

**In The Matter Of:**

**CARE**

**vs .**

**Cow Palace**

**Deposition of**

**Dan McCarty**

**February 25, 2014**



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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

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COMMUNITY ASSOCIATION FOR RESTORATION OF THE ENVIRONMENT, INC., a Washington Non-Profit Corporation  
and  
CENTER FOR FOOD SAFETY, INC., a Washington, D.C. Non-Profit Corporation  
  
Plaintiffs,  
  
vs.  
  
COW PALACE, LLC, a Washington Limited Liability Company,  
  
Defendant.

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No. CV-13-3016-TOR

COMMUNITY ASSOCIATION FOR RESTORATION OF THE ENVIRONMENT, INC., a Washington Non-Profit Corporation  
and  
CENTER FOR FOOD SAFETY, INC., a Washington, D.C. Non-Profit Corporation  
  
Plaintiffs,  
  
vs.  
  
GEORGE & MARGARET, LLC, a Washington Limited Liability Company  
and  
GEORGE DERUYTER & SON DAIRY, LLC, a Washington Limited Liability Company  
  
Defendants.

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No. CV-13-3017-TOR

1	COMMUNITY ASSOCIATION FOR	)	
	RESTORATION OF THE	)	
2	ENVIRONMENT, INC., a	)	
	Washington Non-Profit	)	
3	Corporation	)	
	and	)	
4	CENTER FOR FOOD SAFETY, INC.,	)	
	a Washington, D.C. Non-Profit	)	
5	Corporation	)	
		)	
6	Plaintiffs,	)	No. CV-13-3018-TOR
		)	
7	vs.	)	
		)	
8	D & A DAIRY, a Washington	)	
	Partnership	)	
9	and	)	
	D & A Dairy, LLC, a	)	
10	Washington Limited Liability	)	
	Company,	)	
11		)	
	Defendants.	)	
12	_____	)	
		)	
13	COMMUNITY ASSOCIATION FOR	)	
	RESTORATION OF THE	)	
14	ENVIRONMENT, INC., a	)	
	Washington Non-Profit	)	
15	Corporation	)	
	and	)	
16	CENTER FOR FOOD SAFETY, INC.,	)	
	a Washington, D.C. Non-Profit	)	
17	Corporation	)	
		)	
18	Plaintiffs,	)	No. CV-13-3019-TOR
		)	
19	vs.	)	
		)	
20	HENRY BOSMA DAIRY, a	)	
	Washington Proprietorship,	)	
21	aka HANK BOSMA DAIRY, aka	)	
	BOSMA DAIRY,	)	
22	and	)	
	LIBERTY DAIRY, LLC,	)	
23		)	
	Defendants.	)	
24		)	
25		)	



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DEPOSITION OF DAN MCCARTY  
Tuesday, February 25, 2014

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APPEARANCES

For Plaintiff Community Association for Restoration of the Environment: CHARLES TEBBUTT  
DANIEL SNYDER  
SARAH MATSUMOTO  
Law Offices of Charles M. Tebbutt  
941 Lawrence Street  
Eugene, Oregon 97401

For Plaintiff Center for Food Safety: ELISABETH HOLMES  
Center for Food Safety  
303 Sacramento Street  
Second Floor  
San Francisco, California 94111

For Defendants: DEBORA KRISTENSEN  
Givens Pursley  
601 West Bannock  
PO Box 2720  
Boise, Idaho 83701

For State of Washington: KRISTEN K. MITCHELL  
Assistant Attorney General  
7141 Clearwater Drive Southwest  
Olympia, Washington 98504

Reported by: Kylie Hammington, CCR, RPR  
License No. 2054



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REQUESTED INFORMATION

No Information Requested



1 BE IT REMEMBERED that the deposition upon oral  
2 examination of DAN MCCARTY was taken on Tuesday,  
3 February 25, 2014, at 7141 Clearwater Drive Southwest,  
4 Olympia, Washington, before Kylie Hammington, Certified  
5 Court Reporter in the State of Washington.

6

7 DAN MCCARTY, having been first duly sworn upon oath,  
8 testified as follows:

9

10 EXAMINATION

11 BY MR. SNYDER:

12 Q Mr. McCarty, I'm going to be handling your deposition  
13 this morning. I'm just going to start with a few  
14 ground rules here. Have you ever been deposed before?

15 A No.

16 Q So because we're having what we're saying today  
17 transcribed, it's going to be important that you answer  
18 audibly: yes, no, or an explanation.

19 A Okay.

20 Q Um-hmm, shrugging won't work because it won't appear on  
21 the transcript.

22 A Sure.

23 Q Does that make sense?

24 A Yes.

25 Q It's going to be important that you wait to answer a



1 question until I finish the question. And I'm going to  
2 assume that you understand the question unless you tell  
3 me otherwise. So if there's something that's unclear,  
4 just let me know, and I'll try to clarify it for you.

5 You may hear objections from counsel today about  
6 some of the questions I'm asking. You're still  
7 required to answer those questions unless Ms. Mitchell  
8 tells you do not answer.

9 A Okay.

10 Q If you need to take a break, just let me know. We'll  
11 try to be as accommodating as possible. And you're  
12 under oath, so everything you say must be truthful  
13 here.

14 Now, we're going to be exchanging some paperwork  
15 back and forth and we're going to be talking about lots  
16 of different documents. If you're confused at any time  
17 or you don't know what document we're talking about,  
18 just let me know so we're both on the same page, so to  
19 speak.

20 Could you tell me a little bit about what you did  
21 to prepare for the deposition today?

22 A Nothing. I sent the folders to -- or the files to  
23 Ginny in our Olympia office.

24 Q Did you review the deposition subpoena?

25 A Yes.





1 Q Did you take a look at the production at deposition  
2 about the documents that we were seeking?

3 A You all have them.

4 Q Could you just tell me a little bit about where you  
5 looked for documents?

6 A Everything that we have right now is in electronic  
7 file. So I've gone through my laptop and gone through  
8 the server.

9 Q Did you speak with anyone in preparing for the  
10 deposition today?

11 A My counsel.

12 Q Okay. So we're going to be talking about D & A Dairy,  
13 DeRuyter Dairy, the Bosma and Liberty facilities, and  
14 Cow Palace. I'm guess you're somewhat familiar with  
15 all those?

16 A Yes.

17 Q Before we get into that, I want to cover some general  
18 background stuff. Could you tell us a little bit about  
19 your educational background?

20 A I have a bachelor of science degree from the University  
21 of Idaho in general agriculture where I studied animal  
22 science, plant science, crops, and soils.

23 Q Did you do anything after that? Did you go get a  
24 master's?

25 A No, sir.



1 Q Okay. So it sounds like you had an emphasis on crop  
2 science and agronomy?

3 A Yes.

4 Q Did you do any internships or anything like that while  
5 attending college?

6 A Yes, I did two. One with the Columbia Basin Ag  
7 Research Center, summer of '92, and then one at the  
8 Eastern Oregon Ag Research Center in Union, Oregon, in  
9 '94.

10 Q When did you start with the Department of Agriculture?

11 A June of 2010.

12 Q What did you do before that?

13 A I was the watershed planter and stem recovery  
14 coordinator for the Klickitat County Natural Resource  
15 Department.

16 Q How long were you in that role?

17 A Three years.

18 Q Was that your first job after college?

19 A No.

20 Q Can you tell me what you did before that?

21 A I was the inspector with the Idaho State Department of  
22 Agriculture working with livestock producers on the  
23 Salmon and Clearwater and Snake River drains to get  
24 them in the plans.

25 Q Did that involve inspecting dairies?



1 A No.

2 Q What did you do when you started your role with the  
3 Department of Ag? Did you have any training?

4 A I did not have any training on dairies.

5 MS. KRISTENSEN: Let me just be clear.  
6 You're talking about Washington? Because he said he  
7 worked for Idaho State.

8 MR. SNYDER: Yes. Washington Department of  
9 Agriculture.

10 A Repeat the question.

11 Q Did you have any training with the Washington State  
12 Department of Agriculture? I'll refer to that as  
13 Department of Ag or WSDA from here on out. If we're  
14 talking about another state, I'll let you know.

15 A Not prior to starting the job. I've gone through  
16 training since.

17 Q Tell me about the training you've gone through.

18 A It was investigator training put on by, I think,  
19 department -- I don't know who it's put on by,  
20 but -- and then we've gone to phosphorus conferences  
21 and different seminars.

22 Q What happened in the investigator training? Can you  
23 tell to me a little bit about that?

24 A It was pretty broad spectrum training. We had folks  
25 from the Department of Revenue there, Department of



1 Health, and they basically gave us the kind of  
2 core -- the core investigative techniques on how to do  
3 our job.

4 Q What are some of those core investigative techniques?

5 A Asking questions to -- maybe to see if the answers  
6 you're getting are, in fact, the truth or not.

7 Q Did you have any training about the actual inspection  
8 process at dairies that you're going to be going to?

9 A After I was hired, yes.

10 Q Tell me a little bit about that.

11 A My boss, Virginia Prest, went out in the field with me  
12 and showed me how to do them, what we were looking for.  
13 Of course, I read up on the statutes well before that.  
14 So I knew what to -- what our statutory authority was  
15 and wasn't.

16 Q Do you remember what statutes you read?

17 A 90.64.

18 Q Is that the Dairy Nutrient Management Act?

19 A Yes.

20 Q How many times did you go out with Ms. Prest before you  
21 started going out on your own?

22 A I think we did three inspections together.

23 Q As part of your employment, did you receive any  
24 guidance manuals or training plan manuals?

25 A Yes. We have an inspector manual.



1 Q Was that produced today as part of the records that  
2 were provided?

3 A Ms. Prest put the information together. I don't know  
4 what's on the disk.

5 Q So you didn't actually review the disk that was  
6 produced?

7 A No.

8 Q So did Ms. Prest do the record search for responsive  
9 documents?

10 A Yes.

11 Q What does the inspector manual have to say about  
12 inspecting dairies? Is it -- let me just start there.

13 A You know, we got -- we've got the responsibility to  
14 protect the environment and -- as a support  
15 agriculturalist. This program was initially set up as  
16 a surface water program, but we -- we're trying to  
17 morph it into ground water as well. But we're  
18 scheduling appointments with the dairymen so that we  
19 can -- when we get on site, we'll take a tour of their  
20 facilities where the manure collection system takes  
21 place, basically from the parlor to the lagoon. Then  
22 from there, we go check their fields, make sure that  
23 they are all bermed and they don't have the potential  
24 to pollute to surface waters. And then we go through  
25 and do records reviews where we'll look at soil



1 samples, manure nutrient testing, application records,  
2 export records, if they apply any commercial  
3 fertilizers. We take that in -- we look at those  
4 records, as well.

5 Q So does the guidance manual have a checklist, if you  
6 will, of things you're supposed to do as you inspect a  
7 dairy?

8 A Yes.

9 Q Are all the things you just discussed items on that  
10 checklist?

11 A Yes.

12 Q Does the guidance manual have any instructions on what  
13 would be soil nitrate levels that are elevated?

14 MS. KRISTENSEN: Objection. Vague.

15 Q Go ahead.

16 A We've been trained at 45 parts per million in the first  
17 foot is elevated.

18 Q Do you know where that number comes from?

19 A I don't know.

20 Q 45 parts per million, is that the common metric that's  
21 used when you inspect dairies?

22 A It's either 45 parts per million or 130 pounds per  
23 acre.

24 Q One hundred thirty?

25 MS. KRISTENSEN: It's hard for me to hear



1           some of your answers. You said 130 --

2                       THE WITNESS: Pounds per acre.

3 Q       Is that in the top foot of the soil?

4 A       Yes.

5 Q       How about phosphorus? Is there anything in there about  
6       levels of phosphorus?

7 A       We don't regulate on phosphorus. We do mention it in  
8       our inspection form if they're above 40 parts per  
9       million.

10 Q      You don't mention phosphorus if they're above 45 parts  
11      per million?

12 A      We don't mention it if they're below 40 parts per  
13      million.

14 Q      If they're below 40 parts per million. If they're  
15      above 40 parts per million, is that something that  
16      you --

17 A      We'll mention it on their inspection report, but we  
18      don't have statutory authority to regulate it.

19 Q      If you inspect a dairy and you find that their soil  
20      sampling records have numbers that exceed, let's say,  
21      130 pounds per acre for nitrate, what do you do?

22 A      I investigate to make sure that on their application  
23      records that they didn't overapply, they met agronomic  
24      rates. We talk about yield, if there was some kind of  
25      a crop failure or reason why the crop didn't take up



1 the planned amount of nutrients.

2 And then from there, we'll note that particular  
3 field on the inspection report and then when we come  
4 back at our next inspection, if it's still elevated and  
5 they've continued to apply manure, then they'll go  
6 through our letter of warning. If it comes back a  
7 following time, then we go to notice of correction.

8 Q Would this be if the soil levels are above that 130  
9 mark each time?

10 A Yes.

11 Q You said -- you mentioned the word "agronomic." What  
12 is an agronomic application?

13 A Agronomic application is -- for example, if a  
14 crop -- corner crop uses approximately 300 pounds of  
15 nitrogen to -- to meet its goals. So agronomic  
16 application means that they've -- you know, they've  
17 taken into account the soil nutrient values before  
18 application, they make the application based on what  
19 the crop needs, what's already in the soil levels, and  
20 try not to exceed that 300 pounds.

21 Q Why is it important to apply manure at agronomic rates?

22 A So it doesn't run off or leach into ground water.

23 MS. KRISTENSEN: Objection. Beyond the scope  
24 of this witness. He's not an expert. He's designated  
25 as a fact witness as an inspector, and that's the scope





1 of this deposition.

2 Move to strike the last question and answer.

3 MR. SNYDER: I believe Mr. McCarty as an  
4 inspector just described his guidance manual and  
5 training and how he needs to make sure that  
6 applications are agronomic. I don't think this is  
7 outside the scope at all. I think it's directly within  
8 the scope.

