

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: MORRIS COUNTY
DOCKET NO. C-3939-84

DIAMOND SHAMROCK
CHEMICALS COMPANY,

PLAINTIFF,

VS

THE AETNA CASUALTY
AND SURETY COMPANY, ET AL.,

DEPENDANTS.

STENOGRAPHIC TRANSCRIPT

OF:

NON-JURY TRIAL

-----X
AFTERNOON SESSION

DATE: OCTOBER 12, 1988
PLACE: MORRIS COUNTY COURTHOUSE
MORRISTOWN, NEW JERSEY

B E F O R E: HON. REGINALD STANTON, A.J.S.C.

TRANSCRIPT ORDERED BY: STEPHEN D. CUYLER, ESQ.

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

MESSRS. PITNEY, HARDIN, KIPP & SZUCH,
BY: DENNIS LA FIURA, ESQ.

-AND-

MESSRS. CAHILL, GORDON & REINDEL,
ATTORNEYS FOR PLAINTIFF,
BY: WILLIAM E. HEGARTY, ESQ.
MICHAEL P. TIERNEY, ESQ.
RAYMOND L. FALLS, JR., ESQ.
LEONARD A. SPIVAK, ESQ.
MARSHALL COX, ESQ.
PETER F. LAKE, ESQ.
(Admitted pro hac vice)

DEBORAH A. NUTTING
OFFICIAL COURT REPORTER
MORRIS COUNTY COURTHOUSE
MORRISTOWN, NEW JERSEY

APPEARANCES (Continued):

MESSRS. CUYLER & BURK,
ATTORNEYS FOR DEFENDANT GENERAL
REINSURANCE GROUP, ET AL,
BY: STEPHEN D. CUYLER, ESQ. and
CLARA HARELIK.

MESSRS. SHEFT & SWEENEY,
ATTORNEYS FOR DEFENDANT LLOYD'S, AND
LONDON MARKET COMPANIES
BY: PETER SHEFT, ESQ.
AND LEONARD A. SHEFT, ESQ.
(ADMITTED PRO HOC VICE)

MESSRS. DAY, BERRY & HOWARD,
ATTORNEYS FOR DEFENDANT AETNA CASUALTY,
BY: THOMAS J. GROARK, JR., ESQ.
AND STEPHEN MOSER, ESQ.
(ADMITTED PRO HOC VICE)

MESSRS. MORGAN, MELHUIH, MONAGHAN,
ARVIDSON, ABRUTYN & LISOWSKI,
ATTORNEYS FOR DEFENDANT HOME INSURANCE CO.,
BY: HENRY G. MORGAN, ESQ.
AND STEFANO CALOGERO, ESQ.

MESSRS. PHELAN, POPE & JOHN,
ATTORNEYS FOR DEFENDANT AMERICAN REINSURANCE
COMPANY AND AMERICAN EXCESS INSURANCE COMPANY
BY: ROBERT J. BATES, JR., ESQ.
(ADMITTED PRO HOC VICE)

MESSRS. MUDGE, ROSE, GUTHRIE, ALEXANDER &
FERDON,
ATTORNEYS FOR DEFENDANTS INSURANCE COMPANY OF
NORTH AMERICA, CALIFORNIA UNION INSURANCE
COMPANY AND PACIFIC EMPLOYER'S INSURANCE CO.,
BY: PAUL R. KOEPPF, ESQ.
AND GEORGE A. PIERCE, ESQ.

APPEARANCES (Continued):

MESSRS. GARRITY, FITZPATRICK, GRAHAM,
HAWKINS & FAVETTA,
ATTORNEYS FOR DEFENDANT AMERICAN INTERNATIONAL GROUP,
BY: ANTONIO D. FAVETTA, ESQ.
AND RUDOLPH G. MORABITO, ESQ.

MESSRS. KUNZMAN, COLEY, YOSPIN & BERNSTEIN,
ATTORNEYS FOR DEFENDANT FIREMEN'S FUND,
BY: STEVEN A. KUNZMAN, ESQ.

MESSRS. LEVY, BIVONA & COHEN,,
ATTORNEYS FOR DEFENDANT FIREMEN'S FUND,
BY: DONALD M. GILBERG, ESQ.

MESSRS. GOLDEN, ROTHSCHILD, SPAGNOLA &
DIFAZIO,
ATTORNEYS FOR DEFENDANT ROYAL INDEMNITY,
BY: CHARLES W. MILLER, III, ESQ.

MESSRS. BUMGARDNER, HARDIN & ELLIS,
ATTORNEYS FOR DEFENDANTS U.S. FIRE INSURANCE
CO., AND LONDON GUARANTEE INSURANCE CO.
BY: MARK S. KUNDLA, ESQ.
AND MARY ELLEN MYERS.

MESSRS. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER,
ATTORNEYS FOR DEFENDANT EVANSTON INSURANCE CO.
BY: THOMAS F. QUINN, ESQ.

MESSRS. TOMPKINS, MC GUIRE & WACHENFELD,
ATTORNEYS FOR DEFENDANTS FIRST STATE INSURANCE
CO. AND HARTFORD ACCIDENT AND INDEMNITY CO.
BY: REX K. HARRIOTT, ESQ.

A p p e a r a n e s (continued)

MESSRS. SCHENK, PRICE, SMITH & KING,
ATTORNEYS FOR DEFENDANT SAINT PAUL,
BY: DONALD BEDELL, ESQ.

MESSRS. JAMES AND ADDAS,
ATTORNEYS FOR DEFENDANT SOUTHWEST,
BY: FRANK ADDAS, ESQ.

MESSRS. BUNGARTNER, HARDIN & ELLIS,
ATTORNEYS FOR DEFENDANT GUARANTEE,
BY: CRAIG BROWN, ESQ.

MESSRS. GRIFFITH & BURR, P.C.
ATTORNEYS FOR DEFENDANT COMMERCIAL UNION
INSURANCE COMPANY,
BY: JAMES W. CHRISTIE, ESQ.

MESSRS. GORDON, GORDON & HALEY,
ATTORNEYS FOR WITNESS BLAIR,
BY: WILLIAM C. SULLIVAN, ESQ.

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>WILLIAM HUTTON</u>					
Mr. Cologero	5		67		
Mr. Moser		53			
Mr. Hegarty		59			
Mr. L. Sheft		58			
<u>WALTER BLAIR</u>					
Mr. Cuyler	69		124		
Mr. Spivak		85			
Mr. L. Sheft		125			

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
D-142	Report on Lister Avenue facility dated 6/10/83		52

1 said. I've decided to enjoy that rather than
2 get annoyed.

3 MR. HEGARTY: I wish I could share your
4 feeling.

5 THE COURT: Do you have anything further
6 with the witness.

7 THE COURT: All right. You may step down,
8 Mr. Hutton. Why don't we -- why don't we have
9 Mr. Blair now.

10 MR. CUYLER: That's a great idea.

11 W A L T E R W I L L I A M B L A I R, S W O R N.

12 D I R E C T E X A M I N A T I O N B Y M R. C U Y L E R:

13 THE COURT: Have a seat, there, Mr. Blair.
14 Whenever you're ready.

15 MR. SULLIVAN: William C. Sullivan, Jr.,
16 Gordon, Gordon & Haley representing Mr. Blair.
17 Mr. Gordon is unavailable today and I'm familiar
18 with the underlying litigation.

