I'll just tell you, on the
3 original damages information they submitted to you,
4 there was a Nelson Mullins bill. And I went and pulled
5 it to see what it was. It was me reviewing the AECOM
6 contract, for them to retain AECOM. So I just took that
7 out of the damages sheet.

8 MR. LINDEMANN: Okay.

9 BY MR. LINDEMANN:

10 Q. As far as Mr. Lavender goes, had he been
11 previously retained or under a retainer agreement with
12 ReWa?

13 A. I don't know if we had an official retainer
14 agreement with him or not, to be honest with you.

15 Q. Had he previously done work for ReWay?

16 A. Yes. Yes, he had.

17 Q. Did he do work for ReWa on a regular basis?

18 A. Yes. I believe he did.

19 Q. Who does your environmental work currently?

20 A. Well, they would still be our -- his firm
21 would be our go-to firm for environmental work.

22 Q. And by that, do you mean still Nexsen Pruet?

23 A. Yes.

24 Q. Do you have any knowledge as to whether ReWa
25 has ever made a request to the Insurance Reserve Fund to

1 retain Mr. Lavender to defend any claims brought against
2 ReWa?

3 A. I don't know specifically. No, sir.

4 Q. How about specifically with respect to this
5 PCB contamination? Are you aware of any requests to the
6 Insurance Reserve Fund to actually retain Mr. Lavender?

7 A. No. I am not aware.

8 Q. Are you aware of any requests that were ever
9 made to the Insurance Reserve Fund to retain any lawyer
10 for ReWa related to this PCB contamination?

11 A. Can you ask me that again to be sure?

12 Q. Are you aware of any requests from ReWa to the
13 Insurance Reserve Fund to retain any other lawyer, any
14 lawyer, for representation regarding this PCB
15 contamination?

16 A. No. I'm not aware of any request to the
17 Insurance Reserve Fund.

18 Q. As far as the reference in the complaint to
19 consulting fees, what is your understanding of what the
20 reference in that -- in the complaint to consulting fees
21 consist of?

22 A. I think that would refer to the consulting
23 fees for the environmental engineering that we consulted
24 with.

25 Q. And that's AECOM?

1 A. AECOM primarily.

2 Q. How about any other -- were there any other
3 consulting fees that were incurred by ReWa?

4 A. There could be. I can't remember
5 specifically. I would think that AECOM was the bulk of
6 that.

7 Q. And you said ReWa had an ongoing relationship
8 with them as well, correct?

9 A. That is correct.

10 Q. Does AECOM still do
11 engineering -- environmental engineering work for ReWa?

12 A. Yes, they do.

13 Q. You've also been identified as an individual
14 to speak to item number 12, which is the processes
15 involved and expenses occurred to conduct sampling --

16 A. Yes, sir.

17 Q. -- as described in paragraph 14(A) of the
18 complaint. We've obviously talked about sampling a good
19 bit going through that timeline.

20 A. Um-hum.

21 Q. Can you summarize for me what the sampling
22 program was that ReWa engaged in as a result of learning
23 of the PCB contamination?

24 A. Yeah. There were several components to that
25 sampling program. One was the sampling of all our

1 treatment plant processes. You've seen evidence of that
2 in the timeline. That was more formalized. We set up
3 schedules for testing the different tankages, the
4 influents, the effluents, within the treatment
5 facilities. We also enhanced our sampling of the
6 biosolids program to gauge where we were, make sure we
7 did not have further contamination in the treatment
8 facilities that already had contamination, but also to
9 ensure we didn't see anything that we were previously
10 unaware of at the other facilities.

11 The big component of the -- of the sampling
12 program was the screening of our hauled waste customers,
13 the loads of septage and grease that were brought to us.
14 We implemented a regimen of sampling every load that was
15 brought to us. We would sample the truck, sequester the
16 waste in the frac tanks. And then after the frac tanks
17 were full, or after some specified time, we would sample
18 those for PCB to determine if we had further
19 contamination. If it was a clean sample, then we would
20 let it be processed through the treatment facility. If
21 we had a detection, then we would do further
22 investigation to determine which hauler was the source
23 of that. We also did some investigative sampling out in
24 the collection system, sampled grease interceptors,
25 collection lines, pump stations, that sort of thing.

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1 we find that there's a detection downstream.

2 Q. And the sampling expenses that you're claiming
3 as part of this litigation, is that limited to the cost
4 of the analysis by Rogers & Callcott, or otherwise
5 Shealy Environmental, or does it include the actual
6 taking of the samples?

7 A. I do not believe we -- we counted the cost of
8 taking those samples.

9 Q. So do you know of any other costs that are
10 being claimed related to the sampling program other than
11 the cost of the analysis?

12 A. I do not.

13 Q. And is ReWa claiming the cost of the analysis
14 up through 2016?

15 A. Yes.

16 Q. And what's the basis for that if the
17 contamination itself happened in 2013?

18 A. We continued to see contamination for quite
19 some time after that.

20 Q. Explain that to me, how you were seeing
21 contamination.

22 A. We were having contaminated loads that were
23 brought to us. We were finding it in grease
24 interceptors out in the system up until 2016, I believe.

25 Q. Well, when you were -- so you were finding

1 them in loads of septage or grease?

2 A. Um-hum.

3 Q. Is that a "yes"?

4 A. Yes.

5 Q. Did those loads ever damage any type of
6 property or equipment?

7 A. Yeah. It made it unable for us to use it.
8 Yes.

9 Q. Well, let me back up. As I understand it, you
10 found those PCBs in truckloads of septage or grease?

11 A. Um-hum.

12 Q. And you caught that before it ever entered
13 your system, right?

14 A. It still -- it still went into portions of the
15 frac tanks and our pumping systems, which had to be
16 disabled and decontaminated and the contents taken care
17 of before they could be used again.

18 Q. I thought they were sampled before they left
19 the trucks?

20 A. The sample was, but it was still just -- the
21 material was discharged. So we took a sample when it
22 was discharged, went into these frac tanks. It did not
23 make it into the main body of the facility, but it still
24 made it into the system we put in place to try to screen
25 it.

Plaintiff's 30(B)(6) Deposition Counter-Designations

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1 grease that had PCBs in it.

2 A. Um-hum.

3 Q. And would they be PCBs over 50 parts per
4 million or just any PCBs?

5 A. Both.

6 Q. How many of these 8 to 12 times actually had
7 PCBs over 50 parts per million?

8 A. I couldn't tell you off the top of my head.
9 We'd have to look at that report.

10 Q. Did you do any type of decontamination if the
11 PCBs were less than 50 parts per million?

12 A. Yes.

13 Q. And why is that?

14 A. Because there's an EPA prescribed cleaning
15 procedure that had to be followed.

16 Q. And that had to be followed even it was less
17 than 50 parts per million?

18 A. That was the guidance that we were given.
19 Yes.

20 Q. And who was that given by?

21 A. By Ken Feely, the EPA.

22 Q. And take me through what would need to be
23 cleaned or decontaminated.

24 A. Anything that was -- had come in contact with
25 the PCB contaminated material. It could be hoses,

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1 A. It's a multiyear contract that we have with
2 this vendor to provide this service.

3 Q. And how was their rate of compensation
4 determined?

5 A. It's on -- based on the -- it's a tier rate.
6 There's a per-gallon rate, and it depends on the
7 distance that they have to travel. It's -- it has
8 multiple factors in it to try to calculate it, but it
9 includes the hauling rate. It includes the application.
10 It also includes the administration of the program that
11 they perform, permitting and that sort of thing. All of
12 that is included in the contract.

13 Q. How did the cost of Synagro carrying out that
14 contract compare to the cost of putting the biosolids
15 into a landfill?

16 A. It is significantly more expensive to put it
17 in a landfill.

18 Q. And why is that?

19 A. Because it has to be further processed to be
20 able to go to a landfill.

21 Q. And the further processing is putting it
22 through a --

23 A. Belt press.

24 Q. Belt press, okay. And tell me why that's
25 considerably more expensive.

1 A. Well, several components. It takes more
2 manpower. You have to have someone to run the
3 machinery. You have to have the chemical addition, the
4 polymer, in order to put it through. You have to
5 maintain the machinery, keep it up and go on the
6 electricity. There's a lot of components to it. Then
7 you still have the transportation cost to get it from
8 the facility to the landfill.

9 Q. And that's cost that ReWa would incur itself?
10 I mean, it would use its own trucks and employees?

11 A. Potentially, under normal circumstances, yes,
12 unless the quantity exceeded our ability to do that.
13 And then we would have a contractor to do it.

14 Q. And then what would be the charge in the
15 landfill? Did that differ from landfill to landfill?

16 A. It differs from landfill, anywhere from \$25 a
17 ton up to -- we got a recent quote of \$60 a ton at some
18 landfills. And -- and with the Greenville County
19 landfill, we have an agreement where we treat some of
20 their leachate from their facility -- their landfill in
21 exchange for a certain amount of quantity of tipping
22 fees to take our solids to them.

23 Q. And when did that agreement go into effect?

24 A. It's been around for years. I can't recall,
25 10, 12 years.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
- - -
RENEWABLE WATER RESOURCES,
Plaintiff,
vs.
INSURANCE RESERVE FUND, A DIVISION
OF THE STATE FISCAL ACCOUNTABILITY
AUTHORITY OF SOUTH CAROLINA,
Defendant.

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: Case No.
: 2016-CP-23-5905
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:

30(b)(6) DEPOSITION OF RENEWABLE WATER RESOURCES
GIVEN BY: KEVIN DEAN JAMES

DATE TAKEN: Thursday, July 26, 2018
TIME BEGAN: 3:08 p.m.
TIME ENDED: 5:06 p.m.
LOCATION: Nelson Mullins Riley & Scarborough, LLP
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25 ALSO ATTENDING: Mr. Chris Lombard, CPCU, ARM, AIC,
Assistant Director of Claims for the South Carolina
State Fiscal Accountability Authority;

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P R O C E E D I N G S

KEVIN DEAN JAMES, after having been first
duly sworn, was examined and testified as
follows:

- - -

EXAMINATION

- - -

BY MR. LINDEMANN:

Q. Please give me your full name for the record.

A. Kevin Dean James.

Q. Mr. James, have you ever given a deposition
before?

A. No, sir.

Q. What we're doing here today is actually
referred to as a Rule 30(b)(6) deposition. That's the
deposition that's being taken of Renewable Water
Resources which, for sake of brevity, I've been calling
"ReWa" throughout the deposition. So I assume that's
fine with you to continue to do so?

A. (Nods head).

Q. So this is a deposition of the company itself.
You have been designated as a witness to testify on
certain subject matters. Are you aware of that?

A. Yes, sir.

1 Q. As I understand, what I've been told prior to
2 the deposition starting -- and there's a copy of the
3 actual deposition notice and on the third page of that
4 are the list of topics. Have you seen that document
5 before?

6 A. Yes, sir.

7 Q. I have been told that you are the appropriate
8 person to testify to items 9, 10, 13 through 16, as it
9 pertains to the Pelham facility as well as the
10 Mauldin Road facility. Is that your understanding as
11 well?

12 A. Yes, sir.

13 Q. Have you reviewed those topics?

14 A. Yes, sir.

15 Q. Are you knowledgeable about those particular
16 topics and specifically with regard to the Mauldin Road
17 facility and the Pelham facility?

18 A. Yes, sir.

19 Q. All right. Let me give you just a few
20 guidelines as far as the deposition goes. I'm going to
21 be asking you questions regarding those particular
22 subject matters. If at any time I ask you a question
23 you do not understand, please stop me. Tell me you
24 don't understand my question. I'll be happy to try to
25 restate it in such a way that it's clear. Will you do

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1 that?

2 A. Yes, sir.

3 Q. If you answer a question, we'll assume you
4 understood the question. Is that fair?

5 A. Yes, sir.

6 Q. As you're doing a great job of, try and say
7 "yes" and "no," rather than "uh-huh" or "huh-uh" or a
8 nod of the head. If you do that, I may follow it up
9 with: Is that a yes, or is that a no? I'm not trying
10 to harass you or get you to change your answer. I just
11 want to make sure it's clear for the court reporter.
12 Okay?

13 A. Yes, sir.

14 Q. Also, this may take a little while. So if you
15 need to take a break at any time, let me know. I'm
16 happy to take a break. All I'd ask is if there's a
17 question already that's been posed on the table, that
18 you answer the question before we go to break. Okay?

19 A. Yes, sir.

20 Q. All right. Give me a little background
21 information on yourself. How long have you been with
22 ReWa?

23 A. June -- this past June was 26 years.

24 Q. And what is your current position?

25 A. I'm the director of water resource recovery.

1 Q. And tell me what your job responsibilities are
2 in that position.

3 A. Well, the responsibilities are to basically
4 oversee our waste -- all our treatment facilities,
5 outlay of our -- the treatment facilities we own and the
6 one that we are currently -- that we're -- we operate.
7 So it's a total of nine, but it's basically to oversee
8 the -- the complete operation of those -- the task
9 involved in -- in those facilities.

10 Q. And how long have you been the director of
11 water resource recovery?

12 A. Eight months.

13 Q. What was your position prior to that?

14 A. Water resource recovery facility manager.

15 Q. And in that job, were you assigned to one
16 particular facility?

17 A. No. In that job, I dealt more with the day to
18 day -- I was -- I was over all the -- still
19 over -- well, yes. At one time, it was three
20 facilities. And then it went to all the facilities.
21 But I was -- I was more overseeing more of the
22 day-to-day, you know, operation. There's a little bit
23 more -- I dealt with a lot of different other things
24 closer to the operation than I do now, as far as
25 purchasing and stuff like that, that I don't do now.

1 But it was all the facilities.

2 Q. And who did you report to in that position?

3 A. Glen McManus.

4 Q. Who do you report to in your current position?

5 A. Joel Jones.

6 Q. And how long did you hold the position of

7 water resource recovery facility manager?

8 A. Let me think, from 2008 until eight months or
9 so. I'll get my math right now.

10 Q. So late 2017?

11 A. Yes, sir.

12 Q. During the period of the PCB contamination,
13 that's the position you held?

14 A. That was the position I held. But when this
15 first started, I was -- that's when I was in charge of
16 the three facilities.

17 Q. And which three facilities were those?

18 A. That would be the Durbin Creek Water Resource
19 Recovery Facility; the Gilder Creek, G-i-l-d-e-r; and
20 Pelham.

21 Q. And when did your position change where you
22 basically had some sort of oversight over all the
23 facilities as opposed to just those three?

24 A. That was the end of 2014. Maybe December of
25 2014, I believe.

1 Q. And explain to me, then, how the job changed
2 at that point.

3 A. Well, at that -- at that point, there was --
4 there was two managers. So the other manager left, and
5 he was in charge of the -- you know, the same job as I
6 did, but we just had the area split up into east and
7 west. So he was in charge of the Mauldin Road treatment
8 facility, the Lower Reedy treatment facility, Gilder --
9 I mean Georges Creek, the Piedmont Regional Facility.
10 So -- so at that time, we just kind of had the duties
11 split up. We did the same job. It's just I had a
12 certain number of plants. He had a certain number of
13 plants. And then around 2014, he left.

14 Q. And who is that you're referring to?

15 A. Adger Turner. And I was asked to -- I was
16 asked to fill in until they, you know, replaced that
17 position, and then ultimately, it led to me -- it never
18 was filled, and I took over both what we call the east
19 and the west divisions.

20 Q. So, in essence, the job duties didn't change,
21 just the number of facilities you worked for?

22 A. That's correct.

23 Q. Okay.

24 MR. STILWELL: Did you get a raise, at least?

25 THE WITNESS: Can we go off?

Defendant's 30(B)(6) Deposition Designations

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1 THE REPORTER: I don't know what to do.

2 MR. LINDEMANN: You're fine.

3 THE WITNESS: Minimal.

4 BY MR. LINDEMANN:

5 Q. As far as prior to 2008, what positions did
6 you hold with ReWa?

7 A. Prior I was a operations foreman.

8 Q. At what facility?

9 A. The Gilder Creek facility. And prior to that
10 was the Taylors facility, which is -- no longer exists.

11 Q. Any other jobs other than operations foreman?

12 A. And then before that I was just a operator at
13 Mauldin Road, the Mauldin Road facility.

14 Q. What is your educational background?

15 A. Just -- just high school.

16 Q. Where did you graduate, in what year?

17 A. 1987, Liberty.

18 Q. And you've been identified as someone who
19 can -- who is knowledgeable about the Mauldin Road
20 facility, and obviously, the PCB contamination that
21 occurred starting in 2013, as I understand. Is that
22 your understanding?

23 A. That is my understanding. I was -- I was -- I
24 was involved in a lot of -- I think we discussed -- I
25 was involved in a lot of the actual cleanup at

Defendant's 30(B)(6) Deposition Designations

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1 THE WITNESS: Are we?

2 MR. STILWELL: I think it was December 23rd,
3 because I think there's an extra year in there just like
4 doing it, but we can --

5 MR. LINDEMANN: What are you saying? He left
6 in --

7 MR. STILWELL: I think Adger left in December
8 of 2013, and Kevin took over. And I think that's when
9 you all started doing all the remedial. And we could
10 look at any of the AECOM contracts or anything like
11 that.

12 THE WITNESS: Yeah. I mean -- yeah.

13 MR. STILWELL: Yeah.

14 THE WITNESS: I mean, I could have my -- I
15 could be off a year.

16 MR. LINDEMANN: All right.

17 BY MR. LINDEMANN:

18 Q. Tell me again the facilities at Mauldin Road
19 that you understand were contaminated with PCB.

20 A. The -- the tanks, the --

21 Q. Right, the structures at the facilities.

22 A. The two digesters and --

23 MR. STILWELL: You've got a picture here.

24 THE WITNESS: Tanks 7 and 8, holding --
25 biosolids holding tanks 7 and 8.

Plaintiff's 30(B)(6) Deposition Counter-Designations

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1 BY MR. LINDEMANN:

2 Q. Actually, that's Lower Reedy.

3 A. There's Mauldin. So these are the holding
4 tanks 7 and 8.

5 Q. Okay.

6 A. And then here are our digesters, our three
7 digesters, and two of those are online.

8 Q. And how are they designated? Digesters 1, 2,
9 and 3?

10 A. Yes, 1, 2 and 3.

11 Q. And which two were the ones that had the PCB
12 contamination?

13 A. I can't recall exactly without look at some
14 lab results, which -- exactly which numbers. Usually,
15 there's only -- there's two online. One is set as a
16 standby. And I think it would be on -- on our -- on
17 our -- some lab results. But I don't know if it was 1
18 and 2 or 2 and 3, exactly.

19 Q. Okay. It's kind of an important fact for me
20 to know. You can't tell me right now whether -- what
21 numbers they were?

22 MR. STILWELL: It's on the timeline.

23 MR. LINDEMANN: Well, I don't know that it is
24 or not.

25 BY MR. LINDEMANN:

Defendant's 30(B)(6) Deposition Designations

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Plaintiff's 30(B)(6) Deposition Counter-Designations

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Defendant's 30(B)(6) Deposition Designations

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Plaintiff's 30(B)(6) Deposition Counter-Designations

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1 Q. Are you familiar with this timeline --

2 A. Yes, sir.

3 Q. -- which is Defendant's Exhibit Number 6?

4 A. Um-hum.

5 Q. Did you play any role in preparing that
6 document?

7 A. I probably gave some of the dates. Yes, sir.
8 I don't know that I -- I provided some of the
9 information that would be on here. I did not
10 specifically type this document up.

11 Q. Are you able to tell, from looking at that
12 document, which are the two digesters?

13 A. According to this, we sampled digesters, it
14 looks like, 2 and 3.

15 Q. And what are you referring to? Do you see
16 that?

17 A. On page 4.

18 Q. Which entry?

19 A. August the 1st.

20 Q. All right. That shows samples were collected
21 from digesters 2 and 3?

22 A. Um-hum. So that -- I guess what I'm saying is
23 that would have been the only two -- that would have
24 been the two digesters that were online.

25 Q. Okay. And how do you know that digester 1 was

1 not online?

2 A. Because that is the normal operation, is to
3 have two digesters. We do not normally operate with
4 three digesters.

5 Q. So would digester number 1 have never been
6 used during 2013?

7 A. There's a chance of that. I mean,
8 it's -- it's definitely possible.

9 Q. Are you definitely telling me it was digesters
10 2 and 3?

11 A. Well, I'm telling you, based off what I'm
12 seeing here, that it would have been -- 2 and 3 would
13 have been the only ones that would have been online.

14 Q. All right. I understand you have been
15 designated as the person to testify for ReWa. This is
16 not your personal deposition. This is ReWa's
17 deposition. So I need to know what ReWa knows. Is your
18 testimony, on behalf of ReWa, that it was digesters 2
19 and 3?

20 A. I meant, based off the information I'm seeing
21 here, that is correct. It would be 2 and 3.

22 Q. And what other structures, facilities at
23 Mauldin Road, were contaminated with PCBs?

24 A. Initially, it was tanks 7 and 8, biosolids
25 holding tanks 7 and -- I meant -- I'm sorry -- yes, 7

1 and 8.

2 Q. And you said "initially"?

3 A. Um-hum.

4 Q. Did that change over time?

5 A. Well, ultimately, all the tanks because of the
6 contamination -- all of our -- all of our tanks ended
7 up -- all of our holding tanks ended up being filled up
8 with material that contained PCB.

9 Q. And tell me how that occurred.

10 A. Well, we have multiple -- we have multiple
11 tanks on the site that can store -- we have 7 and 8
12 here. And then across the river, we have biosolids
13 holding tanks 3, 4, 5 and 6. Those ultimately became
14 filled with material that contained PCB. Also, these
15 holding tanks that are called I think D1 and D2, which
16 were old digesters, those were filled up with material
17 that contained PCB.

18 Q. And that would be holding tanks 1 and 2?

19 A. Yes.

20 Q. And you said those are old digesters?

21 A. Yes, sir. All these are actually old
22 digesters that have been converted into storage tanks.

23 Q. Well, explain to me how it was initially two
24 holding tanks and then the other six got contaminated as
25 well.

1 A. Because the material -- the PCB was in our
2 digester. So what happen in our digesters is this
3 material comes in. Any solids, organic waste, and all,
4 goes into our digesters. That is processed. It's
5 broken down. It is then sent to holding tanks for what
6 we normally do, which is we land apply that material.

7 I meant, anything -- I mean -- you know, it
8 doesn't -- it doesn't stop. So if we have PCB coming in
9 the plant, this material is coming in the digester,
10 eventually it's got -- it has to go somewhere. So we
11 had PCB. We weren't land applying it. So these tanks
12 were filled up, so we had no option. We can't, you
13 know, stop -- stop the solids from being produced.

14 So it ended up -- so we ended up thickening
15 the material. It ended up going to this tank. Those
16 filled up, then the next tank, the next tank and the
17 next tank. And during -- during that time, we were
18 working -- we have belt presses we were working on to
19 get these belt press -- we have a belt press building
20 that we -- that hasn't been used in -- in quite some
21 time, so that's kind of our backup. So if you don't
22 land apply, you have to do something with the solids.
23 So dewatering that material and taking it to a landfill
24 is your next step.

25 Q. All right. So over -- let's sort of back up

1 chronologically. So holding tanks 7 and 8 were the two
2 that were initially contaminated --

3 A. Yes, sir.

4 Q. -- is that what you're saying?

5 A. Yes, sir.

6 Q. What time frame? When were those
7 contaminated?

8 A. Well, I can say, based off this timeline here,
9 August 2nd shows they were -- they contained material.
10 I just don't see -- (looks through exhibits). Well,
11 this shows, at least by -- there is some contamination
12 in July 25th of 2013. And I believe this was a
13 composite from some digesters or holding tank, it
14 doesn't specifically say, but it shows a 2.9 part per
15 million result.

16 Q. All right. And 2.9 parts per million, that
17 says a composite sampling. What does that mean?

18 A. I am assuming that was taken from multiple
19 tanks and sampled, maybe tanks 7 and 8.
20 I -- I -- without looking at some lab results, I can't
21 tell you exactly what tanks those were from.

22 Q. Well, if you look at July 23rd, it says from
23 holding tanks 3, 7 and 8. Do you see that?

24 A. Yeah.

25 Q. All right. So composite sampling of those

1 three tanks revealed 2.9 parts per million?

2 A. It appears to be. Yes, sir.

3 Q. All right. Is that a level of contamination
4 that requires decontamination?

5 A. At the time -- as in -- explain to me what you
6 mean by "decontamination."

7 Q. Well, is there a certain level of
8 contamination with PCBs that requires it to be cleaned?

9 A. I'm not -- I'm not -- I'm not aware of what
10 that level may be.

11 Q. Do you agree with me there is a level?

12 A. I know there are levels where certain things
13 have to -- the material -- you can do certain things
14 with the material. Yes.

15 Q. And you can't testify as to what level it is
16 that requires decontamination?

17 A. I understand that EPA, anything over 50
18 parts -- 50 parts per million requires a different way
19 of handling that material.

20 Q. Well, obviously that composite reading was
21 substantially less than 50 parts per million, right?

22 A. That is correct.

23 Q. If you look at August 2nd, there was
24 individual sampling for holding tanks 7, 8 and 3. And
25 all of those were less than 2 parts per million,

1 correct?

2 A. That's correct.

3 Q. Did the sampling for those holding tanks ever
4 exceed 50 parts per million?

5 A. I am not aware that they ever exceeded them.

6 Q. Did they ever exceed 10 parts per million?

7 A. Not that I'm aware of, no, sir.

8 Q. How about any of the holding tanks at
9 Mauldin Road? Did they ever exceed 10 parts per
10 million?

11 A. Not that I'm aware of, no, sir.

12 Q. How about digesters 2 and 3? What were their
13 levels of contamination?

14 A. What I'm seeing on this timeline, on
15 August 5th, I see a result for digester 2 and digester 3
16 of 0.62 and 0.95.

17 Q. So both of them less than 1 parts per million?

18 A. On that date, yes, sir.

19 Q. And that wouldn't require any type of
20 decontamination, would it?

21 A. Not that I'm aware of. I mean, it's below
22 the -- yeah.

23 Q. And is it your testimony that at some point
24 all of these holding tanks and digesters, that we've
25 been talking about, digesters 2 and 3 and holding tanks

1 1 through 8 at Mauldin Road, were decontaminated?

2 A. Can you -- I'm sorry. Can you say -- repeat
3 that question?

4 Q. Is it your testimony that digesters 2 and 3
5 and holding tanks 1 through 8 at Mauldin Road were
6 decontaminated at some point?

7 A. They were, yes, sir.

8 Q. And explain to me why that was necessary if
9 the levels of contamination with PCBs were as low as
10 what are described in this timeline.

11 A. That was a decision that was -- that was made
12 by -- that was a decision made by ReWa to -- you know,
13 to protect -- you know, this material is normally land
14 applied on -- on -- on fields and other -- other items.
15 So it was our decision to -- whether that be the board
16 or our executive at the time -- that this material would
17 be cleaned up and the tanks would be decontaminated.

18 Q. And you don't know who made that decision?

19 A. I do not know specifically who made that
20 decision.

21 Q. Were you involved at all in the
22 decision-making process?

23 A. I was not involved in that.

24 Q. What is the maximum amount of PCB
25 contamination that was found at Mauldin Road throughout

1 this entire process?

2 A. I believe -- I meant -- I don't know the exact
3 number. I'm -- you know, there was a lot of plants that
4 had PCB contamination. To ask me what each specific
5 tank, what the highest is, I don't know that I can tell
6 you without, you know, looking at notes, but --

7 Q. You would agree with me that it never exceeded
8 10; is that correct?

9 A. To my knowledge, it did not exceed 10.

10 Q. Did it ever exceed 5?

11 A. It possibly could have exceeded 5.

12 Q. You have no knowledge, though?

13 A. I don't know the exact number. No, sir.

14 Q. And other than saying somebody made the
15 decision that these tanks had to be decontaminated, can
16 you tell me why, the reasoning behind that decision?

17 A. I think the reasoning is because of the
18 material we're dealing with. I meant, you know, we're
19 dealing with material that was banned, as far as I know,
20 in the seventies. You know, it was -- there had to be a
21 reason why it was banned. And this material goes --
22 this is material that's used as a -- as a -- as,
23 basically, a fertilizer product for -- and it's going
24 out on private landowners' farms and stuff. And you
25 know, I think --

1 Q. PCBs in low concentrations are common in the
2 environment; is it not?

3 A. Yes. But if you're applying -- you know, I
4 don't know -- if you're -- you know, there's probably
5 some cumulative effect if you're applying to -- you
6 know, if you've got a certain farmer that you're taking
7 material to his field and had -- you know, I don't know
8 that you want to -- whether it's 2 parts, 3 parts or 4
9 parts -- whether you want to keep taking material of
10 that nature and applying it on a field. Eventually,
11 you're probably going to hit -- you know, the stuff just
12 doesn't go away over -- overnight.

13 Q. So is it fair to say that the decision was
14 made as a business decision rather than as a health
15 reason, health decision?

16 A. Is it fair to say that -- say that again.

17 Q. That the decision to clean these tanks, which
18 you testified never exceeded 10 parts per million and
19 probably were substantially less than that, that was a
20 business decision as opposed to --

21 A. I did not make that decision. I can't -- I
22 can't --

23 Q. You can't testify to that decision?

24 A. I can't testify why that decision was made.

25 Q. All right. Let me ask you this: Obviously,

1 in order to decontaminant those holding tanks, they had
2 to be emptied, correct?

3 A. That's correct.

4 Q. Once they were emptied, were the tanks
5 themselves tested at all?

6 A. Yes, sir.

7 Q. Was any coring done?

8 A. No, sir.

9 Q. Why were no -- why was no coring done?

10 A. Because we didn't -- well, we did -- we did
11 swipe -- we -- we swabbed the tanks, and we sent those
12 samples off and tested them. And they came back -- to
13 my knowledge, they came back as a non-detect for PCB.

14 Q. Okay. So once the biosolids were out of the
15 tanks, and the tanks themselves were tested, they came
16 back non-detect?

17 A. After they were washed, yes. They
18 were -- they were -- they were pressure washed, double
19 washed.

20 Q. Once the material -- the biosolids in the
21 tanks were removed, was testing done to determine
22 whether washing was even necessary?

23 A. No, sir.

24 Q. So they were not swabbed between the times the
25 biosolids were taken out and the expense was gone to to

1 clean the tanks?

2 A. They were -- the material was cleaned out.

3 They were pressure washed, double washed, and then they
4 were tested.

5 Q. All right. So prior to pressure washing them,
6 no testing was done of the tanks themselves?

7 A. No, sir.

8 Q. So we don't know if the tanks themselves had
9 any PCB contamination, then; is that true?

10 A. We don't know if the concrete structure
11 itself, is that -- is that --

12 Q. That's what I'm asking, yes.

13 A. No, sir.

14 Q. How about the digesters? Were they tested
15 after they were emptied?

16 A. I can't -- I do not believe so. I do not
17 believe so.

18 Q. Who made that decision not to test the
19 structures themselves prior to cleaning?

20 A. Are you talking about prior to pressure
21 washing?

22 Q. Prior to pressure washing.

23 A. That would probably be me.

24 Q. And what was the thought process there?

25 A. Well, that was just our -- that was how

1 we -- you know, we went through a process at Pelham, you
2 know. Pelham had been remediated, the material at
3 Pelham, and that was the plan, that -- that we had
4 proposed and was approved, was tanks would be cleaned.
5 They would be washed. So we basically, went down the
6 similar path at my own route.

7 Q. Was that course of action, that you followed
8 in Mauldin Road -- was that approved by anybody higher
9 than you, or was that purely your decision?

10 A. That would have been my decision.

11 Q. And we'll talk about Pelham in a few minutes.
12 But the PCB levels there were much higher than in
13 Mauldin, correct?

14 A. Oh, yes.

15 Q. I mean, you had readings there that exceeded
16 50 parts per million, correct?

17 A. We did.

18 Q. But the same protocol for decontamination was
19 used at both facilities?

20 A. As far as the pressure washing, that's
21 correct.

22 Q. Well, let's talk about how the holding tanks
23 were decontaminated. You said they were pressure washed
24 and then you said there was another component to it?

25 A. I think there was a citric -- citrus spray

1 that they -- they -- they put on the -- the actual
2 concrete structure and sprayed. And then they -- they
3 were double washed or --

4 Q. And what do you mean by double washing?

5 A. Well, they -- they -- they pressure washed it
6 twice.

7 Q. Okay. Pressure wash like once with just
8 regular water?

9 A. No. They -- they sprayed the -- the citric
10 spray -- the citrus spray on there first.

11 Q. Pressure washed it -- oh, with the citrus
12 spray first?

13 A. Yeah. Yes, sir.

14 Q. And then the second cleaning was with what?

15 A. Just water.

16 Q. Who did that work?

17 A. At Mauldin Road, that would be JBR out of
18 Spartanburg.

19 Q. And what was the cost of doing just the
20 pressure washing?

21 A. I -- I don't know what it cost. They -- they
22 were involved in doing the whole -- they -- they did the
23 cleanout of the material. The material that we could
24 not pump out of those tanks, they were in -- they were
25 hired to clean that material out, and that was

1 just -- that was one component of their job.

2 Q. All right. Let's go through all the
3 components of their job. So JBR was hired to clean out
4 the biosolids actually in the tanks?

5 A. No. The residual -- the tanks are, of
6 course -- have a cone-shaped bottom, so there's a lot of
7 that material that we cannot pump out, okay? Without
8 the pumps that we have, you just can't -- the way
9 the -- the level of that tank versus a pump or this,
10 that, we can't remove that material. Or it's grit,
11 stuff that you can't pump. So most of the tanks had
12 some level from the sidewall -- where the sidewall ends
13 to the -- to the bottom of the tank that still
14 contained --

15 Q. So JBR was not involved in removing the vast
16 majority of the biosolids, then, from the tank?

17 A. We -- no. We processed ourself the -- the
18 vast majority of the biosolids ourself. When I say
19 "we," I'm talking about ReWa. The material that we
20 could not pump out, or that was grit material that we
21 could not pump, JBR was hired to come in and solidify
22 that material and remove it from the tank and pressure
23 wash and decon the tanks.

24 Q. Was there any other component of their work?

25 A. No. I mean, they did -- they were in charge

1 of the hauling of that material too. So it's not only
2 the cleaning but the -- they loaded up material that was
3 solidified and put in roll-offs and was taken to...

4 MR. LINDEMANN: Let me go off the record for a
5 second to look at this.

6 (Pause in the proceedings. A recess was
7 taken from 3:46 p.m. until 3:55 p.m.)

8 MR. LINDEMANN: Back on the record.

9 BY MR. LINDEMANN:

10 Q. Mr. James, just to make sure certain I'm
11 clear, you indicated that JBR did the decontamination
12 work of the eight holding tanks at Mauldin Road,
13 correct?

14 A. Yes.

15 Q. And just so I understand, their scope of work
16 included cleaning out the material at the very bottom of
17 the tank and then doing the double pressure washing of
18 the tanks themselves; is that right?

19 A. Yes.

20 Q. And then you indicated, I think when we took
21 the break, that it also included some hauling. Can you
22 explain that to me?

23 A. All the material -- all the material in the
24 conical bottom that they removed, of course, had to be
25 taken to a landfill. And so that was part of

1 their -- their scope, was to transport that material to
2 the local landfill.

3 Q. All right. So that material, because it
4 didn't exceed 50 parts per million, didn't have to go to
5 the landfill in Alabama, then; is that correct?

6 A. That's correct.

7 Q. So it was simply hauled to a local landfill?

8 A. Yes, sir.

9 Q. All right. Any other portion of JBR's work at
10 Mauldin Road?

11 A. I believe that was the extent of their work.

12 Q. All right. Let's talk about the digesters 2
13 and 3. Once the sludge was removed from digesters 2 and
14 3, was there any testing done to determine whether the
15 tanks themselves were contaminated with PCBs?

16 A. I do not believe we emptied those tanks, I
17 think, 2 or 3. I think those tanks remained online, and
18 I believe that material -- the PCB material ended up
19 basically getting pushed out, and I believe some
20 sampling was performed.

21 Q. So digesters 2 and 3 were, then, never shut
22 down?

23 A. I do not believe they -- neither one of those
24 digesters were shut down.

25 Q. Okay. Were either of them ever cleaned in any

1 way?

2 A. They were. They were subsequently -- I
3 know -- I believe it was digester number 2 was cleaned.
4 We had a roofing -- we had to have the roof repaired and
5 that -- I believe it was digester 2 that had to be
6 cleaned out and --

7 Q. So the roof was repaired to which one?

8 A. I believe it was number 2.

9 Q. And that's not related to PCB contamination,
10 is it?

11 A. It was not.

12 Q. Do you know whether those expenses are being
13 claimed as part of this lawsuit?

14 A. They are not that I am aware of. No, sir.

15 Q. Who did the roof repairs?

16 A. It was an engineering job, so it wasn't
17 something I was in charge of but I -- I do not know
18 exactly the contractor who was in charge of that -- or
19 the contractor for that roof.

20 Q. So that digester number 2 had to be taken off
21 line in order to do the roof repairs?

22 A. That's right.

23 Q. And at that point in time, was there any
24 decontamination done to digester number 2?

25 A. I don't know any decontamination that was done

1 to it. I know -- I know it was cleaned out. I know it
2 was sampled. It was -- it was tested. And I believe
3 Bionomics was the contractor who performed that work as
4 far as the cleanout.

5 Q. Okay.

6 A. I don't know who the roof -- the general
7 contractor was, but I believe Bionomics -- if I remember
8 correctly, Bionomics was the -- was who was subbed out,
9 I believe.

10 Q. And just so we're talking about the same
11 thing, when you say "cleaned out," do you mean the
12 sludge was removed?

13 A. The sludge that remained in the bottom of that
14 tank -- of the digester tank, yes, sir.

15 Q. And you think that was done by Bionomics?

16 A. I believe that was done by Bionomics.

17 Q. Do you have a time frame that that work was
18 done?

19 A. I -- I do not. It was --

20 Q. Can you give me a month and a year?

21 A. Well, since I've been off for a year, I'm
22 trying to -- I know it was at the time frame when we
23 were doing the remediation or right at the end of when
24 we finished our -- we finished removing all the sludge
25 from the tanks, if that was 20 --

1 Q. The timeline, which is Exhibit Number 3 -- or
2 6, only goes through August of 2013, if that helps any.

3 A. I -- I do not know the time.

4 Q. All right. You can't even give me the year?

5 A. (Looking at exhibit).

6 Q. Let me ask you this because it's been very
7 curious to me: Why has the whole decontamination
8 process taken so long? I mean, the first PCBs were
9 discovered in early 2013, and it appears that expenses
10 are being claimed to the Insurance Reserve Fund in 2014,
11 2015, and even into 2016. I can tell you, Spartanburg
12 was a lot more efficient than this. Why did you guys
13 extend it over such a lengthy period of time? What's
14 the explanation for that?