9 MS. KRISTENSEN: I can state my objection for  
10 the record. We don't need to argue about it.

11 MR. SNYDER: I understand.

12 Q When you arrive on site for a dairy inspection, what's  
13 generally the first thing you do?

14 A Generally, the first thing we're doing is take a tour  
15 of the facility, look at their crop fields, make sure  
16 they're bermed and there has been no evidence of  
17 discharge or runoff or excessive nutrients.

18 Q What would be evidence of excessive nutrients on fields  
19 when you inspect them?

20 A It's ponding of liquid manure. It's runoff into the  
21 road ditch, things like that, runoff from the property.

22 Q What are some of the causes -- or what would cause soil  
23 nitrate end levels to exceed 130 pounds per acre?

24 MS. KRISTENSEN: Objection. Calls for  
25 speculation. Incomplete hypothetical.



1 A Some kind of a crop failure or overapplication of  
2 nutrients.

3 Q Have you ever inspected the Cow Palace Dairy?

4 A Yes.

5 Q Do you know -- who do you know at the Cow Palace Dairy?

6 A I know the manager, Jeff Boivin.

7 Q Do you know anyone else from the facility?

8 A No.

9 Q Do you know anyone from Cow Palace at all on a personal  
10 level?

11 A No.

12 Q Are the only interactions you have with Cow Palace  
13 Dairy personnel when you inspect the dairy?

14 A Yes.

15 Q Mr. McCarty, did you inspect the Cow Palace Dairy in  
16 March of 2013?

17 A I would have to look at the documentation to confirm  
18 that or not.

19 Q So I'm going to hand you what will be marked as Exhibit  
20 1 to your deposition.

21 (Exhibit No. 1 marked for identification.)

22 Q Mr. McCarty, does this look like the inspection form  
23 you filled out when you inspected Cow Palace Dairy on  
24 March 1, 2013?

25 A Yes.



1 Q Let's talk about this inspection for a little bit. Do  
2 you recall what you did first during this inspection?

3 A Normally, I would go around and look at the facilities.

4 MS. KRISTENSEN: Dan, just before we get into  
5 this -- and I'm sorry we didn't raise this at the  
6 beginning. There are a number of documents that I'm  
7 sure are going to be used throughout today's  
8 depositions and tomorrow that have been marked  
9 "confidential" already in this case. I know we have a  
10 pending motion before the judge about the adequacy of  
11 that. Until and unless the judge makes a definitive  
12 decision, I want to be sure that we're preserving  
13 confidentiality designations. See, like this document,  
14 for instance, is marked confidential. So to the extent  
15 we have testimony or use of confidential documents, I  
16 want to make sure that I'm raising that -- that I'm  
17 marking that and I want to preserve those confidential  
18 designations. Obviously, if the judge rules in some  
19 other way, we can revisit that. But for the time  
20 being, I want to maintain the status quo and don't want  
21 to waive any of those things.

22 MR. TEBBUTT: Let's clear this up now. So do  
23 you intend to then go back through the testimony and  
24 designate what's confidential and what's not?

25 MS. KRISTENSEN: That's exactly what I'm



1 trying to get at. That's why I'm marking it and I'm  
2 raising it on the record here, because this is the  
3 first point where we're using documents that have been  
4 marked confidential. So we want to continue with those  
5 confidential designations unless and until the judge  
6 changes our ability to do so.

7 MR. TEBBUTT: So then are you going to be  
8 seeking to designate the -- just portions of the  
9 depositions as confidential?

10 MS. KRISTENSEN: Yes. I mean, nothing that  
11 Mr. McCarty's talked about thus far in terms of his  
12 background, what he's done. There's no confidential  
13 there. But now that we're talking about a specific  
14 document that has been marked confidential, I think any  
15 testimony related specifically to that will be  
16 encompassed within that.

17 MR. TEBBUTT: So it will be your burden,  
18 then, to go back and designate which pages and lines  
19 you believe are confidential.

20 MS. KRISTENSEN: I'm going to start with, as  
21 soon as I've raised any objection, everything forward  
22 related to Exhibit 1 we'll designate as confidential.  
23 I will try and every time we use a document that's been  
24 marked confidential, to raise the same objection with  
25 respect to all testimony on that particular document.



1 MR. TEBBUTT: Okay. You'll do that as -- on  
2 an exhibit-by-exhibit basis, then?

3 MS. KRISTENSEN: I'll certainly try to. I'm  
4 trying to say at the beginning that is my intent. I  
5 don't mean to waive any confidentiality that we've  
6 previously asserted. I will endeavor at every chance  
7 that you introduce a document that has a confidential  
8 designation to make that same objection without having  
9 to do this whole speech again.

10 I'll say -- if we're okay, Dan, that my previous  
11 objection as to confidentiality is being reasserted  
12 with respect to whatever new document. Is that fair,  
13 Dan?

14 MR. SNYDER: I believe so, but I think that  
15 the protective order requires you to designate specific  
16 testimony that you believe is confidential. So what  
17 I'm hearing you say is preemptively you're going to say  
18 everything is confidential. But I think the way it was  
19 meant to be is, after the fact, you'd go back and say  
20 this is confidential, once you hear what the testimony  
21 is. Because there might be testimony that's not  
22 confidential.

23 MS. KRISTENSEN: Correct. But anything  
24 related to a confidential document, testimony  
25 explaining it, talk about what you did to get it, I'm



1 going to say that is confidential. And in this case,  
2 you're -- I'm assuming your line of questioning is  
3 going to be asked about how did you generate Exhibit 1  
4 and what did you mean when you wrote whatever you wrote  
5 on Exhibit 1. So all that will be encompassed within  
6 my objection on the confidentiality, and I would  
7 designate in this transcript as such.

8 MR. TEBBUTT: I'm just trying to think if  
9 there's a way we can shorthand it so we don't spend a  
10 lot of time during the depositions. If you'll just  
11 say --

12 MS. KRISTENSEN: That's what I was trying to  
13 get at.

14 MR. TEBBUTT: If we can agree to some  
15 shorthand that confidentiality objection interposed at  
16 this point.

17 MS. KRISTENSEN: That's all I'm trying to do.  
18 I don't want to -- it's just the first time we've come  
19 up with it so far. So if you all agree, if we can have  
20 like an ongoing stipulation that when I raise a  
21 confidentiality designation related to the document,  
22 whatever document you've raised, you're using and  
23 testimony related thereto, that will be a  
24 way -- instead of me having to go into a big speech  
25 again.



1 MR. TEBBUTT: That's fair. And of course  
2 we'll object as a matter of fact to each of your  
3 interpositions of confidentiality. That way we don't  
4 have to object over time. It will just be a standing  
5 objection on our part. Standing disagreement. All  
6 right?

7 MS. KRISTENSEN: One of many.

8 MR. SNYDER: So I understand that we have a  
9 standing objection from our side on the confidentiality  
10 designation. So I'm not going to be objecting to the  
11 confidentiality interpositions, if you will, that  
12 you're going to raise as we go and interpose.

13 MS. KRISTENSEN: Yes.

14 MR. SNYDER: Okay. Glad we got that cleared  
15 up.

16 MS. KRISTENSEN: Is that absolutely clear  
17 now? Clear as mud.

18 Q (By Mr. Snyder) All right. Mr. McCarty, earlier you  
19 said usually when you inspect a facility, one of the  
20 first things you do is inspect the fields.

21 A Facility and the fields.

22 Q Facility and the fields. Sorry. When you inspected  
23 the Cow Palace, did you start with inspecting Cow  
24 Palace's fields during this inspection, the March  
25 inspection?



1 A I don't recall. We probably did the facilities first  
2 and then went to the fields.

3 Q When you say we do the facilities first, can you walk  
4 me through that?

5 A Through their collection, advanced manure system.

6 Q How much time do you spend on each one of those items?

7 A Well, we'll walk the interior or drive the  
8 interior -- or the exterior of the lagoons, make sure  
9 that we don't see any road holes, there's no trees or  
10 shrubs, that they've been well maintained. Outside, on  
11 average, an hour, hour and a half.

12 Q And do you walk the entire facility or do you -- do you  
13 walk the entire facility?

14 A No. Sometimes we drive it.

15 Q When you drive it, do you ever stop to get out at  
16 certain spots?

17 A Yes.

18 Q What are those spots that you would get out?

19 A Typically the lagoons.

20 Q Did you inspect the lagoons at Cow Palace Dairy during  
21 this inspection?

22 A Yes.

23 Q I'm looking at the page that's been identified  
24 COWPAL000415. And it's got this chart at the top.  
25 Could you tell me a little bit about this chart?





1 A The chart covers -- I think there's ten lagoons with 41  
2 million gallons of capacity. So I've gone through and  
3 I've separated out like settling basin 1, settling  
4 basin 2, lagoon 1, lagoon 2, 3, 4, and then catch  
5 basins 1 through 3, and then they also have a catch  
6 basin on Kirks Road that was observed.

7 Then I go through -- on the plan, nutrient  
8 management plan, I see what their capacities were, talk  
9 to producer to see roughly how full their lagoons are,  
10 if there's solids buildup or not, and if the dikes are  
11 in good condition or not.

12 Q I want to go back to one thing you just said. You said  
13 you reviewed the DNMP. Do you review the DNMP before  
14 you come to an inspection?

15 A No. So I get the capacity once I get back to their  
16 office and review. But I'll write down the lagoon  
17 condition, solids buildup or not, and what percentage  
18 they are full.

19 Q So you review the DNMP in Cow Palace Dairy's office?

20 A Yes.

21 Q And earlier you were talking about how full each lagoon  
22 is. Where did you get that information?

23 A From the producer.

24 Q So do you do any independent evaluation of each lagoon  
25 to figure out how full it is?



1 A Because these were also -- were relatively full, I had  
2 to ask the producer who's been -- or who knows these.

3 Q Solids buildup. What is a solids buildup?

4 A If there's a thick crust over the top of it.

5 Q Here, looking at this page, it says that all lagoons  
6 have light solid buildup. Did you inspect each lagoon  
7 to make that determination?

8 A Yes.

9 Q About how much time did you spend with each lagoon?

10 A Depending on the size and the circumference that I had  
11 to walk, could be anywhere from five to 15 minutes.

12 Q And when you walk around the circumference of the  
13 lagoon, do you also evaluate the dike condition?

14 A Yes.

15 Q What is a good dike condition?

16 A One that's free of weeds, doesn't have trees or shrubs  
17 growing up in it, blackberries, no rodent holes.

18 Q Looking back at page 415 here, underneath the chart,  
19 there's a little thing that's numbered 4. It says, "Is  
20 the maintenance schedule for the liquid storage  
21 facilities being followed?" Do you see that?

22 A Yes.

23 Q There's no check box there. Can you explain that?

24 A That was probably an oversight on my part.

25 Q Do you look at or ask for a maintenance schedule?



1 A It's in their nutrient management plan.

2 Q Is that something you would typically ask for and ask  
3 if they're complying with?

4 A Yes.

5 Q Flipping back one page to 415 -- or excuse me, 414,  
6 COWPAL000414, in the middle there, there's a chart that  
7 says "Detail of Current Animal Inventory" and there's  
8 an identification of milking cows, dry cows, et cetera.  
9 How did you get this inspection?

10 A The animal numbers in the nutrient management plan  
11 comes directly out of the -- out of that plan. The  
12 current number I get from the producer.

13 Q When you get them from the producer, how do you get  
14 them? Is there a document that you're given?

15 A Sometimes they pull up records. Sometimes they've got  
16 it off the top of their head.

17 Q When you inspected the dairy in March here, did you  
18 look at any soil samples?

19 A Yes.

20 Q How far -- how many years back do you look, generally,  
21 when you look at soil samples?

22 A Typically, I will look at the last five years.

23 Q Five years?

24 A Yes.

25 Q Do you recall how far you looked back when you



1 inspected Cow Palace Dairy during this inspection?

2 A I noted records -- soil samples going back to '98.

3 Q And looking at page 415 again, it says that the soil  
4 nitrate-N, it says "583 acceptable." Could you explain  
5 what that means?

6 A Yes. They have -- on page -- on page 414, question  
7 No. 7, it says "Acreage nutrient management plan was  
8 developed for, 533." Current total acreage is 583.  
9 About 583 is the total amount of acres that were within  
10 that acceptable level below that 45 parts per million.

11 Q And the same thing for phosphorus?

12 A Yes, sir.

13 Q Mr. McCarty, I'm going to hand you what will be marked  
14 for your deposition as Exhibit 2.

15 (Exhibit No. 2 marked for identification.)

16 Q These are the Cow Palace soil sampling results from  
17 2012?

18 MS. KRISTENSEN: I'm just going to interpose.  
19 I'll just do it the shortcut way. This is our --  
20 continuing with the confidentiality objection as  
21 previously discussed.

22 Q Did you look at these documents when you inspected Cow  
23 Palace Dairy in March of 2013?

24 A I don't remember the specific details.

25 Q Okay. Let's start with the first page here. It's 261,



1 COWPAL000261.

2 Can you tell me what crop was growing on this

3 field?

4 A No.

5 Q Does this form identify what crop was growing on the

6 field?

7 A No.

8 Q On the first column where the numbers appear, do you

9 know what that first column is?

10 A It's pretty blurry. I'm going to assume that it's

11 nitrogen pounds per acre.

12 Q I will represent to you that that blurry section says

13 NO3-N. Do you understand that to be nitrate?

14 A Yes.

15 Q The number here, what does that number mean, the first

16 one?

17 A That there's 280 pounds per acre in that top foot.

18 Q And the second number?

19 A 245 pounds per acre in the second foot.

20 Q Were those both above the number you mentioned earlier?

21 A Yes.

22 Q That was 130 pounds per acre?

23 A Yes.

24 Q And the third column, I'll represent to you that that's

25 a P.