19 THE COURT: Fine. You can have a seat and
20 we'll give you limited rights to object.

21 MR. SULLIVAN: I understand. I don't
22 expect to say much.

23 Q Mr. Blair, are you presently employed?

24 A I'm retired.

25 Q Was there a time when you were employed by

1 Diamond Shamrock?

2 A Yes, sir.

3 Q And can you tell the Court, please, when
4 you were employed by Diamond Shamrock?

5 A I believe it was from '53 to '69.

6 Q Can you tell the Court what facilities of
7 Diamond Shamrock you were employed at that time '53 to
8 '69?

9 A What was that again?

10 Q What plant, location of the plant?

11 A Newark plant.

12 Q And that's the plant at 80 Lister Avenue
13 in Newark?

14 A Right.

15 Q Can you tell the Court, please, what job
16 or job positions you've held at 80 Lister Avenue?

17 A As a pipefitter. Pipefitters helper I started
18 and I worked up to mechanic first class.

19 Q Now, Mr. Blair, I know our time is short
20 with you so I'm going to get right down to the point.
21 In your position working at the 80 Lister Avenue, did
22 you have occasion to see where the various waste waters
23 coming off the manufacturing process went?

24 A Yes.

25 Q Would you tell the Court -- let me direct

1 your attention now to the period of time in the 1950's.
2 Would you tell the Court where you observed such waste
3 waters going?

4 A To the Passaic River.

5 Q And can you tell us how did they get from
6 the manufacturing area itself to the Passaic River?

7 A They had sewers out to the river.

8 Q Now, when you say sewers, can you describe
9 them physically for us? Was this a pipe that was
10 running underground? Was it above ground trench? What
11 type --

12 A It was both.

13 Q You saw both?

14 A Would go from the top and also some sewage.

15 Q Now, when you use the term sewer are you
16 referring to the one or the other in particular or both
17 types of devices?

18 A Well, the ones I'm talking about at first was
19 from there to the river. And then later on they did
20 put a pit where they used to catch the stuff and after
21 it got full they would -- got so much stuff in
22 settlement in the bottom, they would knock that off and
23 I guess transfer it to the river. I don't know. I
24 never did that. And heat it up and pump it to the
25 Passaic River.

1 Q What I was focusing in on was this: Do
2 you recall seeing some exposed trenches?

3 A Yes.

4 Q In the area of the facility?

5 A Right.

6 Q And where would those trenches run from
7 and to?

8 A Go from the building out to the river and then
9 later on they directed them to this here pit.

10 Q Now, when do you recall this pit having
11 gone in?

12 A Exact date I couldn't say, sir.

13 Q Now, do you recall after this pit was
14 installed were there still trenches that led from the
15 manufacturing facilities, from some of the buildings at
16 least down to the Passaic River?

17 A Yes, sir.

18 Q So am I correct in saying that even after
19 this -- what we've been referring to as pit was
20 installed while some of the effluent was now being
21 diverted to the pit there was also some waste water
22 that was still going to the Passaic River?

23 A Yes.

24 MR. SPIVAK: Objection to form.

25 THE COURT: It was leading. See if you

1 can avoid that.

2 MR. CUYLER: All right. Well since we've
3 had an answer to it that's going to make it
4 rather easy.

5 Q After the installation of this pit, can
6 you describe for us the area or areas to which waste
7 water effluent would be discharged?

8 A It would be from the older buildings.

9 Q And where was that going?

10 A You mean after the pit?

11 Q After the pit had been installed --

12 A Yes.

13 Q -- at the facility, I'm asking you whether
14 all of the waste water went to that pit or whether some
15 of it went through these open channels out to the river
16 or was it a combination of discharge to the pit and to
17 the river?

18 A Well, this here was on the 2,4,5-T side it went
19 to the pit mostly. Except when they washed the floor
20 or something could go down right out to the river also.

21 Q Now, what about the other areas of the
22 plant, other than the 2,4,5-T area?

23 A After they put the pit, I didn't -- I worked in
24 all the buildings but I didn't work on the other side
25 that much.

1 Q All right. Do you remember the old DDT
2 building?

3 A Yes, sir.

4 Q Where did those waste waters flow to?

5 A Well, a lot of them went to the river also.

6 Q Okay. Now, was the DDT building ever
7 hooked up to this pit to your knowledge?

8 A No, it wasn't.

9 Q Now, after the plant explosion in 1960, do
10 you recall the rebuilding of the plant?

11 A Yes, I do.

12 Q After that rebuilding of the plant, what
13 if any waste waters were being discharged into the
14 river?

15 A Not direct -- wasn't supposed to be directly but
16 there was some still there going to the river.

17 Q There was still waste water directed to
18 the river?

19 A At times, yeah.

20 Q Are you capable of telling us out of that
21 new building what process waste waters were still
22 discharged to the river? Can you go through the
23 process and tell us that?

24 A There was some, they call it hydrochloric acid
25 going to the river. Used to be chlorination goes

1 through a scrubber that goes down and a lot of that
2 would go to the river yet.

3 Q Do you recall any other specific processes
4 to your recollection that went into the river?

5 A There was one other pit there by the autoclaves.

6 Q That's the TCP autoclaves?

7 A That wobble the TCP autoclaves, and they did put
8 a little pit there. And I think they had it filled
9 with water. I'm not sure. That there was for two
10 rupture disks on the autoclave. One was small pressure
11 and the other was high pressure.

12 And small one would go to the pit. And if that
13 one didn't work, too much pressure, it would go to the
14 higher pressure and go out into the atmosphere.

15 Q Now, do you recall the pit that you
16 referred to as having been installed at one point in
17 time? Do you ever recall that that pit would be
18 plugged?

19 A Yes.

20 Q Okay. And what would happen when that pit
21 was plugged?

22 A They would plug it. I guess they'd open some
23 other plug somewhere. Not sure. I didn't see that.

24 Q Do you recall ever having seen an instance
25 where that pit was plugged that the effluents would

1 then back up and flow into the river through the old
2 trenches?

3 MR. SPIVAK: Objection, your Honor.

4 THE COURT: I'll allow it. Answer the
5 question, if you can.

6 A It had to.

7 THE COURT: Why do you say it had to?

8 THE WITNESS: Because where else would it
9 go?

10 THE COURT: I don't --

11 THE WITNESS: There was no other outlet
12 outside.

13 THE COURT: There was no other outlet?

14 Q Now, sir, do you ever recall having seen
15 any chemical spills or discoloration on the actual
16 grounds in and around the area of the plant?

17 A Around which area?

18 Q Any area.

19 A Any area.

20 Q I'm talking about out on the ground.

21 A Yes.

22 Q And can you describe what you saw for the
23 Court, please?

24 A There was a lot of powder on the floors which
25 would be washed down. And out in the field there was

1 chlorine fumes and stuff roaming around.

2 Q Now, what was the color of the powder? Do
3 you recall that?

4 A The color of who.

5 Q The color of the powder. You mentioned I
6 believe that you saw powder?

7 A Oh, that would be white.

8 Q And what if anything -- do you know what
9 that white powder was?

10 A It was 2,4,5-T powder or 2,4-D. Yeah, 2,4-D or
11 2,4,5-T.

12 Q Did you ever see such a powder in the area
13 of the DDT building?

14 A Yes.

15 Q And can you describe what you would see on
16 the ground in the area --

17 A White or flake powder from the DDT flaker.

18 Q And to your knowledge, what material was
19 that?

20 A DDT.

21 Q Did you ever observe instances when
22 material would be out on the ground when it was cleaned
23 up?

24 MR. SPIVAK: Objection to form.

25 THE COURT: I don't think that's clear.

1 What do you mean when it was cleaned up?

2 MR. CUYLER: Let me try rephrasing it.

3 Q When you would observe this powder, would
4 you -- out in the area of the plant, did you ever
5 observe anyone making any efforts to clean it up?

6 A Not too often. They used to wash the place
7 down.

8 Q Now, when you say wash the place down, are
9 we talking about the inside of the plant now?

10 A The inside, yes.

11 Q And how would that be accomplished?

12 A By hose.

13 Q Now, where would that hose, waste water
14 from that operation go?

15 A Go into the sewer. And before --

16 Q When you say the sewer, what are you
17 talking about now?

18 A The ones going to the river. After that there
19 there were ones that went to the pit they put out.

20 Q Sir, did you ever observe any of the --
21 any discharges of material, fumes, dust, or otherwise
22 into the atmosphere at the plant?