15 A. Well, I think, we started -- I believe when we
16 found out our first at Pelham -- you know, we found out
17 there, and that was the first place that was taken care
18 of. And I believe we started that by -- you know, that
19 was January. I think by everything -- whenever -- you
20 know, there was a lot going -- you know, we'd never seen
21 anything like this before, first. And -- and -- and,
22 you know, this was new territory for us. And then I
23 believe we started in November of -- of that year with
24 Pelham. And I think we finished up with -- with the
25 stuff more than 50 parts per million by February

1 of -- that would have been, I believe, 2014.

2 Q. Did you --

3 A. But we still had -- we still had
4 material -- Pelham, for example, still had material
5 coming in. I mean, we had material. We were checking
6 grit. We were -- we were doing a lot of sampling. We
7 were still getting positive results on grit that were
8 high, you know. I mean, I'm not talking about half a
9 part, 1 part. I'm talking about there were some high
10 results.

11 Q. Let me ask you this: Who is your counterpart
12 at Spartanburg Sanitary Sewer System?

13 A. I do not know.

14 Q. Did you ever -- because you understood they
15 were having similar issues, correct?

16 A. Yes.

17 Q. And did you understand they also had three
18 facilities affected?

19 A. I believe so, yes.

20 Q. And there was no consultation with your
21 counterparts over there?

22 A. I think there were some discussions. It
23 wasn't by -- I did not discuss -- I did not talk with
24 them at the time. I meant, the role I had back
25 then -- during this period was a little bit different

1 than what my role is now.

2 Q. I was just curious because it's been handled
3 so much differently. But that's --

4 A. But --

5 Q. So let me go back. So when did the whole
6 process of Mauldin Road even begin? Can you give me --
7 can you ballpark a figure for me there, a date?

8 A. Of when we started cleaning?

9 Q. Yes.

10 A. I believe it was March of '15.

11 Q. So that's more than two years after the first
12 PCB detection?

13 A. Well, that was -- well, I don't know if it was
14 two years after the first PCB detection at Mauldin Road,
15 but -- I know when our detection was at Pelham. It was
16 some time -- I believe it was done in January 2013.

17 Q. Right.

18 A. I don't know what the exact -- I meant -- I
19 don't know when we -- what --

20 MR. STILWELL: I still think there's an extra
21 year in there. I think it's '14, I mean --

22 MR. LINDEMANN: Well, let the witness testify.
23 We'll --

24 MR. STILWELL: If you put some -- he's holding
25 the document that's after that. And like all the

1 invoices and the damages sheet have all the dates on it.

2 MR. LINDEMANN: Well, I understand that,

3 Rivers. But I mean, I get to ask the questions. And he

4 should be knowledgeable as to these subject matters.

5 He's been designated as ReWa's representative. I mean,

6 I'm happy to show him a timeline, but the timeline ends

7 in August of '13.

8 BY MR. LINDEMANN:

9 Q. So your understanding, as I just -- what you

10 just testified to, is you believe the cleanup started at

11 Mauldin Road in March of 2015; is that correct? I

12 promise you that exhibit's not going to help you. It

13 goes through August of 2013.

14 A. I understand. But -- yeah. I mean, if I

15 had -- I was thinking it was -- it was -- it was January

16 or February of '15.

17 Q. All right. And so, again, explain to me then

18 why it took so long, from the initial detection, for you

19 all to start the process of cleaning at Mauldin Road.

20 A. I can't -- I can't answer that.

21 Q. And the fact that you waited so long to clean

22 actually resulted in contamination of all of the holding

23 tanks when initially you were -- the initial sampling

24 only showed three holding tanks having any PCB

25 contamination, correct?

1 A. Are you talking about -- which location are
2 you talking about?

3 Q. Well, looking at the timeline in 2013, the
4 only holding tanks that showed any type of PCB
5 contamination, looking again: August 2nd, 2013,
6 sampling records report show -- granted, very negligible
7 amounts -- but holding tanks 7, 8 and 3. And I think
8 your testimony earlier was it was initially only holding
9 tanks 7 and 8 and the other holding tanks got
10 contaminated because you kept having to put biosolids
11 somewhere.

12 A. Because I think material was still coming in.
13 I believe -- during this period, we had -- we had a
14 tanker truck of hauled waste that came in that was
15 -- that had some high levels of -- of --

16 Q. But the tanker trucks were actually put in
17 frac tanks and not introduced into the system until
18 they'd been tested, correct? That's what Mr. Jones just
19 testified to.

20 A. That -- that did take place. At some point we
21 did put in -- frac tanks in for segregation.

22 Q. So again, am I correct that the simple fact
23 that you all delayed in taking action on decontaminating
24 the digester resulted in you contaminating other holding
25 tanks?

1 MR. STILWELL: Object to the form.

2 BY MR. LINDEMANN:

3 Q. You can answer the question. He's just making
4 an objection.

5 A. I don't know that it did. If -- if -- if
6 there's PCB material coming in, it doesn't stop -- the
7 solids production doesn't stop.

8 Q. And where's the record of it coming in?

9 A. Well, we have records of -- we found
10 material -- there's records of it in lab results that
11 show it in grit. We were testing grit at Pelham. We
12 tested grit at -- at -- samples at Mauldin Road, and we
13 were getting positive results.

14 Q. And the grit was removed from the system
15 through the grit chamber, correct?

16 A. The grit is removed, but that doesn't mean
17 there's a hundred -- if it could take out a
18 hundred percent, then we would have never had any of
19 this maybe to start with. But if -- if there's material
20 out there in the line -- you know, there was -- there
21 was found to be in -- grease trap interceptors in
22 locations. I don't know the exact locations without
23 going back and looking but, you know, if it's in
24 grease -- grease trap interceptors, then it could -- it
25 could -- those can overflow or it could get pushed out

1 and come -- come to the plant. But, you know, if
2 material comes in and then it stops, then -- then that's
3 one thing. But even with Pelham, we have record of an
4 impact that we actually caught that had a tremendous
5 amount of PCB in it that was after this initial result.

6 Q. Did Mauldin Road use -- did you guys use frac
7 tanks as part of the decontamination process?

8 A. We did.

9 Q. And you didn't start that until 2015?

10 A. If that -- if I am correct on the date -- I
11 meant, I'll be glad to clarify it if I am off -- or I
12 can verify -- maybe I am off. But we used frac tanks
13 for the decontamination.

14 Q. And the frac tanks were used to hold the
15 sludge and the biosolids once they were removed from the
16 digester and the tanks, correct?

17 A. No. The frac tanks were used in the -- on the
18 decontamination process. The frac tanks were used for
19 the filtrate, to hold filtrate.

20 Q. So where did -- once the sludge was taken out
21 of the digester, where did it go?

22 A. Once the sludge -- I need clarification
23 exactly what -- I don't -- I don't know that I follow
24 what you're asking.

25 Q. All right. Well, let me make sure I

1 understood your earlier testimony. I understood that --
2 at the point in time that the digester number 2 was
3 cleaned, there was a roof repair done, and the sludge
4 was removed from the bottom of digester 2?

5 A. Yes, sir.

6 Q. Where did that sludge go?

7 A. That would have went to a landfill.

8 Q. Was it processed between being taken out of
9 the digester and going to the landfill?

10 A. It was -- I believe it was thickened, yes, by
11 the contractor. Like I said, that was not a job that I
12 was in charge of. That was an engineering project.

13 Q. What contractor did that work?

14 A. I believe that was Bionomics.

15 Q. How about digester number 3? Was the sludge
16 ever removed from it?

17 A. I don't recall how we handled digester 3.

18 Q. Do you know whether it was ever pressure
19 washed?

20 A. I do not know. I do not believe it was, but I
21 do not know. Or I do not recall at the moment.

22 Q. But you believe digester number 2 was pressure
23 washed, or is that not correct?

24 A. Digester number 2, I -- I don't -- I meant, if
25 I said that, I may have misspoke because that

1 was -- like I said, that was -- that was done by
2 Bionomics. And that may have been -- that was probably
3 in their scope of work, but I don't remember
4 specifically whether they pressure washed it.

5 Q. Was there any other type of decontamination
6 done to the digesters?

7 A. Not that I'm aware of.

8 Q. So the eight holding tanks definitely were
9 pressure washed?

10 A. Yes.

11 Q. And you said you're the one who made the
12 decision to do that even without testing the concrete
13 before the pressure washing was done, correct?

14 A. Yes.

15 Q. Was that ever addressed with any
16 representative of the Insurance Reserve Fund, whether
17 that work needed to be done?

18 A. Not that I'm aware of, no.

19 Q. Were you aware at the time that a claim had
20 been made to the Insurance Reserve Fund, and there were
21 adjusters assigned to the claim?

22 A. I do not recall having knowledge of that.

23 Q. So it's fair to say, then, you never consulted
24 with any adjuster with the Insurance Reserve Fund as to
25 whether that work was necessary and something that they

1 would pay for under their policy?

2 A. No, sir.

3 Q. Do you know if anybody who had that discussion
4 before the holding tanks were pressure washed -- anyone
5 with ReWa who had a conversation with the Insurance
6 Reserve Fund about whether that work was needed and
7 something they would pay for?

8 A. No, sir.

9 Q. Any other component or equipment at
10 Mauldin Road that was contaminated with PCBs and
11 required any type of decontamination?

12 A. There was -- there was some -- there was
13 some -- there was some remediation done on -- or some
14 cleanup done on the influent pump station wet well where
15 there were some high -- there was some -- a grease layer
16 that had some high levels of PCB -- found to have high
17 levels of PCB.

18 Q. And what do you mean by "high levels"?

19 A. I do not know the -- well --

20 Q. Did it exceed 50 parts per million?

21 A. It did not exceed 50.

22 Q. Okay. And tell me what the influent wet well
23 is.

24 A. Well, this is basically where all the flow
25 is -- I should have said influent pump station wet well,

1 to be more accurate.

2 Q. And you may have. I may have just not said it
3 correctly.

4 A. So this is just -- this is the pump -- this is
5 the wet well where all the flow that enters -- that
6 comes down our trunk line enters the plant. It arrives
7 and it's -- and it -- it kind of hits this wet well, and
8 there's pumps associated with it that pump -- that pumps
9 that water up into the plant. And at that point, it
10 starts the gravity flow throughout the system.

11 Q. Is that considered part of the plant, or is
12 that considered a lift station or pump station?

13 A. No. It's part of our plant. I mean, it's
14 inside --

15 Q. Inside the premises?

16 A. It's inside the premises of the plant.

17 Q. Describe for me the work that was required to
18 the influent pump station wet well.

19 A. I was not totally associated nor had a hand in
20 that cleanup, so I don't know that it would be fair for
21 me --

22 Q. Well, you've been designated as the person
23 most knowledgeable about the cleanup at Mauldin Road.

24 So --

25 A. I understand, but I --

1 Q. You're not capable of answering questions
2 about that component?

3 A. I -- no, sir. I know it was cleaned. I don't
4 know the process it went through.

5 Q. Do you know who did the work?

6 A. I believe it was HEPACO who did the work.

7 Q. But as far as the scope of that work, you
8 don't know?

9 A. I do not.

10 Q. Any other component of the Mauldin Road plant
11 that required any type of decontamination?

12 A. I can't -- I can't think of any.

13 Q. Any equipment that required any type of
14 decontamination at Mauldin Road?

15 A. I am not aware of any of the time I was -- I
16 was there except for some of the -- some of the
17 equipment we -- that I was, actually -- that we rented
18 in the remediation process required some cleaning.

19 Q. I'm talking about existing equipment, fixtures
20 at the facility.

21 A. I am not -- I am not personally aware of any.

22 Q. Are you aware of any structure or equipment
23 that was destroyed beyond repair or decontamination at
24 the Mauldin Road facility?

25 A. No, sir.

1 Q. So no structure or anything was destroyed,
2 hauled off and rebuilt; is that correct?

3 A. No, sir. No, sir.

4 Q. Is that a correct statement?

5 A. That's correct.

6 Q. Lastly, as far as the work done at the
7 influent pump station wet well, do you know whether
8 anyone with ReWa consulted with the Insurance
9 Reserve Fund before that decontamination work was done?

10 A. I do not know.

11 Q. All right. Let's talk about the Pelham
12 facility. Tell me your involvement with the remediation
13 that was done at Pelham.

14 A. Well, I mean, at the time, I was -- I was -- I
15 had an office located at the Pelham plant -- or at the
16 Pelham facility and, you know, I worked with -- worked
17 with --

18 Q. Are you more knowledgeable about Pelham than
19 you were -- than you are about Mauldin Road?

20 A. I'm -- yeah, I would say so. Yeah.

21 Q. Okay.

22 A. That would be correct. I mean, I was --

23 Q. What was your role in overseeing the
24 remediation process at Pelham?

25 A. Well, I just -- I was there. I mean, I just

1 happened to have an office there. I mean, I wasn't in
2 charge of -- of, you know, finding a contractor. I
3 mean, there was -- there was -- there was -- you know,
4 we had a consultant hired, and some of that stuff was --
5 was above my level. I mean, I was there and saw what
6 happened, the process. But I mean, on this job we
7 actually -- you know, it was -- we -- a contractor was
8 hired to do the entire remediation versus Mauldin Road
9 where we kind of handled it internally.

10 Q. All right. What contractor was hired to do
11 it?

12 A. Waste Management.

13 Q. What components of the Pelham plant were
14 contaminated with PCB?

15 A. Tanks --

16 Q. Again, holding tanks?

17 A. Holding -- biosolids holding tanks.

18 Q. How many are there?

19 A. They're 3, 4, 5 and 6.

20 Q. So how many total tanks are there at the
21 plant?

22 A. Well, there's -- there are -- there's four
23 that we call biosolids holding tanks.

24 Q. So 1 through 4?

25 A. No, 3 through 6.

1 Q. Okay, 3 through 6.

2 A. And then we have biosolids overflow tanks,
3 which would be 1 and 2. Those are unthickened material,
4 but that is -- that does come out of the digesters, but
5 that's not...

6 Q. So tell me the difference between what's in
7 the overflow tanks versus what's in the holding tanks.

8 A. It's basically the same material that comes
9 out of it. It's all digested material, but what's in
10 biosolids holding tanks -- or digester overflow holding
11 tanks 1 and 2 has not been thickened. So we thicken
12 material out of 1 and 2, and then it would either go to,
13 you know, tank 4, 5 -- or 3, 4, 5 or 6.

14 Q. So the thickening process takes place in
15 1 and 2?

16 A. No. It takes place in our biosolids
17 thickening building, which has gravity belt thickeners
18 for -- that's the mechanical means to thicken the
19 product.

20 Q. Tell me how the thickening process works.

21 A. Well, basically it's a gravity belt thickener,
22 and it's kind of what it says. The product, it's a
23 3-meter -- at Pelham it's -- I believe it's a 3-meter
24 porous belt that the sludge -- the biosolids is pulled
25 out of either tanks 1 or 2, and it -- and it hits this

Defendant's 30(B)(6) Deposition Designations

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Plaintiff's 30(B)(6) Deposition Counter-Designations

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1 A. This building here.

2 Q. Oh, okay. What's the EQ holding tank? What
3 does that mean?

4 A. Well, that's where -- equalization. So any
5 heavy rains, if we have high flows or whatever, we can
6 bypass flows to -- to here, so we can take influent flow
7 off the plant, basically, slow the flow down.

8 Q. All right. So then from the biosolids
9 thickening building, the thickened sludge goes into
10 biosolid holding tanks 3 through 6; is that right?

11 A. Three through 6, yes.

12 Q. So going back to my original question, what
13 components of this plant were actually contaminated with
14 PCBs?

15 A. We found -- we found -- we tested positive for
16 PCBs in maybe all of our holding tanks, I know
17 specifically the holding tanks 4 -- 3, 4, 5 and 6. It
18 was found in digester 1 or 2. I don't know the exact
19 digester that was online at that time.

20 Q. How many digesters are there?

21 A. There's two digesters. We only operate with
22 one digester.

23 Q. Okay.

24 A. I mean -- so according to the
25 February 11th entry, digester 1 tested at 8 parts per

1 million.

2 Q. So then that would have been digester 1 that
3 was online?

4 A. Yes, sir.

5 Q. All right. So digester 2 was never
6 contaminated?

7 A. Initially -- initially -- without going back
8 and looking, I can't say for sure. We may have -- there
9 may have been some reason we put that digester online at
10 some point and it became contaminated. I don't believe
11 we did. I believe digester 1 stayed online -- was
12 online the entire time.

13 Q. But you can't say with certainty right now
14 whether digester 2 was ever contaminated?

15 A. I can't say with certainty.

16 Q. All right. Can you say with certainty that
17 digester 1 was contaminated?

18 A. Yes, sir.

19 Q. Was it ever contaminated at a level of over 50
20 parts per million.

21 A. No, sir. I believe, if I remember right, 44
22 was...

23 Q. All right. We're going to talk about each of
24 these in little bit more detail, but was there any other
25 component at Pelham that was contaminated with PCBs?

1 A. Yes, sir. The -- the GBT wet well, which is
2 wet well 1202, I believe is how we designate it at
3 Pelham, was -- was contaminated, was found to contain
4 PCBs at some point. The influent pump station wet wells
5 were found to contain a layer of PCB in the grease. The
6 EQ holding tank was found to contain solid material with
7 PCB. Of course, the primary clarifiers, we -- the
8 primary sludge tested positive for PCB, and so that
9 material would have been in the primary clarifier. I
10 mean, any time to get -- you know, to get material from
11 the -- into the digester, it has to go through the
12 primary clarifier, so...

13 Q. All right.

14 A. And you could have also assumed -- well, the
15 grit system also, this headworks facility,
16 was -- would -- was also found to have PCB, especially
17 in the grit.

18 Q. Let's break those down in a little bit more
19 detail, and I'll go backwards from what you just said.
20 You said the headworks, and specifically the grit
21 chamber, had PCB contamination?

22 A. Yes. It was found -- the grit was found to
23 have levels of PCB.

24 Q. In the grit itself?

25 A. In the grit itself.

1 Q. How about the grit chamber, the actual
2 equipment?

3 A. I meant -- I don't know that it was
4 specifically tested, but it was in the grit. Then PCB
5 went through that chamber.

6 Q. Was there any type of decontamination done of
7 the grit chamber?

8 A. No, sir.

9 Q. All right. You mentioned a couple of pump
10 stations. You said the influent pump station. Can you
11 point that out to me on Exhibit 3?

12 A. This is one pump station. This is the second
13 pump station.

14 Q. So there are two of those?

15 A. Yes, sir.

16 Q. And you had referred to something, a GBT wet
17 well. What is that?

18 A. Well, that's the gravity belt thickener, is
19 the GBT, and it's in this biosolids thickening building.
20 So the material that is thickened falls off the end of
21 this belt as it -- as it's going across the rollers, and
22 the material will fall into a wet well. And then it
23 will be pumped to -- from that wet well, it will get
24 pumped to one of the holding tanks.

25 Q. So the water that you described to me earlier,

1 that gets separated from the biosolids in the thickening
2 building, is what you're referring to that goes into a
3 wet well?

4 A. No, sir. So the solids -- when it separates,
5 the solids will stay on the belt.

6 Q. Okay.

7 A. The water will drain through the belt. The
8 solids will fall off the end of the belt into a wet
9 well. The water will drain out through basically a
10 drain under the -- under the gravity belt thickener.
11 It's like a normal storm -- well, floor drain. And then
12 it's routed to -- to this tank here, which is the
13 filtrate, so the material will flow from -- I lost
14 track. From this biosolids thickening belt, all the
15 filtrate will flow from here to this here (indicating
16 exhibit).

17 Q. Okay.

18 A. So from there, it will end back up in this
19 pump station.

20 Q. So going back to the GBT wet well --

21 A. Um-hum.

22 Q. -- it sounds to me like the wet well fills up
23 with thickened solids?

24 A. That's right.

25 Q. All right.

1 MR. STILWELL: They're real wet. They're not
2 solid.

3 BY MR. LINDEMANN:

4 Q. All right. So you're saying that wet well had
5 PCB contamination?

6 A. Yes. We found it to contain material with PCB
7 in it.

8 Q. At what level?

9 A. I don't know the exact number.

10 Q. Was it ever over 50 parts per million?

11 A. I don't -- I can't say if it was 50 or not.

12 Q. All right. Was there any type of
13 decontamination done to the GBT wet well?

14 A. I believe it was part of -- yes. I believe it
15 was a part of the work that Waste Management -- that was
16 one of the areas that they cleaned.

17 Q. And what was the process of cleaning?

18 A. It would have been -- it would have been like
19 what was done with the other tanks. It should have been
20 like a double -- I think, it was a chemical like
21 citric -- citrus material that's sprayed on, and then it
22 was -- it was double washed.

23 Q. Was there any coring done?

24 A. No, sir.

25 Q. Was that wet well concrete?

1 A. Yes, sir.

2 Q. Was the concrete tested at all prior to the
3 double cleaning?

4 A. I would assume that it was tested.

5 Q. Do you know?

6 A. I do not know.

7 Q. Then I assume you don't know if the test
8 results were over 50 parts per million?

9 A. I don't know of any that came back that were
10 over 50. So if it was tested, I would -- I would expect
11 that it was less than 50.

12 Q. Do you know if anyone with ReWa consulted with
13 the Insurance Reserve Fund or the independent adjuster,
14 who had been retained by the Insurance Reserve Fund,
15 prior to the GBT wet well being cleaned?

16 A. I do not.

17 Q. Going back to the influent pump station, you
18 said there were two pump stations; is that correct?

19 A. On the influent pump station?

20 Q. Right.

21 A. Yes. There's two.

22 Q. Were they both contaminated, or was it one or
23 the other?

24 A. I believe both were found to contain PCB,
25 either in grease on the surface or grit on the floor.

1 Q. And so how were those cleaned?

2 A. Those were cleaned by Waste Management also
3 with a -- with a vac truck, if I recall.

4 Q. A vacuum truck?

5 A. A vacuum truck. Yes, sir.

6 Q. And take me through that process.

7 A. Basically, what -- if I recall correctly,
8 we -- we pumped the wet well down. Whichever pump
9 station they were cleaning, we would have pumped the wet
10 well down, removed as much water as we can. Or
11 depending on what they were doing to get the grit, or if
12 they were getting the grease, we would have maybe had to
13 fill the wet wall up, let the grease float, get it to a
14 higher elevation. And then a -- a vacuum truck with --
15 you know, a truck that, of course, has a system on it,
16 they could pull a vacuum with a long hose, 6-inch
17 nozzle, that would go in and would basically remove the
18 material from either the surface or the grit on
19 the -- on the bottom.

20 Q. And then what would happen next?

21 A. Well, depending on what the concentration was,
22 it would have either went to Emelle, Alabama, or it
23 would have been transported to a landfill -- a local
24 landfill that would have accepted it.

25 Q. And how about the wet well itself, the actual

1 structure, was it cleaned in any way?

2 A. I don't recall if it was cleaned. I
3 don't -- I just don't remember if it was -- if it was
4 cleaned.

5 Q. How about -- I assume there's a pump in the
6 pump station, right?

7 A. There's -- yes.

8 Q. Was the pump cleaned in any way?

9 A. Well, the pump doesn't sit -- the pump doesn't
10 directly sit in the wet well. It is a -- the pump is on
11 the dry side. So there's a pipe and a valve between the
12 two. I think we tested -- I believe we tested those
13 pumps at some point and found them not to show any
14 indication of PCB.

15 Q. So no remedial action had to be taken with the
16 pumps?

17 A. Not that I'm aware of, no, sir -- actually,
18 some of these pumps were replaced shortly after that
19 project. But I'm almost positive that we did some
20 testing for the safety of the contractor that was
21 removing those pumps to verify that there was no
22 contamination.

23 Q. And why were those pumps replaced?

24 A. They were not good pumps.

25 Q. Basically, they needed to be replaced because

1 they were obsolete or were worn out?

2 A. Well, they weren't -- neither. They just were
3 not good pumps.

4 Q. Oh, okay. It had nothing to do with the PCB
5 contamination?

6 A. No, sir.

7 Q. So they're not part of the claim against the
8 Insurance Reserve Fund?

9 A. No, sir.

10 Q. You mentioned the equalizer tank. Tell me
11 about the contamination of that with PCBs.

12 A. Well, we found -- we had an issue with that
13 tank with some -- basically, some drains that keeps the
14 tank for floating. There's a relief -- there's a relief
15 system in there if the ground water gets up. And we
16 actually had one that wasn't closing. So it was
17 allowing the -- anything we put in there would allow it
18 to leak out. So we put influent in there. This valve
19 was open so it would allow the influent, so we needed to
20 get that repaired.

21 So the -- we -- we had talked with the
22 CROM -- this was a CROM tank. So we had talked to CROM,
23 the manufacturer of the -- or the constructor of this
24 type of prestressed -- this is a prestressed concrete
25 tank. So we checked with CROM, and they were going to

1 send -- they were going to send their people out to work
2 on it. But you know, there were some dried up solid
3 material -- this is a big tank. I mean, this is
4 a 15 -- it holds 15 million gallons, so it's -- it's not
5 a small structure. And so the floor contained a lot of
6 solids material. So for the safety of the CROM
7 employees -- it was something we, to be honest, had not
8 thought about checking. We were able to get a sample.
9 We sent it off to the lab and confirmed that it -- that
10 solids -- the dried solids material on the floor of that
11 tank contained PCBs.

12 Q. When was that time frame?

13 A. It was -- I believe it was -- let me -- let me
14 check this and see if it's on this timeline. I'm
15 thinking it was in late 2014.

16 Q. Okay.

17 A. Or not late 2014, I'm sorry, the early part of
18 2014, maybe March 2014. But this stops I guess at --

19 Q. It stops in August of 2013.

20 A. So I believe it was -- it was in the early
21 part of 2014, maybe March.

22 Q. And when you say "CROM," can you spell that?

23 A. CROM (pronunciation), C-R-O-M.

24 Q. CROM?

25 A. Um-hum.

1 Q. So what was -- how was the remediation of the
2 equalizer tank handled?

3 A. Well, basically what we did, we -- we
4 hired -- and, you know, I don't know the exact
5 concentration. It was less than 50. So we -- we
6 contacted A&D Environmental, which is -- which is a
7 local contractor that -- that does emergency work
8 and -- and vacuum type work and other cleanup
9 remediation stuff. So I contacted them. Their -- their
10 local rep came out. He took a look at it, and we talked
11 about the best way to get this material off without, you
12 know -- you know, creating a lot of volume with water.
13 So it was -- the material was so dry, that basically it
14 was almost swept up -- you know, pushed up and then
15 shoveled. And what we did is we took some -- we had to
16 get a crane and lower the people -- to get the people
17 in, we had to lower them through the top of the roof.
18 On the roof there's a hatch there, so they had to be
19 lowered in.

20 And then they lowered plastic tote containers
21 that we had that used to have polimrent (phonetic) in
22 them. So they lowered those in, and they cut the top
23 and they filled those up with the material and pulled
24 them out. And when they were filled, they dropped
25 another empty one in. So that's basically how it

1 worked. It was a broom and shovels just because
2 material was so dry.

3 Q. And ReWa people did the work or A&D?

4 A. The A&D people did the work.

5 Q. And there was a crane rental involved?

6 A. Yes, sir. That's the only way to get anybody
7 in that tank.

8 Q. But as I understood it, CROM was supposed to
9 do some work on the tank anyway, right?

10 A. CROM (pronunciation) was.

11 Q. CROM?

12 A. Yeah.

13 Q. And what's the work they were hired to do?

14 A. They were hired to fix a leaking -- or a
15 faulty relief -- relief valve in the -- in the bottom of
16 the tank.

17 Q. And so the only way to get them in was with a
18 crane?

19 A. Yeah. I meant --

20 Q. So the crane was needed to do the work that
21 CROM needed to do anyway; is that correct?

22 A. Yeah. I mean, the crane would have been
23 needed to do the work that -- that -- that CROM was
24 working on. That's true.

25 Q. And the work that CROM needed to do was

1 totally unrelated to the PCBs, right?

2 A. Totally unrelated.

3 Q. Just out of curiosity, is any of the work done
4 on the Pelham plant -- was any of it obtained through
5 procurement? Did you all vet any of this?

6 A. You know, I -- I don't know if it was done by
7 an advertised procurement. We may have got pricing,
8 verbal pricing, or we may have contacted people for
9 pricing. I don't --

10 Q. How about the contract with Waste Management?
11 That was a huge contract.

12 A. And that's who I would have been talking
13 about.

14 Q. How did you all get away with not procuring
15 this?

16 MR. STILWELL: I'll have to object to the
17 form. It was all procured.

18 MR. LINDEMANN: Well, you know, let him
19 testify.

20 MR. STILWELL: He's not testifying to
21 procurement. I'm just -- before we get off on the wrong
22 foot --

23 MR. LINDEMANN: All right. Well, we'll follow
24 up with those documents.

25 BY MR. LINDEMANN:

1 Q. Who is in charge of procurement for ReWa?

2 A. Who's in charge? At the moment, our
3 procurement manager is Julie Dacus.

4 Q. Who was it in 2013?

5 A. I believe it was -- I believe it was Julie in
6 2013.

7 Q. Her last name is Dacus?

8 A. Yeah, D-a-c-u-s.

9 Q. All right. Going back to the 6 holding cells,
10 how were those decontaminated?

11 A. As far as -- you're talking about the washing,
12 or are you talking about the solids removal?

13 Q. The structures themselves.

14 A. They were -- the material was cleaned, and
15 they were -- they were -- they were pressure washed.

16 Q. And who did that work?

17 A. Waste Management.

18 Q. A similar question to what I asked you on
19 Mauldin Road, was there any testing done before the
20 pressure washing, once the biosolids were removed from
21 the tanks?

22 A. I do not recall any testing prior to washing.

23 Q. Do you know whether anyone with the Insurance
24 Reserve Fund or the independent agent -- adjuster,
25 Fred Young, were consulted prior to that work being

1 done?

2 A. I do not know.

3 Q. The digester number 1, was there any type of
4 decontamination done to it?

5 A. It was pressure washed.

6 Q. And was it tested prior to -- after the solids
7 were removed and prior to the pressure washing being
8 done?

9 A. I don't believe so.

10 Q. Okay. Did anyone consult with the Insurance
11 Reserve Fund or Fred Young prior to that work being
12 done?

13 A. Not that I'm aware of.

14 Q. Was there any equipment at the Pelham Water
15 Treatment Plant that was -- or that required
16 decontamination as a result of PCBs?

17 A. I don't recall any equipment being
18 decontaminated.

19 Q. Any other components or parts of that plant
20 that we haven't already talked about that required any
21 type of decontamination?

22 A. I don't -- I don't believe so.

23 Q. I may have already asked you this, and if I
24 did I apologize. It's been a long day. Were frac tanks
25 used at all in the process at Pelham?

1 A. They were.

2 Q. And in what capacity, in what way?

3 A. There were -- there were -- there

4 were -- there were two different ways. One is where

5 they were used for storage and chemical treatment of the

6 solids before they were processed. And the second use

7 of the tanks was for filtrate storage, segregation,

8 testing and then released back to the system after

9 testing.

10 Q. And where did the frac tanks come from?

11 A. They were rented from Rain for Rent or

12 Western Oilfield.

13 Q. How many frac tanks were used at Pelham?

14 A. Six, eight? I don't know the exact number.

15 Q. Is that something that ReWa rented, or was

16 that part of Waste Management's contract?

17 A. That was part of Waste Management's contract.

18 Q. Okay. Did ReWa independently rent any type of

19 frac tanks?

20 A. Not -- not at Pelham, not frac tanks.

21 Q. I saw some reference to a lake tank.

22 A. That's right.

23 Q. Where was a lake tank used?

24 A. It was used at Pelham.

25 Q. It was used at Pelham?

1 A. Um-hum.

2 Q. And is that something that Waste Management
3 rented or did ReWa rent?

4 A. ReWa rented.

5 Q. And what was the purpose of the lake tank?

6 A. It was a -- it was -- they're brought in as
7 basically a -- a redundancy because our tanks -- at one
8 time, our tanks were all -- you know, they were -- we
9 were basically out of room. And so -- our holding tanks
10 were full. It was raining. You know, I don't know why.
11 It was the summertime by then, and it seemed like it was
12 raining an inch every day, it seemed like. So, you
13 know, these tanks keep creeping up even though we're not
14 putting any material in them. They're creeping up. The
15 level's going up, going up, going up, from the rain.
16 And eventually, you know, there was fear that we could
17 have some type of overflow of -- of material
18 that's -- with PCB of greater than 50. So it was my
19 decision to -- that we needed to do something, you know.
20 We talked it over with -- I mean, I talked it over with
21 my supervisor. We talked it over with AECOM. And so we
22 rented a lake tank just in case we needed to move
23 material to keep -- move material to it for -- just to
24 make some room.

25 Q. Who was the lake tank rented from?

1 A. Rain for Rent.

2 Q. And how big a lake tank?

3 A. If I recall, it was a million gallons
4 capacity.

5 Q. Was it ever used?

6 A. It was not.

7 Q. So it remained empty the entire time?

8 A. It did.

9 Q. Is ReWa seeking to recover the cost of the
10 lake tank from the Insurance Reserve Fund -- I mean, the
11 cost of the rental of the lake tank?

12 A. I believe that cost is included.

13 Q. Was an employee of the Insurance Reserve Fund
14 or the independent adjuster, Fred Young, ever consulted
15 prior to the lake tank being rented?

16 A. Not that I'm aware of, no, sir.

17 Q. In any decision making that you made with
18 regard to either Pelham or Mauldin, did you ever consult
19 with the Insurance Reserve Fund or an independent -- the
20 independent adjuster, who had been retained by the
21 Insurance Reserve Fund, in any of the decisions that you
22 made?

23 A. I did not.

24 Q. Do you know of anybody who did at ReWa?

25 A. I do not know of anybody. I'm not saying that

1 nobody did, but I just don't personally know of anybody.

2 Q. Was there ever discussion, at the time this
3 work was being done, that ReWa was expecting Insurance
4 Reserve Fund to pay for anything that you guys decided
5 to do?

6 A. I did not -- I was not privy to any -- if that
7 was the case, I did not hear such.

8 Q. Were there ever any discussions that you were
9 privy to about insurance or insurance being involved or
10 insurance was going to pay for this?

11 A. No, sir.

12 Q. Can you give me an idea of the duration of
13 time from the beginning of the remediation process at
14 Pelham until the time the project was completed?

15 A. Three and a half months. I believe it started
16 in November, and it was finished by February, March.

17 Q. So November of what? 2013?

18 A. '13.

19 Q. And finished by early 2014?

20 A. Um-hum.

21 Q. Is that a "yes"?

22 A. Yes.

23 Q. Okay. Is there a reason why you didn't then
24 start work on Mauldin right away?

25 A. I can't -- I can't speak to that. You know,

1 like I said before, at some point in time I was -- I was
2 at Pelham and then at -- whatever the -- was it 2014, or
3 something, I went to Mauldin. So at some point during
4 this, I was only over the Pelham facility. I had
5 nothing to do with Lower Reedy or the Mauldin Road
6 facility, so I do not know.

7 Q. All right. Let's take about a two-minute
8 break, and let me consult with these folks.

9 (Pause in the proceedings.)

10 MR. LINDEMANN: I have no further questions
11 for this witness. And I understand we're going to be
12 taking a break until the morning to get Mr. McManus in
13 the morning.

14 MR. STILWELL: Yeah. And I'll talk to him
15 about what time to let you know, if it's like 9:30 or
16 9:00, to see if I can get him in earlier.

17 MR. LINDEMANN: Okay. Thank you.

18 (End of 30(b)(6) deposition given by Kevin Dean
19 James at 5:06 p.m.)
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

- - -

RENEWABLE WATER RESOURCES,

Plaintiff,

vs.

INSURANCE RESERVE FUND, A DIVISION
OF THE STATE FISCAL ACCOUNTABILITY
AUTHORITY OF SOUTH CAROLINA,

Defendant.

:
:
:
: Case No.
: 2016-CP-23-5905
:
:
:
:
:

30(b)(6) DEPOSITION OF RENEWABLE WATER RESOURCES
GIVEN BY: LONNIE GLEN McMANUS

DATE TAKEN: Friday, July 27, 2018

TIME BEGAN: 8:59 a.m.

TIME ENDED: 12:48 p.m.

LOCATION: Nelson Mullins Riley & Scarborough, LLP
104 South Main Street, Suite 900
Greenville, South Carolina 29601

REPORTED BY: Jeanne M. McLaren, CSR, RMR
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Defendant's 30(B)(6) Deposition Designations

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1 to be back in Columbia by 3:00, so you have that to your
2 advantage. But if at any time you need to take a break,
3 just let us know and we'll take a break. The one thing
4 is if there's a question that's already been asked at
5 the time you want to take a break, I'm going to look for
6 an answer to the question before we break. Okay?

7 A. Understood.

8 Q. All right. You have been designated -- are
9 you familiar with Exhibit Number 1, which is the Rule
10 30(b)(6) notice? Have you seen that before today?

11 A. I have seen at least portions of it.

12 Q. And if you turn to the third page where it's
13 captioned "Exhibit A," those are the -- and continuing
14 on to the next page, those are the various topics that
15 we have asked ReWa to produce or designate witnesses to
16 address. We understand that you will be addressing
17 items 6 through 8. If you'll take a moment to look at
18 those.

19 A. Okay.

20 Q. Also number 11 at the top of the next page.

21 A. Okay.

22 Q. And also 13 through 16 specifically with
23 respect to the Lower Reedy Water Treatment Plant.

24 A. Okay.

25 Q. Are you an appropriate witness for those

1 particular subject matters?

2 A. I believe I would be.

3 Q. Let me first get a little bit of background
4 information on you. What is your -- are you currently
5 employed by ReWa?

