

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NOS. L-10358-86
L-045269-86

IRONBOUND HEALTH RIGHTS :
ADVISORY COMMISSION, et al., :
Plaintiffs, :

vs :

DIAMOND SHAMROCK CHEMICALS :
COMPANY, et al., :
Defendants. :

DEPOSITION OF:

JAMES BURKE
(Volume II)

JOHN BRENNAN, et al., :
Plaintiffs, :

vs :

DIAMOND SHAMROCK CHEMICALS :
COMPANY, et al., :
Defendants. :

Friday, January 13, 1989
Newark, New Jersey

Dennis B. Drenth
Certified Shorthand Reporter

Reporting Services Arranged Through:
ROSENBERG & ASSOCIATES
Certified Shorthand Reporters
161 Eagle Rock Avenue
Roseland, New Jersey 07068
(201) 228-9100

A P P E A R A N C E S:

MESSRS. GORDON, GORDON & HALEY
BY: WILLIAM SULLIVAN, JR., ESQ.,
Attorneys for Plaintiffs

MESSRS. MC CARTER & ENGLISH
BY: J. FORREST JONES, ESQ.,
Attorneys for Defendant Diamond Shamrock

MESSRS. HOAGLAND, LONGO, OROPOLLO & MORAN
BY: MARY SIOBHAN BRENNAN, ESQ.,
Attorneys for Defendant Aetna

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
James Burke			
By Mr. Jones:	4		103
By Ms. Brennan:		90	

E X H I B I T S

<u>Burke</u>	<u>Description</u>	<u>Ident.</u>
26	Notice dated 4/30/62.	81
27	Notice dated 11/25/63.	86
28	Notice dated 7/13/64.	86
29	Notice dated 2/19/68.	86

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT of testimony taken by and before
DENNIS B. DRENTH, a Notary Public and Certified Shorthand
Reporter of the State of New Jersey, at the offices of
Messrs. McCarter & English, 100 Mulberry Street, Newark,
New Jersey, on Friday, January 13, 1989 commencing at
10:10 a.m. pursuant to notice.

J A M E S B U R K E, 5 Arlington Place, Piscataway, New
Jersey, recalled.

MR. SULLIVAN: Before we start this morning,
I want to note an objection we have to counsel for
Diamond switching attorneys mid-deposition. I realize
they are two day depositions. We all know the standard
practice is one attorney per party asking questions.

What we want to happen in the future is if
you're going to switch for the second day, just let us
know ahead of time. They didn't know until I got back
yesterday that you were planning on switching
attorneys. In the future if you could let us know in
advance, I would appreciate it.

MR. JONES: We certainly will be happy to
let you know when we know it. However, I would like to
know for the record, since you are putting an objection

1 on the record, what you claim the prejudice to your
2 client to be?

3 MR. SULLIVAN: I think as a general matter
4 we are concerned about attorneys working on -- in other
5 words, there should only be one attorney asking
6 questions. I don't think we want to get into a
7 situation of attorneys in this case developing sub-
8 specialties of showing up on different days with
9 different types of questions.

10 Another big concern we have is I don't think
11 there is any problem with us switching attorneys to
12 cover depositions, since we are only covering them. But,
13 for example, if I hadn't been here yesterday, you could
14 go into a whole line of questioning with Mr. Burke that
15 was covered yesterday and I would never know it because
16 I wasn't here. That's one thing.

17 MR. JONES: Counselor, I understand the
18 spirit in which you are presenting your objection.
19 However, I think that you can see the risk of that
20 particular danger is really if you switch people who are
21 covering the deposition rather than we -- rather than if
22 the person who is asking the questions changes.

23 I will just note that I think this is, as we
24 can all agree, a complex case. It is a case in which it
25 is possible that attorneys will develop areas of

1 expertise. I certainly have heard the objection
2 expressed at depositions that it is unfair and confusing
3 for the witness if more than one attorney is asking
4 questions at a time. That is certainly something that I
5 heartily agree with.

6 However, it is difficult for me to fathom
7 the prejudice to a witness if different questions are
8 asked at different times by different attorneys.

9 MR. SULLIVAN: I don't think we have any
10 obligation to have the same attorney present to cover a
11 deposition every day. I think that we all recognize, as
12 a general matter, that at these depositions, even if they
13 go more than one day in other cases, that one attorney
14 for each party that's actually taking the deposition
15 actually asks the questions.

16 For example, we agreed for Dr. Brodtkin's
17 deposition Mr. Haley from our office took all three days
18 of the deposition. I would ask as a general matter you
19 try to let us know ahead of time if you are going to do
20 that in the future.

21 MR. JONES: I certainly will take it under
22 advisement and, as I said, the prejudice to me is
23 unclear.

24 I did not mean to suggest you had any
25 obligation, counselor, to appear at both days of the

1 deposition. I did not mean to imply there was an
2 obligation on your part to maintain continuity. We have
3 no objection to your appearing with different attorneys
4 on different days, depending on the needs and the
5 availabilities of your office.

6 MR. SULLIVAN: Fine.

7
8 DIRECT EXAMINATION BY MR. JONES:

9 Q. Mr. Burke, good morning. My name is Forrest
10 Jones and I represent the Diamond Shamrock Chemicals
11 Company. You are still sworn. This is a continuation of
12 the deposition which began yesterday, and I just note
13 you are familiar with the procedures now, but I would
14 like to mention a few things to you.

15 First of all, again, if you at any time do
16 not understand a question that I ask, or if you wish to
17 confer with your attorney, please just let me know. We
18 will take a break. Or if you don't understand the
19 question I ask, I will attempt to rephrase it so you do
20 understand.

21 A. Good.

22 Q. Also, if for any reason you wish to take a
23 break today, please let us know. This isn't an endurance
24 contest, although it may seem that way sometime.

25 Mr. Burke, when did you start work at the

1 80 Lister Avenue plant?

2 MR. SULLIVAN: Could we more specifically
3 define what plant you are talking about?

4 Q. Do you understand there to be a plant at 80
5 Lister Avenue?

6 A. One owned by Lee Kolker who already started
7 in the front in another building.

8 Q. Let me start out it is my understanding,
9 sir, that you began work at the general area of the 80
10 Lister Avenue plant site sometime in the 1930s while you
11 were employed by an electric contractor?

12 A. Correct.

13 Q. I'm going to be asking you a series of
14 questions to attempt to find out what the plant did look
15 like at that time, and so I can't really define the
16 buildings at this point, because that's what my
17 questions are going to be.

18 Just to start off with, though, could you
19 tell me what year you first came to that general plant
20 area?

21 A. 1937.

22 Q. Who were you employed by at that time?

23 A. Mellows Electric in Weehawken.

24 Q. And who owned the plant site at that time?

25 A. I believe it to be Lee Kolker.

1 Q. At the time you went to the plant site on
2 the first occasion in the 1930s, could you describe for
3 me the buildings that were on the plant site?

4 A. It was one huge brick building with a
5 wooden shed on the Lister Avenue side.

6 Q. Any others?

7 A. At that time, no.

8 Q. What did -- what went on within this huge
9 brick building?

10 A. I believe they made what they call
11 paradichlorobenzine, moth crystals.

12 Q. Do you know if they made any other products
13 at that time?

14 A. No.

15 Q. Did there come a time when there was
16 another building built on the plant site?

17 A. There was an extension built on one side,
18 corrugated something, just a small -- to house a
19 refrigerator.

20 Q. Did there come a time when Lee Kolker
21 purchased any additional buildings adjacent?

22 A. No.

23 Q. Did there come a time when something other
24 than the moth crystals that you just described were
25 manufactured at the plant?

1 A. I don't know what they made, other than
2 that.

3 Q. What was your job at the plant site at that
4 time?

5 A. When I first started I was an electrician's
6 helper.

7 Q. Did you work on any equipment?

8 A. Yes.

9 Q. What type of equipment did you work on at
10 that point?

11 A. There were pumps, agitators, other
12 machinery. I really don't remember.

13 Q. Just to take this opportunity, we are not
14 asking you to come up with anything you don't recall.
15 All of my questions are based on what you recall, and if
16 you don't recall, just let me know.

17 How long did Lee Kolker own the plant site?

18 A. I guess he held it, as far as I can
19 remember, until the war, World War II started, then I
20 left and I worked in the shipyard for awhile. When I
21 came out after the war was over and I came back, he was
22 back on 80 Lister.

23 Q. This plant site that you described, was
24 that on 80 Lister, the one huge brick building that you
25 described?

1 A. It was on Lister, I don't know the number.

2 Q. The Kolker site at 80 Lister after the war,
3 when did you first work there?

4 A. January 1946.

5 Q. Were you still employed by Mellows
6 Electric?

7 A. Yes.

8 Q. Can you describe for me the plant site at
9 80 Lister Avenue?

10 A. It was a three story brick building, maybe
11 a hundred by 150 foot. There was a warehouse to the
12 right of it, couple of small -- all buildings were
13 connected on that side and made one huge building.

14 Q. Were there any other buildings on the plant
15 site, other than the three story brick building and the
16 warehouse that you described that was connected to it?

17 A. There was other buildings that didn't
18 belong to them.

19 Q. Could you tell me what those were?

20 A. It was an oil reclaiming building, Triplex
21 Oil.

22 Q. Any others?

23 A. Not that I remember.

24 Q. How long did Kolker own this plant?

25 A. I don't know.

1 Q. Did there come a time when Mr. Kolker
2 constructed any additional buildings at the plant site?

3 A. I can't recall.

4 Q. What was manufactured in the three story
5 brick building?

6 A. DDT, as far as I know.

7 Q. And what did you -- what was your job in
8 this DDT building?

9 A. I was an electrician and I installed the
10 wiring and maintained it.

11 Q. And did there come a time when Kolker sold
12 the plant?

13 A. Yes.

14 Q. And to whom was the plant sold?

15 A. Diamond Alkali.

16 Q. Do you recall when that occurred?

17 A. No. In the '50s, that's about all.

18 Q. Prior to the operation of the plant by
19 Diamond Alkali, do you recall anything other than DDT
20 being manufactured in the brick building?

21 A. Before Diamond owned it?

22 Q. Right.

23 A. It was supposed to be a warehouse for
24 grain. It was a warehouse for something.

25 Q. That was a function it had before?

1 A. Before.

2 Q. Before Kolker had operated it?

3 A. Right.

4 Q. But during the time that Kolker operated
5 the plant, but before Diamond did, do you know anything
6 other than DDT that was manufactured there?

7 A. There were other things, but I don't know
8 what they were.

9 Q. During the time Diamond operated the DDT
10 building, what was manufactured in the DDT building?

11 MR. SULLIVAN: Wait a minute. I'm going to
12 object to the form. Why don't we figure out what
13 building we are talking about first.

14 Are you talking about the building that was
15 used by Kolker to manufacture DDT? Just define that a
16 little.

17 Q. Sure. I'm talking about the three story
18 brick building approximately a hundred by 150 feet which
19 you described as being owned by Kolker at 80 Lister
20 Avenue which was used to manufacture DDT and other
21 chemicals that you don't recall, then was operated
22 sometime during the 1950s by Diamond Alkali. That's the
23 building I'm talking about.

24 A. Right.

25 Q. My question is do you know what Diamond

1 manufactured in the DDT building?

2 A. I heard there was a 2,4-D product.

3 Q. Was that manufactured within the three
4 story brick building that you described or was that
5 manufactured elsewhere?

6 A. Inside the brick building.

7 Q. Do you recall any other products that were
8 manufactured inside the brick building by Diamond?

9 A. Offhand I can't think of the names.

10 Q. Did there come a time when Diamond, during
11 the 1950s, when Diamond operated another manufacturing
12 building on the site?

13 A. There was other buildings that were
14 connected together. They had -- I don't know who
15 started them, but there was an ester department and a
16 warehouse and the building became 2,4-D and 2,4,5-T and
17 they manufactured that. That was when Kolker was there,
18 he had started this, I'm sorry.