1 A Okay.

2 Q What would that P stand for?

3 A Parts per million. 190 parts per million.

4 Q I'm sorry. The column itself has just a capital P.

5 A Oh, phosphorus. How much phosphorus was in it.

6 Q So this would have 190 parts per million phosphorus?

7 A Yes.

8 Q What did you say the number was, the trigger number for  
9 phosphorus earlier?

10 A 40.

11 Q If you wouldn't mind flipping to the next page, 262.  
12 Same thing. What's the first two numbers there for  
13 soil nitrate-N?

14 A 146, 141.

15 Q And would you turn to COWPAL000262, I think that's the  
16 back page of what you were just looking at there.

17 A (Witness complied.)

18 Q It should say field 2.

19 A Field 2. 235 pounds per acre of nitrate in the first  
20 foot, 212 in the second foot.

21 Q And I think I just mentioned field 3. Could you turn  
22 to 264, which was identified as field 4B. Again, the  
23 soil nitrate levels there were --

24 A 212 and 183 in the second foot.

25 Q When you looked at these soil tests during this



1 inspection, did you compare them against the manual  
2 that you had been given, the inspector manual?

3 MS. KRISTENSEN: Just objection. He  
4 didn't -- he says he doesn't recall if he looked at  
5 these exact reports during May 2013. So it misstates  
6 the testimony.

7 Q Do you ever compare, when you review soil samples, what  
8 the results are against the inspector manual?

9 A I know that the magic number -- or the typical numbers.

10 Q Okay. Do you review -- the typical numbers again,  
11 could you tell me what those typical numbers were?

12 A 130 pounds per acre of nitrate and 40 parts per million  
13 of phosphorus.

14 Q Do you refer to those as the magic numbers?

15 A What I've been trained for, yes.

16 Q When you inspected the Cow Palace Dairy at this time,  
17 did you -- and "this time" being the March inspection,  
18 did you look at any application records?

19 A Yes. Well, I assume so. It says I did here.

20 Q Would those application records have been the 2012  
21 application records or the 2013 records?

22 A It says that I looked at some 2013s as well.

23 Q Well, I'm going to show you the 2012 records. This  
24 will be marked as Exhibit 3.

25 (Exhibit No. 3 marked for identification.)



1 MS. KRISTENSEN: Same objection.

2 Confidentiality.

3 Q Do you recall looking at these records during the March  
4 inspection?

5 A I can't remember if this was -- if I looked at these  
6 particular records or not.

7 Q Are these similar to records you would look at during  
8 an inspection?

9 A Um-hmm. Yes. I'm sorry.

10 Q Thank you. Looking at the first page here, it's  
11 COWPAL000284. It says "alfalfa" and then it's got this  
12 number here. What does that number mean? It says 480.

13 A I can't read that.

14 Q Why don't we go two more pages in. That's a better  
15 copy, I think, 286. Is that easier to read?

16 A Yes. Pounds of N utilized.

17 Q What does that mean?

18 A Be the amount of pounds of nitrogen used by that  
19 particular crop for -- to make the yield.

20 Q So this record is for Cow Palace field No. 3. And  
21 below you'll see where it says "Gallons Applied" and  
22 the date ranges.

23 A Um-hmm.

24 Q If you look to the far right, it says "N Crop Balance"  
25 and it starts at 480 and then it goes down. Do you





1 know why it goes down like that?

2 A Well, you start with the 480 pounds that it's going to  
3 take to produce that crop, then the first application  
4 shows 4.2 million gallons applied to that particular  
5 field and the pounds per 1,000 gallons is 1.5,  
6 producing 40.6 pounds of nutrients. So, therefore, the  
7 480 is subtracted from the 40.6 to come up with 339  
8 remaining for application purposes.

9 Q When it says "pounds of N per 1,000 gallons," what does  
10 that N mean?

11 A That's the nutrient value of the manure.

12 Q Starting at 480, is there anything on here that tells  
13 you what the residual nutrient content was of the soil?

14 A No.

15 Q Is that a number you would want to know for a crop  
16 balance like this?

17 A Yes. It would have come through their soil samples  
18 prior to application.

19 Q Where it says "pounds of N per 1,000 gallons," you'll  
20 see it says 1.5. Do you know if the DNMP requires Cow  
21 Palace Dairy to take annual manure nutrient samples?

22 A Yes.

23 Q Why is that important?

24 A So that they can know the amount of nitrogen or  
25 nutrients that they are putting on in each application.



1 Q Is that typically a document that you look at during  
2 inspection?

3 A Yes.

4 Q Does that number vary, usually?

5 A Yes.

6 Q So this will be Exhibit 4.

7 (Exhibit No. 4 marked for identification.)

8 MS. KRISTENSEN: Same objection regarding  
9 confidentiality.

10 Q Do you know what these documents are, Mr. McCarty?

11 A They appear to be nutrient testing, Cow Palace.

12 Q Is this the type of testing that the NMP requires?

13 A Yes.

14 Q Is this the type of document that you would review when  
15 you inspect the dairy?

16 A Yes.

17 Q So we were looking at the 2012 records. So let's  
18 go -- let's take a look at COWPAL009248. I think it's  
19 going to be the first page there. It's an October 2,  
20 2012, record.

21 Looking at this, do you see what the reported  
22 pounds of N per 1,000 gallons was?

23 A Total N was 2.3 pounds per 1,000 gallons.

24 Q So is that the number that Cow Palace Dairy should have  
25 been using?



1 MS. KRISTENSEN: Objection. Vague.

2 Q When they were -- would Cow Palace Dairy use this  
3 number in determining whether they were making  
4 agronomic applications?

5 MS. KRISTENSEN: Objection. Calls for  
6 speculation. Outside the scope of his knowledge.

7 A They could have taken a more recent test.

8 Q For 2012?

9 A Before they made this 2013 application.

10 Q Let's go back to that -- were you going to say  
11 something? I didn't mean to interrupt you.

12 A No.

13 Q Looking back at the application record I just gave you  
14 for 2012, you'll see the first page there,  
15 COWPAL000284. Are all those numbers 1.5?

16 A Yes.

17 Q And that date range, what is the date range there?

18 A September 3, 2012, through March 9, 2012.

19 Q Okay. I'm going to have you flip back then, so now we  
20 know we're between March and September. This would be  
21 back to the manure nutrients sampling documents. We're  
22 going to be doing some flipping back and forth, so let  
23 me know if you're on the same page here.

24 A What page are you on?

25 Q Let's look at 9250, the next page. It says it's a



1 sample from 9/30 of 2010. Do you see on there anything  
2 that says what the pounds of N per 1,000 gallons was?

3 A Total N is 1.67.

4 MS. KRISTENSEN: What page are you on, Dan?

5 MR. SNYDER: This could be COWPAL009250.

6 MS. KRISTENSEN: Exhibit 4. Okay.

7 Q Then we're going to flip back to the records we were  
8 just looking at, the application records. Does that  
9 number appear in that column at all?

10 A No.

11 Q Can we talk about field 2 real quick, if you flip the  
12 page on those?

13 Is there any variation in the number of N per  
14 1,000 gallons for field 2 on 2012?

15 A No.

16 Q The next page for field 3?

17 A No.

18 Q Do you think you looked at the 2011 application data  
19 when you inspected Cow Palace Dairy in March?

20 A I don't know.

21 Q Would you typically look two or three years back at  
22 application data?

23 A Yes.

24 (Exhibit No. 5 marked for identification.)

25 MS. KRISTENSEN: Same confidentiality



1 objection.

2 Q So this is the 2011 application records from Cow Palace  
3 Dairy. Again, it starts at field No. 1 for the 2011  
4 crop year. Does that number vary here, the N per 1,000  
5 gallons?

6 A No.

7 Q What is the date range on this one?

8 A November 3, 2010, through September 11, 2011.

9 Q Flipping the page to field 2. Any different numbers  
10 there for the N per 1,000 gallons?

11 A No.

12 Q Is it all 1.5?

13 A Yes.

14 Q Is it important to know what the nutrient content of  
15 your manure is when applying it to fields?

16 A Yes.

17 Q If you don't know the right nutrient content, what can  
18 happen?

19 MS. KRISTENSEN: Objection. Calls for  
20 speculation. Incomplete hypothetical.

21 A You can either over- or underapply.

22 Q And if your manure nutrient sampling shows a number  
23 that, say for instance, is higher than 1.5, what would  
24 be the consequence then?

25 MS. KRISTENSEN: Again, same objection.



1 Calls for speculation. Incomplete hypothetical.

2 A Overapplication.

3 Q Let's flip back to the inspection report now. I  
4 recognize you have a lot of paper in front of you, so  
5 tell me when you're there. This would be in the  
6 Exhibit 1, the last page of the exhibit, if you  
7 wouldn't mind turning to it. It's an email. Can you  
8 tell me a little bit about this email?

9 A On January 29, 2013, general manager of Cow Palace,  
10 Jeff Boivin, was wondering if it was okay to start  
11 spreading manure on the neighbor's field. The ground  
12 is not frozen and the temperature has warmed. Of  
13 course we would be applying at agronomic rates. Please  
14 advise.

15 And I responded to Jeff Boivin: As discussed, you  
16 can start applying liquid manure on soils if they are  
17 not saturated, frozen, or snow covered. Make sure you  
18 check the WSU AgWeatherNet to ensure soil temperatures  
19 are above freezing. Also check your local weather  
20 forecasts to make sure no precipitation is going to  
21 occur within 72 hours. This will help reduce potential  
22 runoff.

23 Q Okay. What was the, quote, Honey-Vac manure that  
24 Mr. Boivin was talking about?

25 A The Honey-Vac is a -- is a machine that will suck up



1 manure from the alleys or from pits or -- they could  
2 use it to vac- -- or to pump out the lagoons, catch  
3 basins.

4 Q Was there some special reason why Mr. Boivin was asking  
5 you whether he could apply in this instance?

6 A According to the email, he was wondering if -- because  
7 the ground was not frozen and the temperatures had  
8 warmed.

9 Q Is it typical for a dairy manager to send you an email  
10 asking you if it's okay to apply manure?

11 A Yes.

12 Q And in this case, we're talking about the Honey-Vac  
13 manure. Do you know where the source of the Honey-Vac  
14 manure was?

15 A No.

16 Q And just -- I want to fall back on one thing here. In  
17 this inspection, you said that all of Cow Palace  
18 Dairy's fields were acceptable for soil nitrate-N,  
19 right?

20 A Yes.

21 Q You can take that first exhibit, put it over to the  
22 side, because we're going to talk about another  
23 inspection now.

24 Do you remember inspecting Cow Palace Dairy in  
25 early 2011?



1 A Not specifically, no.

2 Q On or about January 29th? I'm going to hand you what  
3 will be marked as Exhibit 6.

4 (Exhibit No. 6 marked for identification.)

5 MS. KRISTENSEN: Same objection regarding  
6 confidentiality.

7 Q Do you recognize this document?

8 A Yes.

9 Q Does this help refresh your recollection about this  
10 2011 inspection at all?

11 A Yes.

12 Q Let's start again with the herd size, which is  
13 COWPAL000422. I think it's page 3 of 10 of this  
14 document.

15 How did you get the current numbers of the animals  
16 at the facility?

17 A From the producer.

18 Q And do you recall looking at any records during this  
19 inspection that evidenced that information?

20 A No.

21 Q I notice this inspection form itself is a little bit  
22 different. You see at the top it says "The Digital  
23 Health Department." Can you explain that?

24 A We were transitioning from the paper copy with  
25 duplicate to using this online version. And at that





1 point, we were -- we did not have the capacity of  
2 having this condensed version that was done in 2013.

3 Q Okay. So did you have a computer with you when you --

4 A Yes.

5 Q -- did this inspection?

6 A Yes.

7 Q So you inputted this information into this form?

8 A Yes.

9 Q That makes sense. Thank you.

10 Did you inspect each one of Cow Palace Dairy's  
11 lagoons during this inspection?

12 A I would assume so, yes.

13 Q About how much time do you think you spent on each one?

14 A About five to ten minutes.

15 Q On page COWPAL000424 -- it's at the very bottom of the  
16 page -- it's the start of the chart again. It didn't  
17 carry over to the other page. It says "settling basin  
18 91," and then it says 90 -- "how full, 90."

19 A That would be 90 percent.

20 Q In winter, is it common for lagoons to be at 90 percent  
21 storage?

22 MS. KRISTENSEN: Objection. Incomplete  
23 hypothetical. Calls for speculation.

24 A Well, this was a settling basin, so typically their  
25 lagoon levels are not quite as full as that.



1 Q And it says "solid buildup, medium" there. What's a  
2 medium solid buildup?

3 A That there actually is part of the settling pond  
4 was -- had a crust on it.

5 Q Did you see -- test at all how deep that crust was?

6 A No.

7 Q The next page on 425, it says storage pond 2 was also  
8 at 90 percent?

9 A Yes.

10 Q For a storage pond, is it typical to be at 90 percent  
11 during the winter months?

12 MS. KRISTENSEN: Same objection. Incomplete  
13 hypothetical. Calls for speculation.

14 A That was one of their smaller ponds. If you look above  
15 it, storage pond No. 1 has 18.3 million gallons  
16 capacity and was only 35 percent full.

17 Q And storage pond No. 3 there below, too, how full is  
18 that?

19 A 90 percent.

20 Q Does Cow Palace Dairy's DNMP prohibit applications  
21 during the winter months?

22 A The NMP is an advisory document. They list best  
23 management practices and they do -- so recommendations  
24 are made in that document.

25 Q Do you know what those recommendations are?



1 A There's a whole list of best management practices that  
2 are put in there by NRCS.

3 Q What are the best management practices of application  
4 of manure during winter months?

5 A Usually avoid if possible.

6 Q If you're avoiding manure applications during the  
7 winter months, do you need to have -- like would a  
8 dairy field have its lagoons at a lower level?

9 MS. KRISTENSEN: Objection. Calls for  
10 speculation. Incomplete hypothetical.

11 A Please repeat the question.

12 Q So the best management practices are avoid applications  
13 during winter months. What does a dairy need to do if  
14 they're not going to be applying manure in those winter  
15 months in terms of storage?