6 A. I am.

7 Q. In what position?

8 A. Director of business continuity services.

9 Q. And how long have you held that position?

10 A. About six weeks.

11 Q. And that was a new position to me. So --

12 MR. STILWELL: It was new to me, so I was kind
13 of wondering.

14 THE WITNESS: It is new to ReWa.

15 MR. STILWELL: Yeah.

16 BY MR. LINDEMANN:

17 Q. Tell me briefly what your job duties are in
18 that position.

19 A. I am responsible for business development,
20 intergovernmental and interagency relations and
21 partnership opportunities, key customer interface and
22 relations, emergency management, safety and security and
23 enterprise resiliency and continuous improvement
24 programs.

25 Q. And based on your previous response, I'm

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Plaintiff's 30(B)(6) Deposition Counter-Designations

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Defendant's 30(B)(6) Deposition Designations

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Plaintiff's 30(B)(6) Deposition Counter-Designations

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1 A. Director of operations.

2 Q. What is your educational background?

3 A. I hold a Master's in Public Administration
4 from the University of Colorado, Denver, and a BS Degree
5 in electrical engineering technology from Clemson.

6 Q. What year did you get the BS?

7 A. 1981.

8 Q. And how about the Masters in Public
9 Administration?

10 A. 2015.

11 Q. All right. Turning to some of the issues in
12 the case, you have been identified as the person most
13 knowledgeable to talk about the PCB contamination at
14 Lower Reedy as well as the remediation process at that
15 facility. Are you the best person to be able to testify
16 to those areas?

17 A. I believe I would be one of, if not, the best.

18 Q. Fair enough. You're knowledgeable of,
19 obviously, the contamination at that particular plant as
20 well as the remediation?

21 A. Yes, sir.

22 Q. When did the -- when were PCBs first detected
23 at Lower Reedy?

24 A. In 2013.

25 Q. Do you recall when specifically in 2013?

1 A. I could look at the timeline to tell you
2 exactly when.

3 Q. And I was going to suggest that. I already
4 marked it as, I think, Exhibit 6 is the timeline.

5 A. So it looks like July of 2013, was the -- the
6 first positive sampling that we had at Lower Reedy.

7 Q. Are you looking at an entry for July 25th?

8 A. I am.

9 Q. Let me actually do this with the timeline and
10 go through with you the references to Lower Reedy. As I
11 understand it from testimony yesterday, that there is
12 annual -- or in 2013, there was annual sampling that was
13 done at all of your facilities; is that right?

14 A. Yes, sir.

15 Q. If you look at the February 19th, 2013 entry,
16 it looks to be where the annual biosolids sampling was
17 done for Lower Reedy; is that correct?

18 A. Yes, sir, it is.

19 Q. All right. And just so I have an
20 understanding of Lower Reedy, there's a reference to two
21 holding tanks, numbers 4 and 5. How many biosolids
22 holding tanks are there at that facility?

23 A. There are -- there are two that are so
24 designated.

25 Q. Okay.

1 A. There's --

2 Q. Why are they 4 and 5, then?

3 A. That was -- when the plant was constructed,
4 and subsequently later went through upgrades,
5 tanks -- tank purposing may have been changed. And
6 those were the numbers that were on those tanks as
7 compared to other facilities. So the numbers were kept
8 for purposes of consistency.

9 Q. Are there other types of tanks that are
10 designated 1, 2 and 3?

11 A. Not as far as in terms of holding tanks.
12 There may be a -- a tank that would be -- and I'd have
13 to look at the -- at the diagrams to confirm, but, for
14 example, there are some --

15 Q. We actually have a Lower Richland (sic)
16 diagram already in evidence --

17 A. Okay, good.

18 Q. -- one of those. There we go. Let's see,
19 tell me the exhibit number in the bottom-right corner.

20 A. The exhibit number is 5.

21 Q. Okay, great. Let me ask you this: Is that
22 exhibit -- is that an accurate reflection of what the
23 Lower Reedy plant looked like in 2013?

24 A. It is, yes.

25 Q. And you were getting ready to answer my

1 question about the holding tanks.

2 A. Yes. To -- to the best of my knowledge, there
3 are not other tanks. There may have been former tanks
4 that were designated as 1, 2, 3 and 4. Those tanks may
5 have been re-purposed for mixing or blending tanks as
6 a -- as a part of the process and may have that number,
7 say, for instance, number 3 or number 2 in terms of
8 a -- of a process blending tank or some other interim
9 process.

10 Q. So as far as biosolids holding tanks 4 and 5,
11 are they the only ones at that facility?

12 A. Yes, that's correct.

13 Q. All right. And how many digesters are there
14 at that facility?

15 A. There is one digester.

16 Q. Just based on my observations, at least, it
17 appears Lower Reedy is a much smaller facility than
18 Pelham and Mauldin Road; is that correct?

19 A. It is, yes.

20 Q. What's it rated for, how many million gallons
21 per day, do you know?

22 A. It -- it is in the range of -- of plus or
23 minus 10 million gallons a day. I don't have that exact
24 number in front of me.

25 Q. Anyway, going back to the timeline. The first

1 entry that I see for Lower Reedy is on February 19th, is
2 when the routine annual biosolids sampling was done; is
3 that correct?

4 A. Yes, sir.

5 Q. And it appears, based on this, that a
6 composite sampling was taken of the two holding tanks?

7 A. That is correct.

8 Q. And what is -- how is that done, that there's
9 a composite sample? What does that mean?

10 A. So that is a blended sample from the two
11 tanks, equal amount of sampling, from each tank.

12 Q. And so, essentially, they're blended and then
13 tested together?

14 A. That is correct.

15 Q. And does the timeline reflect what the results
16 were from that annual biosolid sampling?

17 A. It does. It shows March 1st of 2013, that
18 that February 19th sample shows non-detect for PCBs.

19 Q. And "non-detect" means there were no PCBs?

20 A. Correct.

21 Q. Okay. What is the next entry regarding the
22 Lower Reedy? And please scan it. But to help out, I
23 believe it's July 23rd, but please make certain that
24 that's correct.

25 A. That appears to be correct.

1 Q. Okay. Do you know why additional testing was
2 done on July 23rd?

3 A. To my recollection, given that the PCBs were
4 continuing to increase at the Pelham facility, there was
5 some concern that we may be the victim of criminal
6 dumping, and so we thought it wise to test our other
7 facilities.

8 Q. Were all the other facilities tested?

9 A. They were.

10 Q. So it looks that on July 23rd, there was,
11 again, a composite sample taken from the two tanks at
12 Lower Reedy; is that correct?

13 A. Yes, that is correct.

14 Q. And it looks like also that samples were taken
15 from the Lower Reedy -- well, the next entry also talks
16 about samples being collected then from the Lower Reedy
17 holding tanks. Is that something separate from the
18 previous entry? Do you see what I'm saying? There are
19 two entries for July 23rd, involving Lower Reedy.

20 A. Let me look at the results, and I'll answer
21 that. I don't see any information that would indicate
22 that that sampling at Lower Reedy is separate from the
23 above entry for the same date, for holding tanks 4
24 and 5.

25 Q. All right. The composite sampling, the

1 results are reflected on July 25th, right?

2 A. That is correct.

3 Q. And that's the tests results -- I think you
4 testified a few moments ago, that was the first sign of
5 any PCBs at that facility?

6 A. Yes, sir, it was.

7 Q. And the sampling result at that time was 2.2
8 parts per million?

9 A. Yes, that is correct.

10 Q. Okay. And you'd agree with me that's a fairly
11 negligible amount?

12 A. Any amount of PCBs, given their carcinogens,
13 is -- is certainly a concern. I would hesitate to call
14 it negligible.

15 Q. Is there a particular threshold that the EPA
16 and DHEC use in determining what level of PCBs require
17 remediation?

18 A. The -- the plant permit does -- the NPDES
19 permit for the plant does not allow any PCBs to come in
20 or be existent in -- in the plant facility in terms of
21 biosolids. The -- the permit for that allows less than
22 50 parts per million.

23 Q. And here of, course, it was the biosolids
24 being tested, right?

25 A. That is correct.

1 Q. So the sampling showing 2.2, that's obviously
2 substantially less than the 50 parts per million
3 threshold?

4 A. It is.

5 Q. All right. It looks to me -- if you'll look
6 at one of the entries that's dated July 31, that,
7 apparently, there must have been other sampling done at
8 Lower Reedy on July 23rd, because there's been some
9 additional -- oh, I'm sorry, that actually shows
10 additional samples are being taken?

11 A. Correct.

12 Q. I misread that, I apologize. Okay. So you're
13 thinking that the double entry of July 23rd, was really
14 one -- one episode of sampling?

15 A. I see no other information to believe
16 otherwise.

17 Q. All right. And at that point in time, there
18 hadn't been any sampling of any component of the plant,
19 other than the holding tanks?

20 A. With the exception of the annual
21 biosolids -- well, the annual PCB testing,
22 which -- which is separate testing for biosolids and for
23 the plant influent.

24 Q. So that -- the influent is actually tested as
25 part of that annual testing?

1 A. It is.

2 Q. It looks like on July 23rd, a decision was
3 made that digesters at various facilities, including
4 Georges Creek and Marietta, were tested. Is there a
5 reason why Lower Reedy -- the Lower Reedy digester was
6 not tested at that time?

7 A. I don't recall.

8 Q. Ultimately, July 31, looking at that entry,
9 additional samples were taken from each of the holding
10 tanks at Lower Reedy. Why so quickly -- or why were
11 additional samples taken at that point in time?

12 A. So going back to the July 25th result of the
13 July 23rd sampling, we showed a PCB detection in the
14 composite sample. So then we sampled, on July 31st, the
15 individual holding tanks separately from each other to
16 identify whether one of the tanks had PCBs versus the
17 other or whether both of them had it.

18 Q. And those results are reflected on August 2nd;
19 is that correct?

20 A. That is correct.

21 Q. And what were those results?

22 A. Holding tank 4 had 1.4 parts per million, and
23 holding tank 5 had 0.78 parts per million.

24 Q. If you'll flip over to page 5 of the timeline,
25 it looks like on August 2nd, a sample was taken from the

1 Lower Reedy digester; is that correct?

2 A. Yes, sir.

3 Q. And what was the reasoning for that?

4 A. With the biosolids testing positive, the next
5 step would be to trace back and determine if we still
6 have PCB material elsewhere in the process prior to the
7 holding tanks.

8 Q. And what were the results of the testing on
9 the Lower Reedy digester?

10 A. The August 5th entry shows that the -- that
11 that sample was non-detect for PCB.

12 Q. Let me backtrack and then come back to this
13 timeline.

14 A. Okay.

15 Q. I never did ask you what your job duties were
16 when you were director of operations. Can you give me a
17 summary of what those are -- or were?

18 A. Certainly. I was responsible for the overall
19 administration of all of the treatment facilities, the
20 wastewater collection or conveyance system, central
21 maintenance department, biosolids program and the
22 process control group.

23 Q. What would have been your responsibilities
24 relative to the PCB contamination in 2013, and the
25 ultimate remediation process?

1 A. My responsibility would have been to interface
2 in the planning and carrying out of operations between
3 our executive director, to whom I reported, and our
4 treatment operations manager, which is Kevin James -- or
5 was Kevin James at the time and -- or -- and actually,
6 let me back up on that. We had -- when that process
7 started, we had two different treatment operations
8 managers. Kevin was responsible for the Enoree Basin
9 plants. We have another manager who has -- who retired
10 somewhat in the middle of that process who was
11 responsible for the Reedy River facilities. So both of
12 them reported to me. I reported to the executive
13 director, and so my responsibility was to interface
14 between the two in terms of planning and carrying out of
15 the operations.

16 Q. Was there an ultimate decision maker, as far
17 as the remediation process, or how did the decision
18 making work?

19 A. The executive director, by authority, is
20 deemed as the ultimate decision maker in the process in
21 terms of what might be considered emergency or urgent
22 actions. Certainly, that's carried out at the -- at the
23 facility level or perhaps with some input from me, but
24 the ultimate decision would be from the executive
25 director.

1 Q. Did the board play any role in any of these
2 decisions as far as the remediation?

3 A. At a point, the board made the decision
4 that -- consistent with the subsequent DHEC decision,
5 that we would not apply any level of PCBs to -- to land.

6 Q. Okay. So in essence, what I'm hearing you say
7 is the suspension of the land application program was
8 made by the board?

9 A. In terms of a hold for any PCB contaminated
10 biosolids, there was -- there was an earlier decision
11 with -- with Pelham that was made by staff to, at least
12 temporarily, suspend the program until we could get
13 information on the cumulative effect of PCB application
14 to land.

15 Q. Was the land application program suspended for
16 all the facilities or just some of them?

17 A. The program was suspended for those facilities
18 that had PCB contamination.

19 Q. So for instance, would Lower Reedy -- when was
20 that program suspended?

21 A. I'll need to look at the timeline to see when
22 the board made that decision, but I believe it was in
23 the July time frame. Let me confirm that. It looks
24 like, based on some things I'm seeing on the timeline,
25 that that would have been in the time frame of late July

1 of 2013.

2 Q. Did you have any involvement in the
3 preparation of this timeline?

4 A. I did.

5 Q. Okay. And tell me what that participation
6 was.

7 A. My participation was drafting the timeline
8 based on review of either documentation or data or
9 meetings with staff members and then also incorporating
10 the parts of the timeline that came from our director of
11 technical services and his engineering department and
12 pretreatment department.

13 Q. And the timeline ends in August 30th, 2013,
14 correct?

15 A. That is correct.

16 Q. All right. Was there an additional timeline
17 done after that period of time?

18 A. Not to my knowledge.

19 Q. And why did it stop at that date?

20 A. To the best of my recollection, we had been
21 asked to provide a timeline, up to a certain point, to
22 our legal folks or possibly to the Insurance Reserve
23 Fund. And after we did so, we did not continue to
24 compile the timeline as you see it here.

25 Q. Do you know whether this timeline was provided

1 to the Insurance Reserve Fund or the independent
2 adjuster that had been retained by the Insurance
3 Reserve Fund, Fred Young?

4 A. I cannot confirm that, given that that action
5 and interface with the insurance folks would have been
6 handled through our accounting and finance department.

7 Q. Okay. Did you have any involvement yourself
8 directly in dealing with the Insurance Reserve Fund or
9 Mr. Young?

10 A. Only from the standpoint of being in a meeting
11 where information was presented and opportunities for
12 questions.

13 Q. And that meeting was held after lawyers were
14 already involved, correct?

15 A. I believe so.

16 Q. For instance, Mr. Devlin was in that meeting
17 on behalf of the Insurance Reserve Fund, correct?

18 A. I would be remiss to say that that is correct.

19 Q. Okay.

20 A. I don't recall.

21 Q. Fair enough. Do you recall fielding any
22 telephone calls directly from a claims adjuster with the
23 Insurance Reserve Fund or having any discussions with a
24 specific adjuster?

25 A. I can't say with absolute certainty that I

1 didn't, but I don't recall.

2 Q. Fair enough. Let me go back to where I was
3 when I digressed wanting to go through the sampling as
4 far as Lower Reedy is concerned. At the top of page 5,
5 it appears that sampling was then taken from the
6 Lower Reedy digester on August 2nd; is that correct?

7 A. Yes.

8 Q. And I think you confirmed for me there is only
9 one digester at Lower Reedy?

10 A. That is correct.

11 Q. And the results, then, came back on
12 August 5th. And what were those results?

13 A. Those results were non-detect.

14 Q. The next entry I see regarding Lower Reedy is
15 on August 28th, but definitely scan that for me and make
16 certain I am correct.

17 A. I'm sorry. Would you repeat the date?

18 Q. August 28th, towards the end of the timeline.

19 A. You are correct.

20 Q. On August 28th, it shows additional sampling
21 at the belt press cake; is that correct?

22 A. Yes, sir.

23 Q. Tell me what a belt press cake is.

24 A. So what a belt press does is to take the
25 thickened liquid biosolids and further dewater them

1 using polymer and putting that mixture under extreme
2 pressure through -- on belts or rollers. And by
3 pressing or squeezing the liquid out of it, you end up
4 with what is known in the industry as a cake. It is
5 essentially the consistency of a thick mud pie or jello
6 type consistency. And so -- so that material would be
7 taken to the landfill, and -- I'm sorry. Did I -- did I
8 answer your question there?

9 Q. I think so. Let me just follow up. So when
10 the sludge comes out of the digester, does it first go
11 through the belt press before it's then put into the
12 biosolids holding tanks?

13 A. No. It goes one way or the other. It either
14 goes through a thickener and is put in the biosolids
15 holding tank for liquid land application or it goes
16 through a belt press to dewater that liquid and turn
17 into a cake material that can be put into a dump truck
18 and taken to the landfill.

19 Q. So once material goes through the belt press
20 process, what I'm hearing you say is it does not go,
21 then, into the holding tanks; is that correct?

22 A. That's correct.

23 Q. Is there separate holding tanks that hold
24 those cakes until they're removed to the landfill?

25 A. No. The cake is put directly into dump trucks

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1 Q. Would that data be available prior to 2013,
2 that we could then use as a comparison to pre-PCB versus
3 post-PCB contamination?

4 A. It would, yes.

5 Q. I'm probably going to get back to the
6 biosolids program in a few minutes with you when I
7 finish with the Lower Reedy testing. We were talking
8 about the entry in the timeline, August 28th, the belt
9 press cake was sampled. And do you see the results of
10 that sampling? I believe it's an August 30th entry.

11 A. It is.

12 Q. And what were results?

13 A. 0.5 parts per million.

14 Q. All right. And what was the significance of
15 those results? I mean, was any decisions made, any
16 action taken?

17 A. Yes.

18 Q. Tell me what those were.

19 A. That tells us two things. One, it tells us
20 that we are within the limits that -- that our people
21 can handle within their certification levels and that it
22 can go to the landfill, local landfill. And two, it
23 tells us that there -- there is still PCB present
24 somewhere in the plant process in order for it to show
25 up in the biosolids.

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1 presses, instead of putting liquid to the holding tanks,
2 that there were times that the belt press would be down
3 and we had to put the thickened liquid into the holding
4 tanks. So it is possible that one or both of those
5 tanks may have increased somewhat in their
6 concentration, but as I recall, not substantially above
7 5 parts, if that much.

8 Q. Was the rental -- were any frac tanks rented
9 for use at Lower Reedy?

10 A. Yes, sir.

11 Q. And what were those used for?

12 A. Those were used as the -- the stored solids
13 were processed through a rotary press for purposes of
14 making cake and -- and turning those liquid solids into
15 cake solids to go to the landfill. The liquid that was
16 being pressed off of those had -- had to be below a
17 detection threshold for PCBs. And so all of the liquid,
18 that was coming out of that dewatering process, had to
19 be stored in those frac tanks and then batch tested.

20 It also had to go through a filtration
21 process. And so you had to have some buffer frac tanks
22 for that filtration process before putting it in the
23 final storage frac tanks. And then as each tank filled
24 up, it had to be batch tested to confirm that it did not
25 have any PCB detection in it before that liquid could be

1 released back into the head of the plant.

2 Q. Is that what is commonly called filtrate?

3 A. It is, yes.

4 Q. Okay.

5 A. It's typically called filtrate if it comes off

6 of a belt press, centrate if it comes off of a

7 centrifuge. But filtrate is -- is a generic term, yes.

8 Q. Now, you mentioned a different type of press,

9 a conveyor press, is that what I heard you say?

10 A. A rotary.

11 Q. A rotary press. Did the Lower Reedy plant

12 have both of those types of presses?

13 A. It did not. The Lower Reedy plant only had

14 belt presses as part of its permanent installation.

15 Q. But I understood you to say a rotary press was

16 then used at Lower Reedy. Can you explain that to me?

17 A. Yes. We -- for purposes of dewatering the

18 stored solids, it was recognized that it would not be

19 good practice. Nor was the capacity existent to manage

20 the daily plant flow and production of solids through

21 the plant's belt presses, that it was not appropriate,

22 nor did the available capacity exist to also run the

23 stored solids through the plant's belt presses. So

24 we -- we had to find an alternative method to dewater

25 those stored solids. So after looking at various

1 alternatives, we have identified the best cost
2 alternative. It was to purchase a -- a mobile rotary
3 press and use that for the dewatering of the stored
4 solids.

5 MR. STILWELL: And the rotary press was used
6 at Mauldin Road, and I don't have any problems if you
7 ask Glen Mauldin Road questions. I didn't realize until
8 yesterday that the time gap when Kevin came down there
9 was so large. But he was in charge of Mauldin Road up
10 until the time -- and through the time Kevin was there.

11 MR. LINDEMANN: Okay.

12 MR. STILWELL: This part goes into
13 Mauldin Road, and I don't have any objection -- or I
14 encourage you to ask him about Mauldin Road questions up
15 to that point.

16 MR. LINDEMANN: Well, right now I want to
17 stick with Lower Reedy --

18 MR. STILWELL: Okay, sure.

19 MR. LINDEMANN: -- so they're not confused.
20 I'm trying to keep the three plants separate, but I
21 appreciate that.

22 BY MR. LINDEMANN:

23 Q. The rotary mobile press that you just
24 described, was that used at Lower Reedy?

25 A. It was.

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1 ReWa's looking for the Insurance Reserve Fund to pay
2 with respect to that piece of equipment.

3 A. What I call the depreciation costs of that
4 piece of equipment for the time in which it was used as
5 compared to its life cycle depreciation.

6 Q. Do you know what that amount is?

7 A. To the best of my recollection, the amount in
8 the claim is around \$72,000.

9 Q. Was any other equipment purchased for the
10 Lower Reedy plant following the PCB contamination?

11 A. Could you be specific as to what you would
12 reference as "equipment"?

13 Q. Well, as part of the remediation
14 process -- well, I'm not talking about, you know, gloves
15 or hoses or things like that. I'm talking, you know --
16 and I'm not talking about a shovel here or there. I'm
17 talking about a fairly substantial piece of equipment.

18 A. I believe the rotary press was the largest
19 expenditure for -- for that project. But there was
20 other equipment that was purchased in terms of pumps,
21 hoses, piping, electrical control panels, containment --
22 spill containment, mats and materials, that type
23 equipment, or supplies.

24 Q. Going back to the sampling that we were
25 talking about, then, you indicated that you're not aware

1 of any sampling that ever exceeded 5 parts per million
2 in Lower Reedy?

3 A. At Lower Reedy, give or take, somewhere in
4 that range.

5 Q. And you think some of the numbers may have
6 been higher than what's reflected on the timeline
7 because contaminated sludge would be introduced into the
8 holding tanks with other contaminated sludge or
9 biosolids?

10 A. I'm saying that is possible.

11 Q. Okay. As far as the remediation itself at
12 Lower Reedy, when did that occur? When did it begin and
13 when did it end?

14 A. In -- and by "remediation," let me make sure
15 that I understand what you mean by the term. I
16 understand that to mean the process of -- all processes
17 necessary to dispose of that contamination and to
18 decontaminate the facility?

19 Q. Sure. That's a fair explanation for it.

20 A. Okay. So that began on or about the 1st of
21 July of 2013 -- I'm sorry, correction, July of 2014.

22 Q. And how long did the process take?

23 A. And the process took approximately six months.

24 Q. And as far as the land application program out
25 at Lower Richland (sic), I think you indicated you

1 believe the board stopped that program or suspended that
2 program in -- in July or so of 2013?

3 A. Yes, sir.

4 Q. When was that restarted at Lower Richland?

5 A. Lower Reedy?

6 Q. Lower Reedy.

7 A. It was restarted several months after ongoing
8 sampling confirmed that there was no evidence of further
9 PCB contamination within the facility.

10 Q. I saw some reference to December of 2014, as
11 being the date. To your knowledge, is that accurate?

12 A. I couldn't say without going back and -- and
13 looking at reports to see exactly when that happened.
14 That date would coincide with the -- generally, with the
15 end of our remediation process. That doesn't tell me
16 that there wasn't still some detection in the plant that
17 was being run through the belt press. If it -- if our
18 information shows that that's the date, then I couldn't
19 argue with that, but I just don't have the information
20 in front of me to confirm it.

21 Q. And what kind of records would you look at to
22 make that determination?

23 A. The PCB sampling results and board action
24 approving that Lower Reedy be returned to land
25 application status.

1 Q. So the lifting of the suspension of that
2 program was also a decision made by the board?

3 A. It was.

4 Q. So would that be reflected in board minutes?

5 A. It should be.

6 Q. A couple other questions about the timeline
7 itself. When was this created, Exhibit Number 6?

8 A. Exhibit 6 is the timeline itself?

9 Q. Yes.

10 A. This timeline was compiled, to the best of my
11 recollection, in the late summer of 2013.

12 MR. STILWELL: Can we go off the record for a
13 minute?

14 MR. LINDEMANN: Sure.

15 (Off-the-record discussion.)

16 MR. LINDEMANN: All right. Back on the
17 record.

18 BY MR. LINDEMANN:

19 Q. We talked real briefly earlier about the
20 filtrate and how that was handled. Is there an
21 acceptable PCB level for the filtrate?

22 A. There is.

23 Q. And what would that level be?

24 A. According to DHEC at the time, the filtrate
25 had to be non-detect for PCBs.

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1 Q. Again, focusing on just the Lower Reedy plant,
2 what components of that plant actually went through the
3 remediation process?

4 A. Obviously, the biosolids holding tanks 4 and
5 5, and then the secondary -- or I'm sorry, the belt
6 press and associated components itself. And to the best
7 of my recollection, there were no other detections
8 within the facility that required other remediation
9 activities at that site.

10 Q. And take me through the process of
11 decontaminating tanks -- biosolid tanks 4 and 5. Well,
12 who did that work, first of all?

13 A. A portion of the work was done by our staff
14 and a portion of it was done by a remediation
15 contractor. And I don't remember, without looking at
16 other information, as to which contractor did that.

17 Q. And what information would you need to look
18 at?

19 A. I would need to look at the invoices showing
20 which contractor had -- had remediated what locations at
21 that particular time.

22 Q. And take me through the remediation process
23 for tanks 4 and 5. How was that handled?

24 A. So with tanks 4 and 5, we -- we set up the
25 mobile rotary press and -- and containment and -- spill

1 containment area and all of the associated piping and
2 pumps and frac tanks and hoses and filtration units.
3 And we -- we pumped the material out of those tanks,
4 dewatered it through the -- through the rotary press,
5 sent the resulting cake to the landfill.

6 Once the material had been emptied from that
7 tank, we began the decontamination process, which
8 included doing a -- a pressure washing of the interior
9 walls of the tanks and -- and then washing those walls,
10 or all concrete surfaces, with a -- a citric acid
11 compound to remove the PCB contaminated material out of
12 the concrete pores, and then second, pressure wash and
13 rinse, recovering any of the wash material, and -- and
14 the contractor to transport that to an appropriate
15 regulated disposal facility.

16 Q. So were there two pressure washings or three
17 pressure washings, based on what you just said?

18 A. I believe there were two, what I would term
19 pressure washing the -- the intermediate wash with the
20 citric acid compound, would have been a spray-on soak,
21 and then followed up by pressure washing.

22 Q. Was there any coring done of the concrete
23 tanks?

24 A. There was not.

25 Q. And I assume, those tanks are made of

1 concrete?

2 A. They are.

3 Q. After the biosolids were removed from those
4 two holding tanks, was there any sampling done of the
5 tank itself before the decontamination was done?

6 A. There was not.

7 Q. And why was there not?

8 A. I'm sorry. You're asking before the
9 decontamination was done?

10 Q. Before the pressure washing started --

11 A. Before the pressure washing starting?

12 Q. -- but after the tank was emptied.

13 A. It was visually obvious that there
14 were -- there were biosolids dried, or otherwise, on the
15 walls of the tank and in the concrete pores. So there
16 was -- in our opinion, and in accordance with the
17 remediation plan submitted to the EPA, there was no need
18 to perform testing pre-decon.

19 Q. Were any photographs taken of the condition of
20 the holding tanks after removal of the biosolids and
21 prior to the pressure washing beginning?

22 A. There could very well have been.

23 Q. And in essence, what I'm saying: Are there
24 any photographs that support what you just said, that
25 there were dried biosolids attached to the concrete

1 walls?

2 A. I believe there would be.

3 Q. Have you actually seen such photographs?

4 A. By recollection, I feel like I have.

5 Q. Was there a particular person who was tasked
6 with the duty of documenting the remediation process,
7 either photographically or by videotape?

8 A. Not to my knowledge.

9 Q. The actual pressure washing of those two
10 tanks, that would have been done by a contractor rather
11 than ReWa employees; is that right?

12 A. There could have been some participation by
13 both in that. I would have to talk to others or go back
14 and look at plant logs to make that determination.

15 Q. All right. Anything else that was done to
16 decontaminate the holding tanks themselves?

17 A. I believe that would be it for the holding
18 tanks themselves.

19 Q. And similar decontamination was not required
20 at any other component of the plant?

21 A. The belt presses, given that they had PCB
22 contaminated material --

23 Q. That's right.

24 A. -- running through them, it would have gone
25 through a -- pressure washing is not feasible. They

1 would have at least gone through a rinsing or -- or
2 citric acid circulation and -- and subsequent rinsing of
3 them. But certainly not to the extent of the decon of
4 the tanks themselves, being concrete surfaces.

5 Q. Was that the extent of the measures taken as
6 far as the belt press?

7 A. To the best of my knowledge, yes.

8 Q. Do you know whether that work was done by a
9 contractor or by employees?

10 A. Not without questioning others or -- or
11 looking at records. I just don't recall which way that
12 was handled.

13 Q. To your knowledge, was there ever a request
14 made to ReWa to break out the actual decontamination
15 costs for the holding tanks at Lower Richland by the
16 Insurance Reserve Fund?

17 MR. DEVLIN: Lower Reedy.

18 MR. LINDEMANN: Lower Reedy, I apologize.

19 MR. STILWELL: You're fine if you just
20 translate that on the fly.

21 BY MR. LINDEMANN:

22 Q. I've been pretty good about it. I think it's
23 only been the second time. Do you understand my
24 question, or do you need me to repeat it?

25 A. So you're asking if there was a request by IRF

1 for -- for ReWa to provide a separate remediation cost
2 for Lower Reedy? Is that --

3 Q. Well, and specifically, the decontamination
4 costs for the two tanks as well as the belt press as
5 opposed to taking out the costs for the biosolids.

6 MR. STILWELL: Object to the form. You can
7 answer it.

8 THE WITNESS: Those requests would not have
9 come through me, so I am -- I am not the person to
10 answer that question. I don't have knowledge for sure
11 of what was requested.

12 BY MR. LINDEMANN:

13 Q. Do you know whether those calculations have
14 ever been made by ReWa?

15 A. For the decontamination of the tanks? I don't
16 recall whether we have specifically calculated that part
17 out separately from the remediation material that
18 was -- was in them. But I do know that we have data to
19 support that.

20 Q. Do the contractors -- well, you testified, I
21 guess, that you're not certain whether a contractor even
22 did any of the decontamination work at Lower Reedy?

23 A. I do believe that a contractor was involved in
24 the decontamination work.

25 Q. Were the contractors, who did decontamination

1 work, required to itemized their invoices so that you
2 could determine specifically what components of their
3 scope of work -- you know, were broken out by components
4 of their scope of work?

5 A. Only to the extent that we could match up what
6 they were actually doing with what we were being
7 charged.

8 Q. For instance, was there a requirement for your
9 contractors to break out remediation of the biosolids
10 versus remediation of the components of the plant and
11 equipment?

12 A. I believe that there would have been, given
13 that that would be separate work.

14 Q. As far as the Lower Reedy plant, was there any
15 component of the plant that was a complete loss and had
16 to be destroyed and taken out?

17 A. Not to my knowledge.

18 Q. Okay. And was there any equipment that was a
19 total loss and had to be removed and replaced, affixed
20 equipment?

21 A. Not to my knowledge.

22 Q. Was there any affixed equipment that required
23 any type of remediation?

24 A. Yes.

25 Q. And that would be the belt press?

1 A. Yes, sir.

2 Q. Is that -- the belt press is not mobile? It's
3 affixed?

4 A. That's correct.

5 Q. What part of the plant is that located in?

6 A. It is -- in terms of physical diagram?

7 Q. Yes.

8 A. It is located here in this building, as
9 compared to the -- to the two holding tanks located
10 here.

11 Q. Is there more than one belt press, or is it a
12 single item?

13 A. There are -- there are more than one.

14 Q. And how many are there?

15 A. Two.

16 Q. And were both used for this purpose?

17 A. Yes, to the best of my knowledge.

18 Q. And both required, essentially, cleaning with
19 the citric acid?

20 A. Yes, sir.

21 Q. Any other permanently affixed equipment that
22 was affected, other than the belt presses?

23 A. Not other than the biosolids holding tanks --

24 Q. Right.

25 A. -- and associated pumping and piping.

1 Q. Was there actually -- are there actually
2 equipment affixed in those particular holding tanks?

3 A. There is, yes.

4 Q. What are they? Pumps?

5 A. There were pumps and mechanical mixers.

6 Q. And those are obviously affixed, they're
7 permanent?

8 A. They are, yes.

9 Q. And were measures having to be taken to
10 decontaminate those?

11 A. There were, yes.

12 Q. And what were those efforts?

13 A. The mixers were -- that are actually within
14 the tank were deconned as a part of the tank
15 decontamination itself. The pumps and piping were
16 deconned, which are external from the tank but housed
17 in -- in the facility at the tanks, were deconned using
18 the same method as would have been used for the belt
19 press going through a rinse and flushing. With them
20 being essentially metal surfaces, it required less work
21 than a rough concrete surface.

22 Q. And the pump and the mixer in each of the
23 tanks would have been cleaned the same way, just through
24 pressure washing?

25 A. That's correct.

1 Q. And you indicated those all would have been
2 handled at the same time that the concrete walls of the
3 tanks were cleaned?

4 A. Yes, sir. That is correct.

5 Q. Give me one second. Let me switch gears a
6 little bit now. One of the things that I've got some
7 confusion about is just the chronology beyond the
8 timeline itself.

9 A. Okay.

10 Q. You obviously -- you had three affected
11 plants?

12 A. Yes, sir.

13 Q. I assume none of the other wastewater plants
14 were affected in any way?

15 A. Not to our knowledge.

16 Q. Do you know of any reason why the Insurance
17 Reserve Fund would have been given -- or submitted bills
18 for other facilities other than those three? And by
19 "those three," I mean, Pelham, Mauldin Road and
20 Lower Reedy?

21 A. Not unless other facilities might include the
22 parts of the collection system where PCBs were
23 discovered.

24 Q. And were there parts of the collection system
25 where it was found -- discovered?

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1 A. Yes, sir, there were.

2 Q. And where were those located?

3 A. There were locations from Greer down to the
4 Pelham facility. And there was one -- one location just
5 above the Mauldin facility, within the last mile or so
6 of piping, before the plant.

7 Q. Is there any reason why expenses would be
8 claimed for the Gilder Creek plant?

9 A. Not that I'm aware of.

10 Q. Is there any reason why there would be
11 expenses claimed for the Durbin Creek plant?

12 A. Not that I'm aware of.

13 Q. Were there any reasons for any expenses to be
14 claimed for the Grove Creek plant?

15 A. Not to my knowledge.

16 Q. When you mentioned collection systems a moment
17 ago, is that a reference to pump stations, or what is
18 that a reference to?

19 A. The specific reference in this case -- all the
20 pump stations are part of the collection system. The
21 specific reference in this case is referring to the
22 piping and manholes.

23 Q. So you're excluding pump stations?

24 A. We -- as best I recall, we did not find any
25 PCBs in pump stations outside of the plant.

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1 Q. So going back to -- I guess, I digressed
2 again. I've struggled with some of the time frames
3 after that timeline ended, and I need an understanding
4 of when the remediation process started and ended for
5 each plant. You've already given me that information
6 for Lower Reedy. Can you give me that information for
7 the other two plants?

8 A. Yes, sir. For the Pelham facility, that
9 remediation started -- let me look at the timeline here
10 just to confirm --

11 Q. That's fine.

12 A. -- my recollection. Based on what I can tell
13 from the timeline, I believe the remediation process at
14 the Pelham facility began in late summer or early fall
15 of 2013, and I do recall that it proceeded through March
16 or so of 2014.

17 Q. And how about for Mauldin Road?

18 A. For Mauldin Road, that -- that process started
19 for the -- for the stored materials in winter of
20 2014/15. And without going back and looking at records,
21 I -- I'm not sure whether it was December or January. I
22 just remember that it was about the coldest day of the
23 year.

24 Q. Okay.

25 A. And then that process at Mauldin Road was

1 completed at the end of June 2015.

2 Q. Was Mauldin Road done in segments
3 or -- because you seem to characterize it as simply the
4 holding tanks. Were there other parts of Mauldin Road
5 that were decontaminated?

6 A. Well, you had the belt press facility and the
7 digesters that were all impacted by PCBs. And -- and so
8 the belt presses ran to continue to try to process out
9 what -- what was detected within the plant or within the
10 digesters. The digesters subsequently had to be cleaned
11 out and, of course, the belt presses put through a decon
12 process similar to Lower Reedy as well.

13 Q. Well, my question is: Was that done in
14 different phases, or was it all done during this
15 December/January through June time frame?

16 A. All of the stored materials were done within
17 that time frame. I don't recall, without going back and
18 looking, as to what -- what time frame the digester
19 cleanout was done, whether it was during or after
20 that -- that time frame.

21 Q. And was that digester just inoperable, from
22 the point in time PCB was detected in it, through
23 whenever it was cleaned in early 2015?

24 A. No. It was -- was not inoperable. We had to
25 continue operating it because the plant requires two

1 digesters to operate. One digester was down having some
2 other work done to it. So those two digesters had to
3 continue to be operated until the third digester work
4 was completed and it could be put back online. And then
5 I recall that we didn't put it back online until we were
6 able to determine that the plant daily process flows
7 seemed to be clear of PCBs because we didn't want to
8 contaminate yet another digester and have to clean it as
9 well.

10 Q. Which digester was down during that period of
11 time?

12 A. I don't recall which one it was, but I do know
13 that they are all three of the same size and type.

14 Q. And why was that one down?

15 A. There was some work that is typical for
16 digesters. I think it was a -- that the roof or the cap
17 on -- the lid on the digester had to be cleaned and
18 painted as part of the normal maintenance process. And
19 so that was -- as best I recall, that's why that was
20 down, as well as some internal mixing, piping repairs,
21 that had to be done.

22 Q. And how lengthy a period of time would those
23 repairs take under normal circumstances?

24 A. I don't think there was any impact to how long
25 those repairs took because of PCBs because it was really

1 unrelated to the repairs. But I think a typical -- I
2 think that probably was perhaps a -- a process that was
3 as long as six months.