19 Q. Was this a separate building -- to make the
20 question clear, did the 2,4-D and 2,4,5-T manufacture
21 take place in a separate building?

22 A. Yes, but with a common wall. In other
23 words, it was as if it was added on. They used that same
24 wall to build the others.

25 Q. Could you describe this other building with

1 the common wall?

2 A. Where the 2,4-D was made?

3 Q. That's correct.

4 A. I guess 50 foot by about 80, and had their
5 centrifuges and reactors in there.

6 Q. Was it brick also?

7 A. Yes.

8 Q. And how many stories was it?

9 A. One.

10 Q. I believe you mentioned 2,4-D, 2,4,5-T, and
11 esters. Are those the chemical processes that took
12 place in that building that you have just described?

13 MR. SULLIVAN: At what time?

14 Q. During the time that Kolker operated the
15 plant?

16 A. On one side of the wall was 2,4-D and
17 2,4,5-T. On the other side of the wall you the ester
18 department, and that continued down further and became a
19 warehouse, a loading platform.

20 Q. Were there any other chemical processes
21 conducted in that building?

22 A. I don't know.

23 Q. Did that building have a name used to apply
24 to that building?

25 A. I don't know. Just a building with the

1 ester department or D and T department.

2 Q. Acid building?

3 A. Esters.

4 Q. During the time that Diamond Alkali operated
5 the plant, were there any other buildings on the plant
6 site during the 1950s?

7 A. Another little pump house. You don't count
8 them?

9 Q. No, just a major production.

10 A. No.

11 Q. Returning back to the brick building, by
12 this I mean -- I'm going to call it the DDT building.
13 Are you clear what I mean by that?

14 A. Yes.

15 Q. I mean to differentiate the DDT building
16 from the other one story building in which the 2,4-D and
17 2,4,5-T and ester production took place, and for
18 convenience sake, could we refer to that building as the
19 2,4-D building, would that be acceptable to you?

20 A. Yes.

21 Q. Talking about the DDT building, what else,
22 besides the production facilities, was in that building?

23 A. Their office, maintenance shop.

24 Q. Whose offices were in there?

25 A. Engineering, supervision, and the general

1 office force.

2 Q. In the 2,4-D building as we have defined
3 it, was there anything other than the production
4 facilities that you have described in that building?

5 A. Locker rooms was in there.

6 Q. Where were these locker rooms within the
7 building?

8 A. Right next to where they made the 2,4-D.

9 Q. As an employee of Mellows Electric, did you
10 use the locker room?

11 A. No.

12 Q. Now, there came a time when the DDT
13 building had an explosion in it, correct?

14 A. Correct.

15 Q. And a new building was constructed?

16 A. Right.

17 Q. Could you describe that new building?

18 A. Three story corrugated -- I don't know what
19 it was made of, asbestos, maybe it was a hundred by 40,
20 just a guess. That's it.

21 Q. What chemical processes were conducted
22 within this building?

23 A. All I know is with acids. I don't know what
24 was done there.

25 Q. Besides the chemical processing equipment,

1 were there any other functions conducted in the
2 building, such as offices or that type of thing?

3 A. No, not that I remember.

4 Q. Does the term "TCP" or "trichlorophenol"
5 mean anything to you?

6 A. Yes. There were trichlorophenol pumps
7 there, I remember working on them.

8 Q. Would you refer to trichlorophenol as TCP?

9 A. They refer to it as TCP, yes.

10 Q. Do you know what TCP is?

11 A. Outside of phenol, three parts phenol, no,
12 I don't know.

13 Q. Do you know where in the plant TCP was
14 manufactured?

15 A. In this new building on the east side.

16 Q. Do you know what the raw materials that go
17 into TCP are?

18 A. No.

19 Q. Do you know what piece of equipment is used
20 for TCP manufacture?

21 A. No.

22 Q. Did you ever observe any leaks or spills
23 within the new building that you just described for us
24 which you knew to be TCP?

25 A. Yes, there were spills.

1 Q. Did you know that those -- did you know
2 those spills or leaks to be TCP?

3 A. There were spills; I don't know what it
4 was. I wasn't interested in their product, just doing
5 the electrical end.

6 Q. I'm just trying to discover here what you
7 recall.

8 So, you saw leaks and spills within this
9 building that you have just described for us?

10 A. Correct.

11 Q. But you don't know what those leaks and
12 spills were?

13 A. Right.

14 Q. How frequently would you see these leaks
15 and spills? I'm talking specifically about this new
16 process building that you just described for us.

17 A. I couldn't say with what frequency. The
18 only thing I would bring out, they had open grated
19 floors. If you had a leak on the third floor, you had a
20 leak on the second and first.

21 Q. Was there some purpose behind those open
22 grate floors?

23 A. I don't know. I can only guess.

24 Q. Did you ever hear what the purpose might
25 be?

1 A. In case of an explosion, it would go
2 through and blow the sides out, rather than crumble the
3 building like the first.

4 Q. Do you know whose job it would have been to
5 repair a leak?

6 A. Pipefitters.

7 Q. Do you know the names of any of the
8 pipefitters during the time you were at the plant site?

9 A. You have that list too. Blair was one.
10 There was a bunch of them, believe me.

11 Q. Do you recall the names of any of them,
12 other than Mr. Blair?

13 A. It would take a half hour to try to think
14 of some of them.

15 Q. We will let it go at that, then.

16 Do you ever recall any occasion when you
17 saw a leak in a pipe in the process building when that
18 leak was not repaired?

19 A. Yes.

20 Q. Do you recall -- can you recall the
21 specifics of that occasion?

22 A. No, but there were several that masking
23 tape went over them.

24 Q. Masking tape? Do you know what material
25 was within the pipes or the equipment?

1 A. No.

2 MR. SULLIVAN: Let him finish the question
3 before you answer.

4 Q. That's because the reporter can only take
5 down one of us at a time. You have to let me finish and
6 I have to try to let you finish before I jump in.

7 Do you associate TCP in any way with the
8 brick building that you described for us earlier which
9 we called the DDT building?

10 A. There may have been some of it in there.

11 Q. Do you ever recall seeing TCP yourself
12 within the process -- or the DDT building?

13 A. I don't know what their products were. I
14 took care of my end. They said it was a pump or any
15 unit, that's all I took care of. I didn't care what
16 they made. I'm not trying to be nasty. You have a
17 building, you want the electrical work done, that's what
18 I did. They took care of their end.

19 Q. We are only trying to find out what you
20 recall.

21 A. I thought it may have sounded a little
22 sarcastic.

23 Q. We are only trying to probe your
24 recollection.

25 If there was a spill within the process

1 building, the new process building that you have
2 described for us in which the TCP process took place, do
3 you know whose job it would have been to clean up the
4 spill?

5 A. Operators.

6 Q. Do you know the names of any of the
7 operators within the TCP process building?

8 A. They changed around a lot. No.

9 Q. A moment ago when we were describing or you
10 were talking about the 2,4,5-T and 2,4-D manufacturing
11 process, you mentioned a piece of equipment called a
12 centrifuge. Do you recall any of the other equipment
13 that was used in the manufacturing of, specifically,
14 2,4,5-T?

15 A. Tanks that held the product before it was
16 centrifuged.

17 Q. Do you recall the names of any of those
18 tanks?

19 A. 2,4-D holding tank? I don't know. I would
20 say they were holding tanks, that was all.

21 Q. You recall there were tanks, but you don't
22 recall the names or functions of any particular one?

23 A. Correct.

24 Q. Did you ever see any leaks or spills within
25 what we have been calling the 2,4-D building, which you

1 knew to be or you recall now to be 2,4,5-T?

2 A. There were leaks.

3 Q. You recall leaks and spills, but you don't
4 recall whether or not it was 2,4,5-T. Is that correct?

5 A. Correct.

6 Q. Would it also be true that you don't recall
7 what materials may have been present within the ester
8 unit? Let me rephrase that. That's a confusing
9 question.

10 Did you ever see any leaks or spills within
11 the ester part of the 2,4-D building?

12 A. Yes.

13 Q. Do you know what those materials that you
14 saw leaking or spilling were?

15 A. No.

16 Q. Do you know whose job it was, the job title
17 within the plant, whose job it would have been to clean
18 up a leak or spill in the ester unit?

19 A. Operator.

20 Q. Do you know the names of any of those
21 operators?

22 A. One is Brennan. The rest I don't know.

23 Q. What about on the 2,4,5-T, 2,4-D side of
24 the unit -- of the building, rather?

25 A. Leaks?

1 Q. Yes. Whose job would it have been to clean
2 up leaks?

3 A. Operator.

4 Q. Do you recall the names of any of those
5 operators?

6 A. No.

7 Q. There came a time when you were employed by
8 Diamond Alkali. Is that not correct?

9 A. No.

10 Q. You were never employed by Diamond Alkali?

11 A. Diamond Shamrock.

12 Q. When did you begin employment with Diamond
13 Shamrock?

14 A. December '61, '62, I'm not sure.

15 Q. What was your first position at the plant
16 as an employee?

17 A. Electrician.

18 Q. Did that have a job title associated with
19 it?

20 A. The company said it was mechanic.

21 Q. Any class associated with it?

22 A. The only electrician, that was it.

23 Q. Did you supervise any workers?

24 A. When I had helpers, yes.

25 Q. Do you recall the names of any of those

1 helpers?

2 A. They were all employees.

3 Q. Let's start with any helpers that you had
4 during your employment at Diamond Shamrock who were also
5 employees of Diamond Shamrock?

6 A. There was Carol, Trainer, and Murphy.

7 Q. Did you have any helpers who were not
8 employees of Diamond Shamrock?

9 A. When I worked for them?

10 Q. Yes.

11 A. No.

12 Q. Was it one of your responsibilities to
13 instruct those workers, Carol, Trainer, and Murphy?

14 A. Yes.

15 Q. Did you provide safety instructions to
16 them?

17 A. Probably did.

18 Q. What were your responsibilities as an
19 electrician working for Diamond Shamrock in the 1960s?

20 A. Install and maintain electrical equipment.

21 Q. Did you have a supervisor?

22 A. Yes, a foreman and an engineer.

23 Q. Who was the foreman?

24 A. Name was DeGulis.

25 Q. And the engineer?

1 A. Homer Smith.

2 Q. Do you recall using written operating
3 instructions for any of the jobs that you performed?

4 A. Operating instructions?

5 Q. Yes.

6 A. May have gone over the instructions to find
7 out how the wiring goes.

8 Q. What about any written safety instructions
9 prepared by Diamond Shamrock itself, do you recall
10 reviewing any written safety instructions?

11 A. Yes.

12 Q. Do you recall what any of those safety
13 instructions were that were provided?

14 A. Had to wear steel-tipped shoes, and at a
15 later date helmets and gloves.

16 Q. Your work as an electrician included work
17 on the chemical processing equipment, correct?

18 A. Equipment, yes.

19 Q. You described a number of pieces of
20 equipment already, but could you give us your best
21 recollection as to all the equipment that you worked on?

22 A. All I can say it was in the plant, I worked
23 on it, all of it. As far as the names, it either was a
24 pump or reactor or centrifuge. The exact names, I
25 wasn't interested in.

1 Q. How would you receive the assignment to
2 conduct the repair?

3 A. Supervision would come out and say there is
4 a breakdown here or there.

5 Q. Would that be supervision in the production
6 end?

7 A. Sometimes. Mostly it came in the
8 maintenance department.

9 Q. So that would either be DeGulis or Smith?

10 A. Right.

11 Q. Did your foreman change at all during the
12 1960s?

13 A. No.

14 Q. Do you ever recall an occasion when you
15 were unable to promptly attend to the repair you were
16 assigned to?

17 A. If there was a backlog of work, they
18 decided which was priority.

19 Q. Do you recall how those priorities were
20 set?

21 A. No.

22 Q. Do you recall if any particular type of
23 equipment had priority over another?

24 A. The office would decide that.

25 Q. Would the equipment be prepared in any way

1 prior to your beginning work on it?