16 A They would have to have them pumped down going into the  
17 fall.

18 Q About how far pumped down, as an inspector, would you  
19 like to see them?

20 MS. KRISTENSEN: Objection. Incomplete  
21 hypothetical.

22 A Anywhere from 5 to 10 percent.

23 Q So 5 to 10 percent total capacity?

24 A Yes.

25 Q Meaning there would be 90 percent more to fill?



1 A Yes.

2 Q Do you know what the purpose of the DNMP is?

3 A Again, it's an advisory tool. We require that they  
4 have one, with the State Department of Agriculture  
5 Dairy and Nutrient Management Program, but it's not  
6 enforceable.

7 Q Do you need to have a DNMP to operate in the state of  
8 Washington?

9 A Yes.

10 Q Are the best management practices in the DNMP meant to  
11 protect the environment?

12 A Yes.

13 Q Are they meant to protect ground water?

14 A Yes.

15 Q What are they meant to protect ground water from?

16 A Nutrients.

17 Q How do nutrients get in the ground water typically at a  
18 dairy like this?

19 MS. KRISTENSEN: Objection. Calls for  
20 speculation. Beyond the scope of this deposition and  
21 beyond his expertise.

22 A Irrigation, having too much irrigation water and  
23 overapplication of nutrients, or could be a number of  
24 different scenarios.

25 Q Do you know what the best management practices are for



1 lagoons?

2 A Without going onto the NRCS standards and specs, I  
3 don't know.

4 Q Were you trained on the NRCS specs?

5 A No.

6 Q In this inspection report, if you look at page  
7 COWPAL000427, you have a comment here -- well, two  
8 comments really. First it says, "Soil nitrate-N number  
9 of fields acceptable is 532."

10 So does that mean that Cow Palace Dairy's fields  
11 would have been below those magic numbers?

12 A Yes.

13 Q So below 130 pounds per acre or 45 parts per million  
14 nitrate?

15 A Yes.

16 Q And conversely for phosphorus, it lists 532 fields that  
17 need attention.

18 A Correct.

19 Q What does that mean?

20 A That they were above the 40 parts per million.

21 Q And when you say "need attention," what are you telling  
22 the operator to do here?

23 A To work on their strategy to reduce those levels below  
24 that level.

25 Q What are some of those strategies?



1 A Double cropping, going with straight commercial  
2 nitrogen fertilizer. That's all I can think of at the  
3 top of my head.

4 Q So did you look at soil samples during this inspection?

5 A I would assume so.

6 Q Do you think you looked at the 2010 soil samples?

7 A I don't have the years mentioned on those.

8 Q I'm going to hand you what will be Exhibit 7.

9 (Exhibit No. 7 marked for identification.)

10 MS. KRISTENSEN: Same objection regarding  
11 confidentiality.

12 Q So looking at the first page here, 646, what is the  
13 phosphorus level here on field 1 in 2010?

14 A 160 parts per million.

15 Q So that's one of the fields that gave you concern?

16 A Yes.

17 Q And if you flip through here, just these pages, you'll  
18 see all of Cow Palace Dairy's six fields identified.

19 Is there any field here that would be below that  
20 phosphorus number?

21 A The very back page, 653, pears-good and pears-bad -- or  
22 pears-bad.

23 Q And the other six fields are all above it, though,  
24 right?

25 A Yes.



1 Q Let's turn back one page and compare it to Cow Palace  
2 field 6. What's the NO3-N levels in that field?  
3 A First foot, 158 pounds per acre.  
4 Q And the second field?  
5 A 178.  
6 Q Are those above the magic number --  
7 A Yes.  
8 Q -- of 130 pounds per acre?  
9 A Yes.  
10 Q Let's look at COWPAL000649. What are the soil nitrate  
11 levels in that field?  
12 A 198 in the first field, 179 in the second.  
13 Q Is that also above the 130?  
14 A Yes.  
15 Q The two-foot levels, do you know why Cow Palace tests  
16 at two feet?  
17 A No, I don't.  
18 Q Did you inspect any of the fields during this  
19 inspection?  
20 A I would assume so. It doesn't say in the report.  
21 Q If it doesn't say so in the report, what does that  
22 mean?  
23 A That I forgot to mention it on the report.  
24 Q Is it possible that that means you did not inspect the  
25 fields?



1 A No. That's one of the -- we -- the common practice for  
2 the inspection is to do the facilities, check the  
3 fields, and then go check records.

4 Q Is it also the common practice to put that information  
5 into your report?

6 A Yeah. I do see a note here that says "great  
7 containment" on the very -- page 43- -- or 428.

8 Q What does that mean?

9 A That I didn't see any runoff potential to run off from  
10 their fields or their facility.

11 Q And this would have been when you drove around the  
12 fields?

13 A Yes.

14 Q Do you ever drive into the fields?

15 A Typically there's crops growing, so, no, we don't.

16 Q Have you ever driven into the fields?

17 A Not on -- not -- I don't remember which facilities that  
18 we have, but, yes, I have.

19 Q When would those times be, when you would drive onto a  
20 field?

21 A Before planting, before application.

22 Q Okay. I think we can move on to another facility, if  
23 that's okay with you.

24 Why don't we talk a little bit about Bosma and  
25 Liberty. And then we'll take a short break after we





1 get into a little bit.

2 A Okay.

3 MR. TEBBUTT: Before we continue with  
4 questioning, I just have a question with Ms. Mitchell.

5 MS. MITCHELL: Yes.

6 MR. TEBBUTT: As part of the notices of  
7 deposition and requests for documents, the plaintiffs  
8 requested specifically any employee manuals or  
9 handbooks in your possession outlining the guidelines  
10 by which such inspections are or were to be conducted  
11 during the relevant time period. We've reviewed the  
12 files that you've presented today. We've heard  
13 Mr. McCarty testify that there are manuals or handbooks  
14 that he reviewed, and they haven't been provided. Can  
15 you provide those to us this morning, please?

16 MS. MITCHELL: I don't know if I can provide  
17 them this morning. I'll do my best. I want you to  
18 know that we were under some tight time frames, and we  
19 did our absolute darnedest to get them to you as soon  
20 as possible. I got them yesterday at 5:00. I've had  
21 no time to look at them. We'll take a look at that and  
22 see.

23 MR. TEBBUTT: Maybe at the break, we can take  
24 a look and see, if you think they're in there. It  
25 doesn't appear that they are.



1 MS. MITCHELL: Well, I would have to borrow  
2 back one of the disks. We were literally running up to  
3 the deadline for you all.

4 MR. TEBBUTT: Thank you.

5 Q The Bosma and Liberty facilities, what can you tell me  
6 generally about those facilities?

7 A I may have been on them twice so far.

8 Q Are they two different dairies?

9 A Yes.

10 Q Do you inspect them both at the same time?

11 A Yes.

12 Q Who do you know at Bosma and Liberty Dairy?

13 A I know Steve and Henry Bosma.

14 Q Do you know them on a professional basis?

15 A Only a professional basis, as the managers of those  
16 facilities.

17 Q Do you know Henry, Sr., at all?

18 A No.

19 Q Did you inspect the Bosma and Liberty facilities in  
20 April of 2013?

21 A I would have to look.

22 (Exhibit No. 8 marked for identification.)

23 MS. KRISTENSEN: Same objection regarding  
24 confidentiality.

25 Q Mr. McCarty, do you recognize this document?



1 A Yes.

2 Q What is it?

3 A It's an inspection report from April 10, 2013.

4 Q Is this the inspection report --

5 A For the Liberty Dairy.

6 Q Is this the inspection report that you completed?

7 A Yes.

8 Q And if you flip a few pages in, BOSMA000366, do you

9 recognize that document, sir?

10 A Yes. It's the April 10, 2013, Henry Bosma Dairy

11 inspection report.

12 Q Did you make this document right after looking at

13 Liberty Dairy?

14 A Yes.

15 Q Did you look at Liberty Dairy first?

16 A I don't recall which dairy we went to first.

17 Q Do you remember what you typically would do in the two

18 times that you've inspected Bosma?

19 A Again, we would do a drivethrough or around -- walk

20 through the facility, and then the fields and then come

21 back and look at records.

22 Q How big is the Bosma/Liberty Dairies? Just sizewise,

23 not in terms of how many animals or anything.

24 A Approximately 1400 acres.

25 Q Well, let's start at BOSMA000363 and it's the animal



1 inventory. Did the producer provide you this  
2 information again?

3 A Yes.

4 Q Do you recall if you were just told this information?

5 A I don't remember if they had documentation or if they  
6 just told me that.

7 Q And at the bottom of this page, it's the start of the  
8 liquid nutrient storage provision here. And if you  
9 flip it over to the next page, it says total storage  
10 under lagoon, et cetera, et cetera. But this chart  
11 isn't filled out. Do you know why this chart isn't  
12 filled out?

13 A No, I don't know why.

14 Q Did you inspect the lagoons?

15 A I would normally do it, so I would -- I don't know why  
16 that chart is not filled out.

17 Q When you inspect a lagoon, you would put that  
18 information into this report, right?

19 A Normally, yes.

20 Q So looking back at this, you're not really sure what  
21 the lagoon situation was at Bosma and Liberty  
22 facilities?

23 A Correct.

24 Q So you don't know what solid buildup was, what the dike  
25 condition, or how full they were?



1 A I did not write it down on this spreadsheet, no.

2 Q I notice you use the phrase "we -- when we go there."

3 Do you have somebody with you when you go inspect, or

4 is it just you?

5 A Just me.

6 Q So "we" being the collective Department of Ag?

7 A Yes.

8 Q That would be Washington Department of Ag?

9 A Yes.

10 Q Let's just go quickly to the Henry Bosma Dairy  
11 inspection form 2. If you look at this, it's pages 366  
12 through 368. Is there anything on those pages about  
13 the lagoons?

14 A No.

15 Q Do you know if these facilities use the same lagoons?

16 A I don't know for sure if they're pumped together -- or  
17 piped together or not. But they are in close proximity  
18 to each other.

19 Q Do you remember reviewing soil sampling records at this  
20 facility?

21 A Not the specifics.

22 Q Not the specifics. I'm now looking at BOSMA000364.

23 What were the number of fields that were acceptable for  
24 soil nitrate-N at these facilities?

25 A 763 acres acceptable, 637 acres that needed attention.



1 Q So just under half the fields had soil nitrate levels  
2 that gave you concern as an inspector?

3 A Yes.

4 Q What about soil phosphorus?

5 A 450 acres were in the acceptable range. 950 acres  
6 needed attention.

7 Q I'm going to show you some soil sampling records from  
8 these facilities, and I'm going to ask you the same  
9 question about whether you're familiar with them or not  
10 and whether you've seen them.

11 (Exhibit No. 9 marked for identification.)

12 MS. KRISTENSEN: Same objection regarding  
13 confidentiality.

14 Q Do these look like the documents you reviewed when you  
15 inspected the Bosma and Liberty facilities in 2013?

16 A I'm not sure.

17 Q Are these -- have you ever seen these documents before?

18 A I could have. I see many soil samples and manure  
19 samples throughout the year.

20 Q If you recall Cow Palace samples, they were from a lab.  
21 Is that typically what you would see when you inspect a  
22 facility, is the lab results itself?

23 A Yes.

24 Q You don't normally see summaries like this?

25 A Correct.



1 Q Let's look at the second page here. It's field No. 2.  
2 You'll see that this summary document has results from  
3 2008 through 2012. That first column says N. Do you  
4 know what that means?

5 A Nitrogen.

6 Q So 515. What does that mean?

7 A I would assume that it would mean 515 pounds per acre.

8 MS. KRISTENSEN: Just assumes -- lack of  
9 foundation. Calls for speculation.

10 Q And the P column?

11 MS. KRISTENSEN: Same objection.

12 A 296 parts per million.

13 Q So from these documents, it's tough to tell exactly  
14 what's going on?

15 A Correct.

16 Q Would you consider these type of documents insufficient  
17 for your inspection purposes?

18 A Yes. I would have liked to have seen the lab analysis.

19 Q Well, why don't we take a look at some of the lab  
20 analyses.

21 (Exhibit No. 10 marked for identification.)

22 Q These are going to be some of the 2012 records from  
23 Liberty Dairy.

24 MS. KRISTENSEN: Same objection regarding  
25 confidentiality.



1 Q Do you think these are the documents you looked at?

2 A They could have been. I don't know.

3 Q Are these more typical of the types of documents you  
4 would see when you ask for soil sampling records?

5 A Yes.

6 Q So these records have a little bit more information on  
7 them, just looking at the first page here. You can see  
8 on the left-hand side it says a field name and then  
9 it's got some other numbers there. Looking at the  
10 first column, the P, what is that P number?

11 A 158.

12 Q Is that too high?

13 A Yes.

14 Q Now, for the nitrogen column, it says NO3 and NH4. Do  
15 you know what NH4 is?

16 A It's the -- I can't think of the definition right now.

17 Q Is that something you would ever look at when you're  
18 reviewing soil sampling records?

19 A Typically I'm looking at NO3.

20 Q Well, let's flip the page. This document, again, is  
21 from October 12th of 2012.

22 A What page?

23 Q This would be 255. What were the soil nitrate levels  
24 on this field?

25 A The first field listed there is 248. And the second





1 field was 220.

2 Q Are those both too high than what you would like to  
3 see?

4 A They're higher than the 130, yes.

5 Q So I want to go a few pages in here. We'll look at one  
6 more. Let's flip into BOSMA338?

7 A (Witness complied.)

8 Q Tell me when you're there.

9 A All right.

10 Q The first field, it looks like it says field 8 south  
11 and below that field 8 north. What were the soil  
12 nitrate levels for those fields?

13 A South -- field 8 south was either 5- or 600. It's hard  
14 to see on this copy. And the next one is, I believe,  
15 570.

16 Q How would you characterize those soil nitrate results?

17 A Extremely high.

18 Q What would cause extremely high soil nitrate results  
19 like that?

20 MS. KRISTENSEN: Objection. Calls for  
21 speculation. Incomplete hypothetical.

22 A They could have applied manure recently or the sampling  
23 could have -- at the lab could have read wrong,  
24 overapplication, crop -- previous crop failure.