4 Q. And I guess my question is: Obviously, PCBs
5 were detected in Mauldin fairly early in 2013, correct?

6 A. I believe they were discovered mid-2013.

7 Q. Actually, I was just trying to see when the
8 earliest in Mauldin had some positive results for PCB.
9 It looks like March -- March 1st, 2013; is that correct,
10 based on your timeline? Tank number 8 showed 0.93 --

11 A. I'm sorry. You are correct, yes.

12 Q. So in essence, there was -- from the time PCBs
13 were first detected in Mauldin Road, until the
14 decontamination started, it was close to two years --
15 just under two years. Why would that be? Why would you
16 take that length of time to go through that process?

17 A. There were several factors that drove that
18 timeline, one of those being that at the time we first
19 discovered PCBs at Mauldin Road, we appeared to be
20 within our permitted limitation and could land apply the
21 material. However, we had a concern -- or developed a
22 concern as we saw that PCBs were continuing to increase
23 versus decrease, that we didn't know, or didn't have
24 enough information available to us at that time, that
25 would indicate what would be the cumulative effect of

1 PCB application on land sites because normally we
2 don't -- never have to deal with PCBs.

3 And so as a concern, we really needed to look
4 into those factors and determine if what we were seeing
5 is something that we could continue to do land
6 application with. As we talked with DHEC and EPA, and
7 trying to work through the confusion between those two
8 agencies, and even within some groups of EPA as to how
9 we needed to handle this material, that process took
10 some time to figure out. And so -- so that was part of
11 the delay.

12 Once we eventually got through that and got
13 some solid answers and prepared a plan and got EPA
14 concurrence on that or -- or either that it became
15 obvious that EPA wasn't going to have any problems with
16 the plans, then at that point, we had to determine the
17 most economical means of remediation of that material.
18 You know, at that point it became necessary to -- as
19 the -- it coincided with the contractor at Pelham
20 working on -- on that job, which we knew that we
21 couldn't handle because it was beyond the certification
22 level of our people to be able deal with that
23 concentration of PCBs, so we started looking at what
24 would be the best method to dewater these solids.

25 There is a problem with trying to dewater

1 those liquid solids and turn them into cake because they
2 have already had a polymerizing agent added in order to
3 thicken them up as a liquid. And once you've added that
4 polymer, it becomes very difficult to go back and add
5 another polymer that will allow you to -- in layman's
6 terms, to squeeze the water out of it and make a cake.
7 So we had to look at what would be the polymer
8 requirement for that, what would be the best type of
9 mechanical pressing equipment to use in that dewatering
10 process because there are a number of different types of
11 presses and all react differently to various types of
12 sludge or solids.

13 Once we had reviewed the literature and
14 various reports and studies on different types of
15 equipment, we then had narrowed it down to appearing
16 that the rotary press would be the best application or
17 the most economical application for us and that would
18 work. And so at that time, we needed to talk with some
19 other folks who were using that type of processing and
20 get their input as to how that was working. We had to
21 bring in belt presses -- or rotary presses from a couple
22 of different companies -- or two primary companies that
23 supply those and do some pilot testing to make sure that
24 that would indeed work.

25 At that point, based on successful pilot

1 testing, we needed to procure, preferably, a used rotary
2 press. We put together -- had to put together some
3 specifications and asked both companies to provide
4 proposals on -- on selling us one of their demo units,
5 which they both indicated they were willing to
6 entertain. Once we got their proposals in, evaluated
7 them and made the purchase, the company had to do some
8 work to get that Unit into topnotch shape because we
9 didn't want to take something that was going to need
10 further repairs or overhaul. And so by the time that we
11 received that unit in, it was late June, early July of
12 2014.

13 We made the decision to start at Lower Reedy
14 and then move to Mauldin because this polymerized liquid
15 that was in the storage tanks continues to age and
16 becomes increasingly more difficult to dewater. And we
17 knew that we could get finished with Lower Reedy faster
18 than we could get through with Mauldin Road. So it made
19 sense, from an operational perspective, to get
20 Lower Reedy out of the way and then to move to
21 Mauldin Road to come complete that process.

22 One thing I didn't mention to you, is that we
23 asked the contractor for the Pelham job, who was
24 determined to have had the best performance-based
25 proposal at that time, to propose to us what it

1 would -- what they would charge us to do Lower Reedy and
2 Mauldin Road. And it was considerably less expensive,
3 even with the extended time frame, for us to do that job
4 in-house. And so that's how this actual timeline for
5 the remediation at Lower Reedy evolved and came about.

6 Q. So what I'm hearing you say is there was no
7 overlap between the three plants? You would finish one
8 plant, then move to the next and then move to the next;
9 is that right?

10 A. In terms of Mauldin and Pelham, yes. And then
11 the fact that there was no overlap between Pelham
12 and -- I'm sorry. There was no overlap between Mauldin
13 and Lower Reedy because of the process that was just
14 described. And then there was no overlap between Pelham
15 and -- and Lower Reedy because of trying to go through
16 the process of determining the most appropriate and most
17 economical way to do the dewatering of the other two
18 plants.

19 Q. You described earlier that there was confusion
20 between DHEC and EPA. Can you elaborate --

21 A. Yes.

22 Q. -- on that for me?

23 A. Certainly. When we notified DHEC that we had
24 discovered PCBs in our biosolids that exceeded the 50
25 parts per million threshold, DHEC, from all appearances,

1 didn't -- or wasn't cognizant of the fact that they
2 issued a permit that -- that says we can land apply up
3 to or less than 50 parts per million of PCBs.
4 They -- they went into what seemed like a panic
5 and -- and said immediately to cease land application of
6 anything with PCBs in it. Somebody apparently made a
7 mistake. And EPA, on the other hand, have two groups of
8 folks there, one is the -- the TSCA group, Toxics
9 Substances Control Act group, that was saying that
10 your -- your threshold is 1 part per million, not -- not
11 50. We determined, through talking with the engineering
12 consultants and our legal folks, that that -- that
13 applied to, for example, industrial spill sites and
14 didn't apply to us as a utility that was impacted
15 by -- by a criminal event. You have the 503 group of
16 EPA, which regulates biosolids, that -- that had to
17 correct the other group and say that, you know,
18 the -- the -- the limits that are set for biosolids is
19 50, not -- not 1 part. So there was even some confusion
20 at the EPA level as well as DHEC.

21 Q. And how, ultimately, was -- and what was the
22 final determination? Who won out?

23 A. Well, the final determination was -- was that,
24 in essence, the TSCA regs did not apply in this case.
25 The biosolids regs applied. From a DHEC perspective,

1 they issued an emergency regulation indicating
2 that -- that no PCBs could be applied to land, and
3 then -- then eventually they issued a revised regulation
4 stipulating a lower limit. And that if we exceeded that
5 limit in land application, we would need to notify them
6 and wait for their response for action. But their
7 action had to be consistent with what was in the permit.

8 Q. Was the suspension of the land application
9 program in response to that emergency regulation?

10 A. And again, the land application program was
11 only suspended where PCBs were involved. But that
12 suspension came initially from our board and then a
13 month or so later was followed up on by DHEC with their
14 emergency regulation to the same restriction.

15 Q. And just so I make sure certain I understand
16 what you just said, so the land application program
17 continued at the facilities other than Pelham,
18 Mauldin Road and Lower Reedy?

19 A. Yes, sir.

20 Q. Also, following up on what you just said, so
21 the board suspension of the land application program at
22 those three facilities predated the emergency
23 application?

24 A. It did.

25 Q. But ultimately, a suspension was required by

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1 that emergency application?

2 A. It was.

3 Q. I mean, regulation?

4 A. Regulation.

5 Q. I'm sorry.

6 A. Yes.

7 Q. Okay. So at that point, you would have had to
8 suspend it anyway even if the board hadn't done it
9 voluntarily --

10 A. Yes, sir.

11 Q. -- in order to comply with that regulation?

12 A. Yes, sir, for a period of time until the
13 regulation was lifted in favor of a revised regulation.

14 Q. So the emergency regulation would have been in
15 place for what, six months?

16 A. I don't recall the exact period of time
17 without going back and looking, but it was certainly a
18 temporary period along that line.

19 Q. Did you personally have dealings with EPA and
20 DHEC?

21 A. Only from the standpoint of participating in
22 group meetings.

23 Q. I know Mr. James was designated for those
24 topics and that's why I -- I was -- I was curious as to
25 what your involvement was.

1 MR. STILWELL: I don't have any problem with
2 you asking him about those either. He probably has
3 better recall than some -- he was higher in the
4 organization than Joel was at that time.

5 BY MR. LINDEMANN:

6 Q. So you said there were -- as far as your
7 participation, it was group meetings? You didn't have
8 any like individual contact with like, for instance,
9 Ken Sheely with EPA?

10 A. Not -- not at that time in relation to the
11 facilities.

12 Q. Let me follow up on something else you said
13 earlier. You said part of the process, in determining
14 the best time frames and the best approach, that there
15 was discussions with others. And I was just curious.
16 Obviously, we know that Spartanburg Sanitary Sewer
17 District was going through a similar situation. Was
18 there any discussions or collaboration with your
19 counterparts with that utility?

20 A. There were.

21 Q. And who is your counterpart at that utility --
22 or who was it at that time?

23 A. There were -- there were several people from
24 that utility that were involved in our weekly -- or some
25 other basis of conference calls. It would have included

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1 time, which seemed very short, to get that material out
2 of the tanks and get them decontaminated, which would be
3 consistent with TSCA. So it seemed like they
4 were -- were trying to move much faster.

5 Q. And obviously, there's a specialized landfill.
6 I believe it's Emelle, Alabama; is that correct?

7 A. It is.

8 Q. From my review of the materials, or the case,
9 it looks like as if none of the biosolids in the
10 Lower Richland (sic) or the Mauldin Road facilities had
11 to be transferred or transported to that facility; is
12 that correct?

13 A. That is correct.

14 Q. You use local landfills for those?

15 A. Yes, sir.

16 Q. And that's because the PCB levels were
17 substantially less than the 50 parts per million?

18 A. They were below the 50 parts per million
19 threshold.

20 Q. How about Pelham? Were the biosolids there,
21 any of them, transported to Emelle, Alabama?

22 A. Yes, sir. I believe all of the stored
23 biosolids were transported to Emelle.

24 Q. Were local landfills used for any portions of
25 the remediation process at Pelham?

1 A. Yes, sir. In cleaning out of the digester,
2 the plant equalization tank and -- and possibly other
3 vessels where the PCBs were detected at lower than the
4 50 part threshold -- that material was taken to local
5 landfills.

6 Q. Just to jump to another subject right now,
7 that we're having a little bit of trouble with, is
8 understanding the chemicals that were used in the
9 dewatering process.

10 A. Okay.

11 Q. And you already touched on a particular
12 polymer that's normally used, as I understand it, when
13 the sludge is transferred from the digesters to the
14 holding tanks, that there's polymer that's added to the
15 sludge; is that correct?

16 A. Yes.

17 Q. And is that done -- how is that polymer added?
18 Is it added actually within the holding tanks
19 themselves, or is it a second -- is there an
20 intermediary process?

21 A. There's an intermediary process, that.
22 Polymer is -- is added in the -- within the thickening
23 process. The thickener being, in this case, similar to
24 a belt press except that it does not operate under
25 pressure to squeeze the liquid out. It simply blends

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1 (Defendant's Exhibit No. 10, 6-30-16 Pivot
2 PCB Expense Report, was marked for
3 identification.)

4 BY MR. LINDEMANN:

5 Q. Tell me, have you seen Exhibit Number 10,
6 before?

7 A. I have seen an exhibit similar to this, if not
8 this one.

9 Q. Did you personally have any involvement in
10 essentially keeping up with the expenses related to the
11 PCB decontamination?

12 A. Between those under me and myself, yes.

13 Q. Was there a particular person or persons who
14 were tasked with this function?

15 A. Primarily, it was the manager that was
16 responsible for the particular area, for instance, the
17 treatment facilities manager or the biosolids manager or
18 the process manager, depending on purchases that were
19 under their purview at the time.

20 Q. About how many different people are we talking
21 about, then?

22 A. Primarily five, in addition to the office
23 personnel who were compiling the information.

24 Q. Who would those five be?

25 A. That would be Kevin James, who was responsible

1 for the Enoree Basin treatment facilities -- or Pelham
2 initially, and later also for Lower Reedy and Mauldin.
3 Adger Turner, who was initially the manager for the
4 facilities in the Reedy and Saluda Basin until he
5 retired, and we consolidated that into one position with
6 Kevin over it. Joey Collins, who is the biosolids
7 manager. Jimmy Hunsinger, who is the maintenance
8 manager -- maintenance support group manager, and
9 Randy Boyette, who at the time was the senior process
10 control officer.

11 Q. Joey Collins, is he still employed?

12 A. He is.

13 Q. Jimmy Hunsinger, is he still employed?

14 A. He is retired.

15 Q. How about Randy Boyette?

16 A. Randy is still employed.

17 Q. Was there a particular person who was tasked
18 with compiling all this information from those sources?

19 A. Yes. Patty Buchanan who is the office -- or
20 operations office supervisor -- or was at the time.

21 Q. Is she still employed?

22 A. She is.

23 Q. And were these summaries, for lack of a better
24 word -- is that a fair characterization, that this is an
25 expense summary?

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1 A. It does.

2 Q. And one of the questions I have is you've
3 described work that was done essentially starting in
4 2013 into 2014, and even with Mauldin Road then into
5 2015. Is there any reason why there would be expenses
6 incurred on the PCB contamination beyond the completion
7 of the work at Mauldin Road?

8 A. There could be from the perspective of when
9 invoices were submitted and paid after they were QC'd
10 and scrubbed. There could have been, and likely was,
11 some additional work beyond remediating what was in the
12 plant such as followup, cleaning and decontamination of
13 the frac tanks and pumps and filters that were being
14 used before they could go back to the -- to the rental
15 vendors because we can't return the equipment in a
16 contaminated status. They won't take it back until they
17 can verify that it's been cleaned and tested and
18 verified as clean and non-contaminated.

19 So there very well may have been some invoices
20 that came in afterwards. And certainly, there were
21 detections of PCBs in the collection system that
22 discussions with EPA and the associated utilities
23 that -- from whose system that came into us, with what
24 the proper method was for remediating, that that
25 certainly would have been done after that date.

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1 Q. Are you aware of subsequent claims being made
2 to the Insurance Reserve Fund for any additional PCB
3 detections?

4 A. I am aware, from my understanding, that
5 additional reports or notifications were made to the IRF
6 for other PCB detections in the collection system, but I
7 was not directly involved in reporting or corresponding
8 with IRF.

9 Q. Who was tasked with that responsibility?

10 A. That would have been Patricia Dennis.

11 Q. And her position's comptroller?

12 A. Yes, it is.

13 Q. As comptroller, is she the person that handles
14 insurance matters for ReWa?

15 A. She and/or her staff, yes.

16 Q. I just wanted to ask you about the -- these
17 are broken out, obviously, into seven different subject
18 matters. The last three I get. They're broken out
19 between three different facilities that we've been
20 talking about. The others I wanted to see if you could
21 elaborate on those: administration, laboratory
22 pretreatment and solids management. And they are all
23 described over on the right-hand side as overhead. Can
24 you explain those categories for me?

25 A. Well, obviously, she said the lower three are

1 expenses specific to each plant. From a cost accounting
2 standpoint, we may not necessarily track the solids
3 management by plant but rather as a separate department
4 matter, separate function. Same for pretreatment that
5 serves all of the facilities, laboratory as well. And
6 so those expenses are allocated to each plant, if you're
7 trying to go back and look at how those costs go to each
8 plant. Although, we don't typically track them
9 separately, our records do allow us to go back and do an
10 allocation, if necessary, to each facility.

11 So all of these expenses and overhead were as
12 a result of PCB at one plant, or another or possibly in
13 the collection system, or -- or with the sources, such
14 as the grease interceptors for restaurants and other
15 food service institutions, where primarily it was
16 identified that PCBs -- or was the source of PCB
17 contamination. Not causing it themselves but where the
18 person or company that was found to be guilty or
19 somewhat guilty, was dumping their material.

20 Q. So what falls within the category of
21 pretreatment?

22 A. So what the pretreatment group covers is the
23 receiving and testing of hauled waste, which would be
24 septic tank waste or food service establishments grease
25 interceptor waste, which we call FOG, fat, soils and

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1 greases. So there's sampling costs. There are
2 management costs of that as a result of PCBs as well as
3 the oversight and regulation of those grease
4 interceptors at the -- at the food service
5 establishments in terms of doing inspection and
6 enforcement of the regulations to prevent further
7 contamination.

8 Q. The grease program, I've seen that as FOG.

9 A. Yes. Fats, soils and greases.

10 Q. Fats, soils and greases. As I understand it,
11 the only facility of these three that accepts FOG and
12 septage was Mauldin Road; is that not correct?

13 A. That is correct. You are correct.

14 Q. Okay. So why wouldn't the expenses for
15 pretreatment, then, be tied to specifically the
16 Mauldin Road?

17 A. Because there are a number of food service
18 establishments or institutions, numbering in excess of a
19 thousand, within our service area that go -- that
20 their -- that empty into the collection system that goes
21 to various of these plants as well as others. And so
22 part of pretreatment's expense was administering the
23 testing and regulatory program for all those grease
24 interceptors as well as potentially testing entries,
25 that may be discharging into the system, to try to

- 1 identify or rule out where the PCB contamination was
2 coming from.

3 Q. Also, as far as the category for solids
4 management, what is inclusive in that? Is that the land
5 application program?

6 A. That is the land application program as well
7 as hauling the -- or transporting the cake that is
8 produced to the landfills.

9 Q. There's a reference on the left column. I see
10 R&M equipment and then one reference to R&M electrical.
11 What does "R&M" stand for?

12 A. Repair and maintenance.

13 Q. So when there's a reference to repair and
14 maintenance equipment, explain that to me. What does
15 that include?

16 A. Well, that would typically be anything that is
17 not electrical. That would be mechanical. That might
18 include anything from -- from pumps to piping to
19 sampling equipment to belt presses for the mechanical
20 portion of them, anything that is not electrical. We
21 just do a separate tracking of anything that is deemed
22 electrical.

23 Q. And so then electrical would be any type of
24 equipment that is purely electrical in nature, or
25 describe that for me.

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1 then it's my understanding that our folks have gone back
2 and -- and reviewed these invoices and QC'd and scrubbed
3 further to pull out anything that might have been
4 misclassified to this project and perhaps should have
5 been classified elsewhere.

6 Q. Is Exhibit Number 11 the current up-to-date
7 summary of expenses that's being sought from the
8 Insurance Reserve Fund?

9 A. I would say that it's certainly more up to
10 date than Exhibit 10. It is the most recent
11 classification that I have been provided.

12 Q. Are you aware of any expenses, after
13 June 30th, 2016, that are being sought in this
14 litigation?

15 A. I don't know whether there are other expenses
16 that -- that have been incorporated into what's being
17 sought beyond this. Patricia Dennis might be the
18 person --

19 MR. STILWELL: Can we go off the record for a
20 minute?

21 (Off-the-record discussion.)

22 MR. LINDEMANN: Back on the record.

23 BY MR. LINDEMANN:

24 Q. I think we were actually in the middle of a
25 response when we took that short break, and Mr. Stilwell

1 provided us some clarification, but I do want to still
2 follow through with your understanding. Again, looking
3 at this Exhibit Number 11, is it your understanding that
4 this is the expenses through the end of June 2016?

5 A. Yes, to include anything after that that may
6 have been accrued back to this period because of
7 invoices coming in after the fact, of the work actually
8 being done prior to June 30th.

9 Q. Right. So there may have been some invoices
10 for work that was done through June 30th, 2016; is that
11 what you're saying?

12 A. Yes, that's correct.

13 Q. Are you aware of any work related to the PCB
14 contamination that was done after June 30th, 2016?

15 A. If there was, it would have been related to
16 collection system findings of PCB, I believe.

17 Q. Are you aware of any collection system
18 findings that occurred after that date?

19 A. I'd have to go back and look to see when we
20 found the most recent detection, which would have been
21 on the Mauldin Road, the Reedy River trunk line.

22 Q. And tell me -- I guess you briefly touched on
23 that earlier, tell me, in a little bit more detail, what
24 that detection was and where it was.

25 A. So within the approximately one mile of pipe

1 upstream from the plant, we were -- were still
2 occasionally getting a small detect on the influent at
3 Mauldin Road during heavy rains. And so we --

4 Q. Do you recall what the sampling showed?

5 A. Very low numbers.

6 Q. Under 1 part per million?

7 A. Down in that range.

8 Q. Okay.

9 A. So we set out to identify whether there was a
10 point in our lines, prior to the plant, that we might
11 still have some residual material with PCBs in it. We
12 tested all the way to the furthest upstream location
13 where PCBs had been discovered in a grease receptor.
14 And the only place --

15 Q. Where was that?

16 A. The Peddler Steakhouse.

17 Q. Okay.

18 A. So doing some purpose of sampling at points
19 likely to have settled material, we -- the only place
20 that we found anything was within the first mile or so
21 of pipe above the plant, which would have been the
22 largest segment of line. And so we proceeded to get
23 that material out.

24 Q. Is that segment of line outside the boundaries
25 of the Mauldin Road treatment plant?

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1 Patricia Dennis and/or her staff.

2 Q. Okay, fair enough. Was a contractor retained
3 to do that remedial work?

4 A. There were.

5 Q. And more than one?

6 A. Only one.

7 Q. Only one. And who was that contractor?

8 A. I forget which contractor that was. I'd have
9 to look back and see.

10 Q. Do you know whether those expenses are
11 included in Exhibit Number 11?

12 A. I do not.

13 Q. If they were, how would they be listed? Would
14 they be listed under a particular plant or -- I guess,
15 which of these subcategories would they be listed under?

16 A. It's possible they may be listed under the
17 Mauldin Road Plant, given that that collection system is
18 part of that overall plant system.

19 Q. Over the course of the period of time where
20 this contamination existed, essentially from
21 January 2013, through let's say the end of June 2016,
22 were there any other areas where remedial work had to be
23 done to actually collection lines?

24 A. Yes.

25 Q. Can you estimate -- or can you tell me how

1 many different areas required remedial work?

2 A. There was one other overall area, and that was
3 on the Enoree River trunk line as well as Greer CPW's
4 lines that flowed into that trunk line. The Enoree
5 trunk lines flows from the upper area, or essentially
6 the Taylors area of our service area, down to the Pelham
7 treatment plant.

8 Q. Greer has their own system; is that right?

9 A. They do.

10 Q. Okay. Was that part of their system or part
11 of your system?

12 A. The decontamination in this particular case,
13 or at least part of the contamination, originated from
14 an illegal discharge into one or more grease
15 interceptors that emptied into their system, and from
16 there came into our system.

17 Q. Does Greer have their own wastewater treatment
18 plants?

19 A. They do but not on that portion of their
20 system. It goes into our system and into our plants.

21 Q. And how is that -- is there a memorandum of
22 agreement or a contract between the two entities?

23 A. There -- there is a sort of use ordinance that
24 governs those connections to the system.

25 Q. Was Greer responsible for the cleanup of that

1 PCB contamination since it originated in their system?

2 A. They -- they were certainly responsible for
3 the cleanup on their portion of the system. And whether
4 it could be argued that they are responsible for the
5 cleanup of what portion of the impact that they had upon
6 us, would be a legal question that I could not answer.

7 Q. Did ReWa ever pursue a legal claim against
8 Greer?

9 A. Not to my knowledge.

10 Q. Okay. And I'm not limiting that to a lawsuit.
11 Did Greer ever -- did ReWa ever make a claim for
12 reimbursement to Greer?

13 A. We did.

14 Q. You did?

15 A. Yes.

16 Q. And what came of that?

17 A. There was an agreement reached that we would
18 work together with each other to clean the -- the Greer
19 lines, as well as our line, all the way down to our
20 Pelham treatment facility.

21 Q. Is that what occurred?

22 A. Yes.

23 Q. And by "work together," does that mean share
24 the expense?

25 A. Not in that specific term but more in -- in

1 both contributing to the decon services and then with
2 each bearing their own expense for anything that was
3 taken directly out of their part of the system for
4 disposal of that material.

5 Q. Is that agreement memorialized in writing in
6 some way?

7 A. It is memorialized, as I recall, to some
8 extent in a letter or memo of understanding between the
9 two utilities.

10 Q. And Greer's utility is called what?

11 A. Greer CPW.

12 Q. CPW, okay. What does "CPW" stand for?

13 A. Commission of Public Works.

14 Q. And that was a portion of the line -- describe
15 that line for me. How would I refer to that line that
16 was --

17 A. Enoree trunk line.

18 Q. Enoree trunk line. Do you know whether a
19 claim was made to the Insurance Reserve Fund regarding
20 the contamination found in the Enoree trunk line?

21 A. I don't know for sure. I believe you'd have
22 to ask either Patricia or the IRF.

23 Q. As far as ReWa's portion of the cleanup for
24 that, did you retain contractors?

25 A. If we did, it would have only been for the

1 disposal of the material that we took out of the line.
2 And I believe that we actually handled all of that, as
3 best I can remember.

4 Q. Are those expenses for the remediation of the
5 Enoree trunk line included in Exhibit Number 11?

6 A. I am not sure whether they are.

7 Q. Who would be a person knowledgeable to be able
8 to tell me that?

9 A. I think that -- that either Kevin or I, either
10 one, could go back and look and make that determination
11 from -- from looking at the supporting documents for
12 these numbers.

13 Q. And how would you go about doing that? What
14 would you look for?

15 A. We would go back and look at the -- at what
16 comprises these numbers specifically. And I will say
17 that -- that since we don't seem to have any internal
18 labor included in these numbers -- and this is primarily
19 our internal labor and equipment that was used -- my
20 belief would be that those costs are not included in
21 here.

22 Q. How long a stretch of that trunk line are we
23 talking about?

24 A. I believe there's -- there's approximately
25 8 miles.

1 Q. That was cleaned?

2 A. Yes.

3 Q. And what was the time frame for that?

4 A. Again, I'd have to go back and look at the
5 letter of understanding or the work records, but
6 I'm -- I'm thinking that that was in the time frame of
7 late 2015.

8 Q. Any other collection lines that had to be
9 cleaned and are included in the expenses being sought
10 from the Insurance Reserve Fund?

11 A. Not to my recollection.

12 Q. So you have just that segment of Mauldin Road
13 pipes and the Enoree trunk line?

14 A. Correct.

15 Q. Okay. Looking again at Exhibit Number 10,
16 there to your left, there's an entry there for insurance
17 that appears to have been removed from Exhibit
18 Number 11. Do you know what that entry was for,
19 \$62,000, what that was for?

20 A. I do not.

21 Q. It looks like the first entry there that is
22 marked as "fixed assets" with a -- I guess, that
23 reflects the change from the entire price of the rotary
24 press to the \$72,000 you testified to earlier; is that
25 right?

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1 time right now to do it. You don't know off the top of
2 your head what the difference of \$66,000 is?

3 A. I do not.

4 Q. Okay.

5 MR. STILWELL: I'm fairly sure that's the
6 answer.

7 (Mr. Stilwell hands note to Mr. Lindemann.)

8 MR. STILWELL: It's in there.

9 BY MR. LINDEMANN:

10 Q. All right. Looking lastly at Pelham.

11 A. Okay.

12 Q. It looks like those numbers are different from
13 Exhibit 10 to Exhibit 11?

14 A. Yes.

15 Q. It looks like it's gone down somewhat?

16 A. Yes.

17 Q. Do you know what the difference is -- what
18 accounts for the difference there?

19 A. I do recall that there was one big change;
20 although, I don't recall the dollar amount where we
21 discovered that some pumps and pipings -- large pumps
22 and pipings, that had been rented for a project separate
23 from the PCB project but occurring at the same time
24 frame, had gotten misclassified, and we pulled those
25 out. And it was a fairly large expense. But it also

1 appears that there were some chemicals that should have
2 been charged to the normal plant process as opposed to
3 the PCB project.

4 Q. Okay. It looks like a fairly significant
5 reduction in the R&M equipment; is that right? It looks
6 like it went from 158,000 to --

7 A. It does.

8 Q. -- 21,000?

9 A. It does.

10 Q. And off the top of your head, do you know what
11 that difference is?

12 A. I don't recall specifically what that is. For
13 the outside technical, that would have been primarily
14 the pumps that I was mentioning. But on the R&M
15 equipment, other than saying there were obviously some
16 expenses that our folks found in the QC process that
17 needed to be reallocated.

18 Q. Hang on a second. All right. I'm going to
19 ask you about some of the specific vendors and expenses.
20 We talked earlier about the different landfills, local
21 versus using Emelle, Alabama.

22 A. Yes, sir.

23 Q. Would the disposals at Emelle, Alabama -- was
24 that included as far as Waste Management's expenses? I
25 mean, it was paid directly to Waste Management?

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1 identification.)

2 BY MR. LINDEMANN:

3 Q. There's the exhibit right there. There
4 was -- and maybe I don't have the invoice attached here.
5 But there was an invoice for \$4,810 dated March 6th,
6 2015, in the documents that were produced a couple of
7 weeks ago. And we believe that the invoices for this
8 particular proposal involved engineering services for
9 recycle flows.

10 A. Yes.

11 Q. And I was trying to get an understanding of
12 what that means. What are recycle flows, and why was
13 this work needed as part of the PCB remediation?

14 A. Well, first, I'll explain recycle flows. When
15 solids are dewatered, either by thickening or by making
16 cake, there's that filtrate, or by whatever term, that
17 comes out of that. And in some cases, that filtrate
18 will still have some amount of solids in it. And those
19 flows have to be sent back to the head of the plant to
20 be treated through the plant, as you would normally,
21 anything coming into the plant. There are also some
22 intermittent, if you will, recycle flows of the
23 treatment process, which, because of the nature of the
24 biology, require some percentage of the flow going
25 through the plant to be recycled back into a prior

1 portion of the -- of the process to sustain the
2 necessary food source and other nutrients required for
3 the biological life.

4 Also, if -- if certain vessels have to be
5 periodically drained, or like the digesters to decant
6 them or holding tanks to take some water off of those,
7 that has to go back to the head of the plant. So all of
8 those combined are recycle flows. And so the PCB
9 allowance in the plant discharge to the -- to the river
10 is regulated down to an extremely small number that
11 can't even be measured. It has to be calculated based
12 on the presence of -- of PCB or the allowable amount of
13 PCB in other portions of the plant into which that
14 recycle flow plays a factor. And so it's somewhat of a
15 complicated calculation. And so in order to determine
16 what PCBs the plant could deal with processing at a
17 certain point in the plant, to make sure that we were
18 staying in compliance with the calculated discharge into
19 the river, we needed to know what those numbers could be
20 at the various locations or particularly, in this case,
21 in the filtrate from the presses. So that's what
22 Black & Veatch was hired to do.

23 Q. And so did they make a determination -- and so
24 what I'm understanding you to say is you were looking
25 for the, essentially, maximum amount of PCBs that could

1 still be in the filtrate that would then be
2 decontaminated through your normal wastewater process
3 after it was reintroduced at the head of the plant?

4 A. Right.

5 Q. Did I say that correctly?

6 A. I think you said it just about as correctly as
7 you could say it.

8 Q. Well, I appreciate that. I'm starting to
9 learn this wastewater stuff. So what was the
10 determination made? What was the level -- maximum
11 concentration of PCBs that could be in the filtrate that
12 could be then decontaminated through the normal
13 wastewater process?

14 A. I don't have the number in front of me as to
15 what that was determined to be for the Pelham facility.

16 Q. This whole concept of filtrate -- I mean, the
17 normal process -- and by "normal," I mean, prior to any
18 PCB contamination, a normal operation of these three
19 plants would result in filtrate that had to be
20 reintroduced at the head of the system, correct?

21 A. Yes, sir, that is correct.

22 Q. That's part of the normal handling of
23 biosolids?

24 A. It is.

25 Q. And it's a normal handling of the biosolids

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1 additional press from them to expedite the processing of
2 storage solids at the Mauldin Road site. It is possible
3 that Bionomics may have been the vendor that was
4 cleaning the Mauldin Road section of the line, but I
5 can't verify that.

6 Q. There is a -- that was going to be part of the
7 question. There is also, apparently, a purchase
8 throughout Bionomics of a Morgan 30 Foot Conveyor. Are
9 you familiar with that?

10 A. Yes, I am.

11 Q. And that was for the Mauldin Road facility?

12 A. That -- that was used for the loading of the
13 cake coming off of the rotary press at both the
14 Lower Reedy and Mauldin Road facility.

15 Q. And so was that conveyor purchased for ReWa,
16 or was it -- they were charging ReWa for their purchase
17 of that equipment?

18 A. It was a conveyor that they had as a rental
19 unit. And we initially rented it from them and then
20 recognized that it would be cheaper to purchase the unit
21 rather than continue to rent it from them and especially
22 with them crediting rental toward the purchase.

23 Q. So that conveyor was, ultimately, purchased by
24 ReWa?

25 A. Yes.

1 Q. Is that still in ReWa's possession?

2 A. It is.

3 Q. Is it still used by ReWa?

4 A. It is not.

5 Q. Where is it located?

6 A. To the best of my knowledge, it is at the

7 Mauldin Road facility.

8 Q. And it's not used for any reason?

9 A. It is not.

10 Q. Have there been attempts to sell it?

11 A. Not at this point.

12 Q. Do you have an understanding of what its value
13 is?

14 A. I do not know.

15 Q. Bear with me one second.

16 A. Okay.

17 MR. LINDEMANN: Can you mark that?

18 (Defendant's Exhibit No. 13, 7-28-14 bill
19 from Blanchard Machinery Company to Renewable
20 Water Resources, was marked for
21 identification.)

22 BY MR. LINDEMANN:

23 Q. Let me show you what's been marked as
24 Exhibit 13.

25 A. Okay.

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1 Q. But A&D is, obviously, something totally
2 separate?

3 A. They are.

4 Q. What kind of vendor are they? A&D?

5 A. They do environmental remediation work.

6 Q. And did they perform work -- remediation work
7 as part of ReWa's PCB remediation?

8 A. They did.

9 Q. At what facilities?

10 A. I know they performed at Mauldin Road. They
11 may have performed at Lower Reedy as well.

12 Q. Now, this is -- what I've handed you is
13 Exhibit Number 15. What is this?

14 A. So this is a proposal from A&D Environmental
15 to provide services to clean out the frac tanks that
16 were being used as part of the mitigation process for
17 the hauled waste, the FOG and the septic -- septage
18 hauled waste. Those -- those tanks were used as staging
19 tanks for the hot private haulers to discharge into.
20 And then we would perform testing on those tanks and
21 wait until it was verified they were clear of PCBs
22 before we discharged them into the respective process of
23 the plant.

24 But those -- as those haulers come in and
25 discharge their loads, they have some -- sometimes have

1 heavy solids in them or -- or rags and other debris that
2 have not biodegraded and they start settling on the
3 bottom of the tank and take away space in the tank and
4 clogging lines. And so it was necessary, periodically,
5 to have someone to come in and do a confined space entry
6 into those tanks, get that material out and clean out
7 the tank so we could put it back into service. So
8 that's -- that's what this proposal involves.

9 Q. Is this something that was done in the normal
10 course of business for ReWa?

11 A. No, it was not.

12 Q. And how is this related to the PCB
13 contamination?

14 A. So again, for PCB contamination, once we
15 discovered that the -- that one of the sources of PCBs
16 was from the septage or FOG haulers, we found it
17 appropriate to, rather than let them bring their loads
18 in and discharge directly into the plant, that we needed
19 to take precautions and separate that material, put it
20 into holding tanks, which were nonexistent at the time.

21 So we brought in frac tanks to set that system
22 up so they could discharge into these holding or frac
23 tanks, and then we sampled from each tanker. And then
24 once the frac tank was full, we would sample it. If the
25 frac tank was positive for PCBs, we would test the

1 individual samples that we had collected from the
2 tankers to determine who brought us that load in. And
3 then that -- that hauler was held financially
4 responsible for the associated cleanup costs.

5 Q. They're described in this proposal as non-PCB
6 septic frac tanks and non-PCB grease frac tanks. I'm
7 just trying to get an understanding of why something
8 that's not PCB related would be claimed as an expense
9 for the Insurance Reserve Fund.

10 A. I believe what A&D has indicated here is that
11 as long as there has not been a positive sample from
12 that tank, that they -- this is what they would charge
13 to come in and clean it out. However, if we had -- if
14 and when we did have a positive hit on a tank, at that
15 point that tank had to be remediated as a contaminated
16 tank, and there was a separate cost or procedure
17 involved with that. So what A&D is specifying here is
18 that: As long as your tank is not one with a positive
19 hit for PCBs, this is what we will charge you to come in
20 and do the cleanout of those tanks.

21 Q. This process that you just have described, as
22 to how ReWa is handling septage as well as FOG at the
23 Mauldin Road facility, is that ongoing today?

24 A. It is not.

25 Q. When did that stop?

1 A. That stopped, give or take, a year or so ago,
2 plus or minus.

3 Q. And why was that ended?

4 A. We stopped that as a result of having put
5 other control measures in place to -- to mitigate the
6 occurrence of any future PCB instances. And when I say
7 "mitigate," prevent. We required that -- that haulers
8 from the grease interceptors or bringing FOG to us --
9 which is the primary source of this -- could only bring
10 material to us from grease interceptors that had been
11 certified by us. Meaning, that the traps or
12 interceptors had to be tested for PCBs. And if they
13 were negative, they had to be locked at that point and
14 the owners are responsible for keeping them locked and
15 overseeing the -- the pumping folks when they come in to
16 pump that material out. So we, essentially, put
17 measures in place to prevent what had been happening
18 before with the -- with someone illicitly putting PCB
19 contaminated material into those vessels.

20 We also, for a period of time, had continued
21 to test all of the loads that were coming in and were
22 not finding any continuing occurrence of PCBs. So
23 looking at the statistical significance of that, it made
24 sense, from a risk management standpoint, that we could
25 go back to our normal method of receiving septage and

1 FOG, that the -- the high risk was no longer there for
2 PCBs and did not justify the continued expense.

3 Q. The testing of grease interceptors, that you
4 just described, is that something that's taken on by
5 ReWa? ReWa does the testing?

6 A. ReWa initially did testing to try to locate
7 the source points of the PCB contamination. Currently,
8 the certification test has -- the cost has to be borne
9 by the grease trap owner.