23 A Yes.

24 Q And can you tell the Court what you
25 observed in terms of discharge to the atmosphere?

1 A What was that again?

2 Q Would you tell the Court what you
3 observed --

4 A Chlorine into the atmosphere.

5 Q Sir, it's going to help for me to finish
6 the question and you slow down. Are you nervous?

7 A No.

8 Q You sound like you're a little nervous.

9 THE COURT: You're going too slow for him.
10 That's the problem: He is faster than you talk.

11 Why don't you repeat that last answer if
12 you would, please.

13 Q Take your time and let me finish my
14 question. There's no need to rush. You've got enough
15 time.

16 THE COURT: Let me explain to you what's
17 happening. Mr. Cuyler is speaking slowly and
18 Mr. Blair can figure out what the question is
19 before you're finished with it. Which is fine.
20 Except we have a reporter who is trying to take
21 down what you both say. So, unless you wait for
22 him to finish she'll miss what you said. I
23 think we missed part of your last answer. So,
24 Mr. Cuyler was asking you about emissions into
25 the air that you observed at the plant.

1 A It was chlorine fumes.

2 Q Okay. Did you ever observe anything else
3 going out into the air other than the chlorine fumes?

4 A Not really, no.

5 Q Now, to your knowledge were there any
6 vents on the TCP autoclaves?

7 A What was that again?

8 Q Were there any vents on the TCP
9 autoclaves?

10 A I was telling about them going to the pits and
11 to the atmosphere. That was the vents.

12 Q Were those vents on the TCP autoclaves
13 ever hooked up to scrubbers to your knowledge?

14 MR. SPIVAK: I object, your Honor.

15 MR. CUYLER: Why, because they were?

16 MR. SPIVAK: That's not what he was
17 talking about. What he said were the discharge
18 lines from the rupture disk and now we're doing
19 apples and oranges.

20 THE COURT: No, I think the testimony was
21 that sometimes the lower pressure one would
22 discharge into the pit and if that didn't clear
23 it up, the higher pressure one would go into the
24 atmosphere.

25 MR. SPIVAK: Exactly, but it's ruptured

1 disk release we're talking about which are not
2 vents that operate in the ordinary course of the
3 business for every batch that's produced.

4 THE COURT: Okay. I understand. It's
5 something that's not supposed to happen unless
6 there's a build-up of unsaved pressure. Not
7 supposed to be a routine emission. Why don't
8 you repeat the question.

9 Q Let me ask you, sir, other than rupture
10 disk and rupture vents, were there any other type of
11 vents on TCP autoclave that you were aware of?

12 A I believe there was one that when the batch was
13 finished they could discharge it to the atmosphere to
14 get the pressure off so they can get rid of the batch
15 or --

16 Q Now, was that vent that they could release
17 the pressure off the tank, was that hooked up to a
18 scrubber at any time that you recall?

19 A No, not that I recall.

20 Q And that went just out into the
21 atmosphere?

22 A Yes, sir.

23 Q Sir, did there come a time when there was
24 some damage to vehicles of the employees at Diamond
25 Shamrock?

1 MR. SPIVAK: Objection, your Honor.

2 THE COURT: What's the objection?

3 MR. SPIVAK: Leading.

4 MR. CUYLER: Absolutely right. I'm
5 focusing him on something.

6 THE COURT: Really trying to focus in
7 Without suggesting the answer. So repeat the
8 question, please.

9 Q Did there come a time when there was some
10 damage that was sustained by the vehicles of employees
11 at the 80 Lister Avenue plant?

12 A Yes, sir, there was.

13 Q Can you give us a rough approximation as
14 to when that occurred?

15 A One time my car got it, and that on --

16 Q Let me interrupt you. I'm asking can you
17 tell us about what year that occurred.

18 A No, I wouldn't remember that year, sir. I don't
19 keep track of that.

20 Q Can you tell the Court, please, what you
21 do recall of that incident, how it happened and what
22 happened to your cars.

23 A I believe it was big rupture disk in the
24 autoclave which blew and it went on the cars in the
25 parking lot.

1 Q And what happened after that in terms of
2 the cars?

3 A They come out and looked at the cars and told us
4 to get them cleaned up.

5 Q When you say they, who are you referring
6 to?

7 A Plant manager.

8 Q Do you recall who -- at that time who the
9 plant manager was?

10 A No, I don't.

11 Q Let me see if I can help you. Might it
12 have been Mr. Burton?

13 A I believe it was -- no, it wasn't Burton. Must
14 have been Ray Guidi. It was either Ray Guidi or Mike
15 Kennedy.

16 Q Okay. So it was he either Ray Guidi or
17 Mike Kennedy then?

18 A At that time, yes.

19 Q Were there any other instances in which
20 employees had received damage to their vehicles --

21 A I believe there were but I wasn't involved, I
22 wouldn't know.

23 Q So there was one occasion when your car
24 was involved, is that correct?

25 A Right, sir.

1 Q What did you have done to your car?

2 A I had it washed and simonized.

3 Q And who paid for that washing and
4 simonizing?

5 A I guess Diamond.

6 Q Okay. Did you pay for it?

7 A No.

8 Q Okay. Did you receive reimbursement from
9 somebody?

10 A Yes. Uh-hum.

11 Q And from whom, sir?

12 A I guess it was Diamond, as far as I know.

13 Q Now, sir, in terms of the plant, are you
14 aware there came a time when Diamond Shamrock shut down
15 the operation of 30 Lister Avenue?

16 A I guess that was '89, wasn't it?

17 Q I'm sorry?

18 A I believe that was '89.

19 Q '69 you mean?

20 A I said '89 -- I mean to say '69, yes, sir.

21 Q Were you still employed at the plant at
22 the time it was being shut down?

23 A Yes.

24 Q Now, can you tell us was there ever any
25 period of time from 1953 through 1969 that there were

1 not at least some discharges of material into the river
2 right up until the time it closed down?

3 A I would say continues right on through at times.

4 MR. CUYLER: Thank you, very much, sir.

5 THE COURT: Are there any other defense
6 counsel that have any questions they'd like to
7 ask, Mr. Blair? No. Mr. Spivak.

8 MR. SPIVAK: Thank you, your Honor.

9 CROSS-EXAMINATION BY MR. SPIVAK:

10 Q Mr. Blair, is it correct that you are a
11 plaintiff in a lawsuit against Diamond Shamrock?

12 A Yes, sir.

13 Q And is it correct, sir, that you are
14 asserting in your lawsuit that -- against Diamond that
15 something that occurred while you were employed at the
16 30 Lister Avenue plant has had an adverse consequence
17 to your health?

18 A Yes, sir.

19 Q Have you spoken to anyone prior to giving
20 testimony here today to go over the questions that you
21 would likely be asked?

22 A No, sir.

23 Q Do you have any understanding with anyone
24 that you will be compensated for the time that you
25 spent here testifying today?

1 A No, sir.

2 Q Have you read the transcript of your
3 deposition testimony?

4 A Yes.

5 Q Did you do so recently?

6 A Right here. I believe this is the one -- no,
7 this is the subpoena. No, that's right. I'm sorry.
8 No, I didn't.

9 Q You remember that you gave a deposition --
10 deposition testimony on approximately April 26, 1988 in
11 Mr. Cuyler's office and that they examined you and I
12 examined you? Do you recall that, sir?

13 A No.

14 THE COURT: I think maybe Mr. Blair is not
15 familiar with the term deposition.

16 Q Did you go to Mr. Cuyler's office and then
17 answer a series of questions that Mr. Cuyler
18 made?

19 THE WITNESS: Could be but I don't
20 remember.

21 THE COURT: You don't remember whether you
22 did or not? Do you remember meeting Mr. Spivak
23 before -- that's the man who is standing now.