25 Q Do you have any records or did you see any records



1 about crop failures in this instance from Bosma and  
2 Liberty?

3 A I don't recall.

4 Q Did you hear or see anything about the timing of when  
5 these samples were taken?

6 A No.

7 Q Would that type of information appear in your  
8 inspection report if you had seen it?

9 A Yes.

10 Q Did you follow up from this inspection at all with the  
11 Bosmas?

12 A My -- I don't recall.

13 Q Do you recall sending a letter on May 17th of 2013 to  
14 Henry and Steve Bosma?

15 A Certainly could have. I don't know.

16 Q This is from the documents that we received. I'm going  
17 to show you a computer. We'll work on getting an  
18 exhibit on this soon. I just want you to take a look  
19 at this and see if it refreshes your recollection.

20 A (Witness complied.)

21 Q Now, at the top there it says there's a letter of  
22 warning for New House Dairy. But what does the first  
23 paragraph say?

24 A "On April 10, 2013, Washington State Department of  
25 Agriculture dairy nutrient management inspector Dan



1           McCarty conducted a routine inspection of your nutrient  
2           management operations and facility at H & S Bosma and  
3           Liberty Dairy."

4   Q       Do you remember why you wrote this letter now?

5   A       Yeah. It would have -- the records continued to be  
6           insufficient to show agronomic rates were used on  
7           multiple fields.

8   Q       Did this result in an enforcement action?

9   A       This is their letter of warning. It was the first step  
10          for enforcement.

11   Q       What happens next?

12   A       They go to a notice of correction.

13   Q       When would you know when to send the notice of  
14          correction?

15   A       Usually at the next routine inspection.

16   Q       How long is that from this last one?

17   A       18 to 22 months.

18   Q       So you would go back, inspect the records again --

19   A       Yes.

20   Q       -- and if you saw levels of concern, like some of the  
21          levels we were talking about --

22   A       Yes.

23   Q       -- would you then issue a notice of correction?

24   A       Yes.

25   Q       What would that notice of correction require the



1 Liberty and Bosma facilities to do?

2 MS. KRISTENSEN: Objection. Calls for  
3 speculation.

4 A They would need to continue to reduce those nutrient  
5 levels in those fields.

6 Q Any of those nutrients that are present in the soil now  
7 that were high, do you think they could possibly leach  
8 to ground water?

9 MS. KRISTENSEN: Objection. Beyond the  
10 scope -- not within this witness's expertise. Beyond  
11 the scope of his notice of deposition.

12 A Yes, it could, based on irrigation, precipitation, not  
13 have -- crop failure.

14 Q Do you inspect any dairies that have ground water  
15 monitoring plans?

16 A I don't, no. I don't.

17 Q Let's go back to the inspection report. If you don't  
18 mind, I'll take the computer back.

19 I'm looking at page BOSMA000365 now. So this will  
20 be near the end of the document, near the end of the  
21 Liberty document. In your comment section, I see that  
22 it says "WSDA would like to see soil test results less  
23 than 120 pounds per acre N and less than 40 PPM for P  
24 in the fall."

25 Why 120 for nitrates -- or for N, excuse me?



1 A That -- those numbers are shown to -- the 120 pounds  
2 per acre that we like to see going into winter, that  
3 will help with ground water, reduce runoff.

4 Q So you -- what's the difference between the 130 that we  
5 were talking about earlier and the 120 here? Is there  
6 two different numbers?

7 A No. It's -- the 130 -- I'm sorry. 130 was my mistake.  
8 It is 120.

9 Q 120, okay.

10 A Yes.

11 Q And you want to see levels of 120 in the fall?

12 A Less than 120.

13 Q And why is that again?

14 A To protect ground water.

15 Q How does it protect ground water to have soil nitrate  
16 levels that are less than 120 pounds per acre?

17 MS. KRISTENSEN: Okay. Beyond the scope --

18 A I don't know the scientific.

19 MS. KRISTENSEN: Mr. McCarty, I know this is  
20 hard because I'm over here, but after the question is  
21 asked, there's an opportunity for me to make an  
22 objection for the record. If you could just wait.  
23 I'll try to speak up a little bit faster perhaps. I  
24 need to make the objection before you answer. The  
25 objection is beyond the scope of this witness's



1 knowledge. Lack of foundation.

2 Q What was your answer again?

3 A I don't know the scientific reason behind that.

4 Q You notice how it says "WSDA would like to see soil  
5 test results less than the numbers in the fall"?

6 Was there a follow-up inspection at any point in  
7 time in the fall of 2013?

8 A I don't recall.

9 Q Did you ask these facilities to send you their soil  
10 sample information?

11 A I don't recall.

12 Q Well, before we take a quick break here, I just want to  
13 introduce your notice of deposition into the record as  
14 well, although I don't see that we have copies for  
15 this. We'll find them and follow right back up when we  
16 start. So why don't we take --

17 MR. TEBBUTT: Go ahead and introduce that and  
18 we'll make copies.

19 (Exhibit No. 11 marked for identification.)

20 (Off the record.)

21 Q Mr. McCarty, you understand you are still under oath,  
22 correct?

23 A Yes.

24 Q I want to circle back really quick to Cow Palace. And  
25 I want to ask you about a complaint that you



1 investigated after your April 2013 inspection. You  
2 sent a document to Cow Palace that followed up on a  
3 complaint about applying manure to a field. Does that  
4 sound familiar, sometime in May?

5 A I remember a complaint about -- that complaint.

6 Q So I'm going to show you this document to see if it  
7 refreshes your recollection. This is one of the  
8 documents --

9 MS. KRISTENSEN: Do we have a copy of it?

10 MR. SNYDER: This is one of the documents  
11 that we just received, so we're going to have to make  
12 copies on the break here.

13 Q If you scroll to the top here really quick, it says Cow  
14 Palace 1 and 2. Do you see where it says CAFO permit?

15 A Yes.

16 Q What is the CAFO permit?

17 A That's their -- I believe it's their NPDES -- permit  
18 with Department of Ecology.

19 Q Do you know if Cow Palace has a CAFO permit?

20 A No. In this particular program, a lot of this  
21 information is already filled out.

22 Q So someone --

23 A Someone --

24 Q -- previously had inserted that?

25 A Yes.



1 Q So we talked about the 2013 inspection. Did you  
2 inspect the Bosma and Liberty facilities in 2011?

3 A I would have to look at the inspection.

4 Q In 2011, did you investigate a complaint about the  
5 Bosma facilities concerning an irrigation pond that was  
6 constructed?

7 A I don't remember at this time if I did or not.

8 (Exhibit No. 12 marked for identification.)

9 Q Can you take a look at these documents I just handed  
10 you and see if that refreshes your recollection about  
11 the investigation I mentioned.

12 A (Witness complied.)

13 Q Do you recall now about this complaint?

14 A A little bit, yes.

15 Q What can you tell me about it?

16 A This was an irrigation pond that was constructed away  
17 from their facility in this particular field, and it  
18 was -- it was to be used for irrigation for this  
19 particular field.

20 Q Do you know if the facilities had planned at some point  
21 in the future to use this for manure storage?

22 A I don't remember that part of the conversation.

23 Q Let's look at -- it's labeled at the top here as  
24 CARE008417. And it's the ERTS form, Environmental  
25 Report Tracking System Input Form. I'm assuming you're





1 familiar with this document? What I want to ask you  
2 about is the follow-up information here at the bottom.  
3 Do you see the narrative? It says that on April 29,  
4 2011, Dan McCarty contacted Steve Bosma to determine if  
5 this is actually a dairy lagoon or an irrigation pond.

6 Do you know if this irrigation pond was lined in  
7 any way?

8 A I don't think it was. I don't see it -- lining in the  
9 pictures.

10 Q And what picture are you looking at there? Can you  
11 just identify the page number at the top for me?

12 A CARE008413.

13 Q If you want to look at the page just before the one  
14 you're talking about, 8412, it's an email to Jan  
15 Whitefoot from Charlie McKinney. Do you know who  
16 Mr. McKinney is?

17 A Yes.

18 Q Do you work with Mr. McKinney?

19 A No. He's within the Department of Ecology.

20 Q If you look just above that, it's a forward. It says,  
21 "Dan, passing this on to you, FYI."

22 So did you receive this email?

23 A Probably.

24 Q Second full paragraph there in the actual email itself,  
25 says "Mr. Bosma indicated the intent to potentially use



1 the pond as a manure storage lagoon." Do you see that?

2 A Yes. I do see that paragraph.

3 Q Do you -- did you inspect this lagoon during the 2013  
4 inspection?

5 A I don't remember if I did or not.

6 Q Do you remember going back at all to look at this  
7 lagoon after you initially investigated?

8 A No.

9 Q Would construction of a lagoon like this require an  
10 update to a dairy nutrient management plan?

11 A Yes, if it was going to be used as a lagoon.

12 Q And do you know if this lagoon was designed or  
13 engineered to meet the NRCS standards?

14 MS. KRISTENSEN: Objection. Calls for  
15 speculation.

16 A I don't know if it was engineered or not.

17 Q Could you look at the last page of the ERTS form? Very  
18 last page. One more over.

19 A It says, "This pond is not -- was not designed or  
20 engineered by NRCS. It is not lined."

21 Q Thank you. So 2011 -- discussed whether you inspected  
22 the Bosma/Liberty facilities in 2011. I'm going to  
23 hand you another inspection report.

24 (Exhibit No. 13 marked for identification.)

25 Q Take a look at that for a moment, Mr. McCarty, and let



1 me know if this is the inspection document you filled  
2 out.

3 A (Witness complied.)

4 MS. KRISTENSEN: This one is a CARE document.  
5 I think I've seen things that we produced that have a  
6 confidentiality delineation. Without having to dig  
7 through everything, to the extent we've produced this  
8 with a confidential designation, I just want to  
9 continue that objection. I'm not saying we have,  
10 because I don't want to delay your deposition, but I  
11 also don't want to waive that ability.

12 MR. SNYDER: Understood.

13 Q So did you inspect the Liberty and Bosma facilities on  
14 February 28th of 2011?

15 A Yes.

16 Q Can you walk me through what happened, to the best of  
17 your knowledge -- to the best of your recollection?

18 A This probably was my first time on this, so -- on this  
19 facility since I started in June of 10 -- 2010. Did a  
20 walk-through of the facility. They explained -- they  
21 probably explained how the facility -- or how the  
22 manure went from parlor and alleyways, how it was  
23 collected and transferred to storage. And then we  
24 probably went out and looked at fields and then came  
25 back and looked at records.



1 Q On BOSMA000354 -- it's page 3 of 10 -- you'll see in  
2 the middle there it says, "Acreage NMP was developed  
3 for" and then "current acreage." What was the current  
4 acreage at the time you inspected these dairies?

5 A 2090.

6 Q Did you go inspect all of these fields?

7 A I don't recall if we did or not.

8 Q If you inspect -- strike that.

9 When you inspect a facility, do you generally  
10 inspect the fields that are in the immediate proximity,  
11 or do you go to every field that's identified in the  
12 NMP?

13 A I try to go to every field in the nutrient management  
14 plan.

15 Q About how often do you think you get to all the fields?  
16 More than half the time?

17 A I try to, you know, to do them all the time. But, you  
18 know, I don't know if we looked at all 2900 -- or 2090  
19 acres.

20 Q Same page, similar question here. "Dairy from NMP" and  
21 then the dairy numbers they have. Where did you get  
22 those numbers?

23 A I was probably told by the producer.

24 Q Now, if we go forward two pages to BOSMA356, again,  
25 this is going to be at the bottom of the page. This is



1 the lagoon information. Does this identify how many  
2 lagoons the Bosma Dairy and Liberty Dairy have?

3 A No.

4 Q If you look up a little bit, does it say the number of  
5 lagoons?

6 A Yes. 17, yes.

7 Q In the bottom, the chart that we've seen in the past  
8 isn't there. Do you know why that chart isn't there?

9 A I don't recall at this time why it wasn't there.

10 Q Did you go and inspect every lagoon at the facility  
11 during this inspection?

12 A I would have assumed so, yes.

13 Q How did you come up with the number 80 for how full?

14 A That came from the producer.

15 Q So did the producer tell you that all of their lagoons  
16 were 80 percent full?

17 A I don't recall that -- how that conversation went.  
18 Total capacity is probably 80 percent.

19 Q And the solids buildup were light on all of the  
20 lagoons? Did the producer tell you that as well?

21 A No. Those would have been my comments.

22 Q So if we go to page BOSMA359, how many fields at the  
23 Bosma facilities were acceptable for nitrate-N?

24 A All -- 290 acres -- or 2090 acres.

25 Q And how about for phosphorus?



1 A Zero were in the acceptable.

2 Q So all of them --

3 A All of them needed attention.

4 Q All of these fields needed attention.

5 The first page of this document is a follow-up to  
6 the inspection, right?

7 A This would have been an outcome letter, yes.

8 Q And you sent this letter, right?

9 A Yes.

10 Q Here it says that approximately 1800 to 2500 acres,  
11 which we know would be 2098 from the other document,  
12 have elevated nitrate and phosphorus levels. Is there  
13 a reason why the follow-up says there was elevated  
14 nitrate levels and the report doesn't?

15 A No. I don't know.

16 Q Did you review soil samples when you inspected the  
17 dairy at this time?

18 A Yes.

19 Q Do you know what years you looked at?

20 A The years on the report were from 2004 to 2010.

21 Q So you're looking at BOSMA00358 right now?

22 A Yes.

23 Q And what numbered paragraph?

24 A On question No. 5: "Are soil records maintained?

25 Yes."



1 Q So I see the check box that says three years. But then  
2 it says "Years maintained: 2004 to 2010."

3 Does that mean you looked at six years past soil  
4 sampling records during this inspection?

5 A I would have been focussed on the most recent ones.

6 Q So this inspection being in 2011, that probably would  
7 have been 2010 and 2009?

8 A Probably, yes.

9 (Exhibit No. 14 marked for identification.)