10 Q. I noticed that there's an individual named at
11 the -- on the third page of Eric McManus. Any relation?

12 A. He is not. He works for this company but is
13 not related.

14 Q. Not cousin Eric?

15 A. No, afraid not.

16 Q. All right.

17 MR. LINDEMANN: Give me one second. I have
18 one more thing I want to go through.

19 (Defendant's Exhibit No. 16, Renewable
20 Water Resources' cost calculations for
21 processing solids for land application, was
22 marked for identification.)

23 BY MR. LINDEMANN:

24 Q. Let me show you a document that's been marked
25 as Defendant's Exhibit 16. I do not have multiple

1 copies of that. Unfortunately, I don't have a copy for
2 myself, either. That's a document that we received from
3 ReWa's lawyer yesterday, and I understand that you were
4 involved in preparing that document; is that correct?

5 A. I provided the calculations and the numbers
6 that were used in the preparations of this document.

7 Yes.

8 Q. Do you know who actually compiled the document
9 itself?

10 A. I -- I do not. I'm assuming that this
11 document was compiled here.

12 Q. By counsel?

13 A. Yes.

14 Q. Okay. But the actual calculations were done
15 by you?

16 A. Yes.

17 Q. Can you walk me through what this document
18 tells us?

19 A. Sure.

20 Q. Do you mind if I look over your shoulder while
21 you're doing it?

22 MS. JOLLY: Do you want my computer? I can
23 pull up my computer.

24 MR. LINDEMANN: I can go down and look over
25 her shoulder.

1 BY MR. LINDEMANN:

2 Q. All right. If you would, just walk us through
3 what it says and what it's intended to explain to us.

4 A. Okay. So give me just a moment to review and
5 just --

6 Q. Take your time.

7 A. -- verify that this shows what I believe it
8 shows. So to start with, it shows our production of
9 dried tons of solids or biosolids at each facility. And
10 dry tons is the normal unit that's used for making an
11 apples to apples comparison as opposed to gallons of
12 solids at a certain percent or wet tons, which is
13 dependent upon what percentage of water is in the cake.
14 So we calculate what is the dry tons, in other words,
15 how much solids is actually in that cake or the -- or
16 the associated liquid.

17 So in the first block there, this is showing
18 that, at Pelham, there were 285 dry tons of solids
19 produced there or stored -- stored material and cleaned
20 out material from -- from -- whether that be digesters
21 or holding tanks. For Lower Reedy and Mauldin Road,
22 that's showing the dry tons that were taken out of those
23 storage or holding tanks.

24 Q. And where does that data come from?

25 A. Okay. So for instance, on Pelham, the

1 notation there indicates from liquid at 3 percent. So
2 we know that the liquid that was processed was -- was at
3 3 percent solids. And so you use the volume of liquid
4 and factor in the 3 percent solids, as compared to the
5 percent solids of the cake that is produced, to come up
6 with the dry tons and, essentially, it's the same way
7 for Lower Reedy and Mauldin.

8 Q. I'm trying to make certain I understand this.
9 So when -- does it say -- does that mean that the cakes
10 were 3 percent liquid?

11 A. Three percent -- they were liquid -- no, no.
12 What that means is that the liquid that were in the
13 storage or holding tanks was 3 percent solids.

14 Q. Oh, okay. And so we're talking about the
15 biosolids as they are --

16 A. Ready for land application.

17 Q. -- ready for land application? It is that
18 liquid?

19 A. Yes.

20 Q. So it's 90 percent -- 97 percent liquid and
21 3 percent solid?

22 A. That's correct.

23 Q. Is that common for the whole concept of a
24 biosolid to be that liquid?

25 A. It is. It would be between -- typically,

1 between 3 and 4 percent. And as they said, in these
2 open tanks you get rainwater in them. It would dilute
3 them down to about 3 percent, so that's typical.

4 Q. And I assume that's after you all have gone
5 through the thickening process?

6 A. It is.

7 Q. So the sludge itself, when it comes out of the
8 digester, is it practically completely liquid?

9 A. It may be about a percent and a half solids.

10 Q. Wow. I had no idea. That's helpful. Thank
11 you.

12 A. Sure.

13 Q. So --

14 MR. STILWELL: It's pretty runny sludge.

15 MR. LINDEMANN: Yeah. I think of sludge as a
16 concept, as a lay person, as being a lot --

17 MR. STILWELL: Thicker.

18 MR. LINDEMANN: -- thicker.

19 BY MR. LINDEMANN:

20 Q. Okay. And what is the significance, then, of
21 doing that calculation? You're trying to determine --

22 A. So what we want to get to is -- what's in the
23 bottom block there is total dry tons -- how many dry
24 tons, total, did we process and what -- what was -- or
25 what is the normal processing costs per dry ton for land

1 application? Because, had we not been hit by PCBs, we
2 would have had to dewater through the -- or thicken
3 through the normal process, and therefore, that -- that
4 is how much it would have cost us to deal with that if
5 we had not been impacted by PCBs.

6 So what we're trying to come to is what is the
7 incremental costs that we had to pay to -- or expense
8 that we incurred to process this material that did have
9 PCBs in it. So the subsequent -- and actually,
10 the -- you have -- you have two different materials,
11 that we've talked about, that -- that were dewatered and
12 either -- or that were sent to the landfills, so you had
13 the stored material that was -- the liquid that was in
14 the tanks to go to land application.

15 Q. Right.

16 A. And then you have the ongoing daily production
17 of the plants, from daily flows, that was being routed
18 to the plant fixed belt presses and dewatered to cake
19 and taken to the landfill. So the middle -- the blocks
20 2, 3 and 4 go through those calculations for the three
21 plants, Pelham, Lower Reedy and Mauldin. It looks like
22 block 5 is totaling those numbers in terms of dry tons.
23 And we'll notice --

24 Q. I just want to ask you about blocks 3, 4 and
25 5. Is there a time frame for those calculations?

1 A. Blocks 3, 4 and 5 or blocks 2, 3 and 4?

2 Q. I'm sorry, 2, 3 and 4. Thank you.

3 A. Okay.

4 Q. Is there a particular time frame that that is
5 the data for?

6 A. Yes. That is the data from the time that we
7 determined that we were hit with PCBs and were able to
8 get the belt presses functioning because there was some
9 delay in that at Mauldin Road and a little bit of delay
10 at Lower Reedy. So once the belt presses were
11 functioning at those plants to handle the daily flows --
12 until such point as we were able to gather enough
13 sampling data to verify that the plant is no longer
14 being impacted by PCBs and there is not likely to be
15 additional PCBs residual in this plant, then we were
16 able to shut that down. So that's for those periods,
17 which, of course, vary by plant.

18 Q. Can you give me the dates of that data?

19 A. I could give you approximate starting dates,
20 but I'd have to go back and look at what the end dates
21 are.

22 Q. I mean, obviously, you pulled this information
23 from a start date to an end date, correct?

24 A. Yes. And so -- so the --

25 Q. Can you get that for us so we know exactly

1 what dates we're talking about?

2 A. Sure.

3 Q. Are they the same for all three plants, or
4 would the start date and end date be different?

5 A. No. They would be different.

6 Q. And they would be different because why?

7 A. Well, with -- well, first of all, the
8 discovery of PCBs at the three plants was different --
9 or at least somewhat different. With Pelham, the belt
10 presses were functional, and we were able to immediately
11 start those up. At Lower Reedy, there was either some
12 work that had to be done to start the presses or shortly
13 after they started them, they experienced some
14 mechanical problems, had to order some parts, and so
15 there's a period of time that the presses were not
16 operational at Lower Reedy.

17 Q. Weren't those presses part of your normal
18 process, though, prior to the PCB contamination?

19 A. They had become not a part of the normal
20 process because we were able to manage our logistics so
21 that -- in concert with the rain patterns and the amount
22 of available farms, which we had grown significantly,
23 that we were just not having to run belt presses. And
24 it didn't appear that there was going to be future need
25 for belt presses, not a priority situation anyway.

1 There might be something that you recognize that: Okay,
2 we've got a wet spring forecast. We're going to make
3 sure the presses were operational.

4 Q. Are you saying a hundred percent of the sludge
5 coming out of the digesters were going into the land
6 application program?

7 A. Essentially so, yes.

8 Q. And that was at Lower Reedy?

9 A. That was at Lower Reedy, Pelham and Mauldin.
10 Mauldin for sure. Lower Reedy and Pelham might have
11 occasionally run their presses if we were in a wet
12 weather situation in order that more of Mauldin and
13 other plants could go out because their presses were a
14 little bit more reliable.

15 Q. If I wanted to verify what you're telling
16 me --

17 A. Um-hum.

18 Q. -- would an appropriate place to look be the
19 ReWa's landfill invoices?

20 A. I don't know if the landfill invoices would
21 show you which plant that that material was coming from.
22 But in the plant process data, or in the biosolids
23 processing and disposal data, that would show from which
24 plant that the material came as either liquid or belt
25 press cake and at what periods of time.

1 Q. So say that for me one more time. So this
2 would be data generated by ReWa?

3 A. Yes. So the plant process data would
4 indicate, for any specific period of time, whether the
5 belt presses were being utilized or not. And also the
6 biosolids department data would indicate, from this
7 particular plant, we hauled X amount of wet tons of cake
8 to the landfill versus we hauled X number of gallons out
9 for -- for land application.

10 Q. Now, the landfill invoices, would they
11 reflect -- I have not looked at a landfill invoice, but
12 would it reflect what kind of materials coming into the
13 landfill?

14 A. Well, it would. Only the biosolids cake go to
15 the landfill, but then we also --

16 Q. Well, grit goes to the landfill.

17 A. I was going to say, we also haul grit and
18 screenings, so typically, it will show the difference on
19 that unless a particular landfills allows the two to be
20 mixed, and then it may not show the difference.

21 Q. And you don't know, as you sit here today, how
22 that's reflected on landfill invoices, typically?

23 A. I'm not positive. I've seen them, but I just
24 don't remember.

25 Q. We have not asked for them or received them,

1 but do you maintain landfill invoices for prior to 2013?

2 A. I'm not sure what period --

3 Q. That's the relevant time period.

4 A. Okay. I'm not sure what period we're required

5 to retain them, but we do maintain them for some period

6 of time.

7 Q. All right. I didn't mean to interrupt your

8 explanation.

9 A. Oh, no.

10 Q. So basically, if we request it, you can get us

11 the time frames for the data that was collected for the

12 second, third and fourth block?

13 A. Yes.

14 (This page contains requested

15 information.)

16 BY MR. LINDEMANN:

17 Q. Okay. And then the fifth block is basically

18 the sum of the previous three; is that correct?

19 A. In terms of dry tons, yes.

20 Q. All right. So take me to the next block.

21 What does that show?

22 A. Okay. So the final block is showing our total

23 dry tons process from the number directly above that.

24 And then it is showing our -- what is our normal

25 processing costs per dry ton for land application. And

1 I believe, without benefit of a calculator, that -- that
2 bottom line dollar number is showing what our costs
3 would have been absent PCBs to process all of that
4 material for land application.

5 Q. And so the theory behind doing this
6 calculation is that the Insurance Reserve Fund would be
7 entitled to a credit for \$2.6 million off of the amount
8 that ReWa is --

9 A. Off the total amount, yes, sir.

10 Q. Because that's expenses that you would have
11 had even if the PCB contamination had never occurred?

12 A. You are correct.

13 Q. There's a reference, apparently in some
14 landfill invoices that we have received, to a grit pad.
15 Do you know what a grit pad is?

16 A. Yes.

17 Q. What is that?

18 A. That is a concrete pad that drains -- or has
19 containment walls around it and drains back to the head
20 of the plant. It is where the grit that is -- that is
21 taken out of the incoming plant flow is taken and dumped
22 to dry out, along with the screenings off the bar screen
23 or other screening processes, and all of that material
24 is taken -- particularly at Mauldin Road -- to drain and
25 dry out before it's transported to the landfill.

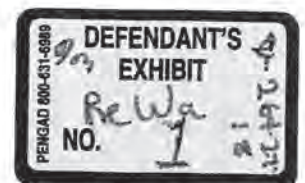
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C. A. NO.: 2016-CP-23-5905

Renewable Water Resources,)
Plaintiff,)
v.) **DEFENDANT'S AMENDED NOTICE**
Insurance Reserve Fund, a Division of) **OF RULE 30(b)(6) DEPOSITION**
the State Fiscal Accountability)
Authority of South Carolina,)
Defendant.)

TO: RIVERS S. STILWELL, ESQ., Attorney for the Plaintiff:

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, the Defendant in the above-captioned matter will take, or cause to be taken, before a Notary Public or some other person authorized by law to administer oaths, the 30(b)(6) deposition of the corporate designee or designees selected by the Plaintiff to testify about those matters listed on Exhibit "A". Pursuant to Rule 30(b)(6), the Plaintiff shall designate one or more officers, directors, managing agents, or other persons who consent to testify on the Plaintiff's behalf. The designee or designees shall testify to matters known or *reasonably available* to the organization regarding the matters listed on Exhibit "A." This deposition is scheduled for July 26, 2018, beginning at 9:30 a.m. and continuing thereafter from day-to-day until said deposition has been completed, at the offices of Nelson Mullins Riley & Scarborough, LLP, 104 South Main Street, Ninth Floor, Greenville, S.C.

Attached as Exhibit "A" to this Notice is a description of the matters on which examination is requested.



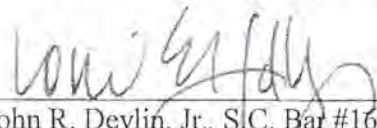
You are invited to attend and participate as permitted by the South Carolina Rules of Civil Procedure.

LINDEMANN, DAVIS & HUGHES, P.A.

ANDREW F. LINDEMANN S. C. BAR #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
andrew@ldh-law.com

-and-

DEVLIN & PARKINSON, P.A.



John R. Devlin, Jr., S.C. Bar #1667
Lori E. Jolly, S.C. Bar #66500
27 Cleveland Street, Suite 201
Post Office Box 10387
Greenville, South Carolina 29603-0387
(864) 242-4050
John.devlin@devlinparkinson.com
Lori.jolly@devlinparkinson.com

Counsel for Defendants

Dated: July 3, 2018
Greenville, SC

EXHIBIT A

The following is a description, with reasonable particularity, of the matters on which examination is requested:

1. The facts, events, and circumstances existing when Renewable Water Resources ("ReWa") "discovered that one or more parties illegally introduced polychlorinated biphenyls ("PCBs") into ReWa's wastewater system" (Paragraph 8 of Plaintiff's Complaint) and the resulting response taken in 2013 from the date of initial identification;
2. ReWa's interactions with DHEC in relation to the events ReWa seeks coverage for in the pending litigation;
3. ReWa's interactions with the EPA in relation to the events ReWa seeks coverage for in the pending litigation;
4. The notice provided to defendant of a claim against any of its building and personal property policies, including the date or dates of said notice (Paragraph 11 of Plaintiff's Complaint);
5. The notice provided to defendant of a claim against any of its tort policies, including the date or dates of said notice (Paragraph 11 of Plaintiff's Complaint);
6. The PCB damage(s) to the equipment used by ReWa for wastewater treatment and the expenses ReWa contends are covered by policies issued by Defendant (Paragraph 12 of Plaintiff's Complaint);
7. The PCB damage(s) to components used by ReWa for wastewater treatment and the expenses ReWa contends are covered by policies issued by Defendant (Paragraph 12 of Plaintiff's Complaint);
8. The PCB damage(s) to the facilities used by ReWa for wastewater treatment and the expenses ReWa contends are covered by policies issued by Defendant (Paragraph 12 of Plaintiff's Complaint);
9. The facts, circumstances, and actions surrounding the isolation of PCBs, assessment, repair and/or cleaning of the Mauldin Road Plant ("MRP");
10. The facts, circumstances, and actions surrounding the isolation of PCBs, assessment, repair and/or cleaning of the Pelham Waste Treatment Plant ("PWTP");

11. The facts, circumstances, and actions surrounding the isolation of PCBs, assessment, repair and/or cleaning of the Lower Reedy Plant ("LRP");
12. The process(es) involved and expenses incurred to "conduct sampling..." as described in paragraph 14(a) of Plaintiff's Complaint;
13. The process(es) involved and expenses incurred to "shut down all biosolids/sludge holding tanks contaminated and rendered unusable by the PCB" as described in paragraph 14(b) of Plaintiff's Complaint;
14. The process(es) involved and expenses incurred to "implement mitigation activities" as described in paragraph 14(c) of Plaintiff's Complaint;
15. The process(es) involved and expenses incurred to "restore the tanks and other structures..." as described in paragraph 14(d) of Plaintiff's Complaint;
16. The process(es) involved and expenses incurred to remove and dispose of the PCB contaminated wastes as described in paragraph 16 of Plaintiff's Complaint;
17. The need for legal and consulting fees as described in paragraphs 18 and 21 of Plaintiff's Complaint;
18. The charges for insurance as described on "Pivot PCB Expense @ 6-30-16" (Bates label SCBCB 001288);
19. The factual bases for each claim for coverage that ReWa believes may apply to its claims in this action;
20. All claims made to any insurer in relation to the events alleged and/or damages sought in ReWa's Complaint;
21. The facts and circumstances described in ReWa's Complaint;
22. All facts and circumstances relied upon by ReWa in preparing its Complaint; and,
23. All facts and circumstances relied upon by ReWa in alleging that defendant has not complied with its obligation of good faith and fair dealing.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C. A. NO.: 2016-CP-23-05905

Renewable Water Resources,)
Plaintiff,)
v.) **CERTIFICATE OF SERVICE**
Insurance Reserve Fund, a Division of the)
State Fiscal Accountability Authority of)
South Carolina,)
Defendant.)

I hereby certify that on the 3rd day of July 2018, I served the following with a copy of **the Defendant's Amended Notice of Rule 30(b)(6) Deposition** via e-mail and by depositing same in the United States Mail, postage prepaid and properly addressed as follows:

Rivers S. Stilwell, Esq.
Nelson Mullins Riley & Scarborough, LLP
P. O. Box 10084
Greenville, SC 29603

Rivers.stilwell@nelsonmullins.com

Attorneys for Plaintiff



Laura Kirwan
Legal Assistant to Lori E. Jolly
Devlin & Parkinson, P.A.
P.O. Box 10387
Greenville, SC 29603

Byers, Rob

From: Byers, Rob
Sent: Monday, October 27, 2014 2:03 PM
To: 'Patricia Dennis'
Subject: RE: PCB claim

Dear Patricia,

After reviewing my predecessor's notes and reports from the Independent Adjuster it appears that to date we have determined three segment locations that had PCB's present.

These locations are as follows:

Segment 50 Durbin Creek
Segment 65 Gilder Creek
Segment 90 Pelham

"If there are additional segment locations by all means please identify them and send them to me".

To date it appears that you incurred a total expense for cleanup in the amount of \$5,711,029.17. This amount does not show anything that was applied for these Segments 50, 65 and 90. Please provide me and the independent adjuster with an itemized breakdown of what was done at each segment location. As you know there is only limited coverage for these loss locations that would apply under your policy.

I have included the language of the applicable Insurance form the Building and Personal Property Coverage Form PD 04 (7/08) that applies.

Please forward me the segment numbers with their individual itemized remediation breakdowns as soon as possible.

BUILDING AND PERSONAL PROPERTY COVERAGE FORM PD04 (7/08)

"4. Additional Coverages

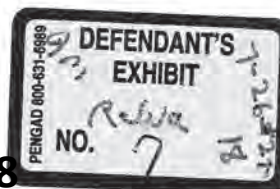
d. Pollutant Clean Up and Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each

1



SCBCB 001358

1918

separate 12 month period of this policy."

Respectfully,

Robert Byers

Rob Byers

Claims Examiner II

South Carolina Insurance Reserve Fund

Phone: 803-737-2719

Email: rbyers@irf.sc.gov

From: Patricia Dennis [mailto:PatriciaD@re-wa.org]

Sent: Friday, October 24, 2014 3:45 PM

To: Byers, Rob; Brenda Page

Subject: RE: PCB claim

Thanks!

From: Byers, Rob [mailto:rbyers@irf.sc.gov]

Sent: October 24, 2014 3:23 PM

To: Patricia Dennis

Subject: RE: PCB claim

I will review and report back.

From: Patricia Dennis [mailto:PatriciaD@re-wa.org]

Sent: Friday, October 24, 2014 3:20 PM

To: Byers, Rob; Brenda Page

Subject: RE: PCB claim

No, ReWa only but we have a separate PCB claim that we filed with the IRF over a year ago but haven't received a determination. We send a report to Fred Young monthly.

From: Byers, Rob [mailto:rbyers@irf.sc.gov]

Sent: October 24, 2014 3:16 PM

To: Patricia Dennis

Subject: RE: PCB claim

All of them.

Are you filing the claim on behalf of Greer CPW?

Respectfully,

Robert Byers

Rob Byers

Claims Examiner II

South Carolina Insurance Reserve Fund
Phone: 803-737-2719
Email: rbyers@irf.sc.gov

From: Patricia Dennis [<mailto:PatriciaD@re-wa.org>]
Sent: Friday, October 24, 2014 3:13 PM
To: Byers, Rob
Subject: RE: PCB claim

Rob – Does that include all PCB claims or just the most recent? Also, can you send an claim acknowledgment?

Thanks,

Patricia

From: Byers, Rob [<mailto:rbyers@irf.sc.gov>]
Sent: October 24, 2014 3:10 PM
To: Patricia Dennis
Subject: RE: PCB claim

Hello Patricia,

Please forward any future information direct to this email.

Thank you and have a Great Weekend.

Respectfully,

Robert Byers

Rob Byers

Claims Examiner II

South Carolina Insurance Reserve Fund
Phone: 803-737-2719
Email: rbyers@irf.sc.gov

From: Parris, Danny
Sent: Friday, October 24, 2014 2:00 PM
To: Byers, Rob; Chandler, Nelson; Abromaitis, Dave
Cc: Stewart, Sara
Subject: FW: PCB claim

Rob, Nelson, Dave: FYI, re: recent PCB contamination of upstate water utilities and IRF 01078, etc.

Danny

Danny E. Parris
Assistant to the Claims Manager
Insurance Reserve Fund
1201 Main St., Suite 500
Columbia, SC 29201

Tel. 803-737-3824
e-mail: Dparris@irf.sc.gov

From: Stewart, Sara
Sent: Friday, October 24, 2014 1:14 PM
To: Parris, Danny
Subject: FW: PCB claim

Danny,

Can you advise who this should go to?

Thanks,
Sara

From: Patricia Dennis (<mailto:PatriciaD@re-wa.org>)
Sent: Thursday, October 23, 2014 5:45 PM
To: Anderson, Jerry
Cc: Brenda Page; Stewart, Sara; Cathy Caldwell
Subject: PCB claim

Hi Jerry,

Please let me know if you are not the correct person to receive. I wanted to put the IRF on notice of the following events:

On Thursday, September 11, several manholes that lead to ReWa's Pelham facility were sampled. On Friday, September 12, the lab results from Rogers & Calcott indicated manhole #901 had 1,330 ppm of PCB's. On Monday September 15, after significant rainfall, a second sample was taken, split and sent to a different lab. The second sample showed 1.9 ppm of PCB's. Then the other split sample was sent to a thlrd lab which indicated .537 ppm PCB's. Greer Commission of Public Works (Greer CPW) lateral lines feed ReWa's trunk lines so Greer CPW was contacted and began sampling. All four of Greer CPW manholes that were sampled tested positive for PCB's. Greer CPW is currently investigating.

Please confirm receipt.

If you have any questions or need additional information, please contact me.

Thanks,

Patricia



Patricia Dennis, CPA
Controller

Phone 864.299.4036 x252
Cell 864.419.2242
Fax 864.299.4037
361 Mauldin Rd
Greenville, SC 29607
patriciad@re-wa.org
www.rewaonline.org

Regular Cost of Processing Solids for Land Application

Normalized Dry Tons for stored and cleaned out material:

285.020	Pelham normalized dry tons (from liquid @ 3%)
1,812.699	Lower Reedy & Mauldin Rd normalized dry tons
2,097.719	Total dry tons processed from liquid w/o bulking agent

Processing and disposal of ongoing plant flows:

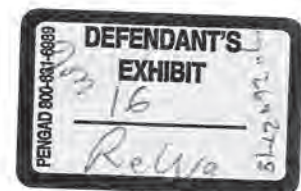
28,657.00	Pelham wet tons of cake
0.144	Pelham BP cake % solids factor
4,126.61	Pelham dry tons calculated from wet tons of cake

10,150.00	Lower Reedy wet tons of cake
0.125	Lower Reedy BP cake % solids factor
1,268.75	Lower Reedy dry tons calculated from wet tons of cake

27,642.00	Mauldin Rd. wet tons of cake
0.165	Mauldin Rd. BP cake % solids factor
4,560.93	Mauldin Rd. dry tons calculated from wet tons of cake

9,956.29	Total dry tons calculated from wet tons of cake at 3 plants
2,097.72	Total dry tons processed from storage at all 3 plants
12,054.01	Grand total dry tons processed

12,054.01	Total dry tons processed
\$216.00	Normal processing cost per dry ton for land app
\$2,603,665.51	TOTAL



REWA v. IRF_040895

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Renewable Water Resources,	)	Civil Action No. 2016-CP-23-5905
	)	
Plaintiff,	)	
vs.	)	
	)	
Insurance Reserve Fund, a Division of	)	<u>PLAINTIFF’S PROPOSED</u>
the State Fiscal Accountability Authority	)	<u>FINDINGS OF FACT AND</u>
of South Carolina,	)	<u>CONCLUSIONS OF LAW</u>
	)	
Defendant.	)	

FINDINGS OF FACT

Plaintiff Renewable Water Resources (“ReWa”) is a special purpose district that provides wastewater treatment services in the Upstate of South Carolina. (Joint Stip. of Facts, Ct.’s Ex. 1 at ¶¶ 1, 5.) At all times relevant hereto, ReWa maintained a Building and Personal Property Insurance Policy (“Building Policy”) and Tort Liability Insurance Policy (“Tort Policy”) with the Insurance Reserve Fund (“IRF”). (*See id.* at ¶¶ 3-4; Pl.’s Exs. 8, 9, 10.)

This case arises out of a polychlorinated biphenyl (“PCB”) contamination that occurred in the Upstate of South Carolina in 2013 as a result of vandalism by the illegal dumping of PCBs into ReWa’s system. (Ct.’s Ex. 1 at ¶¶ 5-6.) ReWa discovered the presence of PCBs at three of its facilities—Pelham Road, Mauldin Road, and Lower Reedy—in routine periodic testing of the wastewater sludge (also referred to as “biosolids”). (*Id.* at ¶¶ 8-9.)

ReWa provided formal notice to the Environmental Protection Agency (“EPA”) and South Carolina Department of Health and Environmental Control (“SCDHEC”) of the PCBs in its treatment facilities on July 26, 2013. (*Id.* at ¶ 12; Pl.’s Ex. 17.) ReWa’s Controller, Patricia Dennis, reported an insurance claim to the IRF on September 24, 2013, which was acknowledged by the IRF on October 11, 2013. (Ct.’s Ex. 1 at ¶¶ 13-14; Pl.’s Exs. 47, 49.)

ReWa retained AECOM—an engineering firm with expertise in the remediation and removal of contaminants like PCBs—to develop and implement a plan for remediation and repair

at the Pelham Road facility. (Ct.'s Ex. 1 at ¶ 15.) ReWa submitted a "Sludge Removal and Disposal Plan" to SCDHEC on October 17, 2013, which was approved by letter dated October 22, 2013. (*Id.* at ¶¶ 15-16; Pl.'s Exs. 32, 33.) The remediation and repair work required ReWa first to remove the sludge contained in the contaminated equipment and fixtures, which process began in November 2013. (Pl.'s Exs. 27, 94.) The plan further required the cleaning of the contaminated facilities, equipment, and structures. PCBs physically adhered to concrete, which is a porous surface, and had to be blasted off by pressure washers and cleaned with a special chemical solution. (*Id.*) Prior to this cleaning, while in their PCB-contaminated state, ReWa's three facilities, and the equipment and machinery located there, were not able to be used for their normal operations. The repairs and remediation were completed in late February and early March of 2014. (*Id.*)

Once the repairs at the Pelham Road facility were complete, ReWa began remediation and repair work at its Mauldin Road and Lower Reedy facilities in April 2014. On April 15, 2014, ReWa submitted a "Summary Remediation Plan" for Mauldin Road and Lower Reedy to SCDHEC, which followed the same process that was done at Pelham Road. (*See* Ct.'s Ex. 1 at ¶ 17; Pl.'s Ex. 38.) This EPA prescribed decontamination process was needed at all three facilities. (Rule 30(b)(6) Depo. of ReWa at 158:10-21.)

No witness disputed that the PCB contamination inhibited or prevented the use of the contaminated structures. Because of the PCB contamination at its three facilities, ReWa incurred millions of dollars in expenses to repair and restore its facilities, machinery, and equipment to usable condition, including the removal and disposal of contaminated material to be able to access the facilities. (Pl.'s Exs. 99, 100, 101.) ReWa kept the IRF apprised of its ongoing expenses related to the PCB remediation and repair by sending updated monthly expense reports. (*See, e.g.*, Pl.'s Exs. 52, 53, 62, 63, 67, 69.) The IRF never notified ReWa that these expense reports should be submitted in a different form or that certain expenses were not covered under ReWa's policies.

During the year after the claim was made, ReWa repeatedly requested a coverage decision. However, the IRF did not provide any determination until October 30, 2014, more than a year after the claim was submitted. (See Pl.’s Exs. 54, 65, 77.) In this “Coverage Position Letter,” the IRF acknowledged that vandalism was a covered cause of loss for primary coverage under the Building Policy, but did not provide any basis for its failure to provide primary coverage. (Pl.’s Ex. 77.) The IRF offered coverage of \$30,000 under an additional coverage provision for pollutant cleanup and removal. (*Id.*) Before suit, the IRF never provided a written determination of coverage to ReWa for the Tort Policy.

This matter came before the Court for trial on January 28-30, 2020. Pursuant to the evidence and testimony presented at trial, the Court makes the following Conclusions of Law:

CONCLUSIONS OF LAW

I. ReWa’s Remediation and Repair Efforts were Reasonable, Necessary, and Required.

On September 25, 2013, SCDHEC issued an emergency regulation (“Emergency Reg.”) which specifically addressed the illicit dumping of PCBs at issue in this case. (Pl.’s Ex. 29.) The federal Toxic Substance Control Act (“TSCA”) regulates remediation after contamination of PCB levels equal to or greater than 50 parts per million (“ppm”). The Emergency Reg. imposed more stringent limits, prohibiting land application of sludge with *any* quantifiable amount of PCBs. The Emergency Reg. also provided that the processing facility impacted by the illicit dumping must be operated in a manner so that the returned wastewater, after processing, has *no* quantifiable amount of PCBs. In addition, ReWa was prohibited under its National Pollutant Discharge Elimination System (“NPDES”) Permits from introducing pollutants into its pretreatment process.¹

In light of the Emergency Reg. and ReWa’s NPDES Permits, the Court concludes that the remediation and repair processes undertaken by ReWa at its three facilities were reasonable and

¹ ReWa maintained NPDES Sludge Permits and Surface Water Discharge Permits for the three facilities at issue. (Pl.’s Exs. 14, 15; Testimony of Joel Jones.)

necessary. The IRF argues that ReWa's costs and expenses at the Mauldin Road and Lower Reedy facilities were unwarranted because the PCB contamination levels at those facilities were below 50 ppm. However, the Emergency Reg. applied to all contaminated materials in ReWa's possession at the time it was implemented. The fact that ReWa's remediation at those facilities did not take place until after the Emergency Reg. was lifted is immaterial. ReWa's NPDES Permits prohibited the introduction of pollutants into its pretreatment process, and ReWa's normal operations could not continue during the PCB contamination. The Court finds that PCB contamination necessitated action by ReWa to remediate and repair the three affected facilities.

II. Interpretation of Insurance Policies

Words in an insurance policy are to be given their "plain, ordinary and popular meaning." *Hutchinson v. Liberty Life Ins. Co.*, 404 S.C. 20, 23, 743 S.E.2d 827, 829 (2013). If a provision is susceptible to more than one interpretation, the Court must adopt the interpretation that favors coverage. *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 143-44, 781 S.E.2d 137, 142 (Ct. App. 2015). Moreover, the insurer bears the burden of establishing that any exclusions apply, and such policy exclusions are to be construed most strongly against the insurer. *Id.*

III. ReWa's Remediation and Repair Efforts are Covered, and Not Excluded, by the Building Policy.

The Building Policy states: "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." (Building Policy ¶ A, Pl.'s Ex. 8.) Thus, to establish coverage under the Building Policy, the following factors must exist: (1) direct physical loss of or damage to property; (2) that property must be Covered Property at the premises described in the Declarations; and (3) the loss or damage must be caused by or resulting from a Covered Cause of Loss. The Court finds that each of these factors has been met,² and that no exclusion alters or impinges on that coverage.

² The IRF conceded that the PCB contamination was caused by vandalism, which is a Covered Cause of Loss. (See Causes of Loss-Special Form ¶ F, Pl.'s Ex. 9; Ct.'s Ex. 1 at ¶¶ 5-6.)

A. Covered Property at Premises in Declarations

The Building Policy states that “Covered Property” includes ReWa’s buildings, together with the fixtures and permanently installed machinery and equipment at such locations. (Pl.’s Ex. 8 at ¶ A.1.a.) To repair its tanks, digesters, machinery and equipment, ReWa first had to remove and properly dispose of the biosolids held in the contaminated tanks and digesters before it could clean them. The IRF does not dispute that these tanks, digesters, machinery, and equipment at the three facilities are Covered Property. The three facilities are also listed on the declaration pages.³ (See Pl.’s Ex. 2.)

The IRF argues that ReWa’s biosolids do not constitute “Covered Property,” and therefore costs associated with removing and disposing of the contaminated biosolids are not covered. The testimony, including from the IRF’s expert, was that the tanks, structures, and equipment at the facilities could not be cleaned and made usable again until the contaminated sludge was removed. The Court concludes that removing and disposing of the sludge was necessary to remediate and repair the contaminated structures, machinery, and equipment at ReWa’s three impacted facilities. The costs associated with remediating and repairing such Covered Property, including the removal and disposal of biosolids, are covered under the Building Policy.

B. “Direct Physical Loss of or Damage to”

The IRF contends that coverage does not apply under the Building Policy because “direct physical loss of or damage to” should be interpreted to mean only immediate structural changes to Covered Property. However, the Court finds that “direct physical loss of or damage to” property includes the contamination of Covered Property even in the absence of structural alteration. This finding is supported by jurisdictions across the country which have found that “direct physical loss

³ The amount of coverage provided in the declaration pages for each affected facility is greater than ReWa’s total damages.

of or damage to” property includes the contamination of such property even in the absence of structural damage or alteration.⁴

The evidence shows that ReWa suffered direct physical loss of or damage to its facilities as a result of the PCB contamination. PCBs physically adhered to concrete, and had be blasted off by pressure washers and cleaned with a special chemical solution.⁵ Further, in the contaminated state, ReWa’s three facilities, and the equipment and machinery located there, were not able to be used for their normal operations. In other words, the Covered Property was unusable in its contaminated state, which is “damage” under the ordinary meaning. The damage from the PCBs was direct and physical. Thus, the Court concludes that the PCB contamination that occurred at ReWa’s facilities caused “direct physical loss of or damage to” ReWa’s Covered Property.

⁴ See *Mellin v. N. Security Ins. Co., Inc.*, 115 A.3d 799, 803-4 (N.H. 2015) (cat urine odor emanating from another condominium unit caused “direct physical loss” to insured’s unit); *Gregory Packaging, Inc. v. Travelers Property Cas. Co.*, No. 2:12-cv-04418, 2014 WL 6675934 (D.N.J. Nov. 25, 2014) (ammonia discharge physically incapacitated insured’s facility, and “property can sustain physical loss or damage without experiencing structural alteration”); *TRAVCO Ins. Co. v. Ward*, 715 F.Supp.2d 699, 708 (E.D. Va. 2010) (toxic gases released by drywall manufactured in China constituted “direct physical loss” to insured’s property and noting that “[t]he majority of cases appear to support [the insured’s] position that physical damage to the property is not necessary, at least where the building in question has been rendered unusable by physical forces.”); *Motorists Mutual Ins. Co. v. Hardinger*, 131 Fed. Appx. 823, 825-27 (3d Cir. 2005) (bacteria contamination of well water constitutes direct physical loss to house if it rendered it unusable); *Yale Univ. v. Cigna Ins. Co.*, 224 F.Supp.2d 402, 413 (D.Conn. 2002) (Yale suffered “physical loss of or damage to property” for the presence of asbestos or lead contamination in its buildings, and stating that the insurer “fail[ed] to even consider, let alone distinguish, the substantial body of case law in which a variety of contaminating conditions have been held to constitute ‘physical loss of or damage to property’”); *Matzner v. Seaco Ins. Co.*, No. CIV. A. 96-0498-B, 9 Mass.L.Rptr. 41 (Mass. 1998) (carbon monoxide contamination, or the risk of carbon monoxide contamination, in plaintiffs’ apartment building constituted “direct physical loss of or damage to” the insured building); *Murray v. State Farm Fire & Cas. Co.*, 509 S.E.2d 1, 17 (1998) (under the homeowner’s insurance policy, “[l]osses covered by the policy, including those rendering the insured property unusable or uninhabitable, may exist in the absence of structural damage to the insured property”); *Azalea, Ltd. v. Am. States Ins. Co.*, 656 So.2d 600 (Fla. Dist. Ct. App. 1995) (there was direct damage to sewage treatment structure because residue from pollutant covered and adhered to the interior of the structure causing destruction of the bacteria colony which was an integral part of the covered facility); *Farmers Ins. Co. of Oregon v. Trutanich*, 858 P.2d 1332, 1335-6 (Or. Ct. App. 1993) (the odor from a methamphetamine lab constituted “physical” damage because it damaged the house and the cost of removing the odor was a direct physical loss); *Western Fire Ins. Co. v. First Presbyterian Church*, 437 P.2d 52 (Colo. 1968) (when insured church had to close its building because of the infiltration of vapors from gasoline in the soil under and around the building, “direct physical loss” occurred).

⁵ The IRF’s expert admitted that the PCB contamination was physically adhered to the walls after the tanks were emptied.