24 THE WITNESS: I've saw him. But I don't
25 remember being there.

1 THE COURT: Was that at the same time
2 maybe when you were being asked some questions?

3 THE WITNESS: I'm not sure, sir.

4 Q Let me just show you a copy of a
5 transcript that says deposition of Walter Blair?

6 A Is that the one you're talking about?

7 Q Yes.

8 A I remember being there, yes, sir. But there was
9 so many people there I wouldn't remember you in person.

10 Q I don't take offense. What I'm interested
11 in, sir, is whether you have since that date when we
12 first met had an opportunity to review the transcript
13 of the questions and answers that were asked and
14 answered on that date.

15 A No.

16 Q All right. Thank you.

17 MR. CUYLER: Just indicate I didn't cover
18 that dep.

19 THE COURT: Very well, okay.

20 Q During the time you were working at the 80
21 Lister Avenue plant, Mr. Blair, did you believe that
22 exposure to any of the chemicals that were being
23 manufactured there could constitute a serious,
24 long-term threat to your health?

25 A Not a long time. I knew they would be unhealthy

1 for me.

2 Q For example, you didn't think that working
3 in the vicinity where DDT was manufactured would have
4 long-term hazardous consequences to your health, is
5 that correct?

6 A No.

7 Q Or TCP?

8 A No, sir.

9 Q Or 2,4,5-T?

10 A No.

11 Q Did you know what DDT was used for at that
12 time?

13 A Roughly, some of it, yes.

14 Q What was your understanding?

15 A For mosquitos and stuff like that.

16 Q And did you understand what the use of
17 2,4,5-T was at that time?

18 A Was either weed or brush killer, I believe. One
19 of the two.

20 Q Now, you developed chloracne at sometime
21 between 1956 and 1958, is that correct?

22 A That's right, sir.

23 Q And you had chloracne up until the time
24 that you left the plant, is that also correct?

25 A Right.

1 Q And you did not cease your employment at
2 the plant because of the fact that you had chloracne,
3 did you?

4 A Again, sir?

5 Q You did not cease your employment at the
6 80 Lister Avenue plant because of the fact that you had
7 developed chloracne?

8 A No, sir.

9 Q And that was because you liked the job
10 that you had there, and you liked the money and you
11 liked the friends that you had there, isn't that so?

12 A I had a lot of good friends there, but I got a
13 job and I needed the money to pay my bills, and I just
14 stayed there.

15 Q And you did not believe that the chloracne
16 itself constituted a serious, long-term threat to your
17 health when you were working at the plant, did you?

18 A No, I didn't.

19 Q And is it also correct, Mr. Blair, that
20 while you were employed at the 80 Lister Avenue plant
21 it did not come to your attention that anyone outside
22 the plant had contracted chloracne or any other injury
23 or illness because of any emission or effluent from the
24 plant?

25 A No, I didn't.

1 Q Now, I would like to turn to your
2 testimony regarding discharges to the river and the
3 time when those discharges occurred.

4 Is it correct that except for discharges to the
5 river when floors were washed down or possibly
6 discharges from the pit or the hydrochloric acid that
7 you referred to, that you can recall no discharges to
8 the river containing product?

9 A No, I don't.

10 Q And is it correct, Mr. Blair, that you do
11 not recall that the discharges to the river were
12 constant?

13 A In the beginning they were. When they put the
14 pit there they weren't constant. It went to the pit
15 until it got full and then they'd plug that up and send
16 it to the river. Heat the stuff in the pit and pump it
17 out the next morning to the river.

18 Q Now, what I'm going to do now, Mr. Blair,
19 is I'm going to show you the transcript of your
20 deposition that you gave in April of this year, and I'm
21 going to read to you the question -- certain questions
22 and answers that you gave at that time. And I'm going
23 to ask you whether those questions were asked of you
24 and whether you gave the answers that the reporter
25 wrote down. And we'll take it very slow and we'll make

1 sure you're at the same place in the deposition that I
2 am. If you're not there, you let me know.

3 I'd like to ask you, if you would, please, to
4 turn to page 15 in the transcript of your deposition.

5 THE COURT: What was the page?

6 MR. SPIVAK: 15, your Honor.

7 THE COURT: Thank you.

8 Q And I'd like you to look at line 13, and
9 we're going to go over to page 16, line 14. Are you
10 with me on page 15, Mr. Blair?

11 A Yes.

12 Q. "Question: Would you actually see
13 discharges going into the river from the plant?

14 "Answer: Yes."

15 Then there was some colloquy that I will
16 skip.

17 "Question: How often would you observe
18 these discharges?

19 "Answer: Certain times when I went out to
20 the riverfront or something. I didn't go out
21 there everyday.

22 "Question: Was it a constant discharge?

23 "Answer: No.

24 "Question: How often would it occur?

25 "Answer: When they washed the floors

1 down."

2 Now, Mr. Blair, did you -- were you asked
3 those questions and did you give those answers
4 at your deposition?

5 A Yes, sir.

6 Q And when you gave those answers at your
7 deposition did you understand that you were under oath,
8 just the way that you are under oath here?

9 A Yes, sir.

10 Q And were those answers that you gave at
11 that time the best recollection that you had of the
12 matters that you were describing?

13 A Yes, sir.

14 Q And have you looked at anything since that
15 time, any document, for example, that has refreshed
16 your recollection in any way in terms of what had
17 occurred at the plant?

18 A No, sir.

19 Q Have you spoken to anyone since the time
20 that you gave your deposition that has resulted in a
21 change in your recollection?

22 A No, sir.

23 Q All right. Thank you. Mr. Blair, you do
24 not recall any batches of chemicals, either good or
25 bad, being discharged to the river, do you?

1 A No.

2 Q Now, for awhile, Mr. Blair what I want to
3 do is focus exclusively on the building in which the
4 2,4-D acids and esters and the 2,4,5-T acids and esters
5 were manufactured.

6 What I'd like to do, with the Court's
7 permission, is to have you identify that building on an
8 exhibit that has been marked as exhibit number 427.
9 And it might facilitate matters if I brought it over to
10 the witness.

11 THE COURT: Fine. Bring it over to the
12 witness. Would make it convenient do that.

13 MR. L. SHEFT: Would I assume the witness
14 is going to be asked if he's capable of doing
15 that from this exhibit?

16 THE COURT: If he's able to work with the
17 exhibit. Yes. See how it goes.

18 Q Here we have what is marked as exhibit
19 number 427. And let me ask you, first, I think as a
20 matter of fairness, Mr. Blair, whether this is a
21 document that you have ever seen before or whether you
22 are seeing this document for the first time here today.

23 A First time I saw this.

24 Q Why don't you get yourself oriented with
25 the document first. Here you'll see is Lister Avenue.

1 MR. L. SHEFT: I think the witness should
2 be asked the general question of whether he can
3 read a plan of that type. That's an engineering
4 drawing, your Honor.

5 THE COURT: All right. He can be asked
6 that but he can be shown the gross limits of it.

7 MR. SPIVAK: I seem to recall Mr. Cuyler
8 doing the exact same thing.

9 THE COURT: You can go do that go ahead.
10 Point out Lister Avenue.

11 Q Here's Lister Avenue, and here's the
12 river, the Passaic River which is to the north, if you
13 recall. And maybe if we turn it this way. All I'm
14 going to ask you is whether you can identify on this
15 drawing the building in which the 2,4,5-T acid and
16 esters and the 2,4-D acid and esters were manufactured.

17 A 2,4,5-T.

18 Q Yes, sir and 2,4-D acids and esters.
19 Remembering this is the river to the north.

20 A This is the tank farm. This is 2,4-D in here
21 (indicating). I believe it was here.

22 Q The building that's labeled 2,4-D building
23 chemical manufacturing existing.

24 MR. CUYLER: No, he was pointing someplace
25 else.

1 A This area here (indicating).

2 Q All right. Let me show you a document
3 that was marked as Blair Exhibit Number 1 at your
4 deposition, Mr. Blair. Let me ask you whether you can
5 identify the building in which the 2,4,5-T acids and
6 esters and 2,4-D acids and esters were manufactured on
7 that document.