10 Q This is Exhibit 14. Soil samplings records from 2010?

11 MS. KRISTENSEN: Same objection.  
12 Confidentiality.

13 Q I'll apologize for the quality of these documents, but  
14 this is how they were provided to us.

15 Do you think you looked at these records when you  
16 did your 2011 inspection?

17 A I certainly could have. I don't recall specifics.

18 Q Let's look at BOSMA271.

19 A (Witness complied.)

20 Q I see there's a number of fields identified on the left  
21 there. I know it's hard to read, but do you think you  
22 could tell me what field numbers those are?

23 A Bronwest pivot [phonetic]. I don't know what  
24 field -- field by something else. I don't know.

25 Q Looking at the NO3-N levels for the fields that are



1 identified for that page, are any of them below 120  
2 pounds of N per acre?  
3 A Yes.  
4 Q Which one?  
5 A The bottom two.  
6 Q What fields are those?  
7 A The Bronwest pivot and that field by something I can't  
8 read.  
9 Q And what page are you looking at right now?  
10 A 274.  
11 Q 274. Let's go to 271.  
12 A (Witness complied.)  
13 Q Are you with me?  
14 A Yes.  
15 Q What is the date up in the upper left-hand corner there  
16 for these samples?  
17 A October of 2010.  
18 Q So are these --  
19 A Would be the date.  
20 Q Would these be the postharvest samples?  
21 A They could be.  
22 Q And if you look at the soil N levels here at the center  
23 column, nitrogen NO<sub>3</sub>-N, how many are above the 120  
24 pounds per acre?  
25 A All six of them.





1 Q Are there concerns about having all six of those fields  
2 in fall having numbers that high?

3 A Typically, unless they were being double cropped, had a  
4 crop on them that fall.

5 Q Do you know if they had a crop on them that fall?

6 A Doesn't say.

7 Q Do the records that you looked at indicate that they  
8 are going to have a crop in 2010 that fall?

9 A That might have been a side conversation.

10 Q Who would that have been a conversation with?

11 A Either Steve or Henry. I don't remember. I don't  
12 remember who was there.

13 Q In any event, these numbers were such that you followed  
14 back up and said you need to correct the levels?

15 A Yes.

16 Q And in 2013, inspection report we were talking about  
17 earlier, you also had to tell them to correct the  
18 levels, right?

19 A Yes.

20 Q And then you sent them another follow-up letter that we  
21 were talking about before the break that was the  
22 warning letter about correcting levels, correct?

23 A Correct.

24 Q We are going to leave the Bosma facilities behind and  
25 move on to D & A and DeRuyter.



1                   Are you familiar with the D & A Dairy?

2 A       Yes.

3 Q       Are you familiar with the George DeRuyter & Sons Dairy?

4 A       Yes.

5 Q       Do you know the people who own the dairy?

6 A       I know them on a professional level, yes.

7 Q       Have you ever met them outside of your job?

8 A       No.

9 Q       Do you know how many times you've inspected the D & A

10        facility?

11 A       Without looking at the records, I'm going to assume

12        twice.

13 Q       How many dairies do you inspect a year?

14 A       I have 150 in my territory that I inspect every 18 to

15        22 months, so approximately half of that.

16 Q       So on a rolling basis?

17 A       Yes.

18 Q       Do you keep notes from the inspections --

19 A       No.

20 Q       -- handwritten notes at all?

21 A       No.

22 Q       Everything goes into the --

23 A       Everything goes into the inspection report.

24 Q       And now that's the computer report, right?

25 A       Yes.



1 Q Do you put pictures or anything into those reports that  
2 you take?

3 A For investigations and complaints, yes.

4 Q So when you inspect the D & A and the DeRuyter Dairies,  
5 do you typically inspect them at the same time?

6 A Yes.

7 Q Why is that?

8 A Because they're under the same management.

9 Q Do you recall investigating -- excuse me, inspecting  
10 the D & A in March of 2013?

11 A No.

12 Q If I showed you the inspection report, would that help?

13 A Yes.

14 (Exhibit No. 15 marked for identification.)

15 Q I'm also going to give you the DeRuyter inspection  
16 report too. They are separate forms, but like you  
17 said, you inspect them at the same time, so it would be  
18 best to look at them both together.

19 MS. KRISTENSEN: Same objection.

20 Confidentiality objection to 15 and 16.

21 MR. TEBBUTT: For the record, the last one is  
22 Exhibit 14 or 15?

23 THE COURT REPORTER: 15.

24 MR. SNYDER: And this will be 16.

25 (Exhibit No. 16 marked for identification.)



1 Q Did you do anything to prepare for these inspections?

2 A I would have looked at previous inspection reports.

3 Q And are those in your files?

4 A As I said earlier, paper copies have all been converted  
5 to the electronic forms.

6 Q So they're all on your hard drive, right, or some hard  
7 drive somewhere that you have access to?

8 A Yes.

9 Q Do you typically look at your previous inspection forms  
10 before you go and inspect a facility?

11 A Yes.

12 Q So for the Bosma one, you would have looked at 2011 for  
13 your 2013?

14 A (Witness nodded head affirmatively.)

15 Q Do you go back further than that?

16 A The first time around, the first round of inspections,  
17 I did for sure. If I didn't find any compliance issues  
18 on my first round, then after that, I didn't go back  
19 any further. I think that's my one --

20 Q So on the first round, did you go back ten years?

21 A As far back as we had records.

22 Q Do you know how far back your records go?

23 A The program started in '98, so...

24 Q So since '98.

25 So the D & A Dairy -- we're looking at page 89



1 here on D & A Dairy. Same process, do you start by  
2 looking at the fields?

3 It might be the other form that we're looking at  
4 now.

5 A This is D & A. This is George DeRuyter & Sons.

6 Q At the bottom, you'll notice some will be labeled  
7 GEOMAR with a number, and some will be labeled DADAIRY  
8 with a number. So I'll do my best to be clear and go  
9 back and forth.

10 A You said 89? I don't have page 89. 89 is the first  
11 page of D & A Dairy, yes.

12 Q Yes.

13 A Okay.

14 Q So this is the first page of your inspection report?

15 A Yes.

16 Q So back to my question: Do you remember starting with  
17 the fields?

18 A The fields and the lagoons, yes.

19 Q Do you know if D & A Dairy and George DeRuyter & Sons  
20 Dairy share fields?

21 A Yes.

22 Q So they use the same application fields for both  
23 facilities?

24 A Yes. And their lagoons are piped together as well, so  
25 they can go back and forth to the digester.



1 Q Are all of the lagoons piped together?

2 A I don't know that.

3 Q Does D & A Dairy have its own lagoon system?

4 A Yes.

5 Q And then there's a pipe at some point that goes to  
6 George DeRuyter & Sons. You said it goes to what?

7 A The digester.

8 Q What's the digester?

9 A It's a machine to produce energy.

10 Q Do you know how much manure D & A Dairy sends to the  
11 digester?

12 A No.

13 Q Do you know if the pipe can work both ways? Can George  
14 DeRuyter & Sons pump to D & A?

15 A I think they can, but I'm not sure.

16 Q Let's look at D & A page 90. It's the next page.  
17 Again, we've got an identification of the number of  
18 milking cows and what the NMP requires.

19 Do you know how you got this information?

20 A The NMP came out of their dairy nutrient program or  
21 plan. The current numbers was given to me by the  
22 producer.

23 Q So the current numbers here is 3,000, right?

24 A Yes.

25 Q What was the amount allowed under the NMP?



1 A 2,400.

2 Q Does that require an update to the NMP to have that  
3 discrepancy?

4 A It's over 10 percent, yes.

5 Q So over 10 percent of 2,400 is 240?

6 A Yeah.

7 Q So at some point, D & A Dairy, whenever it surpassed  
8 2,640, if my math is right, should have gone and  
9 updated their NMP?

10 A Yes.

11 Q Why is it important to do that?

12 A That way you can balance for the amount of nutrients  
13 produced at the dairy to keep track of them.

14 Q So if D & A Dairy here had more animals than what their  
15 NMP was designed for, would they have to increase their  
16 acreage, as well, then?

17 MS. KRISTENSEN: Objection. Calls for  
18 speculation. Lack of foundation.

19 A It's probably recommended, yes.

20 Q And that would be acreage for amount of manure  
21 application?

22 A Yes.

23 MS. KRISTENSEN: Same objection.

24 Q Let's turn the page to 91, DADAIRY91. We're back at  
25 our chart now. You'll see this chart has four lagoons



1 identified. Do you remember looking at these lagoons?  
2 A I don't remember looking at them right now, but  
3 probably did back then.  
4 Q And how did you determine that all of them were 50  
5 percent?  
6 A That's what the producer told me.  
7 Q Is there like a measuring stick or something in  
8 dairies' lagoons?  
9 A I don't know. I don't remember.  
10 Q And for the solids buildup where it says "light," did  
11 the producer tell you that as well, or --  
12 A No. I made that assessment as well as dike condition.  
13 Q Do you know how long you spent at D & A's lagoons to  
14 make that assessment?  
15 A Five to ten minutes.  
16 Q Is that per lagoon or total?  
17 A Per lagoon.  
18 Q Now, at the bottom of the page here, it says -- same  
19 page you're on. You've got a comment that says the NMP  
20 does not account for the current cow numbers. I think  
21 that's what we were just talking about. It says, "See  
22 George DeRuyter & Son's RT -- is that the routine --  
23 A Yes.  
24 Q Did you tell them that they had to update their NMP?  
25 A I did note on my inspection report for -- on page 91





1           that they needed to do a NMP update.

2                       MS. KRISTENSEN:  What page was that,  
3           Mr. McCarty?

4                       THE WITNESS:  91.

5  Q       Is that something you would follow up on in a later  
6       inspection?

7  A       At the -- probably at the next routine inspection, yes.

8  Q       And how does a producer go about updating their NMP?

9  A       They can either hire a private consultant to do them or  
10       have the local conservation district do them.  The  
11       local conservation has to sign off on them.

12  Q       Is that the certification process?

13  A       Yes.

14  Q       What does that entail?

15  A       That they've gone through all of the -- or  
16       any -- they'll do -- the conservation district or the  
17       private consultant will do a -- kind of an inventory of  
18       what's available.  They'll look for different types  
19       of -- or different issues, like -- and make sure that  
20       they've got enough storage.  They calculate the amount  
21       of storage.  And then, you know, they've implemented  
22       all the best management practices, such as installed  
23       gutters or whatever.  Then the conservation district  
24       will sign off on it.

25  Q       Is it required to have a conservation district certify



1 an NMP?

2 A Yes.

3 Q In your experience as an inspector, how many dairies  
4 work with the conservation district on NMP updates?

5 A All of them that I'm aware of, if they don't have  
6 private consultants working on them.

7 Q So the producer would go to the conservation district  
8 and say this is where we're at. Help us update it?

9 A Yes.

10 Q At the end of your inspection report, there's another  
11 email here. It's DADAIERY000152. Do you see that you  
12 were cc'd on this email at the top there?

13 A Yes.

14 Q This email says that a letter of warning was sent on  
15 May 17, 2013. Do you recall what that letter of  
16 warning was about?

17 A It was high nitrate levels.

18 Q What were those levels? I think it's identified in the  
19 email there.

20 MS. KRISTENSEN: I just want to clarify. To  
21 be sure, what facility are we referring to in this  
22 email? It appears to be attached to the back of this,  
23 but based on the document, Dan, that you showed on the  
24 computer that we didn't have a copy of that we just  
25 got, it was May 17, 2013, warning letter. So I don't



1 want to confuse facilities. I just want to be clear  
2 about what we're talking about here.

3 MR. SNYDER: This one at the top has D & A  
4 Dairy written on it.

5 MS. KRISTENSEN: In handwriting by somebody.

6 A Those levels were somewhere between 300 and 600 pounds  
7 per acre.

8 Q Do you know whose handwriting that is that wrote D & A  
9 Dairy at the top?

10 A No.

11 Q That's not yours?

12 A No.

13 Q Are 300 pounds and 600 pounds per acre high?

14 A Yes.

15 Q At the bottom there, it says, "On the phone, you said  
16 your February 2013 soil sample shows nitrate levels had  
17 dropped significantly." In the next paragraph, it  
18 says, "Inspector McCarty indicated that the spring soil  
19 nitrate levels were quite high."

20 Do you remember what those levels were?

21 A Not without looking at the samples.

22 Q Would it have been over 120 pounds per acre?

23 A Yes.

24 Q Let's turn to the George DeRuyter & Sons Dairy  
25 inspection form. This is 16, the other one that we



1           were just talking about. Let's turn to second page,  
2           GEOMAR000130. Again, "Detail of Current Animal  
3           Inventory." Did the producer give you these numbers?  
4 A        I got the animal numbers from the nutrient management  
5           plan out of the plan and then the current numbers  
6           were -- was given to me by the producer.  
7 Q        And on the next page, 131, it's the lagoon chart. Did  
8           you inspect all these lagoons when you inspected the  
9           George DeRuyter & Sons Dairy?  
10 A       Probably.  
11 Q       How did you make determinations on how full each lagoon  
12           was?  
13 A       Again, the producer gave me the estimate.  
14 Q       And the solids buildup?  
15 A       I did. I collected that data.  
16 Q       Dike condition?  
17 A       And that one as well.  
18 Q       And, again, about five to ten minutes per lagoon, you  
19           would say?  
20 A       Yes.  
21 Q       And these are all visual inspection, right?  
22 A       Yes.  
23 Q       You don't have any tools or anything?  
24 A       No.  
25 Q       On the same page here, at the bottom has soil nitrate-N



1 and it says that 5,830 are acceptable and 470 need  
2 attention.