Additionally, coverage under the Building Policy extends to even “risks of” direct physical loss. The Causes of Loss-Special Form states that “Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS.” (Pl.’s Ex. 9 at ¶ A.) Notably, this language has been directly addressed by the South Carolina Supreme Court. In *Ocean Winds Council of Co-owners, Inc. v. Auto-Owners Ins. Co.*, 350 S.C. 268, 565 S.E.2d 306 (2002), the Supreme Court explained the significance of the word “risks” as it relates to the scope of coverage provided. The Court reasoned:

In our view, to construe the phrase “risks of direct physical loss involving collapse” as requiring actual collapse is too narrow an interpretation. This phrase is more expansive than the word “collapse” and appears to cover even the threat of loss from collapse. Further, as noted by courts rejecting the actual collapse standard, such an interpretation encourages an insured to neglect repairs and allow a building to fall, which is economically unsound and contrary to the insured’s duty to mitigate damages.

Id. at 271, 565 S.E.2d at 208 (emphasis in original) (internal citations omitted).

Applying such interpretation to this case, the Court concludes the Building Policy covers not only direct physical loss of or damage to ReWa’s Covered Property, but also the costs incurred by ReWa in addressing the risks of PCBs infiltrating deeper into its facilities, equipment, and machines, such as expenses related to sampling and prevention of contaminated hauled storage being introduced into ReWa’s facilities. Further, ReWa was directed by the policy to take all reasonable steps to protect its Covered Property from further damage. (See Pl.’s Ex. 8 at ¶ E.2.a.(4).)⁶ ReWa is therefore entitled to its reasonable costs and expenses incurred as a result of the PCB contamination, less ReWa’s regular costs of processing biosolids.

C. ReWa’s Remediation and Repair Efforts are Not Excluded by the “Ordinance or Law” Exclusion.

The IRF contends that the Building Policy does not cover ReWa’s damages resulting from the PCB contamination because ReWa’s remediation and repair process was governed by EPA

⁶ Expenses incurred in testing lines which flow into the facilities are covered expenses under this “protection of property” provision, even though this testing did not occur on the Covered Property.

and SCDHEC regulations, and therefore the Ordinance or Law Exclusion applies. That Exclusion states the IRF “will not pay for loss or damage caused directly or indirectly by ... The enforcement of any ordinance or law: (1) Regulating construction, use or repair of any property; or (2) Requiring the tearing down of any property, including the cost of removing its debris.” (Pl.’s Ex. 9 at ¶ B.1.a.) The Court notes that no evidence was presented to indicate the environmental regulations at issue fall within the categories of ordinance and law specified in the policy.⁷ The Court concludes that vandalism, not the enforcement of an ordinance or law, created ReWa’s resulting loss. Any actions by the EPA and SCDHEC which could be deemed to be “enforcement” under this exclusion did not, either directly or indirectly, cause ReWa to suffer the damages claimed in this lawsuit. *See Throgs Neck Bagels, Inc. v. GA Ins. Co. of New York*, 241 A.D.2d 66 (N.Y. App. Div. 1st Dep’t 1998) (“So long as extraneous forces cause physical damage to property, this type of exclusion does not defeat recovery when, as a result, a governmental body enforces an ordinance against the property.”). Further, ReWa’s mere compliance with the applicable regulations does not trigger this exclusion. *See, e.g., Haas v. Audubon Indem. Co.*, 722 So.2d 1022 (La. App. 1998) (“Compliance is not enforcement” and “it was the vandalism that caused damage to the [insured’s] building, not the enforcement of any ordinance or law”).

IV. ReWa’s Remediation and Repair Efforts are Covered by the Tort Policy.

In the alternative, even if ReWa’s claims are not covered under the Building Policy (and, for the reasons explained above, they are), the claims are nevertheless covered by the Tort Policy. That policy states the IRF “will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of ... Property Damage to which this applies caused by an occurrence.” (Tort Policy ¶ I.B., Pl.’s Ex. 10.) An “occurrence” is defined as “an accident, including continuous related exposure to conditions, which results in personal injury or

⁷ The Court further notes that, in its Pre-Trial Brief, the IRF conceded that “Neither DHEC nor the EPA ever filed a complaint or an enforcement action,” and that ReWa “was never even threatened with an enforcement action.” *See* IRF Pre-Trial Brief at 8.

property damage neither expected nor intended from the standpoint of the insured.” (*Id.* at ¶ III.) The acts of vandalism which resulted in the contamination of ReWa’s three treatment facilities constitute “occurrences” under the Tort Policy. “Property Damage” under the Tort Policy includes physical injury to property or loss of use of such property. (*Id.*) In *Helena Chemical Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 637-38, 594 S.E.2d 455, 458 (2004), the South Carolina Supreme Court established that environmental cleanup costs constitute “damages.” *Id.* at 638-41, 594 S.E.2d at 458-60. Furthermore, an insured can become legally obligated to pay such damages without a government directive. *Id.* at 637, 594 S.E.2d at 458.

Based on these principles, the Court concludes ReWa was legally obligated to pay for the damages caused by the PCB contamination, and thus coverage is also triggered under the Tort Policy.⁸ Therefore, in the alternative, the Court finds that the Tort Policy provides coverage for ReWa’s damages resulting from the PCB contamination, and that no exclusion alters or impinges on that coverage.⁹

V. Bad Faith

ReWa has also asserted a bad faith claim against the IRF based upon the IRF’s unreasonable delay in making a coverage determination, and failure to pay the amounts due under the policies. The covenant of good faith and fair dealing extends not just to the payment of a legitimate claim, but also the manner in which it is processed. See *Mixson, Inc. v. Am. Loyalty Ins. Co.*, 349 S.C. 394, 400, 562 S.E.2d 659, 662 (Ct. App. 2002). The IRF may be liable under a claim of bad faith. *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993).

⁸ Tolling Agreements were presented to the Court which stated that “[t]he purpose of this Agreement is to establish a tolling period for the running of any and all statutes of limitations applicable to the Claims and other potential causes of action in this matter....” (Ct.’s Ex. 3; see also Ct.’s Exs. 4-9.) Therefore, no claims are barred by the statute of limitations.

⁹ Coverage under the Tort Policy is \$1,000,000 per occurrence. (Pl.’s Ex. 1.) The Court finds that the contamination of each of ReWa’s three facilities constitutes an occurrence for a total of \$3,000,000. Because the Court finds that ReWa’s expenses related to the PCB contamination are covered under the Building Policy, the Court declines to issue an award under the Tort Policy because it would be duplicative.

The Court concludes the IRF acted without substantial justification in the processing and denial of ReWa's claim. ReWa notified the IRF of its claim on September 24, 2013. (Pl.'s Ex. 47.) Before the claim was even processed, the IRF had internally decided that there was likely no coverage because of "no direct physical damage." (Pl.'s Ex. 48.) Yet, despite numerous requests from ReWa for a coverage decision, the IRF failed to provide any determination to ReWa until over a year after the claim was made. The Court concludes the IRF breached its duty of good faith and fair dealing to ReWa by failing to make a claim determination in a timely manner, and by failing to provide an adequate explanation for its failure to pay ReWa's claim. As a result, ReWa had to retain coverage counsel to analyze its policies and attempt to obtain a more detailed determination from the IRF.

RULING

For these reasons, the Court concludes ReWa's damages resulting from the cleanup, repair, and remediation of its facilities, machinery, and equipment due to PCB contamination at its Pelham Road, Mauldin Road, and Lower Reedy facilities are covered under the Building Policy, and such costs and expenses incurred by ReWa were reasonable and necessary to remediate and repair its facilities and prevent further harm.¹⁰ Further, the Court finds that the IRF breached its duty of good faith and fair dealing to ReWa during the processing of ReWa's claim.¹¹

Pursuant to the testimony and evidence presented at trial, judgment is hereby entered against the IRF in the amount of \$6,235,895.33.

AND IT IS SO ORDERED.

The Honorable Charles B. Simmons, Jr.

¹⁰ In the alternative, as noted above, the claims are covered by the Tort Policy. Because ReWa may recover only once for these damages, the Court concludes that recovery should be under the Building Policy.

¹¹ ReWa's bad faith damages are comprised of Nexsen Pruet invoices which were included in ReWa's total damages calculation of \$6,235,895.33. Furthermore, a finding under bad faith is appropriate even if supported by only nominal damages.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Renewable Water Resources,)
)
Plaintiff,)

Civil Action No. 2016-CP-23-5905

v.)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Insurance Reserve Fund, a Division of)
the State Fiscal Accountability)
Authority of South Carolina,)

Defendant.)
_____)

I. Findings of Fact

1. The IRF issued a Building and Personal Property Insurance Policy to ReWa, bearing Policy Number F130230114, with the effective dates of April 2, 2013 through April 2, 2014. Moreover, the IRF issued a Tort Liability Insurance Policy to ReWa, bearing Policy Number T130230114, with the effective dates of April 2, 2013 through April 2, 2014.

2. On some date during or prior to January 2013, Timothy Howard illegally introduced polychlorinated biphenyls (“PCBs”) into the wastewater treatment system operated by ReWa.

3. As conceded by the IRF, Timothy Howard’s actions qualify as an act of “vandalism” as used in the Building and Personal Property Insurance Policy. The definition of “specified causes of loss” under the Building and Personal Property Insurance Policy includes “vandalism.” Timothy Howard is not an “insured” under any policy of insurance issued by the IRF.

4. In January 2013, ReWa conducted routine sampling of the wastewater sludge (also referred to as “biosolids”) at its Pelham facility. The sampling results reflected PCBs in the sludge in

the only digester in operation at Pelham. Confirmation sampling was performed and additional testing further found PCBs in ReWa's Mauldin Road facility and in the Lower Reedy facility.

5. In 2013, prior to the PCB contamination, ReWa principally disposed of sludge generated by its wastewater treatment plants through land application.

6. On July 26, 2013, ReWa provided formal notice to representatives of the South Carolina Department of Health and Environmental Control ("DHEC") and the United States Environmental Protection Agency ("EPA") regarding the PCB contamination.

7. On or about July 29, 2013, ReWa contacted AECOM and thereafter hired them to assist with the PCB contamination, including preparing a "Sludge Removal and Disposal Plan" for the Pelham facility. The "Sludge Removal and Disposal Plan" prepared by AECOM for ReWa was submitted to DHEC on October 17, 2013. With certain conditions, the plan was approved by letter from DHEC dated October 22, 2013.

8. ReWa submitted a "Summary Remediation Plan for Low-Level PCB Solids Stored at Lower Reedy and Mauldin Road Resource Recovery Facilities" to DHEC on April 15, 2014. That document was prepared by ReWa personnel and not by AECOM. ReWa received no specific response from DHEC. There was no formal approval received for that plan. The Plan as submitted included the following:

The Lower Reed and Mauldin Road WRRFs have a combined total of approximately 11.3 million gallons of thickened digested solids in storage with low-level PCB concentrations (ranging from 0.66 ppm to 5.8 ppm at Maudlin Road and from 1.2 ppm to 4.2 ppm at Lower Reedy). Of this total volume, Lower Reedy has approximately 9.5 million gallons in storage. ReWa does not currently intend to land apply this material, even though current regulations would allow land application. (Pl. Ex. 38).

9. Despite acknowledging that current DHEC and EPA regulations in April 2014 allowed for the land application of the contaminated biosolids at the Mauldin Road and Lower Reedy facilities, ReWa did not land apply those biosolids. ReWa did not re-commence land

application of the biosolids at Lower Reedy until December 2014, and at Mauldin until May 2015. Up through those dates, ReWa was processing both the contaminated biosolids at those facilities as well as ongoing flows and has claimed the increased costs for that processing in its claim made to the IRF. ReWa personnel never consulted with the IRF about its decision not to land apply the contaminated biosolids or the ongoing flows at those facilities.

10. ReWa did not re-commence land application of the biosolids at Pelham until March 2016. Up through those dates, ReWa was processing both the contaminated biosolids at those facilities as well as ongoing flows and has claimed the increased costs for that processing in its claim made to the IRF. ReWa personnel never consulted with the IRF about its decision not to land apply the ongoing flows after the clean-up of the contaminated PCBs at Pelham was completed.

11. The remediation undertaken by ReWa was limited to three facilities – Pelham, Mauldin Road, and Lower Reedy. The remediation at the Pelham facility began on November 14, 2013 and was completed on February 19, 2014. The remediation at Lower Reedy occurred next and was begun in approximately July 2014 and was completed in mid-November 2014. The remediation at Mauldin Road was started in approximately December 2014 and was completed in June 2015. By June 2015, the PCB remediation at the three facilities was complete.

12. At Pelham, the structures that contained biosolids that tested positive for PCBs were Digester 1, Biosolid Holding Tanks 3, 4, 5, and 6, Biosolids Overflow Tanks 1 and 2, two wet wells and the influent pump station. All of those structures were constructed of concrete. None of those structures required demolition and replacement. There was no equipment in those structures that required removal and replacement. The structures were cleaned by pressure washing.

13. At Lower Reedy, the structures that contained biosolids that tested positive for PCBs were Holding Tanks 4 and 5. The test results for Digester 1 was non-detect for PCBs. Holding Tanks 4 and 5 were constructed of concrete. None of those structures required demolition and replacement. There was no equipment in those structures that required removal and replacement. The structures were cleaned by pressure washing.

14. At Mauldin Road, the structures that contained biosolids that tested positive for PCBs were Digesters 2 and 3, Biosolid Holding Tanks 3, 4, 5, 6, 7, and 8, Biosolid Tanks 1 and 2 (old digesters). All of those structures were constructed of concrete. None of those structures required demolition and replacement. There was no equipment in those structures that required removal and replacement. The structures were cleaned by pressure washing.

15. The EPA never initiated any enforcement action against ReWa, and no enforcement order was ever issued. Likewise, DHEC never initiated any enforcement action against ReWa, and no enforcement order was ever issued. ReWa did not enter into any consent order with DHEC or the EPA, nor was ReWa ever asked by these agencies to enter into a consent order.

16. ReWa did not do anything to cause or contribute to the PCB contamination. The EPA never advised ReWa that it was treating ReWa as a “potentially responsible party” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

17. No discharges of wastewater with a PCB concentration in excess of 0.5 micrograms/liter were ever made into the Enoree River or the Reedy River. There were no claims made by any third parties against ReWa related to the PCB contamination. There was no requirement by EPA or DHEC for ReWa to remediate any properties of third parties who had received land-applied biosolids.

II. Conclusions of Law

1. ReWa was required by Federal law including EPA regulations to decontaminate its facilities which contained PCBs at a level greater than 50 mg/kg concentration and to dispose of Toxic Substance Control Act (TSCA) level material at an approved facility. In addition, DHEC required that wastewater was required to have a PCB concentration of less than 0.5 micrograms/liter.

2. On September 25, 2013, DHEC filed an Emergency Regulation in accordance with S.C. Code Ann. § 1-23-130 which is entitled “Emergency Regulation for Management of Wastewater System Sludge, including Land Application of Sludge, Impacted by Illicit Discharges of Polychlorinated Biphenyls (PCB).” The Emergency Regulation was effective on September 25, 2013, for a period of ninety days.

3. On December 23, 2013, DHEC re-filed the same verbatim Emergency Regulation. The re-filed Emergency Regulation was effective on December 23, 2013, for a period of ninety days. The re-filed Emergency Regulation expired on March 23, 2014.

4. On June 27, 2014, DHEC promulgated pursuant to the Administrative Procedures Act amendments to Sections 503 (domestic sludge) and 504 (industrial sludge) of DHEC Regulation 61-9 entitled “Water Pollution Control Permits.” The amendments were published in the South Carolina State Register on June 27, 2014, and were effective on that date. Those amendments did not prohibit the land application of PCBs at a level less than 50 mg/kg concentration.

5. After the expiration of the Emergency Regulation on March 23, 2014, ReWa was not prohibited by state or federal law from disposing of biosolids containing PCBs at a level less than 50 mg/kg concentration by land application. While the Emergency Regulation was in place, ReWa was required to dispose of biosolids containing PCBs at a level less than 50 mg/kg concentration in a local landfill.

6. "The burden of proof is on the insured to show that a claim falls within the coverage of an insurance contract." *Sunex International, Inc. v. Travelers Indem. Co.*, 185 F.Supp.2d 614, 617 (D.S.C. 2001). "The insurer bears the burden of establishing exclusions to coverage." *Id.*

7. The insuring agreement for the Building and Personal Property Coverage Form states as follows: "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." Thus, the Building and Personal Property Coverage Form is read in conjunction with the form entitled "Causes of Loss – Special Form." In the "Special Form" the "Covered Causes of Loss" are all "risks of direct physical loss" which are not limited to the "specified causes of loss" which is a defined term. Instead, if the loss is caused by or resulting from "risks of direct physical loss," then there is a covered loss unless otherwise excluded or limited. In this case, one of the causes of loss is vandalism, as previously conceded by the IRF, which is a covered cause of loss.

8. The insuring agreement may be broken into components. The insured has the burden of showing: (1) "direct physical loss of or damage, (2) to "Covered Property"; (3) the loss occurred at the premises; and (4) the loss was caused by or resulted from a Covered Cause of Loss. In addition, the form entitled "Causes of Loss – Special Form" includes limitations and exclusions.

9. The first issue is whether there is "direct physical loss or damage," and if so, to what extent. These are not defined terms in the policy, and as a result, the Court will apply the plain ordinary meaning of the terms. This Court concludes that "direct physical loss or damage" means a loss or damage that is immediate, material, tangible, and not consequential or economic in nature. That is consistent with existing South Carolina authorities. In *Campbell v. Northern Ins. Co. of New York*, 337 F.Supp.2d 764 (D.S.C. 2004), the court addressed "direct physical loss or damage" and explained that "[t]he use of the term 'physical' to define property damage negates the possibility that the policy intended to include consequential or intangible damages." 337

F.Supp.2d at 769. Moreover, “[t]he Court is unable to construe the plain meaning of the policy in such a way as to find that direct physical accidental loss or damage could mean a consequential or intangible damage such as loss of use.” *Id.* The court relied on the Supreme Court’s decision in *Auto-Owners Ins. Co. v. Carl Brazell Builders, Inc.*, 356 S.C. 156, 588 S.E.2d 112 (2003), where the Court held that economic damages do not constitute “physical injury” to property. 588 S.E.2d at 115. Thus, this Court concludes that “direct physical loss of or damage” includes only the immediate physical damage to the covered property and does not include any consequential, intangible, or economic damages, costs, or expenses. The Court therefore concludes that many categories of expenses claimed by ReWa are consequential or economic and are not covered, including testing or sampling expenses;¹ expert consultant fees as well as attorney’s fees and costs incurred in responding to requirements of DHEC and EPA; expenses incurred in investigating the cause of the PCB contamination; and expenses incurred to continue the operation of the waste water facilities including the protocols developed and implemented for the receipt of FOG (fats, oil, and grease) at the Mauldin Road facility. This reading is also consistent with the “loss payment” provision contained in the Building and Personal Property Coverage Form, which as discussed below, limits the insured’s recovery to “the cost of repairing or replacing the lost or damaged property,” and does not include payment for consequential or economic damages, such as loss of use.² See, *Ecclesiastes Prod. Ministries v. Outparcel Asso., LLC*, 374 S.C. 483, 649 S.E.2d 494, 502 (Ct. App. 2007) (“It is fundamental that in the construction of the language of a

¹ In *Braswell v. Faircloth*, 300 S.C. 338, 387 S.E.2d 707 (Ct. App. 1989), the South Carolina Court of Appeals ruled that “[s]ampling and the performance of chemical tests do not constitute ‘physical injury to or destruction of tangible property.’” 387 S.E.2d at 710.

² *Accord, Campbell*, 337 F.Supp.2d at 769 (“the valuation clause of the contract makes damages such as loss of use impossible. Under this clause, the policy will not pay more than the cost to reasonably restore or replace the covered property. There can be no dispute that damages for loss of use exceed restoration and/or replacement costs”).

contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning”).

10. Subject to applicable exclusions, the Court concludes that the IRF covers only the expense related to the repair of “direct physical loss and damage” to the structures themselves. However, no testing of the structures was even performed until *after* the cleaning was completed. As a result, ReWa has not sustained its burden of proving that the structures, including any digesters or holding tanks at the three facilities, were actually damaged. As testified to by Kevin Finneran, the IRF's expert witness, the chances of the PCBs partitioning into the concrete was highly remote and, if that occurred, would be in such minute concentrations that this Court finds that the structures could not be reasonably considered "damaged." Moreover, as the evidence shows, levels of PCB contamination in all but three holding tanks at Pelham did not exceed the 50 mg/kg threshold. None of the PCB levels at the Mauldin and Lower Reedy facilities even approached that threshold. As ReWa readily conceded in their Plan to remediate those facilities, based upon the regulations applicable in April 2014, the biosolids at the Mauldin and Lower Reedy facilities could have been land applied as was its ordinary method of disposal. Moreover, based on the low levels of PCB contamination and the applicable law, this Court concludes that the cleaning that ReWa engaged in at the Mauldin Road and Lower Reedy facilities was not legally required or necessary. Consequently, ReWa has failed to prove any “direct physical loss and damage” at the Mauldin Road and Lower Reedy facilities.

11. Based upon the "loss payment" provision in the Building and Personal Property Coverage Form, the IRF would only be required to "[p]ay the cost of repairing or replacing the lost or damaged property, subject to **b.** below" and subsection (b) provides: " The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property." Thus, this Court concludes that

the “direct physical loss and damage” at the Pelham facility would be limited to the cost of cleaning the structures and not any consequential or economic damages.

12. The next component that requires analysis is the term “covered property.” “Covered property” is a defined term in Section A.1 of the Building and Personal Property Coverage Form and is divided into the buildings or structures (including fixtures and permanently installed machinery and equipment) and the business personal property that is also described in a list of items covered. It is undisputed, however, that the Building and Personal Property Coverage Form provides no business personal property coverage for the Pelham, Mauldin Road, and Lower Reedy facilities. That coverage was available to but not purchased by ReWa. Thus, the contents of the physical structures, including the biosolids stored within the structures, are not covered under the policy.³

13. The Causes of Loss – Special Form includes an “Ordinance or Law Exclusion” which provides no coverage for a loss caused “directly or indirectly” by the “enforcement of any ordinance or law ... (1) regulating construction, use or repair of any property or (2) requiring the tearing down of any property, including the cost of removing the debris.” Importantly, this section of exclusions includes an anti-concurrent causation clause that reads: “Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.” As the Supreme Court has explained in *South Carolina Farm Bureau Ins. Co. v. Durham*, 380 S.C. 506, 671 S.E.2d 610 (2009), where a policy includes an anti-concurrent causation clause, neither the efficient proximate cause rule nor the concurrent cause rule applies. Instead, if the exclusion addresses a cause of the loss, it makes no difference that there is another

³ ReWa has made claims for the remediation of certain collection lines that are outside the premises of the Pelham, Maudlin Road, and Lower Reedy facilities. Those collection lines are not “covered property” for several reasons. First, those lines are not identified in the declaration pages as a separately covered “segment” of property. Second, the policy contains a list of “property not covered” which includes “[u]nderground pipes, flues or drains.”

cause of the loss that is covered. In the case at bar, this Court concludes that one of the causes for the loss is the enforcement by the EPA and DHEC of its regulations governing the remediation of PCBs. As a result, the loss claimed by ReWa was directly or at least indirectly caused by the enforcement of EPA and DHEC regulations governing a PCB remediation. That was a cause for the loss, and as in *Durham*, the exclusion applies. It is immaterial that another cause of loss, namely vandalism, was also a cause of the loss at the ReWa facilities. ReWa's claim is thus excluded under the Ordinance or Law Exclusion.

14. ReWa also made a claim under the Tort Liability Insurance Policy. With respect to liability insurance, the Supreme Court has ruled:

Both the obligation to indemnify and the obligation to defend are inchoate, conditional, contingent obligations to the insured. Before they come into play, there must be an external event within the coverage of the policy and the performance of all conditions precedent by the insured, including his cooperation. *There is no obligation to defend until an action is brought and no obligation to indemnify until a judgment against the insured is obtained.*

Howard v. Allen, 254 S.C. 455, 176 S.E.2d 127, 129 (1970). (Emphasis added). ReWa has not identified any suit or claim as defined by the Tort Liability Insurance Policy filed by a third party against ReWa that was tendered to the IRF for a defense and indemnity. There was never even an enforcement action – nor the threat of one – from DHEC or the EPA. No consent order was issued, nor was one requested by DHEC or EPA. The EPA never advised ReWa that it was treating it as a “potentially responsible party” (PRP) under CERCLA. At no time did ReWa take the position that it was a PRP under CERCLA or had any responsibility for the PCB contamination. Without the institution of a suit, as *Howard* instructs, there is no duty to defend nor a duty to indemnify under the Tort Liability Insurance Policy.⁴

⁴ ReWa’s witnesses concede that no request for legal counsel was ever made to the IRF.

15. Similarly, ReWa's reliance on *Helena Chemical Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004), is misplaced. In that case, a chemical company brought an insurance coverage suit seeking the recovery from various primary and excess insurers for its environmental cleanup costs. The Supreme Court's opinion states that EPA sent Helena a letter stating that the EPA considered Helena to be a PRP under CERCLA for a hazardous and contaminated site. As to two additional sites, DHEC sent PRP letters. Helena subsequently entered into a settlement agreement with the EPA. The insurers denied coverage. The Supreme Court first addressed whether the costs incurred by Helena were "damages" under a liability policy. The Court ruled in Helena's favor and concluded that "damages" under a general liability policy include environmental clean-up costs. The Court nonetheless upheld the denial of coverage based upon application of the pollution exclusion. The *Helena Chemical* case, however, is distinguishable from the present case in that Helena received letters from the EPA and DHEC advising that it was a PRP. There is no such letters in this case. In addition, it is undisputed that neither the EPA nor DHEC alleged in any respect that ReWa was a PRP. Also, there was never an enforcement action brought or threatened, nor was any agreement or consent order entered between ReWa and the EPA or DHEC. In fact, the Court has seen no evidence of any EPA involvement or oversight with the clean-up activities undertaken at the Mauldin Road and Lower Reedy facilities given the low levels of PCBs detected in the biosolids at those facilities.

16. The Tort Liability Insurance Policy issued by the IRF includes an "Owned Property Exclusion" which provides as follows: "This insurance does not apply to property damage to property owned or occupied by or rented to the insured." This Court concludes that ReWa is seeking only to be indemnified for alleged property damage to its own property. That claim falls squarely within the scope of the Owned Property Exclusion. See, *City of Abbeville v. South Carolina Insurance Reserve Fund*, 323 S.C. 60, 448 S.E.2d 579 (Ct. App. 1994).

17. Section VII.5 of the Tort Liability Insurance Policy states: “No action shall lie against the Fund unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured’s obligation to pay shall have been finally determined either by judgement against the insured after actual trial or by written agreement of the insured, the complaint and the Fund.” With respect to ReWa’s PCB contamination claim, the ReWa’s “obligation to pay” has not been established by a judgment after an actual trial or by a settlement agreement. As the record conclusively shows, there has not been a settlement agreement with a third-party, and certainly not a settlement to which the IRF agreed.

RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-5905

John Devlin <John.devlin@devlinparkinson.com>

Mon 2/17/2020 11:57 AM

To: Herrmann, Karen <KHerrmann@greenvillecounty.org>; Katie Towery <katie.towery@nelsonmullins.com>; Hanks, Danette <DaHanks@greenvillecounty.org>

Cc: William Brown <william.brown@nelsonmullins.com>; Rivers Stilwell <rivers.stilwell@nelsonmullins.com>; Andrew Lindemann <Andrew@LDH-Law.com>

 1 attachments (33 KB)

Proposed Findings of Fact and Conclusions of Law (final) (00163330xECB18).docx;

Dear Karen:

I am attaching to this email a copy of Defendant's Proposed Findings of Fact and Conclusions of Law. As per the Court's instructions, we did not attempt to write a complete order, and limited this submission to a discussion of liability under the policies, and did not address bad faith or damages.

We note that Plaintiff has submitted a complete order including a ruling as to the damages it seeks. We particularly did not understand that to be what Judge Simmons had requested, and would request that you pass on to him our objection to that expansion of his instructions.

If Judge Simmons wants the parties to provide any comment or other response as to the submissions provided by the other, we would be happy to do so.

Please let Judge Simmons know we did the best we could to keep our submission to ten pages as he requested, but the number of defenses available made that problematic. We would be happy to provide more detail if so requested.

John R. Devlin, Jr.



27 Cleveland Street, Suite 201 (29601)
Post Office Box 10387
Greenville, SC 29603
864-242-4050-office
864-242-4277-fax
john.devlin@devlinparkinson.com

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From: Herrmann, Karen <KHerrmann@greenvillecounty.org>

Sent: Monday, February 17, 2020 11:26 AM

To: Katie Towery <katie.towery@nelsonmullins.com>; Hanks, Danette <DaHanks@greenvillecounty.org>

Cc: William Brown <william.brown@nelsonmullins.com>; Rivers Stilwell <rivers.stilwell@nelsonmullins.com>; Andrew Lindemann <Andrew@LDH-Law.com>; John Devlin <John.devlin@devlinparkinson.com>

Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-5905

Thank you Katie,

We will get it to the Judge and let you know.

Karen K. Herrmann

Administrative Docketing Coordinator

Judge Charles B. Simmons, Jr.

Greenville County Courthouse, Suite 313

305 East North Street

Direct Dial 864-467-8258/ Fax 864-467-8401

From: Katie Towery [<mailto:katie.towery@nelsonmullins.com>]

Sent: Monday, February 17, 2020 11:18 AM

To: Herrmann, Karen; Hanks, Danette

Cc: William Brown; Rivers Stilwell; Andrew Lindemann; John.devlin@devlinparkinson.com

Subject: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-5905

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Karen and Danette,

Pursuant to Judge Simmons' instructions after trial, attached please find ReWa's Proposed Findings of Fact and Conclusions of Law. I have included both pdf and word versions. Please let us know if we need to electronically file this as well.

Best regards,

KATIE E. TOWERY ASSOCIATE

katie.towery@nelsonmullins.com

GREENVILLE ONE | SUITE 400

2 W. WASHINGTON STREET | GREENVILLE, SC 29601

T 864.373.2294 F 864.373.2925

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RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905

Herrmann, Karen <KHerrmann@greenvillecounty.org>

Fri 2/21/2020 12:39 PM

To: Andrew Lindemann <Andrew@LDH-Law.com>; William Brown <william.brown@nelsonmullins.com>; John Devlin <John.devlin@devlinparkinson.com>; Katie Towery <katie.towery@nelsonmullins.com>

Cc: Rivers Stilwell <rivers.stilwell@nelsonmullins.com>

Thanks!

You do the same.

Karen K. Herrmann
Administrative Docketing Coordinator
Judge Charles B. Simmons, Jr.
Greenville County Courthouse, Suite 313
305 East North Street
Direct Dial 864-467-8258/ Fax 864-467-8401

From: Andrew Lindemann [mailto:Andrew@LDH-Law.com]
Sent: Friday, February 21, 2020 12:39 PM
To: Herrmann, Karen; William Brown; John Devlin; Katie Towery
Cc: Rivers Stilwell
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905

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Best number for me is 803-261-2219. Thanks. Have a good weekend.

Andrew

From: Herrmann, Karen <KHerrmann@greenvillecounty.org>
Sent: Friday, February 21, 2020 11:28 AM
To: William Brown <william.brown@nelsonmullins.com>; John Devlin <John.devlin@devlinparkinson.com>; Andrew Lindemann <Andrew@LDH-Law.com>; Katie Towery <katie.towery@nelsonmullins.com>
Cc: Rivers Stilwell <rivers.stilwell@nelsonmullins.com>
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905

Thank you.

Karen K. Herrmann
Administrative Docketing Coordinator
Judge Charles B. Simmons, Jr.
Greenville County Courthouse, Suite 313
305 East North Street
Direct Dial 864-467-8258/ Fax 864-467-8401

From: William Brown [<mailto:william.brown@nelsonmullins.com>]
Sent: Friday, February 21, 2020 11:25 AM
To: Herrmann, Karen; John Devlin; Andrew Lindemann; Katie Towery
Cc: Rivers Stilwell
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905

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Karen,
My number is 864-373-2297.
William

William S. Brown
Nelson Mullins Riley and Scarborough, LLP
(864) 373-2297

From: Herrmann, Karen <KHerrmann@greenvillecounty.org>
Sent: Friday, February 21, 2020 11:24 AM
To: John Devlin <John.devlin@devlinparkinson.com>; Andrew Lindemann <Andrew@LDH-Law.com>; Katie Towery <katie.towery@nelsonmullins.com>
Cc: Rivers Stilwell <rivers.stilwell@nelsonmullins.com>; William Brown <william.brown@nelsonmullins.com>
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905
Importance: High

◀**External Email**▶ - From: KHerrmann@greenvillecounty.org

Thanks John,

I have this on the docket for next Thursday the 27th at 4:00.
As soon as I get the numbers for the call it will be set.

I hope you all have a wonderful weekend!

Karen K. Herrmann
Administrative Docketing Coordinator
Judge Charles B. Simmons, Jr.
Greenville County Courthouse, Suite 313
305 East North Street
Direct Dial 864-467-8258/ Fax 864-467-8401

From: John Devlin [<mailto:John.devlin@devlinparkinson.com>]
Sent: Friday, February 21, 2020 11:20 AM
To: Andrew Lindemann; Herrmann, Karen; Katie Towery
Cc: Rivers Stilwell; William Brown
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905

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Karen:

I am not available next Thursday afternoon. Andrew can participate on behalf of the IRF and fill me in afterwards.

John R. Devlin, Jr.



27 Cleveland Street, Suite 201 (29601)
Post Office Box 10387
Greenville, SC 29603
864-242-4050-office
864-242-4277-fax
john.devlin@devlinparkinson.com

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From: Andrew Lindemann <Andrew@LDH-Law.com>
Sent: Friday, February 21, 2020 11:10 AM
To: Herrmann, Karen <KHerrmann@greenvillecounty.org>; Katie Towery <katie.towery@nelsonmullins.com>
Cc: Rivers Stilwell <rivers.stilwell@nelsonmullins.com>; William Brown <william.brown@nelsonmullins.com>; John Devlin <John.devlin@devlinparkinson.com>
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905

Karen, I am available next Thursday at 4:00 for the conference call.

Thanks.

Andrew Lindemann

From: Herrmann, Karen <KHerrmann@greenvillecounty.org>
Sent: Friday, February 21, 2020 10:59 AM
To: Katie Towery <katie.towery@nelsonmullins.com>
Cc: Rivers Stilwell <rivers.stilwell@nelsonmullins.com>; William Brown <william.brown@nelsonmullins.com>; John.devlin@devlinparkinson.com; Andrew Lindemann <Andrew@LDH-Law.com>
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905

J The Judge just informed me he would prefer a call next week Thursday at 4:00 if possible. J if not we will get it set when everyone is available.

Thank you.

Karen K. Herrmann
Administrative Docketing Coordinator
Judge Charles B. Simmons, Jr.
Greenville County Courthouse, Suite 313
305 East North Street
Direct Dial 864-467-8258/ Fax 864-467-8401

From: Herrmann, Karen
Sent: Friday, February 21, 2020 10:58 AM
To: 'Katie Towery'
Cc: Rivers Stilwell; William Brown; John.devlin@devlinparkinson.com; Andrew Lindemann
Subject: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-05905
Importance: High

Good morning,

Judge Simmons has asked that I set a conference call in the above case for next week.

He is available for a call on the 26th at 9:30, the 27th at 9:15 or the 28th at 8:45.

Please check your calendars and copy each other with your reply.

Thank you.

Karen K. Herrmann
Administrative Docketing Coordinator
Judge Charles B. Simmons, Jr.
Greenville County Courthouse, Suite 313
305 East North Street
Direct Dial 864-467-8258/ Fax 864-467-8401

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ReWa -vs- IRF (16-03713)

Hanks, Danette <DaHanks@greenvillecounty.org>

Wed 2/26/2020 4:14 PM

To: Rivers Stilwell <rivers.stilwell@nelsonmullins.com>; William Brown <william.brown@nelsonmullins.com>; Katie Towery <katie.towery@nelsonmullins.com>; Andrew Lindemann <Andrew@LDH-Law.com>; John Devlin <John.devlin@devlinparkinson.com>

 1 attachments (42 KB)

ReWa-vs-IRF-memo-022620.pdf;

Good afternoon, all!!

Judge Simmons asked that I forward the attached to all counsel of record to be discussed during tomorrow afternoon's conference call. Please let me know if you have any questions.

Thanks and have a wonderful evening!!!

Danette Hanks, Court Reporter
Office of the Master in Equity
305 East North Street, Suite 313
Greenville, SC 29601
864-467-8771

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PRELIMINARY MEMO OF RULING

Re: Renewable Water v. Insurance Reserve
(2016-CP-23-05905)

ADD TO PLAINTIFF'S PROPOSED ORDER:

- Policy says “direct physical loss or damage”. The policy doesn’t limit the coverage to “direct physical loss or *direct* physical damage.
- Black’s Law Dictionary defines “damages” as “loss or injury” to property. Bausch & Lomb v. Utica Mut. Ins. Co., 625 A2d 1021 (MD1993) and Helena Chemical also provide relevant definitions of ‘damage’.
- The Court finds that there has been ‘direct physical loss’ due to adherence (which rendered the facilities unuseable). And that there was damage based upon an extremely dangerous PCB contamination that required remediation in order for Plaintiff to be able to use the covered property. There clearly was a bio-solid invasion and attachment in and onto covered property by a physical, tangible thing (PCBs) that caused damage. Even after the tanks were emptied, the bio-solid was still attached to the walls/floors.

TORT LIABILITY COVERAGE:

- For reasons set forth in Defendant’s proposed Order, the Court declines to find coverage under the tort provisions. Rather, the policy covers the insured for **its** wrong doing or fault. The damages here are clearly the result of intentional actions of a third party.

BAD FAITH ISSUES:

- The Court declines to find that there was bad faith. While the Court is troubled by the length of time the Defendant took to deny the claim (thirteen months), the same does not rise to the level of bad faith under the unique facts presented herein. Further, there was significant delay by Plaintiff in making the claim initially to Defendant.

DAMAGES:

- Initially, Plaintiff should not be penalized for taking the initiative to “self-report” the PCB issues/contamination. Clearly, DHEC/EPA was necessarily involved and Defendant should not be able to use Plaintiff’s initiation of the process as a basis to deny coverage. Had Plaintiff waited on DHEC/EPA, the potential danger of contamination and related costs would have increased for both Plaintiff and the public-at-large.