8 A This here one.

9 Q You're looking --

10 THE COURT: You're looking at a different
11 scale now.

12 MR. SPIVAK: Yes.

13 THE COURT: With fewer things.

14 A Got 2,4,5-T there. Warehouse. 2,4-D and ester
15 was in here (indicating).

16 Q Let me see if I can put the question
17 again. Was this building marked 2,4,5-T, is that the
18 building on Blair Exhibit Number 1 for identification
19 marked at your deposition, is that the building in
20 which the 2,4,5-T acids and esters and 2,4-D acids and
21 esters were manufactured?

22 A Yes. Uh-hum.

23 Q And is that the building on Plaintiff's
24 Exhibit Number 427 which is labeled 2,4-D building
25 chemical manufacturing?

1 A I guess so.

2 Q All right.

3 THE COURT: You need this large scale
4 drawing?

5 MR. SPIVAK: I'll take it away from the
6 witness. We'll be using it again, I believe.

7 Q I'm going to refer to that building as the
8 D and T acid building for convenience. Is that all
9 right with you?

10 A All right.

11 Q Okay. And just so we understand each
12 other again, until I say otherwise, my questions are
13 all going to pertain to discharges from that building
14 and that building only, all right?

15 A All right.

16 Q Now, the sewers that you have testified
17 about were open square sewers with plates on top that
18 went out of the building, is that correct?

19 A Yes, sir.

20 Q These sewers were trenches that were cut
21 into the floor of the building and let out of the
22 building, is that also correct?

23 A Yes, sir.

24 Q Now, isn't it a fact, Mr. Blair, that in
25 the mid-1950's the 80 Lister Avenue plant installed a

1 pit into which the wash waters from the D and T acid
2 building and any overflows were rerouted so they no
3 longer flowed into the river but flowed instead through
4 a trench into the pit?

5 A Yes, sir.

6 Q And this pit was concrete lined and was
7 about six feet deep and was about seven feet by eight
8 feet in linear dimension, is that correct?

9 A That's correct.

10 Q And was the pit located to the south of
11 the D and T acid building in the area near the stack?

12 A I guess it would be to the south.

13 Q And was it in the area near the stack?

14 A Yes, sir.

15 Q Was there only one such pit in the area
16 south of the D and T acid building in the vicinity of
17 the stack?

18 A Yes, sir.

19 Q Now, let's see if we can pinpoint the
20 exact location of that pit. Perhaps it will help if we
21 try to do it first on this smaller scale exhibit that
22 was marked as Exhibit Blair Number 1 at your
23 deposition, Mr. Blair.

24 A Where's the stacks, here, right?

25 Q I believe the stack is indicated by the

1 word stack in the upper right-hand corner of the
2 exhibit.

3 A There. You say the stack would be where?

4 Q You see the word stack, s-t-a-c-k?

5 A Okay.

6 Q And there's an arrow?

7 A Would be right around here (indicating).

8 Q So you believe that the pit was located to
9 the east?

10 A That would be to the east, I guess.

11 Q And not to the south?

12 A Let's see. That's the railroad tracks. I
13 believe. I believe so. I could be wrong on that. But
14 I know the pit was there. East, south, west, and north
15 it was there.

16 Q Which was the area that you considered to
17 be the front of the D and T acid building, Mr. Blair?

18 A There.

19 Q The front? And you are indicating the
20 south side of the building, is that correct? If the
21 river is north?

22 A If that's north then this is south.

23 Q So you are indicating the south side of
24 the building?

25 A Uh-hum.

1 Q Now, I'd like to ask you to turn, if you
2 would, sir, please, to page 61 of your deposition
3 testimony commencing at line 21. Are you with me?

4 A Yes.

5 Q And I'm going to ask you again whether you
6 were asked these questions and gave these answers.

7 "Question: You mentioned earlier in your
8 testimony another pit where substances would go
9 from the sewer. Could you tell me where that
10 pit was in relationship to any particular
11 building on the site?

12 "Answer: That was out there by the -- in
13 front of the 2,4,5-T building."

14 And perhaps that's enough. Did you give
15 that answer to that question at your deposition?

16 A Yes.

17 MR. CUYLER: Your Honor, I'm going to
18 object to this question because it's being taken
19 out of context. If the witness and if the Court
20 will refer to the context of the question going
21 back to page 60, it will be clear that the
22 witness had just finished speaking about the pit
23 by the autoclaves.

24 MR. SPIVAK: Precisely.

25 MR. CUYLER: And then this pit -- this

1 question about this second pit came up.

2 MR. SPIVAK: Exactly. Why is it out of
3 context?

4 THE COURT: All right. Fine. Go ahead.

5 Q Now, I'm going to show you exhibit number
6 427 again, Mr. Blair. Just hold that over. And I'm
7 going to ask you whether this location here entitled
8 "Treatment and Holding Tank" was the location of the
9 pit that you recall.

10 Now, I'm not asking you to agree with the name
11 of it, just whether that was the an approximate
12 location of the pit that you recall.

13 A I'm not sure, really. I know where that pit was
14 but on this drawing I can't pinpoint it. I'm not too
15 good at reading these prints.

16 Q I understand.

17 A And it was right in the front of 2,4-D right by
18 the stack. If it's the south or east I'm not sure. It
19 was there.

20 Q Are you able to testify that this
21 location, the treatment and holding tank, was not the
22 location of the pit?

23 A The treatment and holding tank, I don't know
24 what you're talking about now.

25 Q I understand you may not agree with the

1 name. I'm asking you about the location. Whether or
2 not the pit that you recall was located to the south of
3 the D and T acid building near the stack.

4 A The way I remember was south.

5 MR. L. SHEFT: I'm going to object, your
6 Honor, to using the diagram which the witness
7 says he cannot understand and point to a
8 location on the diagram which the witness says
9 he cannot understand.

10 THE COURT: Mr. Blair has indicated that
11 he is not familiar with that diagram and he has
12 some difficulty in locating the area on it. So
13 I -- that's true. But that doesn't mean Mr.
14 Spivak can't try to see if he can be assisted.

15 Is there anything further, Mr. Spivak?

16 MR. SPIVAK: We'll be using it again, your
17 Honor.

18 Q You know, Mr. Blair, that the pit that you
19 are describing was connected to the sewer line that ran
20 out to Lister Avenue, isn't that correct?

21 A Yes. I may have said no before but I recollect
22 it was going to Lister Avenue --

23 Q So the liquids --

24 A -- later on.

25 Q So the liquids that went out --

1 A Would be sewer and the settlement would go into
2 the pit.

3 Q I'm not sure I -- the liquids that went
4 into the pit went out to the sewer?

5 A Would go out to the sewer and the heavier stuff
6 would settle there.

7 Q Would settle. So this pit was in effect a
8 settling basin, is that correct?

9 A I believe so.

10 Q And you said, I believe, that the liquids
11 went out later. I thought I heard you say to the sewer
12 line, is that correct?

13 A What was that again?

14 Q Did you say that it was at a later point
15 in time that the liquids went out to the Lister Avenue
16 sewer line or did the liquids go out to the Lister
17 Avenue sewer line from the point in time that the pit
18 was installed?

19 A Most of it went to the river before that I would
20 say until they put that up. As far as I recollect.

21 Q And when they put the pit in, at that
22 point in time the liquids that were discharged into the
23 pit from the trenches went from the pit to the sewer
24 and the solids settled out in the pit, is that correct?

25 A I believe so. That was the purpose anyhow.

1 Q So the pit was located, Mr. Blair,
2 wherever it was that the sewer line came into the plant
3 and connected up to the pit, is that correct?

4 A That was just from D and T side.

5 Q But speaking strictly now with respect to
6 the D and T side, --

7 A What's that?

8 Q I'm sorry. Speaking strictly with respect
9 to the D and T side, as you said you were --

10 A Right.

11 Q -- that pit that you can recall had to be
12 located wherever it was that the sewer line came in
13 because it was connected up to the sewer line, is that
14 correct?