2 A. You mean cleaned up? Sometimes; sometimes
3 not.

4 Q. If the equipment was cleaned up, who would
5 do the cleaning?

6 A. Operators.

7 Q. You mentioned sometimes the equipment would
8 not be cleaned up. Do you recall any occasions,
9 specific occasions, when that occurred?

10 A. No.

11 Q. What would be the reason, if you recall,
12 why the piece of equipment would not be cleaned up? Is
13 it because it didn't require it or some other reason?

14 MR. SULLIVAN: Are you asking what he heard
15 from someone else?

16 Q. If he recalls to his own knowledge what the
17 reason was that a piece of equipment wouldn't be cleaned
18 up.

19 A. Operator may have been busy, didn't have
20 time to go down.

21 Q. Would you then do the clean up yourself?

22 A. Yes.

23 Q. What would you do to clean it up?

24 A. Hose, water.

25 Q. Do you recall what had been in any of these

1 pieces of equipment before you worked on them?

2 A. No.

3 Q. You mentioned, I think, three pieces of
4 protective equipment that you used: steel-tipped shoes,
5 gloves, and helmets. Did you use any other protective
6 equipment during the time you worked for Diamond
7 Shamrock during the '60s?

8 A. They had respirators and masks.

9 Q. Under what circumstances would you wear a
10 respirator?

11 A. Dusty conditions.

12 Q. Where in the plant would there be dusty
13 conditions?

14 A. Almost any place there would at times be
15 dust.

16 Q. Do you know what the dust was?

17 A. Just product.

18 Q. Do you recall any places as being more
19 dusty than others?

20 A. It was all dust.

21 Q. Was the use of a respirator required?

22 A. We weren't given one to carry with us. If
23 we needed one, we went down and took it out of the
24 storeroom.

25 Q. Were there certain jobs for which the use

1 of a respirator was required?

2 A. If there were heavy fumes you would use a
3 mask, or if there were leaks around at the time you would
4 use a mask.

5 Q. What -- could you describe this mask for
6 us, please?

7 A. Face fitting with a canister underneath.
8 The canister was for fumes.

9 Q. And the respirator -- are you using the
10 term "respirator" to refer to the same thing as the mask?

11 A. The mask was just a cotton --

12 Q. The respirator is this thing with the
13 canister?

14 A. Yes.

15 Q. And it would form fit around your face?

16 A. Right. Just over the nose and mouth.

17 Q. So, the respirator would be used for fume
18 conditions. Is that correct?

19 A. Correct.

20 Q. And the mask would be used for dust?

21 A. Dust.

22 Q. Were there any specific areas of the plant
23 where you would use a respirator?

24 A. Around the centrifuges and many of the
25 pumps that leaked.

1 Q. Who told you to wear a respirator?

2 A. Engineering.

3 Q. Do you recall the names of any of the
4 individuals?

5 A. Well, they would all tell you if you are
6 working around this area, you should put a mask on. If
7 you didn't put it, they didn't push that hard.

8 Q. Did you ever instruct any of your helpers
9 to wear a respirator?

10 A. When we went out either we had them or we
11 didn't, not that one had and one didn't.

12 Q. Right.

13 A. So, if it was bad we had them.

14 Q. My question was did you ever tell your
15 helpers to wear a respirator for a specific job?

16 A. Probably did. I can't recall.

17 Q. Do you recall what material you were working
18 around when you used the respirator?

19 A. No.

20 Q. Did you ever enter a tank or a vessel?

21 A. Yes.

22 Q. Had the tank been cleaned prior to your
23 entering it?

24 A. Yes.

25 Q. How many occasions are we talking about

1 here?

2 A. Less than five.

3 Q. And the tank had been cleaned on all five
4 occasions?

5 A. Yes.

6 Q. Or whatever number less than five there
7 were?

8 A. Yes.

9 Q. Do you recall what material had been in the
10 tank on any of those occasions?

11 A. No.

12 Q. What repair would you perform within the
13 tank?

14 A. Diamond's way of using men, I was helping
15 put patches on some of the tanks, the glass-lined tanks
16 that had chipped.

17 Q. Who were you assisting in doing that?

18 A. A fellow named Mysko and an outside outfit
19 that came in.

20 Q. Do you recall the name of the outside
21 outfit?

22 A. No.

23 Q. Did you wear any protective equipment to
24 enter the tank?

25 A. Just a face mask, because of the glass

1 chippings.

2 Q. And do you recall if you smelled any fume
3 on any of those occasions that you entered the tank?

4 A. Fumes were all over.

5 Q. So, you did smell fumes within the tank?

6 A. Yes.

7 Q. Do you recall what the fumes in the tank
8 smelled like?

9 A. No.

10 Q. Were there any specific procedures which
11 were followed before entering a tank?

12 MR. SULLIVAN: What kind of procedures?

13 Q. Safety procedures.

14 A. The tank should have been cleaned out and
15 an engineer would inspect it. If he said it was fit,
16 that was it. The engineer wasn't always accepted. The
17 men didn't always want to go in the tanks, because they
18 thought it wasn't fit.

19 Q. What happened on those occasions?

20 A. The company decided the engineer was right,
21 go in.

22 Q. Do you recall why the men didn't want to go
23 into the tank?

24 A. Claimed it was dirty, it wasn't safe.

25 Q. Whose job was it to clean out the tank?

1 A. It was the operator.

2 Q. Were air masks available to enter tanks?

3 A. Yes.

4 Q. By "air mask" I mean a mask that had a
5 supply of air.

6 A. No, I don't remember that.

7 Q. Did you ever wear a respirator in the tank?

8 A. No.

9 Q. That's because on the occasions you entered
10 the tank, the tank was clean?

11 MR. SULLIVAN: I don't think he stated the
12 reason why.

13 Q. I'm asking if that was the reason why.

14 A. I didn't wear a respirator because I didn't
15 go in when there was anything in the tank. I only went
16 in on the glass jobs and just wore the mask shield.

17 Q. It's correct you didn't wear a respirator
18 because the tank had been cleaned of material before you
19 entered it, correct?

20 A. Toward the end, yes.

21 Q. Did you ever enter a tank in which the
22 material had not been cleaned?

23 A. No.

24 Q. Were you ever splashed with or have skin
25 contact with a chemical at the plant?

1 A. At times, yes.

2 Q. Do you recall what any of the materials
3 were that you were splashed with?

4 A. Just acids. To me they were all acids. I
5 didn't know one from the other.

6 Q. So, when you refer to the term "acid," you
7 could be referring to any material that was in -- that
8 was acidic or corrosive?

9 A. Yes.

10 Q. What would you do when you were splashed
11 with this acid material?

12 A. Wash it off with whatever was available.
13 Sometimes I had water, sometimes it was, I believe,
14 alcohol, then go to what little first aid room they had.

15 Q. Who was in charge of the first aid room?

16 A. A man that did a lot of work in there, I
17 don't know if he was in charge, his name was Baker.

18 Q. Do you recall if these occasions in which
19 you were splashed with material or came into contact
20 with the material occurred while you were a Diamond
21 employee or prior when you had worked on the site?

22 A. Happened both.

23 Q. Do you recall any of the equipment that you
24 were working on at the time any of these incidents
25 occurred?

1 A. One I recall is proportioning pump.

2 Q. What is a proportioning pump?

3 A. I believe the one that mixes two chemicals
4 together.

5 Q. Do you recall which building this was in?

6 A. It was in the large building, DDT.

7 Q. Do you recall any other specific occasions?

8 A. No.

9 Q. Do you recall ever changing your uniform
10 after one of these occasions?

11 A. Yes.

12 Q. Would that be your practice to do that?

13 A. Oh, yes.

14 Q. Would you take a shower?

15 A. Depending on how bad it was, yes. Once
16 when they told me I was standing in oleum, I thought it
17 was petroleum. Nobody ever said oleum was some sort of
18 acid. And the next day I had to get a new pair of shoes
19 because it ate them away.

20 Q. Where did that take place?

21 A. In the DDT room.

22 Q. On any of these occasions do you recall
23 that you were wearing protective equipment?

24 A. I usually wore it when they called for it.

25 Q. What about goggles or face shields, did you

1 ever use goggles or face shields?

2 A. They had goggles, yes.

3 Q. Did you ever use goggles or face shields
4 while you were a Diamond employee?

5 A. Yes.

6 Q. Do you recall the types of circumstances
7 under which you would wear goggles or face shields?

8 A. When you were working on the unit and there
9 was operating equipment alongside and there were
10 constant leaks, yes, I would wear them.

11 Q. Other than your shoes being eaten away on
12 that one occasion, did you ever observe any physical
13 consequences in yourself as a result of the contacts
14 with these materials within the plant?

15 A. I don't understand.

16 Q. I'm talking about whether you observed any
17 physical condition in yourself; for instance, a rash, as
18 a result or reddening of skin as a result of any contact
19 with any material within the plant?

20 A. Yes.

21 Q. What did you observe?

22 A. Starting to get bumps on the skin and all
23 over the body. Not completely covered, but different
24 parts of the body.

25 Q. When did this occur?

1 A. The early '50s.

2 Q. What did these bumps look like?

3 A. A boil.

4 Q. How long did they last?

5 A. Weeks, months, some went away. When they
6 were lanced, they sort of went down a little faster.

7 Q. Did you give this condition a name?

8 A. Me? No.

9 Q. Did you understand this condition to be any
10 specific --

11 A. No.

12 Q. Are you familiar with the term "chloracne"?

13 A. That came later, yes.

14 Q. You distinguished this condition from
15 chloracne?

16 A. Now I would say it may have been chloracne.
17 It never was told what it was. It just happened in the
18 plant and the doctor would come down and we would lance
19 them.

20 Q. You are talking within the 1950s of a
21 doctor coming down and lancing boils?

22 A. Yes.

23 Q. This was at a time --

24 A. These cysts, they looked like boils.

25 Q. This is at a time when you were not a

1 Diamond employee?

2 A. Correct.

3 Q. Do you know the name of the doctor?

4 A. Bleiberg.

5 Q. Did you -- how did it come -- just to start
6 over, I would like to be certain that you are
7 distinguishing this incident you just described in the
8 1950s in which you observed cysts and boils on yourself
9 and your chloracne condition during the 1960s. Is that
10 not correct?

11 MS. BRENNAN: Can we go off the record a
12 second?

13 MR. JONES: Sure.

14 (Discussion off the record.)

15 BY MR. JONES:

16 Q. Mr. Burke, is it your recollection that you
17 experienced boils or cysts in your skin at a date years
18 prior to the first time you began receiving treatment
19 from Dr. Bleiberg and Brodkin?

20 MR. SULLIVAN: I'm going to object here.
21 This is one of the problems I think that comes up with
22 shifting of attorneys. It seems to me this is an area
23 that was covered yesterday.

24 MS. BRENNAN: It partially was. I discussed
25 it with counsel. It wasn't clear yesterday. I think

1 that there is a discrepancy between the documents, what
2 he has testified to as to Dr. Bleiberg and Brodkin and
3 the dates that he is giving and the fact that he went on
4 the Diamond Shamrock payroll in 1960, the '50s and '60s,
5 there is a little discrepancy.

6 MR. SULLIVAN: If we can limit it to that
7 issue.

8 MR. JONES: I'm not trying to go back into
9 anything already covered.

10 Off the record for a moment.

11 (Discussion off the record.)

12 BY MR. JONES:

13 Q. Mr. Burke, I would just like to clarify
14 your testimony. Let me tell you first what my confusion
15 is. It's my understanding of your testimony yesterday
16 you described your treatment for chloracne during the
17 1960s while you were an employee of Diamond, and it
18 seemed a moment ago you were telling us about a
19 condition consisting of boils and cysts?