3 Is there -- how much acres does the DeRuyter  
4 facility have for applying manure?

5 A The number I was given was 6300.

6 Q And to your knowledge those are fields that are shared  
7 with D & A Dairy, correct?

8 A Yes.

9 Q Did you inspect all of those fields?

10 A I can't be sure, but we did drive through  
11 fields -- around fields.

12 Q Do you think you drove through 6,000 acres of fields or  
13 around 6,000 acres of fields?

14 A I don't remember.

15 Q Do you remember how much time you spent looking at the  
16 fields during this inspection?

17 A No. The total inspection time was two and a half  
18 hours, so I don't remember.

19 Q Okay. Do you know -- have an idea how long it would  
20 take you to drive around 6,300 acres of fields?

21 A That depends on the number of fields. If it's all one  
22 field, it's not going to be that tough or that long.

23 Q Do you know how many fields these facilities have?

24 A I don't recall at this time.

25 Q Your comments under the soil nitrate-N say that the



1 D & A small pivot equalled 474 pound N per acre. Was  
2 that NO3-N per acre?

3 A Yes.

4 Q Would that have been in the top one foot?

5 A Yes.

6 Q How would you characterize that result?

7 A Extremely high.

8 Q How about the next one, D & A large pivot? What was  
9 the number there?

10 A 483 pounds per acre.

11 Q How would you classify that?

12 A High.

13 Q The next one, GDR?

14 A 654 pounds N per acre. Again, those are all high.

15 Q Would you say that's extremely high?

16 A Yes.

17 Q Did you look at soil sampling from these facilities  
18 during this inspection?

19 A I would assume so.

20 Q Do you know who -- whether D & A Dairy and George  
21 DeRuyter & Sons Dairy take their own samples?

22 A I don't know who collects the samples.

23 Q This being a 2013 report, would it be fair to say that  
24 you looked at the 2012 sampling inspection?

25 A Fair, yes.



1 MS. KRISTENSEN: Same objection regarding  
2 confidentiality.

3 (Exhibit No. 17 marked for identification.)

4 Q Do you know who N3 is?

5 A I know one of the partners in there.

6 Q Who's that?

7 A David Haggith.

8 Q How do you know Mr. Haggith?

9 A He is a private consultant on several other facilities  
10 that I inspect.

11 Q Do you know him on a professional basis?

12 A Yes.

13 Q Do you know him on a personal basis?

14 A No.

15 Q So looking at these records, let's look at  
16 GEOMAR000323. This is a 2012 document that N3  
17 Consulting created. This is for field JDR [sic] 1,  
18 right?

19 A Yes.

20 Q Do you remember looking at this document when you  
21 inspected these facilities?

22 A No, I don't.

23 Q Could you have looked at this document?

24 A Could have, yes.

25 Q Here it's got "report card test." Do you see that?



1 It's in the middle there.

2 Do you know what the report card test is?

3 A No, I don't.

4 Q Do you see how it says NO3-N to the right of it, and  
5 then it has PPA, pounds per acre. Is this the soil  
6 nitrate levels?

7 MS. KRISTENSEN: Lack of foundation. He says  
8 he doesn't know what it is. Calls for speculation.

9 A I don't know what the report card is.

10 Q Let's turn the page one over to 324. This will be  
11 JDR [sic] 2.

12 A (Witness complied.)

13 Q Again, I'm looking at the report card tests for October  
14 19th.

15 Would a soil NO3-N result of 1039 pounds per acre  
16 be considered high?

17 A Yes.

18 Q How high?

19 A Extremely high.

20 Q What are the consequences of having that high of a soil  
21 nitrate level in the top one foot of soil coming into  
22 fall?

23 MS. KRISTENSEN: Objection. Beyond the  
24 expertise of this witness.

25 A Potential to pollute ground water.





1 Q Let's flip to 331. It's going to be five pages over, I  
2 think. And this is a field identified as Trevino. Do  
3 you remember if you inspected a field called Trevino?

4 A Yes. It says here I did -- or I made note of it,  
5 anyhow.

6 Q What are the report card numbers on this document?

7 A April 5th, 1185 --

8 MS. KRISTENSEN: Again, I'm going to object.  
9 Lack of foundation. He's testified he doesn't know  
10 what this is. He's just reading the document.

11 A October 19th, 1257.

12 Q Would a soil nitrate-N. result of 1185 in spring give  
13 you concern?

14 MS. KRISTENSEN: Objection. Incomplete  
15 hypothetical. Misleading.

16 A Yes, it would. The corn crop should only use about 300  
17 pounds of N breaker.

18 Q Where do you see the corn crop here?

19 A It says "corn crop" up at the top.

20 Q And it says 2012/2011, and then corn -- corn. So does  
21 that -- what does that mean to you?

22 A That would tell me that they had corn in 2011 and corn  
23 in 2012.

24 Q Would you expect a spring manure -- spring soil nitrate  
25 result of 1185 to go down after a crop of corn has been



1 pulled off in fall?

2 A Yes.

3 Q What would cause it to go up instead?

4 MS. KRISTENSEN: Objection. Calls for  
5 speculation. Beyond the expertise of this witness.  
6 Lack of foundation.

7 A Crop failure, nutrient application made before the soil  
8 test.

9 Q Further down on this document, it says "crop nutrient  
10 uptake." Do you see that?

11 A Yes.

12 Q Do you see where it says "crop, corn"?

13 A Yes.

14 Q And the harvest date?

15 A Um-hmm. Yes.

16 Q What was the yield of the corn that was harvested? Can  
17 you determine that information from looking at this?

18 A 24 ton to the acre.

19 Q Would that be a failed corn crop?

20 A I don't believe so.

21 Q Okay. And just to circle back one more time here, you  
22 don't recall whether these were the records you viewed  
23 when you inspected the dairy?

24 A That's correct.

25 Q Do the DNMPs require fall postharvest manure



1 samples -- or, excuse me, soil samples?

2 A They recommend them, yes.

3 Q Why is that?

4 A To keep an eye on the nitrate levels and nutrient  
5 levels that could be flushed into ground water through  
6 irrigation or precipitation.

7 Q Would a failure to take a fall sample be a violation of  
8 the DNMP?

9 MS. KRISTENSEN: Objection. Calls for  
10 speculation. Incomplete hypothetical. Lack of  
11 foundation.

12 A Again, the nutrient management plan is an advisory  
13 document. But we do require under the Dairy Nutrient  
14 Management Act that they collect annual samples.

15 Q Would that be annual postharvest samples?

16 A That's what's recommended, yes.

17 Q And what is the importance of the postharvest samples?

18 A To see how much nutrients has been taken out of the  
19 soil by the crop and how much is going into winter.

20 Q Would you have looked at the 2011 soil samples during  
21 your inspection?

22 A Probably.

23 MS. KRISTENSEN: Same objection regarding  
24 confidentiality.

25 (Exhibit No. 18 marked for identification.)



1 Q So these are the N3 records for the fields operated by  
2 George DeRuyter & Sons Dairy and D & A Dairy by N3  
3 again.

4 If we flip to GEOMAR000297, does it identify what  
5 field that is at the top?

6 A It says GDR 1.

7 Q Is that one of the fields that you would have inspected  
8 when you went to these dairies?

9 A It could have been, yes.

10 Q Looking at the report card test again, what's the date  
11 there?

12 A April 6th.

13 Q Is there a fall test identified on this document?

14 A Not on this document, no.

15 Q Let's turn the page and look at JDR [sic] 2. This is  
16 field JDR 2.

17 MS. KRISTENSEN: Dan, you keep saying J but  
18 it's G.

19 MR. SNYDER: Excuse me. GDR 2. Thank you  
20 for the correction.

21 Q Again, looking at this, is there a soil sampling report  
22 under report card test?

23 A No.

24 Q Turn the page to fields grapes E. Is there a fall test  
25 there?



1 A There's not one listed.

2 Q And the next page. Fall test on that one?

3 A There is not one listed.

4 Q And what field is that?

5 A Grapes west -- or W.

6 Q The next page is field D & A Big Pivot. Now is this  
7 one of the fields that you identified as having high  
8 nitrate levels? I think that would be in the George  
9 and Margaret GEOMAR document. I think you're looking  
10 at it right there.

11 A Yes. -- this recalls D & A large pivot and this  
12 document says D & A big pivot.

13 Q Do you think those are the same fields?

14 A I would assume so, but I'm not sure.

15 Q Does that have a fall test?

16 A No.

17 Q And then D & A small pivot. Is that one of the fields  
18 that you identified in your inspection report?

19 A Yes.

20 Q Does that have a fall sample?

21 A No.

22 Q Do you remember investigating a leak from the digester  
23 pipe in 2011 between these facilities?

24 A Vaguely, yes.

25 Q I want to talk a little bit about that.



1 (Exhibit No. 19 marked for identification.)

2 MS. KRISTENSEN: Same objection regarding  
3 confidentiality.

4 Q Mr. McCarty, do you recognize these documents here that  
5 are part of this exhibit?

6 A Yes.

7 Q Can you tell me a little bit about what happened?

8 A The narrative on the recommendation -- or livestock  
9 nutrient management program's recommendation for  
10 enforcement action says that "Approximately noon on  
11 June 12, 2011, digester effluent was transferred from  
12 the DeRuyter digester located at George DeRuyter Dairy  
13 lagoon storage located at D & A Farms. George DeRuyter  
14 Dairy and D & A Farms are nearly two miles apart.  
15 There is a conveyance system between the two dairies to  
16 allow liquid dairy manure from D & A Farms to be  
17 transferred to the digester at the George DeRuyter  
18 Dairy and post-digester water to be transferred to  
19 multiple lagoons both at George DeRuyter Dairy and D &  
20 A Farms.

21 "During the transfer on June 12, 2011, between  
22 lagoon 1 and 2 at D & A Farms, digester effluent  
23 exceeded the capacity of the transfer pipe resulting in  
24 effluent seeping around the pipe" --

25 Q Let's stop there for a second.



1           What would cause the effluent to exceed the  
2           capacity of the pipe?

3           MS. KRISTENSEN:  Objection.  Lack of  
4           foundation.  Calls for speculation.

5  A       They exceeded their capacity on the lagoon or  
6       they -- some kind of equipment failure.

7  Q       You said "exceeded the capacity on the lagoon."  Are  
8       you saying there was too much manure in the lagoon?

9           MS. KRISTENSEN:  Same objection.  Lack of  
10          foundation.  Calls for speculation.  If the witness has  
11          personal knowledge, he can testify, but I object to the  
12          speculation.

13 A       I don't -- I don't -- I don't know if there was too  
14       much manure in the lagoons or what happened.  That was  
15       three years ago.

16 Q       Okay.  Do you know if George DeRuyter or D & A  
17       investigated what could have caused the exceedance in  
18       the pipe, the exceedance of the capacity of the pipe?

19 A       You would have to ask them.

20 Q       Did you investigate what could have caused the  
21       exceedance in the pipe?

22 A       I can't remember the details of the inspection.

23 Q       Why don't you take a minute or two and just go through  
24       these documents and see if that helps.  There is some  
25       history and narrative on CARE9319 through 9320.



1 A (Witness complied.) The only inspection that I can  
2 comment on is the January 25, 2011.

3 Q And what page are you looking at?

4 A 9319.

5 Q Okay. And that would just be the routine inspections?

6 A Correct. I was not employed with the Department of  
7 Agriculture during those other three.

8 Q And when you independently investigated this discharge,  
9 did you ask what caused the pipe to exceed its  
10 capacity?

11 A I did, and I don't see what -- I'm assuming, but I  
12 don't see where that got put into this report.

13 Q Okay. Do you remember what you told the D & A and  
14 DeRuyter facilities to do to rectify this problem?

15 A On the narrative part on page 3 -- I'm sorry, 9320,  
16 June 13, 2011, when I met with Dan DeRuyter at the  
17 location where the water flowed into an irrigation  
18 recovery pond south of D & A Farms, DeRuyter Farms were  
19 pumping the water from the pond north to one of the  
20 dairy's lagoons. Mr. DeRuyter was also meeting with  
21 Sunnyside -- or SVID -- which is one of the irrigation  
22 districts --

23 Q Is that the Sunnyside Vail [sic] Irrigation District?

24 A I believe so. I'm not sure what the V stands for.

25 -- personnel Brian Moore to discuss options to





1 prevent more water from entering the drainage ditch.  
2 It was suggested that Mr. DeRuyter continued to pump  
3 water out of the pond below the level of the broken  
4 pipe in order for SVID to make repairs. Mr. DeRuyter  
5 was attempting to pump water that was located in the  
6 SVID manhole located just below the pond. It was  
7 flushed with fresh water and pumped out into a pumper  
8 truck.

9 9:45, I met with Elaine Brouillard and Matt Morgan  
10 with the SVID to collect water samples to test for  
11 fecal. One sample was taken in a manhole. One was  
12 taken north upstream of the dairy on Knowles Road. A  
13 third sample was taken near the intersection of Dekker  
14 Road and Isaacs Road to the south, downstream, of the  
15 dairy, once the pipe daylighted.

16 Q Do you remember what the results of those tests were?

17 A The upstream on Knowles Road, fecal count was 1730 CFU  
18 per 100 milliliters. At the manhole onsite was 35,500  
19 CFU per 100 milliliters, and Isaacs Road downstream was  
20 10,460 CFU per 100 meters [sic].

21 Q Do you know how the manure got into this drainage pipe?  
22 Or maybe I should say the digester effluent reached the  
23 drainage pipe?

24 A According to the narrative, the effluent exceeded the  
25 capacity of the next overflow pipe between lagoons 2



1 and 3 resulting in digester effluent flowing into an  
2 irrigation recovery pond.

3 Q Have you ever heard or have you ever received  
4 complaints about manure trucks spilling manure onto the  
5 roadway?

6 A Yes.

7 Q How many complaints do you get of that nature a year?

8 A I would have to go back through my records. I don't  
9 know off the top of my head.

10 Q More than ten?

11 A Yes.

12 Q More than 50?

13 A I don't think so.

14 Q More than 20?

15 A Honestly, it's somewhere between that 10 and 50.

16 Q Do you know or do you recall a complaint about a  
17 DeRuyter truck spilling manure onto a roadway in 2011?

18 A If you can show me the inspection report.

19 Q I will.

20 (Exhibit No. 20 marked for identification.)