15 A Correct.

16 Q So, if we had a drawing, a map, an
17 engineering drawing such as exhibit 427 that showed
18 where the sewer line came into the plant and where it
19 connected to a pit or basin roughly in the dimensions
20 of the basin that you described, we would know
21 precisely where the pit was that you have been
22 testifying about, is that correct?

23 A I believe so.

24 Q All right. Now, Mr. Blair, in addition to
25 floor washings, were there chemical process waste

1 waters that were discharged through the trenches that
2 were in the floor of the D and T acid building?

3 A I believe so.

4 Q And prior to the time that this pit was
5 installed, these chemical process waste waters flowed
6 in the trenches and out of the building through the
7 trenches into the river, is that correct?

8 A Pipelines or trenches, yes.

9 Q Were there pipelines or were there
10 trenches?

11 A They put these trenches in later. They had
12 pipelines first or drainage, sewage I believe.

13 Q You remember there were pipelines in
14 existence at the time you were at the plant?

15 A Yes.

16 Q And subsequently the pipelines were
17 replaced by these trenches, is that correct?

18 A Yes.

19 Q And then subsequently these trenches were
20 diverted so that -- from the D and T acid building so
21 that they emptied into this pit, is that correct?

22 A Correct.

23 MR. CUYLER: I object. He's interchanging
24 the D and T side with the D and T acid building.
25 And the witness' prior testimony was D and T

1 side. And now it's being converted by this
2 question into D and T acid building.

3 THE COURT: Maybe you missed Mr. Spivak's
4 earlier factual premise when he described what
5 terminology he would use for the building. I
6 think the question makes sense.

7 MR. SPIVAK: Thank you, your Honor.

8 Q So that when the pit was installed in the
9 mid-1950's, as you've testified, Mr. Blair, the
10 chemical process waste waters from the D and T acid
11 building or the D and T side, as you've called it, were
12 discharged into the trench, then into the pit and the
13 liquids went into the sewer, the sewer leading out to
14 Lister Avenue and the solid settled out into the pit,
15 is that correct?

16 A Correct.

17 MR. SPIVAK: Is there an answer.

18 THE COURT: Correct.

19 MR. SPIVAK: I'm having a little trouble.
20 Must be me.

21 Q Isn't it true, Mr. Blair, that you do not
22 recall one way or the other when the process building
23 was reconstructed -- I'm sorry. I withdraw it.

24 Mr. Blair, I'm now going to ask you a question
25 or two that do not relate to the D and T acid building,

1 okay?

2 A Go ahead.

3 Q I'm shifting ground as it were. You with
4 me?

5 A (Witness nods).

6 Q Isn't it true, Mr. Blair, that you do not
7 recall one way or the other whether when the process
8 building was reconstructed after the 1960 explosion
9 there were any changes that were made regarding plant
10 effluents in terms of whether additional effluents were
11 diverted into the Lister Avenue sewer system at that
12 time?

13 A That's correct.

14 Q It simply wasn't your responsibility to
15 know whether any such changes had been made, is that
16 correct?

17 A Right.

18 Q And as far as you were concerned, it is
19 entirely possible that in connection with the
20 reconstruction of the process building following the
21 1960 explosion plant effluents could have been diverted
22 into the Lister Avenue sewer system and you simply
23 wouldn't have known of it, isn't that correct?

24 A That could be so.

25 Q You wouldn't deny that that occurred,

1 would you?

2 A No.

3 Q Do you know, Mr. Blair, whether prior to
4 the explosion the old main process building where TCP
5 was manufactured was connected up to the Lister Avenue
6 sewer?

7 A Not that I recall.

8 Q Would it have been your job to know that?

9 A No, it wouldn't.

10 Q Did you observe the sewer line when it was
11 dug out on the plant property to connect it to the
12 Lister Avenue sewer?

13 A No, I didn't.

14 Q Are you in a position, Mr. Blair, to deny
15 that there was a connection from the old processing
16 building where TCP was manufactured to the sewer line
17 that went out to Lister Avenue?

18 A Repeat that?

19 Q Are you in a position where you can deny
20 that there was a connection between the old processing
21 building where TCP was manufactured and the line that
22 led out to the Lister Avenue sewer?

23 A No, I can't. I couldn't deny it. I told you I
24 didn't know where it was.

25 Q Isn't it true, Mr. Blair, that you really

1 don't know whether there were any lines or pipes, as
2 distinct from trenches, that led at any time from
3 either the old or new TCP process building into the
4 river?

5 A Repeat that?

6 MR. SPIVAK: Would you read it back,
7 please?

8 THE COURT: Would you read it back,
9 please, Mrs. Nutting?

10 (Previous question is read by the
11 reporter).

12 A I'm not sure.

13 Q All right. Is it correct, Mr. Blair, that
14 you have no recollection of any lines going from the
15 2,4,5-T area to the river as distinct from trenches?

16 A They went to the river, yes.

17 Q Let me ask you to turn, sir, to page 52 of
18 your deposition transcript. I'm sorry. 53. Line 7.
19 You see the question that begins there?

20 "Question: Do you know whether any of
21 these lines were connected to kettles in the TCP
22 area?

23 "Answer: Going to the river?

24 "Question: Yes.

25 "Answer: Not that I know of.

1 "Question: How about the 2,4,5-T area?

2 "Answer: They would go -- overflows would
3 go into the sewer and go out that way from
4 different kettles.

5 "Question: I'm talking specifically about
6 the other lines, not the sewers that led to the
7 river. Do you know if there were -- I'm
8 sorry -- do you know if any were connected to
9 the 2,4,5-T area?

10 "Answer: No."

11 Were you asked those questions and did you
12 give those answers at your deposition, sir?

13 A Yes, sir.

14 Q And has anything occurred since the time
15 that you gave those answers at your deposition that has
16 caused you to change your recollection in any way?
17 Specifically with respect to lines as opposed to
18 trenches leading from the 2,4,5-T area into the river?

19 A Well, I'd say they had some going to the river,
20 yes.

21 Q And what was being discharged from those
22 lines from the 2,4,5-T area into the river?

23 A What they washed -- when they filled the pit,
24 right, they plugged it. It had to go somewhere. They
25 had to open and let it go out to the river then.

1 That's what I'm referring to.

2 Q Are you referring to anything else other
3 than that?

4 A No, sir.

5 Q Let me turn to that issue, Mr. Blair, of
6 whether the pit was pumped to the river. You say it
7 had to be. My question is first, did you yourself ever
8 do any of the pumping?

9 A Yes.

10 Q You did. Did you -- did you connect the
11 hose from the pit that led to the river?

12 A I hooked up a pump and a hose to a pipe
13 alongside 2,4,5-T and D building which went to the
14 river and next morning at about five o'clock I'd go in
15 and pump it to the river.

16 Q You pumped it yourself personally to the
17 river?

18 A At times.

19 Q At times?

20 A There were other fellows also.

21 Q You testified on direct, sir, that you did
22 not personally do some of the pumping, that you guessed
23 it was done. I must have misheard you.

24 A I didn't -- last time I don't think you asked me
25 or I didn't say that I pumped it. I know I pumped to

1 the river, early in the morning from the pit to the
2 river.

3 Q Do you recall what time of the morning
4 that occurred?

5 A I believe it was between 5 and 6 in the morning.
6 You have us come in early. The time exactly, I don't
7 know.

8 Q And it's your recollection that the
9 materials were heated prior to the time they were
10 pumped to the river?

11 A They had to be heated overnight, yes.

12 MR. SPIVAK: I'm sorry. I didn't catch --

13 A I said they had to be heated overnight.

14 Q And how were these materials heated?

15 A They were put a hose to a steam line and put it
16 into the pit and put steam in there until it was heated
17 in the morning.