20 A. Looked like boils.

21 Q. Which looked like boils and cysts, during
22 the 1950s and, I believe, early 1960s. What I would like
23 to know is whether you are describing or whether you
24 recall two incidents, an earlier manifestation of boils
25 or things that looked like boils and cysts which went

1 away, then your subsequent treatment for chloracne
2 during the 1960s. Do you understand?

3 A. Partially.

4 Q. Could you tell me whether there was a --
5 whether you recall two separate manifestations of this,
6 two manifestations, one which you have described for us
7 as boils and cysts in the '50s, and another which you
8 understand to have been chloracne in the 1960s?

9 MR. SULLIVAN: I will object to the form.
10 What you have posed, I think, is a hypothetical.

11 MR. JONES: I'm trying to restate what I
12 understood his testimony to possibly be. It was unclear
13 in my mind whether he was describing two incidents or
14 one and there was some confusion over the date of that
15 incident. That's essentially my confusion. That's what
16 I want him to try and clear up.

17 MR. SULLIVAN: I don't think he stated
18 anything as to whether or not his condition was a
19 continuous condition or whether or not it popped up at
20 two different instances.

21 MR. JONES: Here's what he said that led me
22 to believe that there were two separate incidents: He
23 said, "Later on when I thought back, I thought that's what
24 it must have been." Referring, I believe, to chloracne.
25 I may have been confused, I may be taking that out of

1 context. That's what I'm trying to clear up.

2 MS. BRENNAN: May I make a suggestion? Why
3 don't we take a step back and re-ask some of the
4 important questions, instead of trying to decide what he
5 testified to.

6 MR. SULLIVAN: I think that's a good idea.

7 MR. JONES: I'm trying to give him an
8 opportunity to tell us what he recalls now that he
9 understands what our confusion was. I hope he
10 understands what our confusion was.

11 MR. SULLIVAN: What you just said about his
12 statement about referring back to chloracne, I understand
13 it to mean something totally different from what you
14 just said. Why don't we try to backup a little bit.

15 MS. BRENNAN: Let's start with what he said
16 today.

17 BY MR. JONES:

18 Q. Mr. Burke, was there a time during the
19 1950s, before you became an employee of Diamond Shamrock,
20 when you observed any skin condition in yourself?

21 A. Yes.

22 Q. Could you describe that condition?

23 A. It appeared, as I said, they looked like
24 cysts and they looked like boils. And an engineer said
25 you go see Bleiberg for treatment. I didn't work for

1 Kolker at the time. He said you are working in here,
2 it's my responsibility, you go see him.

3 Q. Did you go to Dr. Bleiberg's office at that
4 time?

5 A. He came down to the plant on a weekly
6 basis.

7 Q. So, at this time, at the time you first
8 noticed this manifestation of this skin condition, the
9 plant was being operated by Kolker?

10 A. Yes, in the '50s. I don't know when Diamond
11 took over. I have to assume it's Kolker.

12 Q. It occurred during the 1950s and you do not
13 recall who was the owner of the plant?

14 A. Correct.

15 Q. Do you recall the name of the engineer who
16 told you to go see Dr. Bleiberg?

17 A. Smith, Homer Smith.

18 Q. Is it possible that you saw Dr. Bleiberg at
19 his office, not at the plant?

20 MR. SULLIVAN: At what time?

21 Q. For the initial -- your initial visit with
22 Dr. Bleiberg?

23 A. At the plant, it was at the plant.

24 Q. Did the skin condition which you first
25 observed and which you just described for us, did it

1 change over time?

2 A. No, it continued.

3 Q. Was there a time while you were employed at
4 the plant when this skin condition went away?

5 A. Not to my knowledge.

6 MR. JONES: Off the record.

7 (Discussion off the record.)

8 BY MR. JONES:

9 Q. Mr. Burke, was there a lapse of time
10 between the time you first noticed the skin condition
11 you have just described and when Mr. Smith told you to
12 go see Dr. Bleiberg?

13 A. Once more. This is getting a little close
14 now.

15 Q. You have told us there came a time when you
16 noticed a skin condition while you were working at the
17 Diamond plant, correct?

18 A. Correct.

19 Q. How long after you first noticed that skin
20 condition did Mr. Smith tell you to go see Dr. Bleiberg?

21 A. This is one of those things. He may have
22 told me to go in and get examined anyway, I can't
23 remember exactly. All I know he told me you are working
24 in the plant, you are my responsibility, you go in and
25 see the doctor. How bad I had it, if I had it at the

1 time, I really don't know. Only his records would show
2 that.

3 Q. Do you recall any change in the appearance
4 of these cysts or boils?

5 A. Cysts.

6 Q. We will use the term "cysts."

7 Do you recall any change in the appearance
8 of these cysts after you first noticed them?

9 A. No.

10 Q. Do you recall any change in the number of
11 the cysts?

12 A. No. As one would go, you would get another
13 one.

14 Q. Where were these cysts located on your body
15 when you first noticed them?

16 A. Neck, back, around the belt, buttocks.

17 Q. Did you associate these -- the appearance
18 of these cysts with any specific incident at the plant
19 when you contacted chemicals or were splashed with
20 material?

21 A. No.

22 MR. JONES: Off the record.

23 (Discussion off the record.)

24 BY MR. JONES:

25 Q. There came a time when you noticed these

1 cysts while you were working at Diamond Shamrock,
2 correct?

3 A. Correct.

4 Q. Do you recall how long it was after you
5 first noticed these that Mr. Smith told you to see Dr.
6 Bleiberg?

7 A. No.

8 Q. Was it a matter of weeks or months or
9 years?

10 A. To be honest, I don't know whether I had
11 them and he said go, or he said you are in the plant, you
12 are subject to this, go. I don't recall. It was over
13 30 years ago.

14 Q. You don't recall whether you actually saw
15 the cysts before the time you saw Dr. Bleiberg?

16 A. I don't recall. I felt I had them, but I
17 can't say I'm positive. It all happened around that
18 time.

19 Q. Do you recall roughly how soon after you
20 noticed these cysts and you saw Dr. Bleiberg you became
21 an employee at Diamond Shamrock? Do you understand the
22 question?

23 A. No. Once more.

24 Q. Do you recall how long it was after you
25 first noticed these cysts and saw Dr. Bleiberg that you

1 became a Diamond Shamrock employee?

2 A. These happened about '53. I became an
3 employee '61.

4 Q. It was about '53?

5 A. About '53.

6 Q. Is there any event that allows you -- that
7 you associate in your mind with the appearance of these
8 cysts that permits you to recall that date of 1953?

9 A. It's always been on my mind it was '53 when
10 I first had this. That number just comes up.

11 Q. Are you familiar with the term "cable rash"?

12 A. No.

13 Q. Are there any special safety considerations
14 in doing electrical work in a chemical plant?

15 A. As long as you know what you are doing it's
16 all right.

17 Q. Let me ask it a different way. Is the risk
18 of explosion a risk which you must bear in mind when
19 doing electrical work in a chemical plant?

20 A. In a chemical plant it should be explosion
21 proof.

22 Q. What does that mean for something to be
23 "explosion proof"?

24 A. Whatever rules the board sets up as being
25 safety, that's the ones to be followed. They have a

1 code book for the City of Newark.

2 Q. What types of precautions make an
3 installation explosion proof?

4 A. There were seals put on the conduits. In
5 case there was an explosion inside the motor, it
6 wouldn't carry through the pipe and no fumes could get
7 in to help an explosion.

8 Q. What were those seals made of?

9 A. Some were iron, some were aluminum.

10 Q. Do you know what chemicals were within the
11 plant that might have been explosive?

12 A. Aside from alcohol, no.

13 Q. There was alcohol at the plant?

14 A. Yes.

15 Q. Are you familiar with the use of
16 naphthalenes as insulators?

17 A. No.

18 Q. Have you ever worked with naphthalenes?

19 A. If I did, I didn't know it.

20 Q. Could you describe for me a typical workday
21 at the time you first became an employee at Diamond
22 Shamrock, starting with how you got to the plant? Did
23 you drive or did you walk?

24 A. I drove.

25 Q. Where did you park?

1 A. In their parking lot.

2 Q. Where was that parking lot in relation to
3 the buildings that you have described for us, the
4 process building and the 2,4-D building?

5 A. It was on the other side of their tank
6 farms.

7 Q. How long a walk-was it?

8 A. About 150 foot.

9 Q. Where did you go when you first arrived at
10 the plant?

11 A. From the parking lot, I went into their
12 locker room and changed clothes.

13 Q. Where was the locker room?

14 A. Alongside their office.

15 Q. This isn't the locker in the 2,4-D building
16 you described earlier?

17 A. No.

18 Q. What else was in the locker room. You
19 mentioned offices. Anything else?

20 A. The lockers and the showers and a changing
21 room.

22 Q. Could you describe the layout of the locker
23 changing room facility?

24 A. Coming in the door you go into the locker,
25 take your clothes off, then you walk into the changing

1 room. There were baskets with your clothing in it that
2 was hung high up in the air and they were lowered down
3 and you would take your clothing out and put them on and
4 go to work.

5 Q. There were two rooms?

6 A. Yes.

7 Q. Was one room for street clothes and another
8 for work clothes?

9 A. Correct.

10 Q. Which was for street clothes?

11 A. The locker room.

12 Q. What would you do in the locker room? I
13 know you just described it in brief. Would you disrobe
14 in the locker room?

15 A. Correct.

16 Q. Where would you go after you disrobed?

17 A. Next door into the changing room. They
18 called it dirty clothes locker room. Someone started
19 that, I don't know who.

20 Q. Would you carry anything over from the
21 street clothes side to the work clothes side?

22 A. I carried my money.

23 Q. Anything else?

24 A. No.

25 Q. Were you completely disrobed, were you in

1 your underwear?

2 A. Underwear.

3 Q. Where was your uniform?

4 A. Changing room.

5 Q. Where would you get the uniform from?

6 A. A man who was called a janitor. He would
7 take the clothes and put them in little lockers. You had
8 a number and you take them out of the locker and put
9 them on.

10 Q. This was your uniform?

11 A. Yes.

12 Q. Did it have your name on it?

13 A. Yes.

14 Q. How many uniforms did you get for a
15 workweek?

16 A. I believe there were four.

17 Q. Did you get a clean uniform every day?

18 A. If I wanted one, I would try until they ran
19 out, yes.

20 Q. What did the uniform look like?

21 A. Blue pants and shirt.

22 Q. Did there ever come a time the uniform was
23 a one piece unit?

24 A. I had them, my own I bought.

25 Q. Did the company provide one piece uniforms

1 at any time?

2 A. I don't know.

3 Q. After you changed into your uniform, where
4 would you go next?

5 A. Out in the yard, walk towards the
6 maintenance building, which would be about 50, 60 foot
7 away.

8 Q. Was the maintenance building a building
9 separate from the production buildings that you
10 described?

11 A. The maintenance building itself included
12 the engineers and foremen's office, a cafeteria,
13 maintenance shop, and right next door a warehouse, same
14 building.

15 Q. Did you have your own workplace within the
16 maintenance building?

17 A. I had a small cage that was about eight
18 foot square.

19 Q. Would you ever go back to the locker room
20 during the day?

21 A. When I had work in there, yes.

22 Q. You would have to do electrical work on
23 occasion within the locker room?

24 A. Correct.

25 Q. Other than occasions when you had to do

1 electrical work in the locker room, would you ever go
2 back during the day?

3 A. Yes.

4 Q. What would you go back for?

5 A. Perhaps to pick up a handkerchief or
6 something.

7 Q. Would you go over to the street clothes
8 side of the locker room?

9 A. Yes.

10 Q. Did you eat your lunch in the cafeteria
11 which you just mentioned in the maintenance building?

12 A. It's a lunch room, not a cafeteria. Yes.

13 Q. Did you bring your lunch?

14 A. Yes.

15 Q. Did you have friends at the plant? Of
16 course you knew a lot of people at the plant, that's not
17 what I mean. Did you have any people that you
18 considered to be friends at the plant?