- Plaintiff used a competitive bid process in determining best course of conduct (as approved/monitored by DHEC) and remediation company to retain. Over 15 million gallons involved. Some efforts required transport to approved facilities in Alabama.
- Plaintiff was faced with an exceptionally dangerous case of potential liability and urgency based upon Plaintiff processing thirty million gallons a day coming into the system and with facilities that regularly, once the waste water was processed, discharged into public rivers or land sprayed onto property owned by third parties.
- Plaintiff proceeded for months of extensive/expensive remediation and provided (as requested by Defendant) monthly reports to Defendant setting out what was being done and the expenses related thereto. Plaintiff established a two-step accounting system in order to monitor and track expenses related to the PCB issues/remediation. At no point did Defendant ever raise concerns or questions about the process or costs.
- As relates to the amount of damages, the Court relies upon the testimony of Plaintiff's witnesses and Plaintiff Exhibits 99, 100 and 101. The Court also notes that Plaintiff has deducted the otherwise normal operating costs that would have been incurred during the time in question.

I decline to award as follows:

\$249,572.00 Greenville County Solid Waste (lack of sufficient proof outside technical)

\$4,246.25 AECOM (lack of sufficient proof/explanation why appropriate or covered under policy)

\$1,320.00 Double charge pressure wash (Defendant's Exhibit 19)

All other costs are reasonable and recoverable.

- The Court will address with the attorneys:
 1. Are collection lines (and remediation expenses) 'covered property'? Are collection lines excluded under 'property not covered' provisions? Was issue raised at trial?
 2. If no bad faith, are Plaintiff's attorney fees recoverable?

From: Andrew Lindemann
Sent: Thursday, February 27, 2020 9:17 AM
To: Simmons, Judge Charles
Cc: Herrmann, Karen; John Devlin; Katie Towery; Hanks, Danette; William Brown; Rivers Stilwell
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-5905

Judge Simmons:

To be clear, I was not objecting to the conference call or asking that the call be cancelled. I only was asking for it to be on the record. As stated, we welcome the opportunity to discuss any issues with the Court, including the ones posed in your memo. However, without a record, an appellate court will not have the opportunity to review those arguments and what was discussed with and addressed by the Court. However, I am not asking for the call to be cancelled and will be prepared to proceed at 4:00 as scheduled.

Thank you.

Andrew

From: Simmons, Judge Charles <CSimmons@greenvillecounty.org>
Sent: Thursday, February 27, 2020 8:58 AM
To: Andrew Lindemann <Andrew@LDH-Law.com>
Cc: Herrmann, Karen <KHerrmann@greenvillecounty.org>; John Devlin <John.devlin@devlinparkinson.com>; Katie Towery <katie.towery@nelsonmullins.com>; Hanks, Danette <DaHanks@greenvillecounty.org>; William Brown <william.brown@nelsonmullins.com>; Rivers Stilwell <rivers.stilwell@nelsonmullins.com>
Subject: RE: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-5905

Mr. Lindeman,

The call this afternoon will not have a court reporter. And, I do not typically ask for attorneys to appear in person and do not see a reason for in-person appearances today. If there is an objection to a conference call, I am fine with moving ahead with finalizing the order based upon the record thus far.

As for lack of closing arguments or briefing the damages issues, you are certainly correct. I do not feel the need for closing arguments since I am familiar with the record. As for briefing damages, I did not request that since I believe the record is sufficient for those determinations.

Please advise if the 4:00 conference call today will be necessary.

Charles B. Simmons, Jr., Judge
Greenville County Courthouse
305 East North Street, Suite 313
Greenville, SC 29601

Phone: (864) 467-8556
Fax: (864) 467-8401

From: Andrew Lindemann [<mailto:Andrew@LDH-Law.com>]
Sent: Thursday, February 27, 2020 8:45 AM
To: Simmons, Judge Charles

Cc: Herrmann, Karen; John Devlin; Katie Towery; Hanks, Danette; William Brown; Rivers Stilwell

Subject: Renewable Water Resources v. Insurance Reserve Fund - C.A. No. 2016-CP-23-5905

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Judge Simmons:

Good morning. I understand from the email received yesterday and the "Preliminary Memo of Ruling" that you want to address with counsel at least two substantive issues (as stated at the end of the memo) at today's conference call scheduled for 4:00. Of course, we welcome the opportunity to address those issues and any others with you. However, I did want to inquire ahead of time whether the Court will have a court reporter present for that conference call. If that was not the plan, I would respectfully request that a court reporter be present so that the discussions can be on the record. If that is not feasible, I will be happy to travel to Greenville at 4:00 so that the discussions with the Court may be on the record. Please let me know if you wish for me to be there in person.

Additionally, while you have provided your preliminary ruling, I would respectfully point out that we have not yet been given the opportunity to either make closing arguments or brief the damages issues based on the evidence presented at trial. When you asked for proposed orders, you instructed the parties to only address liability issues, which is what we did. We would also ask for the ability to present arguments on the damages issues either in writing or at a hearing on the record before the Court makes its final rulings on the case.

Thank you for your consideration of this request.

Andrew

Andrew F. Lindemann
Lindemann, Davis & Hughes, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
Direct Dial: 803-881-8921
Email: andrew@ldh-law.com

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Charles B. Simmons, Jr., Master-in-Equity

Case No. 2016-CP-23-5905

RECEIVED
Apr 23 2020
SC Court of Appeals

Renewable Water Resources,..... Respondent,

v.

Insurance Reserve Fund, a Division of the
State Fiscal Accountability Authority of South Carolina,..... Appellant.

NOTICE OF APPEAL

The Appellant Insurance Reserve Fund, a Division of the State Fiscal Accountability Authority of South Carolina, hereby appeals the judgment entered on April 8, 2020, and the following Orders issued by the Honorable Charles B. Simmons, Jr.:

- (1) Findings of Fact and Conclusions of Law filed March 18, 2020
- (2) Order filed April 6, 2020

The Appellant's counsel received written notice of entry of the Order filed April 6, 2020, on that same date.

LINDEMANN, DAVIS & HUGHES, P.A.

BY: s/ Andrew F. Lindemann
ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldh-law.com

-and-

DEVLIN & PARKINSON, P.A.

BY: s/ John R. Devlin, Jr.
JOHN R. DEVLIN, JR. #1667
27 Cleveland Street, Suite 201
Post Office Box 10387
Greenville, South Carolina 29603
(864) 242-4050
Email: john.devlin@devlinparkinson.com

*Counsel for Appellant South Carolina
Insurance Reserve Fund*

April 23, 2020

Other Counsel of Record:

Rivers S. Stilwell
SC Bar #2108
William S. Brown, V
SC Bar #64164
Katie E. Towery
SC Bar #103219
Nelson Mullins Riley & Scarborough, LLP
2 West Washington Street, Suite 400
Post Office Box 10084
Greenville, South Carolina 29601
(864) 250-2300
Email: rivers.stilwell@nelsonmullins.com
Email: william.brown@nelsonmullins.com
Email: katie.towery@nelsonmullins.com

Counsel for Respondent
Renewable Water Resources

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Renewable Water Resources,	)	Civil Action No. 2016-CP-23-5905
	)	
Plaintiff,	)	
vs.	)	
	)	
Insurance Reserve Fund, a Division of	)	<u>FINDINGS OF FACT AND</u>
the State Fiscal Accountability Authority	)	<u>CONCLUSIONS OF LAW</u>
of South Carolina,	)	
	)	
Defendant.	)	

RECEIVED**Apr 23 2020****SC Court of Appeals****FINDINGS OF FACT**

Plaintiff Renewable Water Resources (“ReWa”) is a special purpose district that provides wastewater treatment services in the Upstate of South Carolina. (Joint Stip. of Facts, Ct.’s Ex. 1 at ¶¶ 1, 5.) At all times relevant hereto, ReWa maintained a Building and Personal Property Insurance Policy (“Building Policy”) and Tort Liability Insurance Policy (“Tort Policy”) with the Insurance Reserve Fund (“IRF”). (*See id.* at ¶¶ 3-4; Pl.’s Exs. 8, 9, 10.)

This case arises out of a polychlorinated biphenyl (“PCB”)¹ contamination that occurred in the Upstate of South Carolina beginning in 2013 as a result of vandalism by the illegal dumping of PCBs into ReWa’s system. (Ct.’s Ex. 1 at ¶¶ 5-6.) ReWa discovered the presence of PCBs at three of its facilities—Pelham Road, Mauldin Road, and Lower Reedy—in routine periodic testing of the wastewater sludge (also referred to as “biosolids”). (*Id.* at ¶¶ 8-9.)

ReWa provided formal notice to the Environmental Protection Agency (“EPA”) and South Carolina Department of Health and Environmental Control (“SCDHEC”) of the PCBs in its treatment facilities on July 26, 2013. (*Id.* at ¶ 12; Pl.’s Ex. 17.) ReWa’s Controller, Patricia Dennis, reported an insurance claim to the IRF on September 24, 2013, which was acknowledged by the IRF on October 11, 2013. (Ct.’s Ex. 1 at ¶¶ 13-14; Pl.’s Exs. 47, 49.)

¹ PCBs do not readily break down in the environment and cause a variety of significant adverse health effects, including cancer.

ReWa retained AECOM—an engineering firm with expertise in the remediation and removal of contaminants like PCBs—to develop and implement a plan for remediation and repair at the Pelham Road facility. (Ct.’s Ex. 1 at ¶ 15.) ReWa submitted a “Sludge Removal and Disposal Plan” to SCDHEC on October 17, 2013, which was approved by letter dated October 22, 2013. (*Id.* at ¶¶ 15-16; Pl.’s Exs. 32, 33.) The remediation and repair work, recommended by AECOM and approved with direction from SCDHEC, required ReWa first to remove the sludge contained in the contaminated equipment and fixtures, which process began in November 2013. (Pl.’s Exs. 27, 94.) The plan further required the cleaning of the contaminated facilities, equipment, and structures. PCBs had physically adhered to concrete, which is a porous surface, and had to be blasted off by pressure washers and cleaned with a special chemical solution. (*Id.*) Prior to this cleaning, while in their PCB-contaminated state, ReWa’s three facilities, and the equipment and machinery located there, were not able to be used for their normal operations. The repairs and remediation at the Pelham Road facility were completed in late February and early March of 2014. (*Id.*)

Once the repairs at the Pelham Road facility were complete, ReWa began remediation and repair work at its Mauldin Road and Lower Reedy facilities in April 2014. The Mauldin Road and Lower Reedy facilities required the same types of remediation and repair as the Pelham facility, and ReWa incurred the same categories of damages in this process. On April 15, 2014, ReWa submitted a “Summary Remediation Plan” for Mauldin Road and Lower Reedy to SCDHEC, which followed the same process that was done at Pelham Road. (*See* Ct.’s Ex. 1 at ¶ 17; Pl.’s Ex. 38.) This EPA prescribed decontamination process was needed at all three facilities. (Rule 30(b)(6) Depo. of ReWa at 158:10-21.)

No witness disputed that the PCB contamination inhibited or prevented the use of the contaminated structures. Also, all witnesses who addressed the issue agreed that the repair and decontamination of the structures at the three facilities could not occur unless and until the

contaminated sludge was first removed from the structures. This removal was a necessary first step in any repair efforts. Because of the PCB contamination at its three facilities, ReWa incurred millions of dollars in expenses to repair and restore its facilities, machinery, and equipment to usable condition, including the removal and disposal of contaminated material to be able to access the facilities. (Pl.'s Exs. 99, 100, 101.) ReWa kept the IRF apprised of its ongoing expenses related to the PCB remediation and repair by sending updated monthly expense reports. (*See, e.g.*, Pl.'s Exs. 52, 53, 62, 63, 67, 69.) The IRF never notified ReWa that these expense reports should be submitted in a different form or that certain expenses were not covered or appropriate under ReWa's policies.

During the year after the claim was made, ReWa repeatedly requested a coverage decision. However, the IRF did not provide any determination until October 30, 2014, more than a year after the claim was submitted, and after ReWa had incurred millions of dollars in remediation costs. (*See* Pl.'s Exs. 54, 65, 77.) In this "Coverage Position Letter," the IRF acknowledged that vandalism was a covered cause of loss for primary coverage under the Building Policy, but did not provide any basis for its failure to provide primary coverage. (Pl.'s Ex. 77.) The IRF offered coverage of \$30,000 under an additional coverage provision for pollutant cleanup and removal. (*Id.*) Before suit, the IRF never provided a written determination of coverage to ReWa for the Tort Policy.

This matter came before the Court for trial on January 28-30, 2020. Pursuant to the evidence and testimony presented at trial, the Court makes the following Conclusions of Law:

CONCLUSIONS OF LAW

I. ReWa's Remediation and Repair Efforts were Reasonable, Necessary, and Required.

On September 25, 2013, SCDHEC issued an emergency regulation ("Emergency Reg.") which specifically addressed the illicit dumping of PCBs at issue in this case. (Pl.'s Ex. 29.) The federal Toxic Substance Control Act ("TSCA") regulates remediation after contamination of

PCB levels equal to or greater than 50 parts per million (“ppm”). The Emergency Reg. imposed more stringent limits, prohibiting land application of sludge with *any* quantifiable amount of PCBs. The Emergency Reg. also provided that the processing facility impacted by the illicit dumping must be operated in a manner so that the returned wastewater, after processing, has *no* quantifiable amount of PCBs. In addition, ReWa was prohibited under its National Pollutant Discharge Elimination System (“NPDES”) Permits from introducing pollutants into its pretreatment process.²

In light of the Emergency Reg. and ReWa’s NPDES Permits, the Court concludes that the remediation and repair processes undertaken by ReWa at its three facilities were reasonable and necessary. The IRF argues that ReWa’s costs and expenses at the Mauldin Road and Lower Reedy facilities were unwarranted because the PCB contamination levels at those facilities were below 50 ppm. However, the fact that ReWa’s remediation at those facilities did not take place until after the Emergency Reg. was lifted is immaterial. ReWa’s NPDES Permits prohibited the introduction of pollutants into its pretreatment process, and ReWa’s normal operations could not continue during the PCB contamination.³ The Court finds that PCB contamination necessitated action by ReWa to remediate and repair the three affected facilities.

II. Interpretation of Insurance Policies

Words in an insurance policy are to be given their “plain, ordinary and popular meaning.” *Hutchinson v. Liberty Life Ins. Co.*, 404 S.C. 20, 23, 743 S.E.2d 827, 829 (2013). If a provision is susceptible to more than one interpretation, the Court must adopt the interpretation that favors coverage. *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 143-44, 781 S.E.2d 137, 142 (Ct.

² ReWa maintained NPDES Sludge Permits and Surface Water Discharge Permits for the three facilities at issue. (Pl.’s Exs. 14, 15; Testimony of Joel Jones.)

³ In addition, since the Emergency Reg. was enacted to address the PCB contamination, it likely applied to all contaminated materials in ReWa’s possession at the time it was implemented.

App. 2015). Moreover, the insurer bears the burden of establishing that any exclusions apply, and such policy exclusions are to be construed most strongly against the insurer. *Id.*

III. ReWa's Remediation and Repair Efforts are Covered, and Not Excluded, by the Building Policy.

The Building Policy states: "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." (Building Policy ¶ A, Pl.'s Ex. 8.) Thus, to establish coverage under the Building Policy, the following factors must exist: (1) direct physical loss of or damage to property; (2) that property must be Covered Property at the premises described in the Declarations; and (3) the loss or damage must be caused by or resulting from a Covered Cause of Loss. The Court finds that each of these factors has been met,⁴ and that no exclusion alters or impinges on that coverage.

A. Covered Property at Premises in Declarations

The Building Policy states that "Covered Property" includes ReWa's buildings, together with the fixtures and permanently installed machinery and equipment at such locations. (Pl.'s Ex. 8 at ¶ A.1.a.) To repair its tanks, digesters, machinery and equipment, ReWa first had to remove and properly dispose of the biosolids held in the contaminated tanks and digesters before it could clean them. The IRF does not dispute that these tanks, digesters, machinery, and equipment at the three facilities are Covered Property. The three facilities are also listed on the declaration pages.⁵ (See Pl.'s Ex. 2.)

The IRF argues that ReWa's biosolids do not constitute "Covered Property," and therefore costs associated with removing and disposing of the contaminated biosolids are not

⁴ The IRF conceded that the PCB contamination was caused by vandalism, which is a Covered Cause of Loss. (See Causes of Loss-Special Form ¶ F, Pl.'s Ex. 9; Ct.'s Ex. 1 at ¶¶ 5-6.)

⁵ The amount of coverage provided in the declaration pages for each affected facility is greater than ReWa's total damages.

covered. The testimony, including from the IRF's expert, was that the tanks, structures, and equipment at the facilities could not be cleaned and made usable again until the contaminated sludge was removed. The Court concludes that removing and disposing of the sludge was necessary to remediate and repair the contaminated structures, machinery, and equipment at ReWa's three impacted facilities. The costs associated with remediating and repairing such Covered Property, including the removal and disposal of biosolids, are covered under the Building Policy.

B. "Direct Physical Loss of or Damage to"

The IRF contends that coverage does not apply under the Building Policy because "direct physical loss of or damage to" should be interpreted to mean only immediate structural changes to Covered Property.⁶ However, the Court finds that "direct physical loss of or damage to" property includes the type of contamination involved herein of Covered Property even in the absence of structural alteration. This finding is supported by jurisdictions across the country which have found that "direct physical loss of or damage to" property includes the contamination of such property even in the absence of structural damage or alteration.⁷

⁶ The IRF also argues that the words "direct" and "physical" modify both "loss" and "damage." While the policy does not specifically limit coverage to "direct physical loss" or "*direct physical damage*," the Court finds this distinction irrelevant, as the contamination that occurred at ReWa's facilities is covered under the Building Policy regardless of whether or not the Court interprets the words "direct" and "physical" to modify both "loss" and "damage."

⁷ See *Mellin v. N. Security Ins. Co., Inc.*, 115 A.3d 799, 803-4 (N.H. 2015) (cat urine odor emanating from another condominium unit caused "direct physical loss" to insured's unit); *Gregory Packaging, Inc. v. Travelers Property Cas. Co.*, No. 2:12-cv-04418, 2014 WL 6675934 (D.N.J. Nov. 25, 2014) (ammonia discharge physically incapacitated insured's facility, and "property can sustain physical loss or damage without experiencing structural alteration"); *TRAVCO Ins. Co. v. Ward*, 715 F.Supp.2d 699, 708 (E.D. Va. 2010) (toxic gases released by drywall manufactured in China constituted "direct physical loss" to insured's property and noting that "[t]he majority of cases appear to support [the insured's] position that physical damage to the property is not necessary, at least where the building in question has been rendered unusable by physical forces."); *Motorists Mutual Ins. Co. v. Hardinger*, 131 Fed. Appx. 823, 825-27 (3d Cir. 2005) (bacteria contamination of well water constitutes direct physical loss to house if it

Furthermore, because the Building Policy does not include a definition of “damage,” the Court must apply the “plain, ordinary and popular meaning” of the word. *See Hutchinson v. Liberty Life Ins. Co.*, 404 S.C. 20, 23, 743 S.E.2d 827, 829 (2013). *Black’s Law Dictionary* defines “damage” as “loss or injury to person or property.” *Black’s Law Dictionary* (11th ed. 2019). In analyzing the meaning of “damages” under a general tort policy, the South Carolina Supreme Court found in *Helena Chemical Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004) that “[t]he plain, ordinary meaning of ‘damages’ is monies paid on an insured’s loss, in this case, from property damage” and that “[a]n ‘ordinary’ meaning of the term is not a legalistic one....” *Id.* at 638, 594 S.E.2d at 458.

The evidence shows that ReWa suffered direct physical loss of or damage to its facilities as a result of the PCB contamination. PCBs physically adhered to concrete, and had to be blasted off by pressure washers and cleaned with a special chemical solution.⁸ Further, in the

rendered it unusable); *Yale Univ. v. Cigna Ins. Co.*, 224 F.Supp.2d 402, 413 (D.Conn. 2002) (Yale suffered “physical loss of or damage to property” for the presence of asbestos or lead contamination in its buildings, and stating that the insurer “fail[ed] to even consider, let alone distinguish, the substantial body of case law in which a variety of contaminating conditions have been held to constitute ‘physical loss of or damage to property’”); *Matzner v. Seaco Ins. Co.*, No. CIV. A. 96-0498-B, 9 Mass.L.Rptr. 41 (Mass. 1998) (carbon monoxide contamination, or the risk of carbon monoxide contamination, in plaintiffs’ apartment building constituted “direct physical loss of or damage to” the insured building); *Murray v. State Farm Fire & Cas. Co.*, 509 S.E.2d 1, 17 (1998) (under the homeowner’s insurance policy, “[l]osses covered by the policy, including those rendering the insured property unusable or uninhabitable, may exist in the absence of structural damage to the insured property”); *Azalea, Ltd. v. Am. States Ins. Co.*, 656 So.2d 600 (Fla. Dist. Ct. App. 1995) (there was direct damage to sewage treatment structure because residue from pollutant covered and adhered to the interior of the structure causing destruction of the bacteria colony which was an integral part of the covered facility); *Farmers Ins. Co. of Oregon v. Trutanich*, 858 P.2d 1332, 1335-6 (Or. Ct. App. 1993) (the odor from a methamphetamine lab constituted “physical” damage because it damaged the house and the cost of removing the odor was a direct physical loss); *Western Fire Ins. Co. v. First Presbyterian Church*, 437 P.2d 52 (Colo. 1968) (when insured church had to close its building because of the infiltration of vapors from gasoline in the soil under and around the building, “direct physical loss” occurred).

⁸ The IRF’s expert admitted that the PCB contamination was physically adhered to the walls after the tanks were emptied.

contaminated state, ReWa's three facilities, and the equipment and machinery located there, were not able to be used for their normal operations.⁹ In other words, the Covered Property was unusable in its contaminated state, which constitutes "damage" under the ordinary meaning. The damage from the PCBs was direct and physical. Thus, the Court concludes that the PCB contamination that occurred at ReWa's facilities caused "direct physical loss of or damage to" ReWa's Covered Property.

Additionally, coverage under the Building Policy extends to even "risks of" direct physical loss. The Causes of Loss-Special Form states that "Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS." (Pl.'s Ex. 9 at ¶ A.) Notably, this language has been directly addressed by the South Carolina Supreme Court. In *Ocean Winds Council of Co-owners, Inc. v. Auto-Owners Ins. Co.*, 350 S.C. 268, 565 S.E.2d 306 (2002), the Supreme Court explained the significance of the word "risks" as it relates to the scope of coverage provided. The Court reasoned:

In our view, to construe the phrase "*risks of direct physical loss involving collapse*" as requiring actual collapse is too narrow an interpretation. This phrase is more expansive than the word "collapse" and appears to cover even the threat of loss from collapse. Further, as noted by courts rejecting the actual collapse standard, such an interpretation encourages an insured to neglect repairs and allow a building to fall, which is economically unsound and contrary to the insured's duty to mitigate damages.

Id. at 271, 565 S.E.2d at 208 (emphasis in original) (internal citations omitted).

Applying such interpretation to this case, the Court concludes the Building Policy covers not only direct physical loss of or damage to ReWa's Covered Property, but also the costs incurred by ReWa in addressing the risks of PCBs infiltrating deeper into its facilities, equipment, and machines, such as expenses related to sampling and prevention of contaminated hauled storage being introduced into ReWa's facilities and remediation of ReWa's collection

⁹ ReWa was processing thirty million gallons a day coming into its system.

lines that led into its facilities. Further, ReWa was directed by the policy to take all reasonable steps to protect its Covered Property from further damage. (*See* Pl.’s Ex. 8 at ¶ E.2.a.(4).)¹⁰ ReWa is therefore entitled to its reasonable costs and expenses incurred as a result of the PCB contamination, less ReWa’s regular ongoing costs of processing biosolids.

C. ReWa’s Remediation and Repair Efforts are Not Limited or Excluded Under the Building Policy.

The IRF argues that ReWa’s coverage is limited or excluded by various provisions of the Building Policy. For example, the IRF contends that the “debris removal” and “pollutant cleanup and removal” provisions limit ReWa’s coverage. (*See* Pl.’s Ex. 8 at ¶ A.4.) These provisions, however, are additional coverages under the Building Policy, and are not intended to limit the primary coverage provisions. The Court finds that ReWa’s remediation and repair efforts are not limited or excluded by any additional coverage or exclusion provisions under the Building Policy.

The primary exclusion claimed by the IRF was the Ordinance or Law Exclusion. The IRF contends that the Building Policy does not cover ReWa’s damages resulting from the PCB contamination because ReWa’s remediation and repair process was governed by EPA and SCDHEC regulations, and therefore the Ordinance or Law Exclusion applies. That Exclusion states the IRF “will not pay for loss or damage caused directly or indirectly by ... The enforcement of any ordinance or law: (1) Regulating construction, use or repair of any property; or (2) Requiring the tearing down of any property, including the cost of removing its debris.” (Pl.’s Ex. 9 at ¶ B.1.a.) The Court notes that no evidence was presented to indicate the environmental regulations at issue fall within the categories of ordinance and law specified in the

¹⁰ Expenses incurred in testing and remediating lines which flow into the facilities are covered expenses under this “protection of property” provision, even though this testing and remediation did not occur on the Covered Property.

policy.¹¹ The Court concludes that vandalism, not the enforcement of an ordinance or law, created ReWa's resulting loss. Any actions by the EPA and SCDHEC which could be deemed to be "enforcement" under this exclusion did not, either directly or indirectly, cause ReWa to suffer the damages claimed in this lawsuit. *See Throgs Neck Bagels, Inc. v. GA Ins. Co. of New York*, 241 A.D.2d 66 (N.Y. App. Div. 1st Dep't 1998) ("So long as extraneous forces cause physical damage to property, this type of exclusion does not defeat recovery when, as a result, a governmental body enforces an ordinance against the property."). Further, ReWa's mere compliance with the applicable regulations does not trigger this exclusion. *See, e.g., Haas v. Audubon Indem. Co.*, 722 So.2d 1022 (La. App. 1998) ("Compliance is not enforcement" and "it was the vandalism that caused damage to the [insured's] building, not the enforcement of any ordinance or law").

IV. ReWa's Remediation and Repair Efforts are Not Covered by the Tort Policy.

ReWa also made a claim under the Tort Policy. That policy states the IRF "will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of ... Property Damage to which this applies caused by an occurrence." (Tort Policy ¶ I.B., Pl.'s Ex. 10.) An "occurrence" is defined as "an accident, including continuous related exposure to conditions, which results in personal injury or property damage neither expected nor intended from the standpoint of the insured." (*Id.* at ¶ III.)

With respect to liability insurance, the South Carolina Supreme Court has ruled:

Both the obligation to indemnify and the obligation to defend are inchoate, conditional, contingent obligations to the insured. Before they come into play, there must be an external event within the coverage of the policy and the performance of all conditions precedent by the insured, including his cooperation. *There is no obligation to defend until an action is brought and no obligation to indemnify until a judgment against the insured is obtained.*

¹¹ The Court further notes that, in its Pre-Trial Brief, the IRF conceded that "Neither DHEC nor the EPA ever filed a complaint or an enforcement action," and that ReWa "was never even threatened with an enforcement action." *See* IRF Pre-Trial Brief at 8.

Howard v. Allen, 254 S.C. 455, 176 S.E.2d 127, 129 (1970) (emphasis added). ReWa has not identified any suit or claim as defined by the Tort Policy filed by a third party against ReWa that was tendered to the IRF for a defense and indemnity. There was never even an enforcement action – nor the threat of one – from DHEC or the EPA. No consent order was issued, nor was one requested by DHEC or EPA. The EPA never advised ReWa that it was treating it as a “potentially responsible party” (“PRP”) under CERCLA. At no time did ReWa take the position that it was a PRP under CERCLA or had any responsibility for causing the PCB contamination. Without the institution of a suit, as *Howard* instructs, there is no duty to defend nor a duty to indemnify under the Tort Policy.¹²

Furthermore, the Tort Policy issued by the IRF includes an “Owned Property Exclusion” which provides as follows: “This insurance does not apply to property damage to property owned or occupied by or rented to the insured.” This Court concludes that ReWa is seeking to be indemnified for alleged property damage to its own property. That claim falls squarely within the scope of the Owned Property Exclusion. See *City of Abbeville v. South Carolina Ins. Reserve Fund*, 323 S.C. 60, 448 S.E.2d 579 (Ct. App. 1994).

Finally, Section VII.5 of the Tort Policy states: “No action shall lie against the Fund unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured’s obligation to pay shall have been finally determined either by judgement against the insured after actual trial or by written agreement of the insured, the complaint and the Fund.” With respect to ReWa’s claim, ReWa’s “obligation to pay” has not been established by a judgment after an actual trial or by a settlement agreement. As the record conclusively shows, there has not been a settlement agreement with a third-party, and certainly not a settlement to which the IRF agreed.

¹² ReWa’s witnesses conceded that no request for legal counsel was ever made to the IRF.

Based on these principles, the Court concludes ReWa was not legally obligated to pay for the damages caused by the PCB contamination, which resulted from intentional acts of vandalism by a third party. Thus, coverage is not triggered under the Tort Policy. On these bases, the Court finds in favor of the IRF on the causes of action alleging coverage under the Tort Policy.

V. Bad Faith

ReWa has also asserted a bad faith claim against the IRF based upon allegations that the IRF unreasonably delayed in making a coverage determination and failed to pay the amounts due under the policies. The covenant of good faith and fair dealing extends not just to the payment of a legitimate claim, but also to the manner in which it is processed. *See Mixson, Inc. v. Am. Loyalty Ins. Co.*, 349 S.C. 394, 400, 562 S.E.2d 659, 662 (Ct. App. 2002). The Supreme Court has recognized that a bad faith claim could be asserted against the IRF, and that such claim is a tort governed by the Tort Claims Act. *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993).

The Court is troubled by the length of time the IRF took to deny the claim (thirteen months). However, the Court concludes that the unique facts presented in this matter do not rise to the level of bad faith, particularly in light of the significant delay by ReWa in initially notifying the IRF of its claim. The Court therefore finds in the IRF's favor on the bad faith claim. It is not necessary for the Court to address the other defenses raised by the IRF to the bad faith claim.

VI. Attorneys' Fees

On the issue of attorney's fees, the IRF argued that (1) the prayer for attorney's fees in the Amended Complaint was pled only as part of the bad faith causes of action, (2) ReWa cited only to Section 38-59-40 as a basis for attorney's fees and that requires a showing of unreasonableness or bad faith, and (3) that the IRF is not an "insurer" under the definitions

applicable to Title 38, so Section 38-59-40 cannot be used against the IRF. *See Davis v. State of S.C. Budget & Control Bd.*, 298 S.C. 135, 378 S.E.2d 604 (Ct. App. 1989). Furthermore, counsel for ReWa has conceded that if ReWa did not prevail on the bad faith claim, it could not obtain the attorneys' fees identified in its damages exhibits and a motion for attorneys' fees for the litigation under Section 38-59-40 could not be supported under any of the other claims.

VII. Damages

ReWa's response to the PCB contamination was both reasonable and necessary. ReWa was faced with the urgency of preventing the discharge of contaminated materials into public rivers or the land application of contaminated biosolids onto land owned by local farmers. Testimony was presented at trial by Joel Jones, ReWa's Chief Technical Officer, that ReWa processes approximately thirty million gallons of wastewater a day. The Court finds that under these unique circumstances, ReWa properly notified SCDHEC and the EPA and acted with the necessary sense of urgency to prevent the PCB contamination from further impacting its facilities or affecting the public-at-large.

ReWa retained AECOM, a firm experienced in remediation and removal of contaminants, to help it develop the best course of action. ReWa also used a competitive bid process in determining which vendor to use for solid waste removal. With the approval of SCDHEC and the EPA, ReWa developed a plan of action to safely dispose of over fifteen million gallons of wastewater impacted by the PCB contamination, some of which had to be transported to specially approved receiving facilities in Emelle, Alabama. During the remediation and repair process, ReWa provided monthly reports to the IRF setting out what had been done and the expenses related thereto. As ReWa's Controller, Patricia Dennis, testified at trial, ReWa established a two-step accounting system in order to monitor and track expenses related to the PCB remediation and repair efforts. The IRF never raised any concerns or

questions about ReWa's process of tracking these costs, nor stated any objection to ReWa's inclusion of any particular costs in its expense spreadsheets.

Pursuant to the above findings, the Court finds that the testimony of ReWa's witnesses and the evidence presented at trial establish that ReWa incurred \$8,751,949.60 in total expenses for the PCB remediation and repair. (*See* Pl.'s Exs. 99, 100.) After subtracting ReWa's regular costs of processing biosolids (\$2,516,054.27), ReWa's total damages are \$6,235,895.33. (Pl.'s Ex. 101.) The Court declines to award the following costs: \$249,572.00 to Greenville County Solid Waste due to lack of sufficient proof for outside technical support; \$4,246.25 to AECOM for lack of sufficient proof; \$1,320.00 which appears to be a double charge for pressure washing (*see* Def.'s Ex. 19); and \$155,832.59 in attorneys' fees and costs relating to environmental and coverage counsel.

The Court finds that all of ReWa's other costs and expenses are reasonable and recoverable under the Building Policy. Therefore, the Court finds that ReWa is entitled to an award of damages in the amount of \$5,824,924.49 against the IRF.

RULING

For these reasons, the Court concludes ReWa's damages resulting from the cleanup, repair, and remediation of its facilities, machinery, and equipment due to PCB contamination at its Pelham Road, Mauldin Road, and Lower Reedy facilities are covered under the Building Policy, and such costs and expenses incurred by ReWa were reasonable and necessary to remediate and repair its facilities and prevent further harm.

Pursuant to the testimony and evidence presented at trial, judgment is hereby entered, consistent with the findings herein, awarding ReWa the amount of \$5,824,924.49 under the Building Policy only.

AND IT IS SO ORDERED.

Judge's Electronic Signature to Follow



Greenville Common Pleas

Case Caption: Renewable Water Resources vs. Insurance Reserve Fund , defendant,
et al
Case Number: 2016CP2305905
Type: Master/Master's Filing

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Renewable Water Resources,

Plaintiff,

vs.

Insurance Reserve Fund, a Division of
the State Fiscal Accountability Authority
of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C/A #: 2016-CP-23-05905

ORDER

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Apr 23 2020

SC Court of Appeals

The matter is before the Court pursuant to motions filed by Defendant on March 30, 2020. Based upon the Court's familiarity with the record, I find that a hearing is not necessary. See, *Pollard v. County of Florence*, 444 S.E.2d 534 (S.C. App. 1994). As will be more fully explained below, the motions are denied.

As set forth in the motion under Findings of Fact, items 1., 2. and 3. argue, in substance, that Plaintiff did not consult with Defendant on certain aspects of the remediation. However, the record is clear that Defendant was noticed of the PCBs contamination, provided monthly reports/expenses summaries, and never availed themselves of opportunities to consult with Plaintiff, approve or deny the plan or expenses, or take any other active role for some thirteen (13) months. Under the facts herein, it is too late to now argue Plaintiff acted improperly or without an offer of consultation with Defendant.

As to 5., the Court finds that Plaintiff submitted sufficient evidence to support its claims and the same is amply supported by the evidence. Again, and as noted above, the Defendant was

on actual notice of the ongoing remediation and ongoing and increasing expenses and took no action or participation therein.

The other issues and items raised under Findings of Fact have been sufficiently addressed in the Order filed March 18, 2020.

Under Conclusions of Law, while the Court appreciates the arguments raised by Defendant, the preponderance of the evidence established that Plaintiff acted in a reasonable and appropriate manner in its remediation and that the amounts awarded are reasonable.

Upon a review of the record, the Order of March 18, 2020 and Defendant's motions filed March 30, 2020, the Court is of the opinion that the Order of March 18, 2020 is appropriately and reasonably based upon the facts presented at trial and the applicable law.

As such, Defendant's motions are denied.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Renewable Water Resources vs. Insurance Reserve Fund , defendant,
et al
Case Number: 2016CP2305905
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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Jun 22 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Charles B. Simmons, Jr., Master-in-Equity

Case No. 2016-CP-23-5905

Renewable Water Resources,..... Respondent,

v.

Insurance Reserve Fund, a Division of the
State Fiscal Accountability Authority of South Carolina,..... Appellant.

AMENDED NOTICE OF APPEAL

The Appellant Insurance Reserve Fund, a Division of the State Fiscal Accountability Authority of South Carolina, amends its previously filed Notice of Appeal and hereby appeals the following Orders issued by the Honorable Charles B. Simmons, Jr.:

- (1) Findings of Fact and Conclusions of Law filed March 18, 2020,
- (2) Order filed April 6, 2020, and
- (3) Order Granting in Part Motion for Costs, filed May 21, 2020.

The Appellant's counsel received written notice of entry of the Order filed May 21, 2020, on that same date.

LINDEMANN, DAVIS & HUGHES, P.A.

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June 22, 2020

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Renewable Water Resources

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Renewable Water Resources,	)	Civil Action No. 2016-CP-23-5905
	)	
Plaintiff,	)	
vs.	)	
	)	
Insurance Reserve Fund, a Division of	)	<u>FINDINGS OF FACT AND</u>
the State Fiscal Accountability Authority	)	<u>CONCLUSIONS OF LAW</u>
of South Carolina,	)	
	)	
Defendant.	)	

RECEIVED**Jun 22 2020****SC Court of Appeals****FINDINGS OF FACT**

Plaintiff Renewable Water Resources (“ReWa”) is a special purpose district that provides wastewater treatment services in the Upstate of South Carolina. (Joint Stip. of Facts, Ct.’s Ex. 1 at ¶¶ 1, 5.) At all times relevant hereto, ReWa maintained a Building and Personal Property Insurance Policy (“Building Policy”) and Tort Liability Insurance Policy (“Tort Policy”) with the Insurance Reserve Fund (“IRF”). (*See id.* at ¶¶ 3-4; Pl.’s Exs. 8, 9, 10.)

This case arises out of a polychlorinated biphenyl (“PCB”)¹ contamination that occurred in the Upstate of South Carolina beginning in 2013 as a result of vandalism by the illegal dumping of PCBs into ReWa’s system. (Ct.’s Ex. 1 at ¶¶ 5-6.) ReWa discovered the presence of PCBs at three of its facilities—Pelham Road, Mauldin Road, and Lower Reedy—in routine periodic testing of the wastewater sludge (also referred to as “biosolids”). (*Id.* at ¶¶ 8-9.)