18 Q And did you personally observe the
19 contents of the pit being discharged to the river as
20 opposed to, for example, a tank that was in the D and T
21 acid building?

22 A From the pit to the river, I saw it, yes.

23 Q You saw the contents of the pit being
24 emptied?

25 A Well, I had to go out and see if it was pumping.

1 Q And you did that?

2 A Yes, sir.

3 Q Okay. Did you ever see any men in the pit
4 cleaning it out?

5 A When they first put the pit in they did clean it
6 and put it into drums. And then after that there they
7 stopped doing that and that's when they started pumping
8 to the river.

9 Q And approximately for how long a period of
10 time after the pit was first installed was the process
11 of emptying the pit manually and putting the materials
12 in drums employed?

13 A How long? I could not say.

14 Q I'm sorry?

15 A How long they're done I did not keep track of
16 that. I can't say.

17 Q Do you recall whether it was for a
18 substantial number of years?

19 A I couldn't say, sir. I don't keep track of
20 that.

21 Q When the -- what kind of a hose was used
22 for this purpose? Do you recall?

23 A For what?

24 Q For pumping the contents of the pit to the
25 river.

1 A Reinforced rubber hose.

2 Q And the material that was going through
3 this hose was molten?

4 A It was liquified by the heat. Between the water
5 and heat and stuff would make it liquid form.

6 Q And this was --

7 A With the product in there when it's warm you
8 could pump it.

9 Q Do you have any recollection of the
10 contents of the pit being recycled?

11 A No, sir.

12 Q Did the pit -- I'm sorry. Withdrawn.
13 Did the hose run through the D and T acid
14 building to get to the river?

15 A No, sir.

16 Q Did it run to the east or to the west of
17 the D and T acid building?

18 A Don't ask me east or west. It went from the
19 pump. It went to a pipe that run between the building
20 of ours and a neighbor and I hooked the hose out there,
21 two inch line was there all the time and went to the
22 river and that's where I pumped it.

23 MR. SPIVAK: Let me just hear that back
24 please.

25 THE COURT: Read it back, please,

1 Mrs. Nutting.

2 (Previous answer is read by the reporter).

3 Q So, you connected the hose from the pit to
4 a preexisting pipe, is that your testimony?

5 A Yes, sir.

6 Q And the pipe ran between the adjoining
7 property and the D and T acid building?

8 A Yes, sir.

9 Q How frequently did this pumping process
10 from the pit take place?

11 A I wouldn't say certain time. When the pit got
12 full they would tell me to hook up and pump the next
13 morning. There was no certain period of time.

14 Q Approximately how many times --

15 A Week, two weeks maybe.

16 Q Approximately how many times do you recall
17 doing this?

18 A Roughly around six or eight times.

19 Q And who was it who directed you to empty
20 the pit to the river?

21 A My maintenance foreman would tell me.

22 Q What was his name?

23 A There was one Homer Smith, DeGulis. And there
24 was another one there. I forget his name.

25 Q Mr. Tobin?

1 A No, sir. He was on the opposite -- he was on
2 the DDT side. The one fellow would tell me, production
3 manager at the time. He's deceased. Mr. Wolf

4 Q Isn't it correct, Mr. Blair, that you have
5 no recollection of any of the trenches overflowing or
6 becoming clogged and backing up?

7 A You say no recollection of that?

8 Q That's correct.

9 A Not that I remember.

10 Q And you never heard of chemicals being
11 discharged into the river at night at the 80 Lister
12 Avenue plant, did you?

13 A I wasn't around at night.

14 Q And you never heard about chemicals being
15 discharged into the river at night either?

16 A No.

17 Q And you were not aware of any system at
18 the plant by which the workers would be warned that
19 inspectors were coming to visit the plant, isn't that
20 so?

21 A That's true.

22 Q You just recall the state or other
23 governmental authority inspectors came onto the
24 property and went through the plant, isn't that so?

25 A Yes, sir.

1 Q Now, it's your recollection, Mr. Blair,
2 that some of the trenches that were located between the
3 buildings and the riverfront were opened and covered by
4 a grate, isn't that so?

5 A Right.

6 Q So that you could see down into the
7 trenches through the grate?

8 A No. It was diamond plate was on the top. If I
9 said grate it was a diamond plate. It wasn't a grate.

10 Q I would ask you to turn to page 112 of
11 your deposition testimony, Mr. Blair.

12 A Getting there.

13 Q Okay. Take your time. I'm going to start
14 at line 4.

15 "Question: And was that true of the
16 trenches outside of the plant? Outside of the
17 building as well?

18 "Answer: No. Not all the -- they were
19 open out there. Some of them.

20 "Question: Covered by a grate?

21 "Answer: Some of them were covered with a
22 grate."

23 Q Did you give those answers to the
24 questions which were put to you at your deposition?

25 A Yes, sir.

1 Q And is your recollection different today
2 than it was at the time that you gave your deposition?

3 A Well, at one time they had a grate, okay. I'll
4 go with that. And then they used to drive the Hi-Los
5 in the building there, over these grates and they would
6 give so they put diamond plate on there.

7 Q Do you recall when that occurred?

8 A No. What year, I don't -- I didn't keep track
9 of that.

10 Q Do you recall whether there were
11 inspectors that came onto the property at a time when
12 the trenches were covered by the grates as opposed to
13 the diamond plate?

14 A Yes, sir.

15 Q Mr. Blair, is it correct you have no
16 recollection of noticing any dead fish in the river?

17 A That's true.

18 Q Now, you recall that the ground at the
19 plant was discolored as you testified here today,
20 correct?

21 A Yes.

22 Q You recall that the color was white, is
23 that correct?

24 A Yes.

25 Q And you testified here today that you

1 thought that the powder you referred to came from the
2 2,4-D or 2,4,5-T, is that correct?

3 A That's true.

4 Q You recall testifying at your deposition
5 that you thought it came from DDT?

6 MR. CUYLER: I think his testimony today,
7 your Honor, has included all three?

8 A What was that?

9 THE COURT: It has included DDT, yes.

10 Q Do you recall the discoloration that you
11 referred to as something that the rain would wash away?

12 A Yes.

13 Q Approximately what time, Mr. Blair, what
14 year did the 30 Lister Avenue plant cease to
15 manufacturer DDT?

16 A I wouldn't know. I don't keep track of that.

17 Q Do you recall whether it was about the
18 same time the pit was installed?

19 A DDT?

20 Q That's right.

21 A That wasn't on the pit side.

22 Q Okay. My question is whether or not the
23 plant ceased manufacturing DDT at about the same time
24 that the pit was installed.

25 A I couldn't say that, sir, no.

1 Q Is it correct, Mr. Blair, that you have no
2 recollection of DDT solidifying within the plant?

3 A That's true.

4 Q Do you recall that ruptured disks did not
5 fail very often?

6 A That's true.

7 Q And is it your recollection that the
8 purpose of a ruptured disk was to provide a release for
9 an excess build-up of pressure, that it was a safety
10 device to prevent the plant from blowing up?

11 A Well, I don't know about the plant but sure blow
12 that kettle to hell.

13 Q Is it correct, Mr. Blair, that you do not
14 recall that there were many leaks in the plant?

15 A What was that again?

16 Q Is it correct that you do not recall that
17 there were many leaks in the plant?

18 A Well, at times there were leaks and at other
19 times there wasn't leaks.

20 Q Mr. Blair, let me refer you to page 18 of
21 your deposition testimony.

22 MR. CUYLER: I'm sorry.

23 MR. SPIVAK: 18.

24 MR. CUYLER: 18?

25 MR. SPIVAK: Yes.

1 Q Starting with line 2,

2 "Question: Were there many leaks at the
3 plant?

4 "Answer: Not that I would know."

5 Did you give that answer to that question
6 at your deposition, Mr. Blair?

7 A If that's what's down here I guess I did.

8 Q And you were in maintenance the entire
9 time that you were at the plant, correct?

10 A Yes, sir.

11 Q And is it correct, Mr. Blair, that
12 although you did not get into the warehouse very often,
13 you do not recall any leaks from drums of product in
14 the warehouse?