19 A. Yes.

20 Q. Could you tell me who they were?

21 A. Just a few?

22 Q. The ones you can recall.

23 A. Murphy, Carol, these are the ones that came
24 to the house.

25 Q. Sure. Murphy and Carol?

1 A. Yes.

2 Q. Any others?

3 A. They never came to the house.

4 Q. How about guys that you might go out with
5 after work?

6 A. Those two. I lived too far away.

7 Q. At the end of your workday, where would you
8 go?

9 A. Home.

10 Q. Would you go -- it wasn't a very good way
11 of putting that. After you completed your work at the
12 plant, did you go back to the locker room?

13 A. Dirty clothes locker room, take the clothes
14 all off, walk in, get a towel, shower, wash, shave, go
15 home.

16 Q. Did you enter the street clothes side
17 before you had taken a shower?

18 A. Yes. That's the way it had to be.

19 Q. Why do you say that?

20 A. You come out of the dirty clothes -- put
21 all your dirty clothes down, you walk with a pair of
22 sandals on in to the clean clothes locker room, the
23 showers are on the other side. So, had to go into the
24 clean clothes locker room before you take a shower.

25 Q. Did Diamond set aside time at the end of the

1 day for you to take a shower?

2 A. I believe they allowed 15 minutes.

3 Q. Was it required that you take a shower?

4 A. Requested. I don't know if it was
5 required.

6 Q. Did you always take a shower?

7 A. Yes.

8 Q. Do you recall any occasions when you did
9 not?

10 A. The only time is when I was called in on
11 the early hours of the morning on a trouble call and it
12 was a small five or 10 minute job and it wasn't in the
13 bad part of the plant, then I wouldn't.

14 Q. Those are the only circumstances in which
15 you would not take a shower that you recall?

16 A. Correct.

17 Q. I would like to speak for a moment about
18 the condition of the building you called the DDT
19 building, the brick building that you worked in before
20 you became a Diamond Shamrock employee.

21 Do you recall if that building had a
22 ventilation system in it?

23 A. There were a few exhaust fans.

24 Q. Do you recall where they were located
25 within the building?

1 A. One was in the electrical switch room,
2 which had to be, I believe they call it, positive
3 ventilated, because there was open switches inside the
4 working area and it had forced ventilation on it. And I
5 believe there was one in the maintenance shop and one in
6 the locker room.

7 Q. What was the purpose of having the exhaust
8 fan in the electrical switch room?

9 A. I can only assume, I don't know. Get some
10 of the smell out, but that's about all.

11 Q. Was it related to a risk of explosion?

12 A. I don't know.

13 Q. What did the building smell like?

14 A. Terrible.

15 Q. Can you describe the smell?

16 A. It was a burning sensation to the nose.

17 Different chemicals had different smells. Change of
18 smells was like a vacation sometimes.

19 Q. Do you recall any different odors?

20 A. The phenol odor was rather strong.

21 Q. How would you describe that odor?

22 A. Stinks and made you numb.

23 Q. Do you know what material caused that
24 phenol odor?

25 A. All I was told was to keep away from phenol

1 and that was it. Then I knew what phenol was.

2 Q. Do you recall any other odors, besides that
3 phenol odor?

4 A. There was many. I honestly can't.

5 Q. Did there come a time where you had
6 difficulty in smelling the odor, or were you always able
7 to smell it?

8 A. Always smelled it. The only thing that
9 ever changed, when you got too much phenol, then it
10 became like pins and needles, a numb effect, even in the
11 mouth and tongue.

12 Q. At the time you were working in the DDT
13 building, were there parts of it which were ever dusty?

14 A. Yes.

15 Q. What parts of the building were dusty?

16 A. Mostly the entire building. Product was
17 spilled and dry and dust.

18 Q. Do you know what the dust came from?

19 A. No.

20 Q. How frequently would you observe the
21 dustiness in the building?

22 A. Almost all the time.

23 Q. How was the dust cleaned up?

24 A. They would sweep it up at times.

25 Q. Who would do that?

1 A. Operators.

2 Q. Did the dustiness in the building ever
3 change?

4 A. It was always dusty, unless it was washed
5 down, then there would be no dust for awhile until that
6 dried.

7 Q. What about liquids on the floor of the DDT
8 building. Do you recall there being liquids on the
9 floor?

10 A. Yes.

11 Q. Do you recall any liquids which you knew to
12 be something other than water to clean up or some other
13 cleaning agent?

14 A. I said the one instance when I was working
15 in oleum. I thought oleum was petroleum and it didn't
16 bother me.

17 Q. Any others?

18 A. There was always something leaking. Pumps
19 were never that solid.

20 Q. Do you recall what any of those materials
21 were?

22 A. No.

23 Q. Was it ever your job to repair the leaking
24 in the pumps?

25 A. No.

1 Q. Do you know whose job it was?

2 A. The pipefitters.

3 Q. Do you know how they would go about
4 repairing the leaks in the pump?

5 A. Find out what caused the fault, then repack
6 them or change the pump.

7 Q. Other than the liquids on the floors that
8 you described and the dustiness and the fumes that you
9 described, were there any other housekeeping or
10 cleanliness problems which you associated with the DDT
11 building?

12 A. Problems?

13 Q. Well, yes, problems.

14 A. You had your lunch break and the so-called
15 old locker room, it was right next to the DDT part.

16 Q. Was there a locker room in the DDT
17 building?

18 A. Yes, small.

19 Q. Any other housekeeping problems or
20 cleanliness problems in the DDT building that you
21 recall?

22 A. No.

23 Q. Did you perceive any of these conditions or
24 housekeeping problems to be unhealthy or unsafe at that
25 time?

1 A. There was many that was unsafe. If you tell
2 them to the engineer or foreman, sometimes they would do
3 what they could, and if they couldn't they would put up
4 with it.

5 Q. Do you recall any specific conditions that
6 you informed the engineer about?

7 A. No.

8 Q. Do you recall in general what those
9 conditions might have been that you regarded as safe and
10 had to inform the engineer?

11 A. Safe?

12 Q. Unsafe.

13 A. The different acid pumps would leak and
14 they would spray and you couldn't see it unless the sun
15 or light was shining on it and then you would see the
16 reflection of the light on it.

17 Q. Do you recall what chemical process these
18 spraying pumps were associated with?

19 A. Maybe the 2,4-D side of the building.

20 Q. This is 2,4-D in the DDT side of the
21 building?

22 A. Yes.

23 Q. Any others?

24 A. They also had a pilot plant section. That
25 was subject to lot of leaking and caking.

1 Q. What did the pilot plant make?

2 A. I believe they were trying different
3 chemicals, I don't know. This was the chemical
4 engineers' division.

5 Q. Now I would like to talk about the 2,4-D
6 building which, as I understand it, you would have worked
7 in both as an employee of Mellows and also as an
8 employee of Diamond Shamrock in the '60s. Is that
9 correct?

10 A. Correct.

11 Q. At the first time you began working in the
12 2,4-D building, was it ventilated?

13 A. Small exhaust fans.

14 Q. Where were they located?

15 A. The north and south end of the building.

16 Q. Did the ventilation system change at any
17 time?

18 A. The system change?

19 Q. Well, let's say was there any additional
20 ventilation equipment installed at any time?

21 A. Later on they put in a scrubber.

22 Q. Do you recall when that was installed?

23 A. No.

24 Q. Anything else?

25 A. No.

1 Q. What about the smell of the 2,4-D building?

2 A. It was bad.

3 Q. Was there more than one odor that you
4 recall?

5 A. It all smelled bad. It was a combination of
6 the D and T acids and whatever else was in there.

7 Q. When you say a combination of D and T, are
8 you able to specifically relate an odor to those things,
9 or are you just describing in general what the smell
10 was?

11 A. In general.

12 Q. Do you know what materials caused the smell
13 specifically?

14 A. No.

15 Q. Could you describe the smell?

16 A. Sharp, burns the nose, eyes.

17 Q. Was it similar -- I'm sorry, I didn't let
18 you finish, did I? I wanted to ask if it was similar to
19 the phenol smell you described from the DDT building?

20 A. I don't even know if they had phenol over
21 there. I know it was a sharp smell because the
22 centrifuge was right there. After they finished
23 centrifuging, they scraped it right out and that dust
24 went through the air and that was a smell, and on the T
25 side it was the same thing.

1 Q. Other than the centrifuge, do you relate
2 the smell to any specific piece of equipment?

3 A. No.

4 Q. I think you tried to answer this question
5 for me, but I'm going to ask it again just to see if we
6 can clarify.

7 Did the smell in the 2,4-D building smell
8 like the phenol smell of the DDT building? Was it a
9 different smell?

10 A. I believe it was a different smell. I would
11 say different.

12 Q. And would you describe again for me what
13 that smell smelled like?

14 A. Just burned the nostrils, mouth, and there
15 was something called amine that burned.

16 Q. It burned the mouth did you say?

17 A. Yes. We don't always breathe through our
18 nose, sometimes the mouth, and it gets on the tongue.

19 Q. Did you complain about the smells in the
20 2,4-D building?

21 A. I probably did.

22 Q. Do you recall any occasion when you did?
23 Did there ever come a time when the smell of the
24 building improved?

25 A. Only when it was shut down.

1 Q. Did the installation of the scrubber, for
2 example, improve the smell?

3 A. I believe it did some.

4 Q. Did it ever get worse?

5 A. There was times it was very bad, scrubber
6 or no scrubber.

7 Q. Did you ever observe dust in the 2,4-D
8 building?

9 A. Yes.

10 Q. Was there a specific area that was dusty?

11 A. The entire floor was dust.

12 Q. On both sides? You have described for us
13 the T and D acid side and the ester side, but were both
14 sides dusty?

15 A. Yes. The only building that wasn't dusty
16 was the ester department.

17 Q. Do you know where the dust came from?

18 A. Product.

19 Q. You don't know what product?

20 A. No.

21 Q. How frequently would you observe the
22 dustiness in this area?

23 A. Any day you walked in.

24 Q. How would the dust be cleaned up?

25 A. They had open drain sewers. They would

1 either hose it down or brush it into the sewers.

2 Q. Whose job was that?

3 A. Operators.

4 Q. Did the dustiness, dusty condition, ever
5 improve in the 2,4-D building?

6 A. You asked that before. No.

7 Q. My apologies.

8 A. I said when the dust was there, when they
9 washed it down --

10 Q. I think I asked about fumes before.

11 A. Fumes were almost always present.

12 Q. The dustiness never improved?

13 A. No.

14 Q. Did you observe spills and leaks in the
15 2,4-D building?

16 A. There were numerous spills.

17 Q. Did you observe a liquid on the floor?

18 A. Yes. At times, yes.

19 Q. Liquid other than cleaning agents or water?

20 A. Yes.

21 Q. Do you know what this liquid was?

22 A. No. Just product.

23 Q. By "product" what do you mean?

24 A. Whatever department it was in it was
25 leaking, it was either D or T acid. They had various

1 acids they used and mixed out. I don't know which was
2 which.

3 Q. When you use the term "product," you could
4 refer to any of the raw materials or finished products
5 that were being manufactured or used in the plant. Is
6 that correct?

7 A. Correct.

8 Q. Do you recall observing this liquid on the
9 floor in any particular part of the 2,4-D building?

10 A. All over, no specific spot.

11 Q. How was the liquid cleaned up?

12 A. Water hose or, in some cases, they swept it
13 up or shoveled it up.

14 Q. What kind of material would they shovel up?

15 A. D and T powders and dust.

16 Q. This would be the operator's job again?

17 A. Yes.

18 Q. Other than the dustiness, the fumes, and
19 liquids that you described for us, can you describe any
20 other housekeeping problems or cleanliness problems that
21 you observed in the D building?

22 A. No.

23 Q. Did you perceive any of the conditions in
24 the 2,4-D building as unhealthy or unsafe?

25 A. They said whenever there is fumes it's

1 unsafe and you should report it, which I believe was
2 done almost all the time.