ReWa provided formal notice to the Environmental Protection Agency (“EPA”) and South Carolina Department of Health and Environmental Control (“SCDHEC”) of the PCBs in its treatment facilities on July 26, 2013. (*Id.* at ¶ 12; Pl.’s Ex. 17.) ReWa’s Controller, Patricia Dennis, reported an insurance claim to the IRF on September 24, 2013, which was acknowledged by the IRF on October 11, 2013. (Ct.’s Ex. 1 at ¶¶ 13-14; Pl.’s Exs. 47, 49.)

¹ PCBs do not readily break down in the environment and cause a variety of significant adverse health effects, including cancer.

ReWa retained AECOM—an engineering firm with expertise in the remediation and removal of contaminants like PCBs—to develop and implement a plan for remediation and repair at the Pelham Road facility. (Ct.’s Ex. 1 at ¶ 15.) ReWa submitted a “Sludge Removal and Disposal Plan” to SCDHEC on October 17, 2013, which was approved by letter dated October 22, 2013. (*Id.* at ¶¶ 15-16; Pl.’s Exs. 32, 33.) The remediation and repair work, recommended by AECOM and approved with direction from SCDHEC, required ReWa first to remove the sludge contained in the contaminated equipment and fixtures, which process began in November 2013. (Pl.’s Exs. 27, 94.) The plan further required the cleaning of the contaminated facilities, equipment, and structures. PCBs had physically adhered to concrete, which is a porous surface, and had to be blasted off by pressure washers and cleaned with a special chemical solution. (*Id.*) Prior to this cleaning, while in their PCB-contaminated state, ReWa’s three facilities, and the equipment and machinery located there, were not able to be used for their normal operations. The repairs and remediation at the Pelham Road facility were completed in late February and early March of 2014. (*Id.*)

Once the repairs at the Pelham Road facility were complete, ReWa began remediation and repair work at its Mauldin Road and Lower Reedy facilities in April 2014. The Mauldin Road and Lower Reedy facilities required the same types of remediation and repair as the Pelham facility, and ReWa incurred the same categories of damages in this process. On April 15, 2014, ReWa submitted a “Summary Remediation Plan” for Mauldin Road and Lower Reedy to SCDHEC, which followed the same process that was done at Pelham Road. (*See* Ct.’s Ex. 1 at ¶ 17; Pl.’s Ex. 38.) This EPA prescribed decontamination process was needed at all three facilities. (Rule 30(b)(6) Depo. of ReWa at 158:10-21.)

No witness disputed that the PCB contamination inhibited or prevented the use of the contaminated structures. Also, all witnesses who addressed the issue agreed that the repair and decontamination of the structures at the three facilities could not occur unless and until the

contaminated sludge was first removed from the structures. This removal was a necessary first step in any repair efforts. Because of the PCB contamination at its three facilities, ReWa incurred millions of dollars in expenses to repair and restore its facilities, machinery, and equipment to usable condition, including the removal and disposal of contaminated material to be able to access the facilities. (Pl.'s Exs. 99, 100, 101.) ReWa kept the IRF apprised of its ongoing expenses related to the PCB remediation and repair by sending updated monthly expense reports. (*See, e.g.*, Pl.'s Exs. 52, 53, 62, 63, 67, 69.) The IRF never notified ReWa that these expense reports should be submitted in a different form or that certain expenses were not covered or appropriate under ReWa's policies.

During the year after the claim was made, ReWa repeatedly requested a coverage decision. However, the IRF did not provide any determination until October 30, 2014, more than a year after the claim was submitted, and after ReWa had incurred millions of dollars in remediation costs. (*See* Pl.'s Exs. 54, 65, 77.) In this "Coverage Position Letter," the IRF acknowledged that vandalism was a covered cause of loss for primary coverage under the Building Policy, but did not provide any basis for its failure to provide primary coverage. (Pl.'s Ex. 77.) The IRF offered coverage of \$30,000 under an additional coverage provision for pollutant cleanup and removal. (*Id.*) Before suit, the IRF never provided a written determination of coverage to ReWa for the Tort Policy.

This matter came before the Court for trial on January 28-30, 2020. Pursuant to the evidence and testimony presented at trial, the Court makes the following Conclusions of Law:

CONCLUSIONS OF LAW

I. ReWa's Remediation and Repair Efforts were Reasonable, Necessary, and Required.

On September 25, 2013, SCDHEC issued an emergency regulation ("Emergency Reg.") which specifically addressed the illicit dumping of PCBs at issue in this case. (Pl.'s Ex. 29.) The federal Toxic Substance Control Act ("TSCA") regulates remediation after contamination of

PCB levels equal to or greater than 50 parts per million (“ppm”). The Emergency Reg. imposed more stringent limits, prohibiting land application of sludge with *any* quantifiable amount of PCBs. The Emergency Reg. also provided that the processing facility impacted by the illicit dumping must be operated in a manner so that the returned wastewater, after processing, has *no* quantifiable amount of PCBs. In addition, ReWa was prohibited under its National Pollutant Discharge Elimination System (“NPDES”) Permits from introducing pollutants into its pretreatment process.²

In light of the Emergency Reg. and ReWa’s NPDES Permits, the Court concludes that the remediation and repair processes undertaken by ReWa at its three facilities were reasonable and necessary. The IRF argues that ReWa’s costs and expenses at the Mauldin Road and Lower Reedy facilities were unwarranted because the PCB contamination levels at those facilities were below 50 ppm. However, the fact that ReWa’s remediation at those facilities did not take place until after the Emergency Reg. was lifted is immaterial. ReWa’s NPDES Permits prohibited the introduction of pollutants into its pretreatment process, and ReWa’s normal operations could not continue during the PCB contamination.³ The Court finds that PCB contamination necessitated action by ReWa to remediate and repair the three affected facilities.

II. Interpretation of Insurance Policies

Words in an insurance policy are to be given their “plain, ordinary and popular meaning.” *Hutchinson v. Liberty Life Ins. Co.*, 404 S.C. 20, 23, 743 S.E.2d 827, 829 (2013). If a provision is susceptible to more than one interpretation, the Court must adopt the interpretation that favors coverage. *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 143-44, 781 S.E.2d 137, 142 (Ct.

² ReWa maintained NPDES Sludge Permits and Surface Water Discharge Permits for the three facilities at issue. (Pl.’s Exs. 14, 15; Testimony of Joel Jones.)

³ In addition, since the Emergency Reg. was enacted to address the PCB contamination, it likely applied to all contaminated materials in ReWa’s possession at the time it was implemented.

App. 2015). Moreover, the insurer bears the burden of establishing that any exclusions apply, and such policy exclusions are to be construed most strongly against the insurer. *Id.*

III. ReWa's Remediation and Repair Efforts are Covered, and Not Excluded, by the Building Policy.

The Building Policy states: "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." (Building Policy ¶ A, Pl.'s Ex. 8.) Thus, to establish coverage under the Building Policy, the following factors must exist: (1) direct physical loss of or damage to property; (2) that property must be Covered Property at the premises described in the Declarations; and (3) the loss or damage must be caused by or resulting from a Covered Cause of Loss. The Court finds that each of these factors has been met,⁴ and that no exclusion alters or impinges on that coverage.

A. Covered Property at Premises in Declarations

The Building Policy states that "Covered Property" includes ReWa's buildings, together with the fixtures and permanently installed machinery and equipment at such locations. (Pl.'s Ex. 8 at ¶ A.1.a.) To repair its tanks, digesters, machinery and equipment, ReWa first had to remove and properly dispose of the biosolids held in the contaminated tanks and digesters before it could clean them. The IRF does not dispute that these tanks, digesters, machinery, and equipment at the three facilities are Covered Property. The three facilities are also listed on the declaration pages.⁵ (See Pl.'s Ex. 2.)

The IRF argues that ReWa's biosolids do not constitute "Covered Property," and therefore costs associated with removing and disposing of the contaminated biosolids are not

⁴ The IRF conceded that the PCB contamination was caused by vandalism, which is a Covered Cause of Loss. (See Causes of Loss-Special Form ¶ F, Pl.'s Ex. 9; Ct.'s Ex. 1 at ¶¶ 5-6.)

⁵ The amount of coverage provided in the declaration pages for each affected facility is greater than ReWa's total damages.

covered. The testimony, including from the IRF's expert, was that the tanks, structures, and equipment at the facilities could not be cleaned and made usable again until the contaminated sludge was removed. The Court concludes that removing and disposing of the sludge was necessary to remediate and repair the contaminated structures, machinery, and equipment at ReWa's three impacted facilities. The costs associated with remediating and repairing such Covered Property, including the removal and disposal of biosolids, are covered under the Building Policy.

B. "Direct Physical Loss of or Damage to"

The IRF contends that coverage does not apply under the Building Policy because "direct physical loss of or damage to" should be interpreted to mean only immediate structural changes to Covered Property.⁶ However, the Court finds that "direct physical loss of or damage to" property includes the type of contamination involved herein of Covered Property even in the absence of structural alteration. This finding is supported by jurisdictions across the country which have found that "direct physical loss of or damage to" property includes the contamination of such property even in the absence of structural damage or alteration.⁷

⁶ The IRF also argues that the words "direct" and "physical" modify both "loss" and "damage." While the policy does not specifically limit coverage to "direct physical loss" or "*direct physical damage*," the Court finds this distinction irrelevant, as the contamination that occurred at ReWa's facilities is covered under the Building Policy regardless of whether or not the Court interprets the words "direct" and "physical" to modify both "loss" and "damage."

⁷ See *Mellin v. N. Security Ins. Co., Inc.*, 115 A.3d 799, 803-4 (N.H. 2015) (cat urine odor emanating from another condominium unit caused "direct physical loss" to insured's unit); *Gregory Packaging, Inc. v. Travelers Property Cas. Co.*, No. 2:12-cv-04418, 2014 WL 6675934 (D.N.J. Nov. 25, 2014) (ammonia discharge physically incapacitated insured's facility, and "property can sustain physical loss or damage without experiencing structural alteration"); *TRAVCO Ins. Co. v. Ward*, 715 F.Supp.2d 699, 708 (E.D. Va. 2010) (toxic gases released by drywall manufactured in China constituted "direct physical loss" to insured's property and noting that "[t]he majority of cases appear to support [the insured's] position that physical damage to the property is not necessary, at least where the building in question has been rendered unusable by physical forces."); *Motorists Mutual Ins. Co. v. Hardinger*, 131 Fed. Appx. 823, 825-27 (3d Cir. 2005) (bacteria contamination of well water constitutes direct physical loss to house if it

Furthermore, because the Building Policy does not include a definition of “damage,” the Court must apply the “plain, ordinary and popular meaning” of the word. *See Hutchinson v. Liberty Life Ins. Co.*, 404 S.C. 20, 23, 743 S.E.2d 827, 829 (2013). Black’s Law Dictionary defines “damage” as “loss or injury to person or property.” *Black’s Law Dictionary* (11th ed. 2019). In analyzing the meaning of “damages” under a general tort policy, the South Carolina Supreme Court found in *Helena Chemical Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004) that “[t]he plain, ordinary meaning of ‘damages’ is monies paid on an insured’s loss, in this case, from property damage” and that “[a]n ‘ordinary’ meaning of the term is not a legalistic one....” *Id.* at 638, 594 S.E.2d at 458.

The evidence shows that ReWa suffered direct physical loss of or damage to its facilities as a result of the PCB contamination. PCBs physically adhered to concrete, and had to be blasted off by pressure washers and cleaned with a special chemical solution.⁸ Further, in the

rendered it unusable); *Yale Univ. v. Cigna Ins. Co.*, 224 F.Supp.2d 402, 413 (D.Conn. 2002) (Yale suffered “physical loss of or damage to property” for the presence of asbestos or lead contamination in its buildings, and stating that the insurer “fail[ed] to even consider, let alone distinguish, the substantial body of case law in which a variety of contaminating conditions have been held to constitute ‘physical loss of or damage to property’”); *Matzner v. Seaco Ins. Co.*, No. CIV. A. 96-0498-B, 9 Mass.L.Rptr. 41 (Mass. 1998) (carbon monoxide contamination, or the risk of carbon monoxide contamination, in plaintiffs’ apartment building constituted “direct physical loss of or damage to” the insured building); *Murray v. State Farm Fire & Cas. Co.*, 509 S.E.2d 1, 17 (1998) (under the homeowner’s insurance policy, “[l]osses covered by the policy, including those rendering the insured property unusable or uninhabitable, may exist in the absence of structural damage to the insured property”); *Azalea, Ltd. v. Am. States Ins. Co.*, 656 So.2d 600 (Fla. Dist. Ct. App. 1995) (there was direct damage to sewage treatment structure because residue from pollutant covered and adhered to the interior of the structure causing destruction of the bacteria colony which was an integral part of the covered facility); *Farmers Ins. Co. of Oregon v. Trutanich*, 858 P.2d 1332, 1335-6 (Or. Ct. App. 1993) (the odor from a methamphetamine lab constituted “physical” damage because it damaged the house and the cost of removing the odor was a direct physical loss); *Western Fire Ins. Co. v. First Presbyterian Church*, 437 P.2d 52 (Colo. 1968) (when insured church had to close its building because of the infiltration of vapors from gasoline in the soil under and around the building, “direct physical loss” occurred).

⁸ The IRF’s expert admitted that the PCB contamination was physically adhered to the walls after the tanks were emptied.

contaminated state, ReWa's three facilities, and the equipment and machinery located there, were not able to be used for their normal operations.⁹ In other words, the Covered Property was unusable in its contaminated state, which constitutes "damage" under the ordinary meaning. The damage from the PCBs was direct and physical. Thus, the Court concludes that the PCB contamination that occurred at ReWa's facilities caused "direct physical loss of or damage to" ReWa's Covered Property.

Additionally, coverage under the Building Policy extends to even "risks of" direct physical loss. The Causes of Loss-Special Form states that "Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS." (Pl.'s Ex. 9 at ¶ A.) Notably, this language has been directly addressed by the South Carolina Supreme Court. In *Ocean Winds Council of Co-owners, Inc. v. Auto-Owners Ins. Co.*, 350 S.C. 268, 565 S.E.2d 306 (2002), the Supreme Court explained the significance of the word "risks" as it relates to the scope of coverage provided. The Court reasoned:

In our view, to construe the phrase "*risks of direct physical loss involving collapse*" as requiring actual collapse is too narrow an interpretation. This phrase is more expansive than the word "collapse" and appears to cover even the threat of loss from collapse. Further, as noted by courts rejecting the actual collapse standard, such an interpretation encourages an insured to neglect repairs and allow a building to fall, which is economically unsound and contrary to the insured's duty to mitigate damages.

Id. at 271, 565 S.E.2d at 208 (emphasis in original) (internal citations omitted).

Applying such interpretation to this case, the Court concludes the Building Policy covers not only direct physical loss of or damage to ReWa's Covered Property, but also the costs incurred by ReWa in addressing the risks of PCBs infiltrating deeper into its facilities, equipment, and machines, such as expenses related to sampling and prevention of contaminated hauled storage being introduced into ReWa's facilities and remediation of ReWa's collection

⁹ ReWa was processing thirty million gallons a day coming into its system.

lines that led into its facilities. Further, ReWa was directed by the policy to take all reasonable steps to protect its Covered Property from further damage. (*See* Pl.’s Ex. 8 at ¶ E.2.a.(4).)¹⁰ ReWa is therefore entitled to its reasonable costs and expenses incurred as a result of the PCB contamination, less ReWa’s regular ongoing costs of processing biosolids.

C. ReWa’s Remediation and Repair Efforts are Not Limited or Excluded Under the Building Policy.

The IRF argues that ReWa’s coverage is limited or excluded by various provisions of the Building Policy. For example, the IRF contends that the “debris removal” and “pollutant cleanup and removal” provisions limit ReWa’s coverage. (*See* Pl.’s Ex. 8 at ¶ A.4.) These provisions, however, are additional coverages under the Building Policy, and are not intended to limit the primary coverage provisions. The Court finds that ReWa’s remediation and repair efforts are not limited or excluded by any additional coverage or exclusion provisions under the Building Policy.

The primary exclusion claimed by the IRF was the Ordinance or Law Exclusion. The IRF contends that the Building Policy does not cover ReWa’s damages resulting from the PCB contamination because ReWa’s remediation and repair process was governed by EPA and SCDHEC regulations, and therefore the Ordinance or Law Exclusion applies. That Exclusion states the IRF “will not pay for loss or damage caused directly or indirectly by ... The enforcement of any ordinance or law: (1) Regulating construction, use or repair of any property; or (2) Requiring the tearing down of any property, including the cost of removing its debris.” (Pl.’s Ex. 9 at ¶ B.1.a.) The Court notes that no evidence was presented to indicate the environmental regulations at issue fall within the categories of ordinance and law specified in the

¹⁰ Expenses incurred in testing and remediating lines which flow into the facilities are covered expenses under this “protection of property” provision, even though this testing and remediation did not occur on the Covered Property.

policy.¹¹ The Court concludes that vandalism, not the enforcement of an ordinance or law, created ReWa's resulting loss. Any actions by the EPA and SCDHEC which could be deemed to be "enforcement" under this exclusion did not, either directly or indirectly, cause ReWa to suffer the damages claimed in this lawsuit. *See Throgs Neck Bagels, Inc. v. GA Ins. Co. of New York*, 241 A.D.2d 66 (N.Y. App. Div. 1st Dep't 1998) ("So long as extraneous forces cause physical damage to property, this type of exclusion does not defeat recovery when, as a result, a governmental body enforces an ordinance against the property."). Further, ReWa's mere compliance with the applicable regulations does not trigger this exclusion. *See, e.g., Haas v. Audubon Indem. Co.*, 722 So.2d 1022 (La. App. 1998) ("Compliance is not enforcement" and "it was the vandalism that caused damage to the [insured's] building, not the enforcement of any ordinance or law").

IV. ReWa's Remediation and Repair Efforts are Not Covered by the Tort Policy.

ReWa also made a claim under the Tort Policy. That policy states the IRF "will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of ... Property Damage to which this applies caused by an occurrence." (Tort Policy ¶ I.B., Pl.'s Ex. 10.) An "occurrence" is defined as "an accident, including continuous related exposure to conditions, which results in personal injury or property damage neither expected nor intended from the standpoint of the insured." (*Id.* at ¶ III.)

With respect to liability insurance, the South Carolina Supreme Court has ruled:

Both the obligation to indemnify and the obligation to defend are inchoate, conditional, contingent obligations to the insured. Before they come into play, there must be an external event within the coverage of the policy and the performance of all conditions precedent by the insured, including his cooperation. *There is no obligation to defend until an action is brought and no obligation to indemnify until a judgment against the insured is obtained.*

¹¹ The Court further notes that, in its Pre-Trial Brief, the IRF conceded that "Neither DHEC nor the EPA ever filed a complaint or an enforcement action," and that ReWa "was never even threatened with an enforcement action." *See* IRF Pre-Trial Brief at 8.

Howard v. Allen, 254 S.C. 455, 176 S.E.2d 127, 129 (1970) (emphasis added). ReWa has not identified any suit or claim as defined by the Tort Policy filed by a third party against ReWa that was tendered to the IRF for a defense and indemnity. There was never even an enforcement action – nor the threat of one – from DHEC or the EPA. No consent order was issued, nor was one requested by DHEC or EPA. The EPA never advised ReWa that it was treating it as a “potentially responsible party” (“PRP”) under CERCLA. At no time did ReWa take the position that it was a PRP under CERCLA or had any responsibility for causing the PCB contamination. Without the institution of a suit, as *Howard* instructs, there is no duty to defend nor a duty to indemnify under the Tort Policy.¹²

Furthermore, the Tort Policy issued by the IRF includes an “Owned Property Exclusion” which provides as follows: “This insurance does not apply to property damage to property owned or occupied by or rented to the insured.” This Court concludes that ReWa is seeking to be indemnified for alleged property damage to its own property. That claim falls squarely within the scope of the Owned Property Exclusion. See *City of Abbeville v. South Carolina Ins. Reserve Fund*, 323 S.C. 60, 448 S.E.2d 579 (Ct. App. 1994).

Finally, Section VII.5 of the Tort Policy states: “No action shall lie against the Fund unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured’s obligation to pay shall have been finally determined either by judgement against the insured after actual trial or by written agreement of the insured, the complaint and the Fund.” With respect to ReWa’s claim, ReWa’s “obligation to pay” has not been established by a judgment after an actual trial or by a settlement agreement. As the record conclusively shows, there has not been a settlement agreement with a third-party, and certainly not a settlement to which the IRF agreed.

¹² ReWa’s witnesses conceded that no request for legal counsel was ever made to the IRF.

Based on these principles, the Court concludes ReWa was not legally obligated to pay for the damages caused by the PCB contamination, which resulted from intentional acts of vandalism by a third party. Thus, coverage is not triggered under the Tort Policy. On these bases, the Court finds in favor of the IRF on the causes of action alleging coverage under the Tort Policy.

V. Bad Faith

ReWa has also asserted a bad faith claim against the IRF based upon allegations that the IRF unreasonably delayed in making a coverage determination and failed to pay the amounts due under the policies. The covenant of good faith and fair dealing extends not just to the payment of a legitimate claim, but also to the manner in which it is processed. *See Mixson, Inc. v. Am. Loyalty Ins. Co.*, 349 S.C. 394, 400, 562 S.E.2d 659, 662 (Ct. App. 2002). The Supreme Court has recognized that a bad faith claim could be asserted against the IRF, and that such claim is a tort governed by the Tort Claims Act. *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993).

The Court is troubled by the length of time the IRF took to deny the claim (thirteen months). However, the Court concludes that the unique facts presented in this matter do not rise to the level of bad faith, particularly in light of the significant delay by ReWa in initially notifying the IRF of its claim. The Court therefore finds in the IRF's favor on the bad faith claim. It is not necessary for the Court to address the other defenses raised by the IRF to the bad faith claim.

VI. Attorneys' Fees

On the issue of attorney's fees, the IRF argued that (1) the prayer for attorney's fees in the Amended Complaint was pled only as part of the bad faith causes of action, (2) ReWa cited only to Section 38-59-40 as a basis for attorney's fees and that requires a showing of unreasonableness or bad faith, and (3) that the IRF is not an "insurer" under the definitions

applicable to Title 38, so Section 38-59-40 cannot be used against the IRF. *See Davis v. State of S.C. Budget & Control Bd.*, 298 S.C. 135, 378 S.E.2d 604 (Ct. App. 1989). Furthermore, counsel for ReWa has conceded that if ReWa did not prevail on the bad faith claim, it could not obtain the attorneys' fees identified in its damages exhibits and a motion for attorneys' fees for the litigation under Section 38-59-40 could not be supported under any of the other claims.

VII. Damages

ReWa's response to the PCB contamination was both reasonable and necessary. ReWa was faced with the urgency of preventing the discharge of contaminated materials into public rivers or the land application of contaminated biosolids onto land owned by local farmers. Testimony was presented at trial by Joel Jones, ReWa's Chief Technical Officer, that ReWa processes approximately thirty million gallons of wastewater a day. The Court finds that under these unique circumstances, ReWa properly notified SCDHEC and the EPA and acted with the necessary sense of urgency to prevent the PCB contamination from further impacting its facilities or affecting the public-at-large.

ReWa retained AECOM, a firm experienced in remediation and removal of contaminants, to help it develop the best course of action. ReWa also used a competitive bid process in determining which vendor to use for solid waste removal. With the approval of SCDHEC and the EPA, ReWa developed a plan of action to safely dispose of over fifteen million gallons of wastewater impacted by the PCB contamination, some of which had to be transported to specially approved receiving facilities in Emelle, Alabama. During the remediation and repair process, ReWa provided monthly reports to the IRF setting out what had been done and the expenses related thereto. As ReWa's Controller, Patricia Dennis, testified at trial, ReWa established a two-step accounting system in order to monitor and track expenses related to the PCB remediation and repair efforts. The IRF never raised any concerns or

questions about ReWa's process of tracking these costs, nor stated any objection to ReWa's inclusion of any particular costs in its expense spreadsheets.

Pursuant to the above findings, the Court finds that the testimony of ReWa's witnesses and the evidence presented at trial establish that ReWa incurred \$8,751,949.60 in total expenses for the PCB remediation and repair. (*See* Pl.'s Exs. 99, 100.) After subtracting ReWa's regular costs of processing biosolids (\$2,516,054.27), ReWa's total damages are \$6,235,895.33. (Pl.'s Ex. 101.) The Court declines to award the following costs: \$249,572.00 to Greenville County Solid Waste due to lack of sufficient proof for outside technical support; \$4,246.25 to AECOM for lack of sufficient proof; \$1,320.00 which appears to be a double charge for pressure washing (*see* Def.'s Ex. 19); and \$155,832.59 in attorneys' fees and costs relating to environmental and coverage counsel.

The Court finds that all of ReWa's other costs and expenses are reasonable and recoverable under the Building Policy. Therefore, the Court finds that ReWa is entitled to an award of damages in the amount of \$5,824,924.49 against the IRF.

RULING

For these reasons, the Court concludes ReWa's damages resulting from the cleanup, repair, and remediation of its facilities, machinery, and equipment due to PCB contamination at its Pelham Road, Mauldin Road, and Lower Reedy facilities are covered under the Building Policy, and such costs and expenses incurred by ReWa were reasonable and necessary to remediate and repair its facilities and prevent further harm.

Pursuant to the testimony and evidence presented at trial, judgment is hereby entered, consistent with the findings herein, awarding ReWa the amount of \$5,824,924.49 under the Building Policy only.

AND IT IS SO ORDERED.

Judge's Electronic Signature to Follow



Greenville Common Pleas

Case Caption: Renewable Water Resources vs. Insurance Reserve Fund , defendant,
et al

Case Number: 2016CP2305905

Type: Master/Master's Filing

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2020-03-18 14:09:02 page 16 of 16

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Renewable Water Resources,

Plaintiff,

vs.

Insurance Reserve Fund, a Division of
the State Fiscal Accountability Authority
of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C/A #: 2016-CP-23-05905

ORDER

RECEIVED

Jun 22 2020

SC Court of Appeals

The matter is before the Court pursuant to motions filed by Defendant on March 30, 2020. Based upon the Court's familiarity with the record, I find that a hearing is not necessary. See, *Pollard v. County of Florence*, 444 S.E.2d 534 (S.C. App. 1994). As will be more fully explained below, the motions are denied.

As set forth in the motion under Findings of Fact, items 1., 2. and 3. argue, in substance, that Plaintiff did not consult with Defendant on certain aspects of the remediation. However, the record is clear that Defendant was noticed of the PCBs contamination, provided monthly reports/expenses summaries, and never availed themselves of opportunities to consult with Plaintiff, approve or deny the plan or expenses, or take any other active role for some thirteen (13) months. Under the facts herein, it is too late to now argue Plaintiff acted improperly or without an offer of consultation with Defendant.

As to 5., the Court finds that Plaintiff submitted sufficient evidence to support its claims and the same is amply supported by the evidence. Again, and as noted above, the Defendant was

on actual notice of the ongoing remediation and ongoing and increasing expenses and took no action or participation therein.

The other issues and items raised under Findings of Fact have been sufficiently addressed in the Order filed March 18, 2020.

Under Conclusions of Law, while the Court appreciates the arguments raised by Defendant, the preponderance of the evidence established that Plaintiff acted in a reasonable and appropriate manner in its remediation and that the amounts awarded are reasonable.

Upon a review of the record, the Order of March 18, 2020 and Defendant's motions filed March 30, 2020, the Court is of the opinion that the Order of March 18, 2020 is appropriately and reasonably based upon the facts presented at trial and the applicable law.

As such, Defendant's motions are denied.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Renewable Water Resources vs. Insurance Reserve Fund , defendant,
et al

Case Number: 2016CP2305905

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2020-04-06 08:50:02 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Renewable Water Resources,) Civil Action No. 2016-CP-23-5905

Plaintiff,)

vs.)

Insurance Reserve Fund, a Division of)
the State Fiscal Accountability Authority)
of South Carolina,)

Defendant.)

ORDER GRANTING IN PART
MOTION FOR COSTS

RECEIVED

Jun 22 2020

SC Court of Appeals

Plaintiff Renewable Water Resources' ("ReWa") Motion for Costs came before the Court for hearing, by consent done via Zoom, on May 13, 2020. William S. Brown appeared on behalf of ReWa. Andrew F. Lindemann and John R. Devlin, Jr. appeared on behalf of Defendant Insurance Reserve Fund, a Division of the State Fiscal Accountability Authority of South Carolina ("IRF"). Having heard the arguments and reviewed the submissions of the parties, ReWa's Motion for Costs is hereby granted in part for the reasons set forth below.

Rule 54(d) of the South Carolina Rules of Civil Procedure provides that "[e]xcept when express provision thereof is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State, its offices, and agencies shall be imposed only to the extent permitted by law." The South Carolina Supreme Court and Court of Appeals have held that costs may be assessed against the State as with any other Defendant. *See Dunn v. Dunn*, 298 S.C. 365, 369, 380 S.E.2d 836, 838 (1989); *Varn v. South Carolina Dept. of Highways & Public Transp.*, 311 S.C. 349, 354, 428 S.E.2d 895, 898 (Ct. App. 1993).

Rule 54(e), SCRCP, states that taxable costs include: (1) costs authorized by statute; (2) all filing and recording fees charged by the clerk of court in which the action is pending; (3) fees of the sheriff for service of the summons and complaint or subpoenas for trial; (4) fees incurred

in service of process, which include the fees incurred to subpoena the witness who testified at trial or for the production of documents and materials actually used at trial; (5) witness fees and mileage actually traveled and paid to persons who testified at trial; and (6) fees for exemplification and copies of papers necessarily obtained for trial.

ReWa submitted the Affidavit of William S. Brown in support of its Motion for Costs and also submitted invoice backup for these items in advance of the hearing. The Affidavit includes an itemization of costs that ReWa seeks to recover totaling Thirty-Two Thousand Five Hundred Twenty-Seven Dollars and Six Cents (\$32,527.06), which is further broken down by category and specific amount for each entry. ReWa seeks an award of the following costs pursuant to Rule 54, SCRPC and South Carolina statute:

- (1) Interest pursuant to S.C. Code Ann. § 15-37-30 in the amount of Twenty-Nine Thousand Three Hundred Twenty-Four Dollars and Nineteen Cents (\$29,324.19);
- (2) Filing and recording fees in the amount of Two Hundred Twenty-Five Dollars (\$225.00);
- (3) Fees incurred in service of process of the Complaint in the amount of Fifty Dollars (\$50.00); and
- (4) Costs of exemplifications and copies of papers necessarily obtained for trial, including foam board exhibits, trial exhibits, and original depositions in the amount of Two Thousand Nine Hundred Twenty-Seven Dollars and Eighty-Seven Cents (\$2,927.87).¹

¹ This original amount sought by ReWa included the deposition costs of Four Hundred Twenty-Eight Dollars and Seventy-Eight Cents (\$428.78) relating to Jerry Anderson. ReWa later conceded that this amount could be removed from ReWa's total claimed costs because Mr. Anderson did not testify as a live witness and, although portions of his deposition were originally designated, his deposition was not used or published to the Court during trial.

RULING

As an initial matter, the Court finds that ReWa's Motion for Costs is properly before the Court pursuant to Rule 54(d), SCRCP, and is a matter which should be decided by the Court with the awarded costs entered by the clerk. Furthermore, the Court concludes that, in the interest of judicial economy, the taxation of costs should not be delayed until the IRF's appeal is completed. Ruling at this time in no way prejudices any rights of the IRF.

The Court finds that ReWa is "the prevailing party" under Rule 54. The IRF did not contest that issue in its submission on the motion. Therefore, ReWa is entitled to an award of costs. The issue before the Court is determination of the amount of that award of costs.

1. Interest under S.C. Code Ann. § 15-37-30

ReWa asserts that pursuant to Rule 54(e)(1), SCRCP, it is entitled to recover costs allowed by statute. The statute at issue regarding interest is S.C. Code Ann. § 15-37-30, which states that "[w]hen the judgment is for the recovery of money, interest from the time of the verdict or report until judgment may be finally entered shall be computed by the clerk and added to the costs of the party entitled thereto."

In this case, the Court entered Findings of Fact and Conclusions of Law on March 18, 2020 which set forth the Court's finding and set the amount of the judgment to be entered in favor of ReWa. The judgment was entered by the clerk on April 8, 2020. Therefore, what is at issue is interest which accrued for the twenty-one (21) days between the Court's determination and the entry of judgment.

The IRF makes two principal arguments in opposition to the award of interest under S.C. Code Ann. § 15-37-30 as a cost. First, the IRF asserts that S.C. Code Ann. § 15-37-30 was

repealed by implication with the adoption of Rule 54(e). Second, the IRF contends that Rule 54(e) states the exclusive list of allowable costs. Because interest is not identified in Rule 54(e), the IRF contends that it cannot be awarded as a cost.

The Court does not believe that S.C. Code Ann. § 15-37-30 was repealed. When the Rules of Civil Procedure were adopted by 1985 S.C. Act 100, the General Assembly provided a long list of statutes which were repealed because they were replaced by the Rules. S.C. Code Ann. § 15-37-30 was not listed as repealed by the General Assembly in 1985 S.C. Act 100 or any subsequent Act. “In general, repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation.” *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 135, 694 S.E.2d 213, 216 (2010). “The repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.” *Spectre, LLC v. South Carolina Dep't of Health & Envtl. Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010). The Court finds that Rule 54(e) and S.C. Code Ann. § 15-37-30 can be applied without conflict, so that the IRF has failed to show that they are “incapable of any reasonable reconciliation.” The express language of Rule 54(e), SCRCP, permits recovery of “Costs Authorized by Statute” allowing for the award of costs authorized “in favor of the prevailing party under *any statute* or Rule of Civil Procedure.” Rule 54(e)(1), SCRCP (emphasis added); *see also* 7 S.C. JUR. COSTS § 42 (March 2020 Update). As such, the Court finds that S.C. Code Ann. § 15-37-30 has not been repealed and remains valid law.

The Court finds that ReWa is entitled to interest from the time this Court’s Findings of Fact and Conclusions of Law were entered on March 18, 2020 until such time as the judgment was entered by the clerk on April 8, 2020 under S.C. Code Ann. § 15-37-30. The interest for that twenty-one (21) day period has accrued at the post-judgment interest rate. *See* 7 S.C. JUR. COSTS

§ 42 (March 2020 Update). However, such interest is not a taxable cost under Rule 54(e), SCRCP. This amount should be treated with other interest on the award/judgment and be recoverable at the time of any collection on the judgment. Therefore, the Court denies ReWa's request for an award of Twenty-Nine Thousand Three Hundred Twenty-Four Dollars and Nineteen Cents (\$29,324.19)² as a taxable cost pursuant to Rule 54(e), SCRCP, and finds that this amount should be included as part of the post-judgment interest calculation.

2. Filing Fees and Service of Process

ReWa seeks filing and recording fees, as shown in the public record, for the filing of the Complaint and several motions in the amount of Two Hundred Twenty-Five Dollars (\$225.00). Rewa also seeks costs incurred in service of process of the Complaint in the amount of Fifty Dollars (\$50.00). The IRF did not oppose the award of these costs. The Court finds that these are proper under Rule 54(e), SCRCP.

3. Costs of Copies Obtained for Trial and Depositions

ReWa also seeks the costs of certain copies and depositions. Costs for exemplifications and copies of papers necessarily obtained for trial are recoverable under Rule 54(e)(6), SCRCP. ReWa incurred the expense of copying exhibits for trial. It seeks an award of costs for one full set of Plaintiff's trial exhibits submitted for the Court's use during trial in the amount of Six Hundred Forty-Seven Dollars and Thirty-Five Cents (\$647.35). During the trial, ReWa used a foam board blow-up of Plaintiff's Exhibit 107, which reflects ReWa's total damages calculation and seeks costs for this of Ninety Dollars and Ten Cents (\$90.10). These costs relate to copies of

² The parties also raise an issue regarding the proper daily accrual of interest. ReWa calculated the accrual on a standard 365-day year. The IRF contends that the calculation should use 366 days, to account for the fact that 2020 is a leap year. Neither party submitted authority for its position. Because the Court is delaying the award of this interest, it need not reach this issue.

papers and exemplifications that were necessarily obtained for the trial of this matter, and the Court finds that they are therefore recoverable under Rule 54(e)(6), SCRPC.

ReWa also seeks the costs of certain depositions which were used during trial. The IRF opposes the award of the deposition costs and asserts that deposition costs are not properly recoverable as a cost under Rule 54. The Court finds that ReWa's costs in obtaining original depositions for use at trial are recoverable as taxable costs. The South Carolina Supreme Court upheld the award of deposition costs in *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 401-402, 618 S.E.2d 903, 908 (2005). Noting that the "trial judge has broad discretion to award costs to the prevailing party," the Supreme Court upheld the trial court's award of deposition costs pursuant to Rule 54(d), SCRPC. *See also Register v. Duke*, 302 S.C. 195, 394 S.E.2d 718 (Ct. App. 1990); 7 S.C. JUR. COSTS § 31 (March 2020 Update). Therefore, the Court finds that deposition costs of Two Thousand One Hundred Ninety Dollars and Forty-Two Cents (\$2,190.42) should be awarded as costs.

For these reasons, the Court grants in part ReWa's Motion for Costs. The Court finds that ReWa is entitled to interest pursuant to S.C. Code Ann. § 15-37-30, but declines to award this interest as a taxable cost under Rule 54, SCRPC. The Court grants ReWa's Motion for Costs as to the remaining items, and therefore awards ReWa taxable costs in the amount of Three Thousand Two Hundred and Two Dollars and Eighty-Seven Cents (\$3,202.87), which shall be added to and included as a part of the judgment.

AND IT IS SO ORDERED.

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Greenville Common Pleas

Case Caption: Renewable Water Resources vs. Insurance Reserve Fund , defendant,
et al

Case Number: 2016CP2305905

Type: Order/Costs

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2020-05-20 15:29:58 page 7 of 7

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all materials proposed to be included by all parties and not any other materials.

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January 19, 2021

CERTIFICATE OF COMPLIANCE

RECEIVED

Jan 19 2021

SC Court of Appeals

The undersigned counsel for the Appellant certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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January 19, 2021