15 A True.

16 Q Is it correct, Mr. Blair, that in your
17 opinion the pumps in the plant were generally in good
18 condition?

19 A Yes.

20 Q Now, Mr. Blair, there were times when
21 lines would become clogged and were repaired, is that
22 correct?

23 A True.

24 Q And on those occasions, Mr. Blair, isn't
25 it your opinion that not too much product was lost in

1 the replacement process?

2 A Repeat that?

3 Q On those occasions, Mr. Blair, isn't it
4 your opinion that not too much product was lost in the
5 process?

6 A I guess not.

7 Q And when product would get onto the floor,
8 Mr. Blair, it was washed down into the trenches, isn't
9 that correct?

10 A True.

11 Q And isn't it correct the only leaking tank
12 that you can recall was the leak of an acid tank?

13 A Well, if that's what I said there, yes. There
14 were other leaks in the tanks around there. The one I
15 was involved with.

16 Q Mr. Blair, the tank forms had paved
17 surfaces and were surrounded by a wall, isn't that so?

18 A True.

19 Q And the wall was about four feet high and
20 its purpose was to catch the product if the tank sprung
21 a leak?

22 A Yeah. The tank was -- the tanks that they had
23 in that form, yes. Was also tanks outside of the form.

24 Q Do you recall that you were given clothing
25 to wear during the course of your employment at the 80

1 Lister Avenue plant including shirts, pants, steel-toed
2 shoes?

3 A Yes, sir.

4 Q Did you recall the plant washed your
5 clothing for you approximately twice a week?

6 A Yes, sir.

7 Q Do you recall that you were supplied with
8 rubber boots, rubber aprons and rubber gloves?

9 A Just when you needed them.

10 Q And you were also provided with a canister
11 mask to use in performing a specific job where fumes
12 were heavy such as a chlorine leak?

13 A Wasn't issued for you. Certain jobs they'd give
14 it to you.

15 Q Those were --

16 A Very rare.

17 Q Those were located throughout the plant,
18 were they not?

19 A Not the canisters so much, no. They had the air
20 mask out through the plant. I could use them there.

21 Q At times, Mr. Blair, you were instructed
22 to wear protective clothing for a particular task by
23 the production foreman or the maintenance foreman, were
24 you?

25 A Certain jobs.

1 Q And there came a point in time when the
2 wearing of protective goggles became mandatory, isn't
3 that correct?

4 A Correct.

5 Q And from time to time the foreman
6 instructed the workers as a group regarding the wearing
7 of protective equipment, isn't that correct?

8 A What was that again?

9 Q From time to time the foreman instructed
10 the workers as a group regarding the wearing of
11 protective equipment, isn't that correct?

12 A On certain jobs, yes.

13 Q Now, with respect to the explosion, Mr.
14 Blair, it is your recollection, is it not that the
15 debris was cleaned up, put on trucks and hauled out?

16 A Yes, sir.

17 Q And you do not recall that there was a lot
18 of dust in the area following the explosion, is that
19 correct?

20 A Correct.

21 MR. SPIVAK: Nothing further.

22 THE COURT: Anything further on the
23 defense side?

24 MR. CUYLER: Little redirect, your Honor.

25 REDIRECT EXAMINATION BY MR. CUYLER:

1 Q Mr. Blair, do you recall there was a time
2 when there was a pile of DDT out in the river?

3 A At one time, yes.

4 Q And do you recall that some men were sent
5 out by Diamond to remove it?

6 A I believe so.

7 Q Do you know what the name of the plant was
8 prior to Diamond Shamrock taking it over?

9 A Diamond Alkali.

10 Q Well, I mean prior to Diamond Alkali. Do
11 you recall the old name of the plant?

12 A That was before Diamond bought it?

13 Q Yeah, right.

14 A I know the name. I can't think of it right now,
15 sir.

16 Q Kolker?

17 A Kolker is right.

18 Q Do you recall what the pile of DDT was
19 nicknamed?

20 A What was that again?

21 Q Do you recall what the pile of DDT out in
22 the river was nicknamed?

23 A What it was nicknamed? No, I wouldn't.

24 Q Did you ever hear the the term Kolker
25 Island?

1 MR. SPIVAK: Objection, your Honor. I
2 suppose he's heard it now, hasn't he?

3 THE COURT: Maybe he doesn't recall but
4 maybe he does.

5 A Kolker was before my time.

6 Q Did you ever hear the men refer to the
7 pile as Kolker Island?

8 A No, sir, I really didn't.

9 Q You were a maintenance man and not a
10 production man, correct?

11 A True.

12 Q And you weren't familiar with what
13 practices production people would employ or follow?

14 A That's true.

15 Q And you only worked the day shift, right?

16 A Day shift and we'd be called in at night.

17 Q For emergency?

18 A What's that?

19 Q For emergencies?

20 A Emergencies, yes, sir.

21 MR. CUYLER: Nothing further.

22 MR. L. SHEFT: Just one question.

23 CROSS-EXAMINATION BY MR. L. SHEFT:

24 Q You were asked by Mr. Spivak whether you
25 knew any of these chemicals you were working with were

1 dangerous and you said you didn't, is that right?

2 A Yes.

3 Q You relied on Diamond, didn't you, to
4 provide you with a safe atmosphere and safe working
5 conditions didn't you?

6 MR. SPIVAK: Objection, your Honor.

7 THE COURT: The -- I think it's --

8 Did you think the chemicals you were
9 working with were dangerous?

10 A Yes. Some of them.

11 THE COURT: And who did you expect would
12 figure out what could be handled safely and what
13 couldn't be? Who gave you instructions about
14 that?

15 THE WITNESS: After being so long there I
16 knew just which ones were and weren't.

17 THE COURT: I don't really think we have
18 to ask your question Mr. Sheft because there is,
19 of course, a legal duty to supply a safe
20 workplace. So, I don't think you have to ask
21 him.

22 MR. L. SHEFT: In that case I'll sit down,
23 your Honor.

24 THE COURT: Does anyone else have any
25 questions that you want to ask Mr. Blair? Fine.

1 There are no further questions. So you're
2 excused, Mr. Blair.

3 MR. CUYLER: Thank you, your Honor.

4 THE WITNESS: Thank you, your Honor.

5 THE COURT: Thank you.

6 Gentlemen, let's see. Mr. Blair was the
7 last witness you had ready for today.

8 MR. CUYLER: That is correct, Judge. We
9 have Mr. Centanni tomorrow. And then we have
10 Mr. Andreini. We'll have him here probably
11 about 11 o'clock.

12 THE COURT: Okay.

13 MR. CUYLER: Those are the only two
14 witnesses. Mr. Scureman is not available we're
15 told until next week.

16 THE COURT: So you just have two witnesses
17 tomorrow.

18 MR. CUYLER: Be a short day.

19 MR. SPIVAK: Mr. Burton, move him up.

20 THE COURT: If he could be brought in,
21 that's fine.

22 MR. CUYLER: We'll see what we can do
23 along those lines. I just want -- will Scureman
24 be available Monday morning.

25 MR. SULLIVAN: I really have to check.

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

MR. CUYLER: I understand there may be some rebuttal case.

THE COURT: All right. But the indications were that was going to be quite short.

MR. TIERNEY: That's correct.


THE COURT: If we're going to have it at all. We'll see you all tomorrow morning at nine o'clock.

MR. TIERNEY: Thank you, your Honor.

* * * *

C E R T I F I C A T E

I, DEBORAH A. NUTTING, a Certified Shorthand Reporter of the State of New Jersey, certify the foregoing to be a true and accurate transcript of my stenographic notes.


DEBORAH A. NUTTING
CERTIFIED SHORTHAND REPORTER
CERTIFICATE NO. 959

Dated: October 13, 1986