3 Q. Do you recall reporting fumes in the 2,4-D
4 building?

5 A. Yes.

6 Q. Do you know who you reported fumes to in
7 the D building?

8 A. To a departmental foreman or Homer Smith,
9 sometimes both.

10 Q. Do you recall the names of departmental
11 foremen?

12 A. One was Wolf and Bill Tobin. The
13 maintenance was DeGulis.

14 Q. Did you report these conditions to Tobin,
15 Wolf, and DeGulis?

16 A. When I thought they were bad, yes.

17 Q. Why did you think they were bad?

18 A. They bothered my nose, my eyes.

19 Q. Now I would like to ask you the same
20 questions about the last production building that you
21 described for us, the production building that was built
22 after the DDT building exploded. We will call that the
23 process building, if that's all right with you?

24 A. That's what they call it.

25 Q. Was that building ventilated?

1 A. Yes, I believe there were exhaust fans
2 there too. It also had a positive ventilated switch
3 room.

4 Q. Now, when you say "positively ventilated,"
5 what do you mean by that?

6 A. In both cases they had intake fans blowing
7 air into the room to keep it pressurized so as to keep
8 the fumes out, wouldn't let any fumes come in and
9 contact the arcing to cause an explosion.

10 Q. Was there a smell associated with the
11 process building?

12 A. Yes.

13 Q. What kind of smell was that?

14 A. That was a big phenol smell.

15 Q. Do you know where the phenol smell came
16 from, what part of the plant?

17 A. Process building.

18 Q. Do you know what production process the
19 phenol smell came from?

20 A. No.

21 Q. Was the process building dusty?

22 A. Only the first floor. It was open grates
23 on the other two floors, so anything that dropped down
24 went right down to the first floor, including their
25 washdowns.

1 Q. Do you know what the dusty material was
2 from?

3 A. No.

4 Q. Did you observe liquids on the floor of the
5 process building, other than water and cleaning fluids?

6 A. The first floor, yes, there were some
7 spills down there.

8 Q. What materials, liquid materials, were on
9 the floor of the process building?

10 A. I don't know.

11 Q. Do you recall those liquids being at any
12 specific area of the process building?

13 A. No.

14 Q. How frequently would you observe the
15 liquids on the floor of the process building?

16 A. That's hard to say. It seems to me like it
17 was all the time, every time you would go in there there
18 was something spilled.

19 Q. Other than as you have described for us,
20 were there any other housekeeping problems associated
21 with the process building?

22 A. No.

23 Q. Did you perceive any of these conditions as
24 being unhealthy?

25 A. I was told when you go in a chemical plant,

1 any fume is unhealthy.

2 Q. Who told you that?

3 A. Everybody.

4 Q. Everyone at Diamond Shamrock?

5 A. Yes. Don't go here, this is bad, don't go
6 here.

7 Q. Other than the conditions that you have
8 described for us inside the process building, were there
9 other cleanliness or housekeeping problems or conditions
10 that you thought were unhealthy or unsafe outside the
11 plant buildings in the grounds?

12 A. Now you make it a little shorter.

13 Q. Other than the conditions which you have
14 described for us inside the buildings, were there any
15 other conditions on the grounds of the plant which you
16 thought to be unhealthy or unclean?

17 A. When they had a spill that went over the
18 entire area, the fumes.

19 Q. The spill inside the buildings themselves?

20 A. Right.

21 Q. Would go -- the fumes would go around the
22 plant site?

23 A. Yes.

24 Q. Did you ever observe any spills outside of
25 the buildings themselves?

1 A. Only the tank farms.

2 Q. Was there more than one tank farm?

3 A. Yes.

4 Q. Do you recall spills at more than one tank
5 farm?

6 A. Yes.

7 Q. Do you recall specific occasions when there
8 were spills?

9 A. I just remember one alcohol spill that's
10 prominent.

11 Q. Do you recall any other specific material
12 that was spilled?

13 A. There was always spills, not every day,
14 every couple days. There was always some spills going
15 on.

16 Q. Do you have a specific recollection of any
17 specific material, other than the alcohol?

18 A. No.

19 Q. Were the tank farms diked in any way?

20 A. The new one, yes. The old one, no.

21 Q. What was the floor of the tank farm like in
22 the old tank farm?

23 A. Concrete pad, then the tar around it.

24 Q. How long was the old tank farm used?

25 A. I believe from when I first went in there

1 in '46 until I left.

2 Q. And when was the new tank farm constructed?

3 A. After their explosion.

4 Q. Other than the spills at the tank farms
5 that you described for us, are there any other problems
6 of cleanliness that you recall at the plant site?

7 A. No.

8 MR. JONES: Why don't we take a short
9 break.

10 (Short recess.)

11 BY MR. JONES:

12 Q. Mr. Burke, who was the first person at the
13 plant who you recall having chloracne?

14 A. I don't know.

15 Q. Do you have any idea when you first
16 observed someone at the plant with chloracne?

17 A. No.

18 Q. Do you recall an employee at the plant
19 named Renner?

20 A. Yes.

21 Q. Do you recall if he had chloracne?

22 A. He was the one that was made a janitor?

23 Q. Do you recall --

24 MR. SULLIVAN: If you don't remember who he
25 is --

1 A. I think there was a Renner made a janitor
2 because he couldn't take the fumes in the plant, Dale
3 Renner.

4 Q. When you say he couldn't take the fumes in
5 the plant, what do you mean?

6 A. He was taken from process, made a janitor.

7 Q. Did he have chloracne?

8 A. I believe so.

9 Q. How long did Dale Renner work at the plant,
10 do you recall?

11 A. No.

12 Q. when you say Dale Renner couldn't take the
13 fumes, you mean that he developed chloracne as a result
14 of the fumes?

15 A. I believe so, yes.

16 Q. Do you ever recall having any understanding
17 -- let me backup.

18 Did you have any understanding at the time
19 you worked at Diamond Shamrock as to what chemical at the
20 plant may have been causing chloracne?

21 A. Did I know?

22 MR. SULLIVAN: I will note an objection to
23 this. I'm going to leave it, I guess, to some extent up
24 to Mary. I wasn't here.

25 Again, didn't we go over this yesterday?

1 MS. BRENNAN: I think if I can remember
2 correctly, the question was where in the plant as
3 opposed to the specific question that he is asking. I
4 don't know that there is much of a difference. I think
5 he was asked if he associated it with a process in the
6 plant as opposed to a particular product.

7 MR. JONES: By Mr. Dughi?

8 MS. BRENNAN: I don't remember if it was Mr.
9 McCarter or Mr. Dughi. But there was a similar question.

10 MR. JONES: I will just ask the one question
11 and get off the subject.

12 MR. SULLIVAN: Okay.

13 BY MR. JONES:

14 Q. Do you have any understanding while you
15 were an employee at Diamond Shamrock as to what chemical
16 at the plant may have been causing chloracne?

17 A. No.

18 Q. Do you recall any sampling of materials at
19 the plant in connection with the chloracne problem?

20 A. No.

21 Q. Does the term "rabbit ear test" mean anything
22 to you?

23 A. No.

24 Q. Do you recall --

25 A. That's a new one on me.

1 Q. That's fine. We are trying to find out
2 what you recall or know.

3 Do you recall any rupture disk failures at
4 the plant?

5 A. Yes.

6 Q. In what piece of equipment is there a
7 rupture disk at the plant, do you recall?

8 A. Only in one instance.

9 Q. First, do you recall what piece of
10 equipment has a rupture disk in it?

11 A. Autoclave.

12 Q. Do you associate the term "autoclave" with
13 any specific chemical process at the plant?

14 A. No.

15 Q. And you mentioned a moment ago that you
16 recall one instance?

17 A. Yes.

18 Q. Is it correct you recall one instance of a
19 rupture disk failure?

20 A. Where the rupture -- yes, there was a
21 rupture disk failure. I don't know where they were. I
22 know there was one rupture disk in the autoclave
23 system.

24 Q. Do you have a specific recollection of any
25 rupture disk failure?

1 A. Specific, no.

2 Q. You were present when the explosion
3 occurred at the plant in 1960. Is that correct?

4 A. Correct.

5 Q. What do you recall about the explosion?

6 A. First thing I heard was a clicking sound,
7 then the lights went out. Then the blast.

8 Q. Where were you when the blast took place?

9 A. We had a little electric shop right next to
10 the old maintenance shop.

11 Q. Is that where you were?

12 A. Yes.

13 Q. How far away from the source of the blast
14 was that?

15 A. A hundred foot.

16 Q. Do you have any understanding of what
17 caused the explosion?

18 A. I believe it was said the autoclave erupted.

19 Q. Do you recall what happened to cause the
20 autoclave to erupt?

21 A. No.

22 Q. What was the weather like the day of the
23 explosion, do you recall?

24 A. No.

25 Q. Do you recall any chemicals being dispersed

1 as a result of the explosion?

2 MR. SULLIVAN: Anywhere?

3 Q. Anywhere.

4 A. Where I was there was none. What happened
5 at the other end, I don't know.

6 Q. Were you injured as a result of the
7 explosion?

8 A. They said I was. When the explosion took
9 place the concussion -- I was in the doorway. It pushed
10 me into the little room and as it went by I was sucked
11 out. According to Diamond's doctors, I was apparently
12 out on my feet. When I came to, the fire engines were
13 there.

14 Q. Did you assist in the clean up of the site
15 or the demolition of any of the old DDT building?

16 A. No.

17 Q. Did you resume work at the Diamond plant
18 immediately following the explosion?

19 A. It happened around February 22nd,
20 Washington's Birthday?

21 Q. I believe so.

22 A. I was off the one day and they wouldn't let
23 me in the plant, and they called me the next day to come
24 in they had to do something.

25 Q. I'm not sure you answered this. Did you

1 assist in the clean up of the plant?

2 A. Clean up?

3 Q. Yes.

4 A. Electrical end only, yes.

5 Q. What did you do in the electrical end clean
6 up of the plant?

7 A. Disconnect all the switches that were not
8 going to be used to light up the area for clean up later
9 on.

10 Q. Were these switches within the DDT
11 building?

12 A. Yes.

13 Q. What about the demolition of the DDT
14 building, did you assist in that?

15 A. Removing and discontinuing electrical
16 lines, that was all.

17 Q. Do you recall any attempts to unionize the
18 work force at Diamond Shamrock?

19 MR. SULLIVAN: I'm going to object. I'm
20 sure it was asked yesterday.

21 MR. JONES: I would doubt that was asked.
22 Do you recall, Mary?

23 MS. BRENNAN: We have to go into this area.

24 MR. SULLIVAN: I have to check with my
25 office. I know in the previous depositions Mr. Dughi

1 has spent a considerable amount of time discussing union
2 organizing at the plant.

3 MR. JONES: I plan on proceeding with this.
4 It's a short series of questions. I have a right to go
5 into them on behalf of my client.

6 MR. SULLIVAN: I would have to check with my
7 office. I would be very surprised --

8 MS. BRENNAN: First of all, I don't know
9 that Mr. Dughi's questions, unless they are the exact
10 same question, are binding upon another defendant in this
11 case. Unless he is asking the exact word-for-word
12 question, just because Mr. Dughi went over an area, I
13 don't think it prohibits us from going over the area.

14 MR. SULLIVAN: But the subject was covered.

15 MS. BRENNAN: The fact he may go over the
16 subject matter I'm interested in doesn't mean I can't
17 ask other questions. You can go into further detail --

18 MR. SULLIVAN: He wasn't here yesterday, he
19 doesn't know what Mr. Dughi asked yesterday.

20 MR. JONES: Counselor --

21 MS. BRENNAN: That's your problem, you
22 weren't here.

23 MR. SULLIVAN: He can't amplify on a
24 question if he doesn't know what the original question
25 was.

1 MS. BRENNAN: That's your job to make the
2 proper objections.

3 MR. SULLIVAN: What I will do is call my
4 office and find out if the union organization questions
5 were asked.

6 MR. JONES: I would like to know if you are
7 going to instruct your client not to answer questions on
8 unionization.

9 MR. SULLIVAN: Pending a five minute phone
10 call to my office, yes.

11 MR. JONES: Let's take a break and make the
12 phone call and we will resume and see where we stand
13 then.

14 (Short recess.)

15 MR. SULLIVAN: I have spoken to Michael who
16 was here yesterday. I have what I think are almost word
17 for word the questions that Mr. Dughi asked yesterday,
18 which were limited in number. I have been instructed by
19 Michael if those questions are asked again, to instruct
20 him not to answer those questions. If there are other
21 ones that are different, feel free to go ahead.

22 MR. JONES: Well, counselor, I will say I
23 would proceed. As you understand there will, of
24 necessity, be introductory questions just to introduce
25 the topic again. I believe that the small amount of

1 redundancy which may be created by the asking of similar
2 questions is somewhat to be expected in multi-defendant
3 and complex depositions, and if you wish to instruct your
4 client not to answer because of your belief that they
5 are -- have been repetitive, then I can say we reserve
6 all rights to make an appropriate motion to compel those
7 questions to be answered at an appropriate time.

8 MR. SULLIVAN: Go ahead.

9 BY MR. JONES:

10 Q. Mr. Burke, do you recall any attempts to
11 unionize the work force at the Diamond Shamrock plant?

12 A. Yes.

13 Q. Do you recall when those attempts were?

14 A. I could guess in the '50s.

15 Q. I don't want you to guess. Let me ask it
16 this way: Do you recall any attempts, other than the
17 attempt which led to the actual unionization of the
18 plant?

19 A. I would have to say no then.

20 MR. JONES: Could we mark this.

21 (Notice dated 4/30/62 marked Burke-26 for
22 identification.)

23 BY MR. JONES:

24 Q. Mr. Burke, I'm showing you what has been
25 marked Burke-26 for identification and ask you to please

1 review that document.

2 Mr. Burke, do you recall having seen that
3 document?

4 A. No.

5 Q. Does that document refresh your
6 recollection as to a 1962 unionization effort at the
7 plant?

8 A. I remember something.

9 Q. What do you recall?

10 A. That they were trying to organize a union.

11 Q. Do you recall work conditions being an
12 issue in that unionization effort?

13 A. No.

14 Q. Regardless of whether -- start over.
15 Understanding that you don't recall reading this letter,
16 do you recall any workers at the plant making any of the
17 allegations which are contained in this letter?

18 A. No.

19 Q. Do you recall any inspections of the plant
20 by persons other than employees of Diamond Shamrock?

21 A. Yes.

22 Q. Who conducted these inspections?

23 A. Capen.

24 Q. Who did Mr. Capen work for?

25 A. Aetna.

1 Q. When do you recall these inspections
2 occurring?

3 A. Capen came around and gave a lecture, I
4 believe it was, every second week. I believe he was
5 supposed to have made an inspection before he came in to
6 give us a lecture.

7 Q. Did you ever accompany Mr. Capen on any of
8 his inspections?

9 A. I don't remember any.

10 Q. Do you recall the subject of any of his
11 lectures?

12 A. Yes.

13 Q. What were some of these lectures about?

14 A. Mainly about chemical fires and ladders.

15 Q. Do you recall any other subjects of these
16 lectures?

17 A. No.

18 Q. Do you recall any other inspections by
19 people other than Mr. Capen?

20 A. Plant engineers.

21 Q. Other than employees of Diamond Shamrock?

22 A. No.

23 Q. Do you recall workers at the plant named
24 Baisley and Kalena.

25 A. Yes.

1 Q. Did they have chloracne?

2 A. Yes.

3 Q. Do you recall an occasion when they were
4 hospitalized by Diamond Shamrock?

5 A. Same question as yesterday?

6 MS. BRENNAN: As to one of them.

7 Q. Do you recall an occasion when Baisley and
8 Kalena were hospitalized by the company?

9 A. No.

10 MS. BRENNAN: I believe, for the record, the
11 witness did answer as to Baisley yesterday.

12 A. I knew about it later on, but not in the
13 beginning.

14 Q. When did you know about it?

15 A. Later on.

16 Q. When you say "later on" --

17 A. At some time.

18 Q. Sometime prior to the time you left the
19 employ of Diamond Shamrock?

20 A. Yes.

21 Q. Do you recall the purpose of the
22 hospitalization?

23 A. No.

24 Q. Did you ever discuss the hospitalization
25 with either Mr. Baisley or Mr. Kalena?

1 A. No.

2 Q. Did you ever discuss the hospitalization
3 with any of the workers at Diamond Shamrock that you
4 recall?

5 A. No.

6 Q. Do you recall the taking of urine samples
7 at the plant?

8 A. Yes.

9 Q. Do you recall when those urine samples were
10 taken?

11 A. During the time when a group of people came
12 in and gave us a general testing. That's all I know.

13 Q. Were these -- where was this group of
14 people from?

15 A. I don't know.

16 Q. Could they have been with the government?

17 A. We heard that.

18 Q. How soon before the plant closed did this
19 occur?

20 A. I don't know.

21 Q. Do you recall the purpose of the sampling?

22 A. No.

23 Q. Do you recall if it had any connection with
24 chloracne at the plant?

25 A. I'm not sure.

1 MR. JONES: Could you mark these, please.

2 (Notice dated 11/25/63 marked Burke-27 for
3 identification.)

4 (Notice dated 7/13/64 marked Burke-28 for
5 identification.)

6 (Notice dated 2/19/68 marked Burke-29 for
7 identification.)

8 BY MR. JONES:

9 Q. Mr. Burke, I'm showing you what has been
10 marked Burke-27, 28, and 29 for identification. I would
11 ask you to review those, please. There are three
12 pages.

13 MR. JONES: For the record, they are
14 notices. Burke-27 is a notice signed by F.R. Kennedy
15 dated November 25, 1963 which announces, to characterize
16 it somewhat, a urinalysis to be conducted in the
17 laboratory of the plant.

18 Burke-28 is a notice also signed by F.R.
19 Kennedy dated July 13, 1964 and begins: "A second plant-
20 wide series of urinalysis is to start this week."

21 And Burke-29 is a notice also signed by
22 F.R. Kennedy dated February 19, 1969 which begins: "As
23 part of our continuing effort to control and eliminate
24 the chloracne problem within the plant, another series
25 of urine checks has been scheduled."

1 BY MR. JONES:

2 Q. Mr. Burke, do you recall seeing any of
3 these documents?

4 A. Honestly, no.

5 Q. Do they refresh your recollection as to
6 when the plant-wide urinalysis occurred?

7 A. I know this group came in. I don't
8 remember any of this later on.

9 Q. Is it your recollection that the group that
10 came in preceded the 1963 notice, which is the earliest
11 of these notices? Do you understand my question?

12 A. I'm not sure. Go ahead, try it once more.

13 Q. You said "later on" in response to my
14 question. So, therefore, I'm asking you whether it is
15 your recollection that the group that came in to the
16 plant which you described earlier, came in before 1963?

17 A. I don't know when they came in.

18 Q. Do these documents, Burke-27, 28, and 29,
19 refresh your recollection as to the purpose of the
20 urinalysis?

21 A. No.

22 Q. Do you recall receiving the results of your
23 urinalysis?

24 A. No, I don't.

25 Q. Do you recall asking for the results of

1 your urinalysis?

2 A. No.

3 Q. Do you recall any addition to the process
4 building in the late 1960s?

5 A. I don't know that the process building was
6 up in the '60s. It happened after the explosion.

7 Q. I'm describing the building that was
8 constructed in or about 1960 to replace the DDT building
9 which was destroyed in the explosion. I'm referring to
10 that building as the process building.

11 Do you recall any addition to that building
12 in the late 1960s?

13 A. No.

14 Q. Do you recall the installation of any piece
15 of equipment in the plant called the carbon tower?

16 A. Name is familiar, but I don't remember
17 anything about it.

18 Q. Do you remember anything at all about the
19 carbon tower?

20 A. No.

21 Q. You described earlier your recollection of
22 occasions when workers would refuse to enter a tank
23 because they felt it had not been properly cleaned. Do
24 you recall any other occasion when workers refused to
25 work on a part of the equipment at the plant?

1 A. No.

2 Q. Specifically, do you recall any occasion
3 when workers refused to work on any part of the TCP
4 equipment?

5 A. No.

6 Q. It is my understanding that you testified
7 yesterday about a government study that was conducted at
8 the -- close to the end of the time you were employed by
9 Diamond Shamrock. Is that correct?

10 A. There was one there. I don't know when it
11 was.

12 Q. Do you recall participating in any meetings
13 before the study was conducted with the people who were
14 going to conduct the study?

15 A. No.

16 Q. Did you have any position within the union
17 at the plant?

18 A. Yes.

19 Q. What was your position within the union?

20 A. Maintenance committeeman.

21 Q. Did that maintenance committee have any
22 safety responsibilities?

23 A. Only what management decided.

24 Q. Was there something called a labor
25 management safety committee?

1 A. Not that I know of.

2 Q. What was the job of the maintenance
3 committee?

4 A. Grievances and possible safety.

5 Q. Do you recall any safety or workplace
6 condition issues that you considered as a member of the
7 maintenance committee?

8 A. I believe it was decided that a Homer Smith
9 would be the one to decide whether a vessel was clean or
10 unclean. They accepted him as the only one. That's it.

11 Q. Do you remember any other issues?

12 A. No.

13 Q. You described earlier lectures that were
14 conducted by Mr. Capen of Aetna. Did Diamond Shamrock
15 itself conduct any safety meetings or lectures?

16 A. I don't recall.

17 MR. JONES: Could I have a moment, please.

18 (Discussion off the record.)

19 MR. JONES: I have no further questions.

20

21 CROSS EXAMINATION BY MS. BRENNAN:

22 Q. Mr. Burke, I just have a few questions.

23 Again, I will introduce myself. I'm Mary Siobhan

24 Brennan. I'm from the firm of Hoagland, Longo,

25 Oropollo & Moran. We represent Aetna in the lawsuit in

1 question.

2 I know you have been deposed for the last
3 two days and I have been present and I have been
4 listening to all the testimony going on. I only have a
5 few questions, but if for some reason you don't
6 understand where I'm coming from, just let me know and I
7 will take a step back and try to work it out for you.
8 All right?

9 A. Fine.

10 Q. You recall the instructions that you were
11 given yesterday by the other attorneys?

12 A. Yes.

13 Q. Twice, right?

14 A. Yes.

15 Q. I believe just a little while ago you began
16 talking about Mr. Capen being at the Diamond Shamrock
17 plant. Is that correct?

18 A. Yes.

19 Q. Can you tell me, to the best of your
20 recollection, when the first time was that you became
21 aware of Mr. Capen's presence at Diamond Shamrock?

22 A. After the explosion.

23 Q. Do you recall the circumstances around
24 which you became aware that he was there?

25 A. He was introduced when he was brought into

1 the maintenance department, who he was and who he
2 represented.

3 Q. Do you remember anything about how he was
4 introduced?

5 A. No.

6 Q. Were you told then where he was from?

7 A. Yes. That was Capen and he was -- he
8 represented Aetna and he is a safety man.

9 Q. Were you told what he was supposed to do?

10 A. No.

11 Q. Were you ever told that he was there to
12 conduct inspections or is that something you observed on
13 your own?

14 A. Observed inspections, heard his lectures.

15 Q. Well, I believe you testified earlier he
16 was supposed to do inspections prior to meetings. Where
17 did that information come from?

18 A. I really don't know, honestly.

19 Q. Is that something you just said or is that
20 something you had knowledge of?

21 A. I heard he was supposed to go around making
22 safety inspections, then come back to the maintenance
23 department then tell what he found. This came from the
24 employees or the engineers, I'm not sure.

25 Q. Did he, in fact, do that?

1 A. He spoke to us, and I believe he went
2 around. I can't be sure, I never went with him.

3 Q. Do you know who did go with him?

4 A. It would probably be the engineer, Smith.

5 Q. You say it "probably" was. Do you know for a
6 fact that someone went with him, or do you just not
7 know?

8 A. Let's say I don't know.

9 Q. You believe that if someone went with him,
10 it probably was Mr. Smith?

11 A. Or two foremen, yes.

12 Q. You also said earlier he was supposed to
13 have meetings or he conducted meetings every other week.
14 Is that your recollection of what happened?

15 A. Yes.

16 Q. How long of a period of time did he conduct
17 meetings or lectures every other week or every two
18 weeks?

19 A. How long were they in length?

20 Q. No. How long did this meetings go on for?

21 A. I don't know. I know they took about
22 between a half hour and an hour.

23 Q. Were they voluntary, did you have to go to
24 the meetings, or just if you wanted to you could go to
25 the meetings?

1 A. Maintenance, not on an emergency, had to
2 go.

3 Q. How many of those meetings would you say
4 you attended?

5 A. Almost all.

6 Q. Can you give me an idea how many "all" of
7 them are?

8 A. If I knew how long he was there. I don't
9 know.

10 Q. Well, the problem is, I have no idea
11 whether "all" of them is three of them or whether "all"
12 of them is 300 of them. That's why I'm asking
13 questions.

14 Do you have any sort of way you can tell me
15 about how many?

16 A. If he was there a year, I went to all of
17 them. If he was there two years, I went to all of them.
18 I don't know how long he was there.

19 Q. Do you recall when the last time was that
20 you saw Mr. Capen?

21 A. May have been in April '69.

22 Q. Well, I'm not asking you when it might have
23 been, I'm asking what your last recollection is of Mr.
24 Capen?

25 A. I don't know.

1 Q. Are you certain that Mr. Capen came every
2 two weeks, or was that an approximation on your part?
3 Could it have been every month, or are you certain it was
4 every two weeks?

5 A. I thought it was every two weeks. Every
6 second week he came.

7 Q. Was there ever a time when that changed, or
8 was it always throughout the whole time that he was
9 there?

10 A. Times he did not come engineers took over
11 and gave a small lecture or they canceled it.

12 Q. Going back to when he went on inspection
13 around the plant, did you actually ever observe him
14 going around the plant different places?

15 A. I did see him throughout the plant at
16 times.

17 Q. Can you tell me what you recall that he did
18 when he went throughout the plant on the times that you
19 observed him?

20 A. Just that he was looking around. I don't
21 remember exact detail.

22 Q. When you say he was "looking around," was he
23 basically just looking with his eyes, walking around, or
24 can you tell me what you saw?

25 A. To see if he could find any faults.

1 Q. I understand that. I'm just asking whether
2 it is just walking around observing with your eyes, or is
3 he doing anything more than that to your observation?

4 A. I saw him walking around. What he did, I
5 don't know.

6 Q. Did he carry any sort of materials with
7 him, like a clipboard or a piece of paper and a pen, or
8 did you observe anything like that?

9 A. He had a clipboard and a mask on his belt.

10 Q. You are making a gesture with your hands?

11 A. I'm trying to think of what name you would
12 call it, respirator or dust mask.

13 Q. A mask for his mouth?

14 A. Yes.

15 Q. Did he wear that?

16 A. He had it hooked onto his belt.

17 Q. Did you ever see him wearing that?

18 A. No.

19 Q. Now, you stated before that he would come
20 back to or he would return to the maintenance room after
21 walking around. Is that correct?

22 A. Correct.

23 Q. Am I correct in understanding at that point
24 he would report to the maintenance department what he
25 had observed when he walked around?

1 A. Correct.

2 Q. Did you observe him do anything else at
3 that point?

4 A. Just to come into the maintenance shop and
5 give a talk on whatever subject he had in mind.

6 Q. Would he give the talk only to the
7 maintenance department or would it be open to all
8 workers?

9 A. Maintenance not on emergencies were required
10 to be there. Some operators came. I don't know which
11 ones or why, but they came.

12 Q. Do you ever recall any government people
13 coming around looking around the plant?

14 A. Just the ones with him with their testing.

15 Q. So, they are medical government people?

16 A. Somebody come around and took tests of our
17 bodies. That's all I honestly know.

18 Q. Do you ever remember any one from Aetna,
19 other than Mr. Capen, coming to the plant to look
20 around?

21 A. No.

22 Q. Would Mr. Capen come on a specified date?

23 A. Tuesday.

24 Q. You are holding your fingers. I'm not so
25 much interested in the exact date, I just wanted to know

1 whether everyone would know in advance when Mr. Capen
2 was coming?

3 A. Yes.

4 Q. There has been some testimony from other
5 people that Mr. Capen would wear a green hat. Do you
6 have any recollection of that?

7 A. Yes, I'm sorry, he did.

8 Q. Do you ever recall any special procedures
9 for the days when Mr. Capen would come to the plant?

10 A. I remember being told that Capen is coming,
11 straighten up.

12 Q. Do you remember who told you that?

13 A. No.

14 Q. I think you testified yesterday, and we
15 talked a little bit about it a few minutes ago, of the
16 fact that you were a committeeman in the union?

17 A. Yes.

18 Q. And that you were head of what you called
19 yesterday the grievance committee. Is that the same
20 committee that you testified to today?

21 A. Yes. Not head of, part of.

22 Q. You were a committeeman on the grievance
23 committee, also known as the maintenance -- whatever it
24 was the committee that was mentioned today?

25 A. Yes.

1 Q. Just for purposes of the record, do you
2 remember what you referred to it as?

3 MR. JONES: Maintenance committee, I
4 believe.

5 A. Yes.

6 Q. You also stated yesterday there was a
7 separate safety committee. Is that your recollection?

8 A. Yes.

9 Q. Who was on the separate safety committee?

10 A. One name is Homer Smith.

11 Q. Was Homer Smith the entire safety committee
12 or were there other committeemen on it?

13 A. Others on it.

14 Q. Is it my understanding that you don't
15 recall their names, or do you recall any of the names?

16 A. The foremen went around with them,
17 departmental foreman.

18 Q. Do you remember who that was?

19 A. Tobin and Wolf.

20 Q. Are there any people that you recall being
21 on committees but you don't remember which committees
22 they were on?

23 A. I don't remember any.

24 Q. Do you remember who the other committeemen
25 were who were on the committee that you were on, the

1 grievance maintenance committee?

2 A. Yes.

3 Q. Who were they?

4 A. Rus Lamoreaux and Nick Centanni.

5 Q. Anyone else?

6 A. There may have been others later on.

7 Q. I just mean anyone else you remember?

8 A. Yes, one. When we were negotiating it was
9 said to be I was not aggressive enough and someone else
10 took over. I backed down and they took over. After the
11 agreement was signed, I went back again.

12 Q. Do you remember who that was?

13 A. A Petrosky.

14 Q. As part of the committee, would you have
15 any involvement with Mr. Capen?

16 A. No.

17 Q. Do you know whether anyone that was on the
18 safety committee, in their status as a member of the
19 committee, would have anything to do with Mr. Capen?

20 A. Yes.

21 Q. What do you recall about that?

22 A. Just that those four, including Capen, went
23 together and discussed the problems.

24 Q. So that if we knew when the union committee
25 started we would know Mr. Capen was still at the plant

1 at that time. Is that correct?

2 A. I don't know for sure.

3 Q. But you remember Capen being involved with
4 the committee members?

5 A. Yes.

6 Q. You remember that for a fact, right?

7 A. The safety committee?

8 Q. Right.

9 A. Right.

10 Q. And you remember the safety committee was
11 established once the union came in. Is that correct or
12 is that wrong?

13 A. That I'm not sure of.

14 Q. Do you remember whether Mr. Baker ever held
15 any safety position at the plant?

16 A. Some sort of position. I don't know what
17 it was.

18 Q. Is that separate and apart from the safety
19 committee?

20 A. They may be tied together, I don't know.

21 Q. You said that you remember that Mr. Capen,
22 or your recollection of Mr. Capen begins after the
23 explosion. Can you tell me within whatever is easier
24 for you, within months or years, how soon after the
25 explosion you first recall him being there?

1 A. No.

2 Q. You started talking about there being
3 people from Diamond Shamrock walking around looking at
4 the plant. Do you remember saying that?

5 A. Yes.

6 Q. Do you know whether these people were
7 people that worked at 80 Lister Avenue, or would there be
8 people from Diamond Shamrock from their outside offices
9 that would come into the Newark plant to look around?

10 A. 80 Lister Avenue.

11 Q. Do you ever recall anyone from Diamond
12 Shamrock Corporation outside of the 80 Lister Avenue
13 plant coming in and looking at the plant?

14 A. No.

15 Q. Do you recall after the explosion anyone
16 coming in to assess the explosion and to look at the
17 plans for the rebuilding?

18 MR. SULLIVAN: From Diamond?

19 Q. From Diamond or anyone from outside of
20 Diamond Shamrock?

21 A. After the explosion?

22 Q. Yes, other than Aetna?

23 A. I don't remember any names. There was an
24 awful lot of people running around.

25 Q. Were they people who were not employees of

1 the Newark plant of Diamond Shamrock?

2 A. Yes.

3 Q. In your day-to-day duties as an employee of
4 Diamond Shamrock, would you be in a position to know who
5 was coming into the plant and who was leaving who were
6 not employees?

7 A. No.

8 MS. BRENNAN: I have no further questions.

9 MR. JONES: I just have one question.

10

11 REDIRECT EXAMINATION BY MR. JONES:

12 Q. Mr. Burke, at the beginning today you told
13 us that moth crystals were made at the Kolker facility.
14 Do you recall whether those -- there came a time when
15 those moth crystals were no longer manufactured?

16 A. When I said moth crystals, I understand
17 paradichlorobenzine is compressed into moth crystals or
18 made into flakes. They made the product, they flaked
19 it, and they crushed it to a certain extent to make a
20 dust out of it.

21 Q. Do you recall if there came a time when
22 paradichlorobenzine was no longer manufactured at the
23 plant?

24 A. No.

25 Q. Does that mean that you don't recall when

1 it may have stopped?

2 A. Yes, I don't recall when it stopped, if it
3 stopped even.

4 Q. And you don't recall if it stopped?

5 A. Right.

6 Q. Do you recall if paradichlorobenzine was
7 made at the plant when Diamond Alkali owned it?

8 A. Do I recall if it was made when Diamond
9 Alkali owned it?

10 Q. Right.

11 A. It wasn't made.

12 Q. It was not made?

13 A. Was not made.

14 MR. JONES: Thank you. No further
15 questions.

16 (Deposition adjourned at 1:25 p.m.)

17

18

19

20

21

22

23

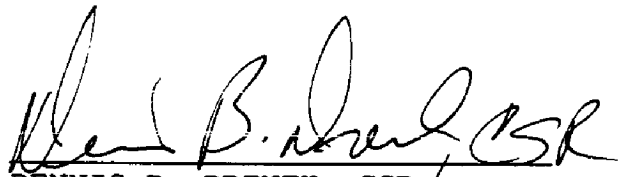
24

25

C E R T I F I C A T E

1
2
3
4 I, DENNIS B. DRENTH, a Notary Public and Certified
5 Shorthand Reporter of the State of New Jersey, do hereby
6 certify that the foregoing is a true and accurate
7 transcript of the testimony as taken stenographically by
8 and before me at the time, place, and on the date
9 hereinbefore set forth, to the best of my ability.

10 I DO FURTHER CERTIFY that I am neither a relative
11 nor employee nor attorney nor counsel of any of the
12 parties to this action, and that I am neither a relative
13 nor employee of such attorney or counsel, and that I am
14 not financially interested in the action.
15

16
17 

18 DENNIS B. DRENTH, CSR
19 License No. XI01048
20 Notary Public of the
21 State of New Jersey
22
23
24
25