21 MS. KRISTENSEN: Same objection regarding  
22 confidentiality.

23 Q So the first page here says -- it's a letter from you  
24 to Dan DeRuyter at D & A Farms. It's referring to the  
25 inspection that you conducted regarding the complaint



1 at the corner of Pump House Road and Lateral C near  
2 Harrah. Do you recall investigating this complaint?

3 A I see where I responded to it on the telephone.

4 Q Did you only respond to this complaint via the phone?

5 A It would appear so, yes.

6 Q I'm looking at page 135, DADAIRY135 at the bottom of  
7 the narrative there. It says, "The tribal policeman,  
8 Rick Hayes, arrived onsite and told Mr. DeRuyter how to  
9 clean up the spill."

10 First, why is a tribal policeman reporting to  
11 this?

12 MS. KRISTENSEN: If you know.

13 A Because Pump House Road and Lateral C are on the Yakima  
14 Indian reservation.

15 Q Did you go out and inspect the cleanup that was  
16 completed?

17 A No.

18 Q Do you usually go and inspect cleanups of spills that  
19 happen on the roadway?

20 A We don't have jurisdiction on the reservation. So I  
21 did not, because of this -- the location, I did not.

22 Q If there was a spill on a roadway that was not within  
23 jurisdiction of the Yakima --

24 A Usually I would, yes.

25 Q And would you direct the cleanup?



1 A Yes.

2 Q How would you usually direct the cleanup? What would  
3 you tell a producer to do or the responsible party?

4 A It depends on whether it's solids or liquid manure. If  
5 it's solids, then they can be swept up and put back in  
6 the truck. Otherwise, I would recommend a street  
7 sweeper for the liquid and then do a wash down with  
8 fresh water and then vacuum that up.

9 Q When you say "wash down with fresh water," what does  
10 that entail?

11 A Just a light water, 50, 60 gallons, depending on the  
12 size of the spill, so that it doesn't leave the roadway  
13 and go into a ditch or water.

14 Q And vacuuming that up, would that be using the  
15 Honey-Vac?

16 A Could be, yes.

17 Q Did you issue any corrective actions against the  
18 DeRuyter or D & A facility for the spill?

19 A It does not appear that I did.

20 Q Okay. Do you recall inspecting the D & A Dairy and  
21 George DeRuyter Dairies in 2011?

22 (Exhibit No. 21 marked for identification.)

23 MS. KRISTENSEN: Same objection regarding  
24 confidentiality.

25 Q This is the D & A inspection form. While you take a



1 look at that, I'll get the DeRuyter one.

2 (Exhibit No. 22 marked for identification.)

3 MS. KRISTENSEN: Same objection regarding  
4 confidentiality.

5 Q Did you do anything to prepare for these inspections?

6 A I probably would have reviewed the previous  
7 inspections.

8 Q Why don't we start with the D & A Dairy again, since  
9 that's what we've been doing. Do you remember starting  
10 this inspection by looking at the fields?

11 A That would have been the normal procedure, yes.

12 Q Do you know what fields you looked at?

13 A No.

14 Q I'm looking at page 98. Again, this is the number of  
15 cows on the site. Did the producer tell you this  
16 information?

17 A The animal numbers from the nutrient management plan  
18 came from the nutrient management plan. The current  
19 ones were given to me by the producer, yes.

20 Q And if we go to page 100 -- it's page 5 of 10 on your  
21 inspection report here -- did you inspect the lagoons  
22 during this inspection?

23 A I don't know. It doesn't appear that -- it doesn't  
24 show up on the record. But normal -- normally I would,  
25 yes.



- 1 Q Where it says "lagoon dike condition," is there any box  
2 checked there?
- 3 A I don't see any.
- 4 Q And behind "solids buildup," what does it say?
- 5 A "Select an option."
- 6 Q What does that mean?
- 7 A That's a drop-down menu in that program.
- 8 Q What would be the items on the drop-down menu?
- 9 A The light, medium, or heavy.
- 10 Q Do you recall looking at soil samples this time around?
- 11 A The report says we did, yes.
- 12 Q What page are you looking at?
- 13 A 102.
- 14 Q Okay. Flipping the page to 103, do you see where it  
15 says soil nitrate-N? Same column that we've been  
16 talking about.
- 17 A Yes.
- 18 Q How many fields are acceptable?
- 19 A Didn't have the acreage listed.
- 20 Q How about fields that need attention?
- 21 A Again, same thing, no. There's nothing listed.
- 22 Q It says zero, right?
- 23 A Yes.
- 24 Q Does it also say zero for phosphorus?
- 25 A Yes. But in my comments, I think, on page 104, it says



1 elevated phosphorus levels.

2 Q You must have looked at some soil sampling records,  
3 then.

4 A Yes.

5 Q Is there a reason why that didn't show up on the rest  
6 of the report?

7 A I must not have put it in, is all.

8 Q Now I'm looking at the George DeRuyter report. Again,  
9 let's look at GEOMAR000121 for the current dairy  
10 numbers. Did you make an independent assessment of how  
11 many cows were at the facility?

12 A No. I got that from the producer.

13 Q And looking at GEOMAR000123, again, I'm looking at the  
14 lagoon chart, the total lagoon storage capacity and  
15 whatnot. Did you look at any of George DeRuyter's  
16 lagoons during this inspection?

17 A I'm assuming I did, but I didn't -- I don't know. It's  
18 not -- didn't get re- -- or mentioned in there.

19 Q Again, this doesn't mention the lagoon dike conditions?

20 A Correct.

21 Q And it doesn't say what the solid buildup level is?

22 A Correct.

23 Q And does it indicate what the capacity of the lagoon or  
24 how full they are?

25 A No.



1 Q So GEOMAR000126. This is back talking about what  
2 fields need attention and what don't. How many fields  
3 needed attention for nitrates?

4 A 145 acres and D & A had elevated nitrate.

5 Q Is there a reason why you didn't identify the D & A as  
6 having elevated nitrate in the D & A inspection?

7 A I assumed it was common field between the two  
8 facilities.

9 Q Would you have looked at the 2010 soil sampling data  
10 for this inspection?

11 A Probably, yes.

12 Q So the information we have is, again, the N3 forms. I  
13 can give you the 2010 N3 forms.

14 (Exhibit No. 23 marked for identification.)

15 MS. KRISTENSEN: Same objection regarding  
16 confidentiality.

17 Q Do you remember if you looked at forms like these  
18 during the inspection?

19 A I could have.

20 Q Let's start by looking at GEOMAR000270, just a couple  
21 pages in there. What field is this referring to?

22 A GDR 1.

23 Q Is there any indication at all under the report card  
24 test about what the soil nitrate-N levels could be?

25 A No. But there is a soil test dated on April 9, 2010.





1 Q And you're looking at the column -- or the row  
2 underneath soil test there?

3 A Yes.

4 Q Looking at that row, do you see any numbers there for  
5 what the soil nitrate-N was?

6 A No.

7 Q Let's flip the page to GDR 2. This is GEOMAR000271.  
8 Again, do you see anything on this document that would  
9 indicate what the soil nitrate-N levels were?

10 A No.

11 Q And the next page?

12 A (Witness complied.) For what field?

13 Q The next page is GEOMAR272. What is the field there?

14 A Grapes E.

15 Q Is there anything on there about what the NO3-N levels  
16 would be?

17 A No.

18 Q What is the last soil test according to this document?

19 A Accord to this document, it is May 22, 2008.

20 Q Now, let's go to GEOMAR274. What field is this?

21 A D & A big pivot.

22 Q Is this the same D & A pivot field that you refer to in  
23 your inspection report about having elevated levels?

24 A Yes.

25 Q Where are the elevated levels from this form?



1 A They're not listed on this form.

2 Q When was the last soil test on GDR field -- excuse me,  
3 D & A big pivot field?

4 A This document says 5/22 of 2008.

5 Q Let's turn the page and look at field D & A small  
6 pivot.

7 A (Witness complied.)

8 Q What was the last soil sample on this field?

9 A According to this document, March 30, 2005.

10 Q Is there anything on this document that indicates what  
11 the NO3-N levels were on this field?

12 A No.

13 Q And then let's go to GEOMAR278.  
14 What field is this?

15 A The Trevino field.

16 Q Do you think this is one of the fields you would have  
17 inspected during your inspection?

18 A I probably would have. I don't know if I did or not.  
19 I don't remember.

20 Q What was the last soil test date for this field?

21 A October 10, 2008.

22 Q Is there anything on this document that indicates what  
23 the NO3-N levels were?

24 A No.

25 Q Do you require dairies to provide you with what their



1 NO3-N levels are in the fields?

2 A That is a required element for the records --

3 MS. KRISTENSEN: What did you say at the end?

4 THE WITNESS: That is a required element for  
5 annual testing.

6 MS. KRISTENSEN: I didn't hear the last part.

7 Q Did you look at the D & A Dairy or George DeRuyter  
8 Dairy NMP before or during this inspection?

9 A Probably during it.

10 Q Do you recall if it required two samples?

11 A I don't remember.

12 (Exhibit No. 24 marked for identification.)

13 Q This is an excerpt from the D & A Dairy NMP.

14 MS. KRISTENSEN: Same objection regarding  
15 confidentiality.

16 Q I've only included the first page and the page that  
17 we're going to look at. You'll note at the top here  
18 this is from July of 2010. At least that was the  
19 effective date of this dairy nutrient management plan.

20 Do you see under section 54 where it's bolded?

21 A Under the testing requirements?

22 Q Yes.

23 A Yes.

24 Q Can you read for me the last sentence of that  
25 paragraph?



1 A An end-of-season soil sample for nitrate will be  
2 required at the two-foot level to monitor potential  
3 nutrient leaching.

4 Q And the documents that we just looked at, did you see  
5 any two-foot samples?

6 A No.

7 Q Is it a violation of the DNMP to not take two-foot  
8 samples?

9 MS. KRISTENSEN: Objection. Calls for  
10 speculation. Lack of foundation.

11 A Again, this -- the nutrient management plans are an  
12 advisory document.

13 Q And why would taking a soil sample for nitrate at a  
14 two-feet level, how does that monitor for potential  
15 nutrient leaching?

16 MS. KRISTENSEN: Lack of foundation,  
17 objection.

18 A Well, if there's any in that -- at the end of the  
19 season soil samples, there's excessive nutrients in  
20 that second foot, then they could have the potential to  
21 leach into ground water.

22 Q Do nutrients in the second foot have a greater  
23 potential to leach to ground water?

24 MS. KRISTENSEN: Objection. Calls for  
25 speculation beyond this witness's expertise.



1 A I don't know.

2 Q Let's take another quick break. I'm just going to  
3 confer with my colleagues here and we'll see if we have  
4 any other questions for you.

5 (Off the record.)

6 Q Just to remind you again that you're under oath.  
7 I'm going to talk a little bit about the Cow  
8 Palace for a second. You take a look at the DNMP when  
9 you go in and look at the facility, right?

10 A Yes.

11 Q Are you familiar that the DNMP has a requirement that  
12 the dairies submit an annual report at the end of the  
13 year?

14 A It's my understanding that only if they're under the  
15 capital permit.

16 Q I'm going to provide you a copy of Cow Palace's DNMP.  
17 (Exhibit No. 25 marked for identification.)

18 MS. KRISTENSEN: Same objection regarding  
19 confidentiality.

20 Q If you would turn to page 21 of the document, which is  
21 COWPAL000487.

22 A (Witness complied.)

23 Q See how there's -- I'll wait until you get there. That  
24 last paragraph there -- I'll note this is under the  
25 mandatory recordkeeping provision -- says, "An annual



1 report summarizing any discharges, the acres available  
2 for land application, acres actually used for  
3 application, number and types of animals, amount of  
4 manure generated, applied, and exported from the  
5 operation is also required."

6 Have you ever seen one of these reports?

7 A I've seen them from other facilities, but I don't  
8 recall seeing one from Cow Palace.

9 Q Do you recall seeing one for the Bosma/Liberty  
10 facilities?

11 A No.

12 Q How about the D & A facility?

13 A No, I don't think so.

14 Q And the DeRuyter facility?

15 A I don't think so.

16 Q Going back to these electronic inspection forms that  
17 you guys have now, "you guys" being the Washington  
18 State Department of Agriculture, do you know anything  
19 about the development of the form? Was it done  
20 internally?

21 A No. I believe it was an external.

22 Q Do you know what company or external firm did it?

23 A No, I don't.

24 Q Is the department considering updating anything within  
25 that form?



1 A There is some talk about going to a different format, a  
2 different internal -- like an internal company to do  
3 it.

4 Q An internal -- so hiring a third-party vendor to take  
5 care of it?

6 A Yes.

7 Q Do you know why that is?

8 A My understanding from my bosses is that it doesn't  
9 adequately generate the -- some of the required -- or  
10 requested reports.

11 Q If this was a third-party vendor, would it still be you  
12 putting in the information?

13 A Well, I would still be putting in -- going to the form  
14 and doing the inspection, yes.

15 Q You mentioned your bosses. Who are your bosses?

16 A Virginia Prest and Ginny -- Virginia Prest and Chery  
17 Sullivan.

18 Q Do you know Eric Bair?

19 A Yes.

20 Q Do you work with Eric Bair?

21 A No.

22 Q Did your employment ever overlap?

23 A No. He had already left before I got there.

24 Q Did you receive -- he already left before you got  
25 there. So you received no training from Eric Bair?



1 A No.

2 Q Have you reviewed any of the comments or the new draft  
3 CAFO permit?

4 A No.

5 Q Have you ever had any discussions about the draft CAFO  
6 permit?

7 A No.

8 Q Have you talked with anyone about these lawsuits?

9 A We've talked about -- or I had talked to my wife and my  
10 supervisors.

11 Q So you haven't spoken about these lawsuits with any of  
12 the defendants or any of the representatives?

13 A No.

14 Q Have you spoken to anyone on the defendant's legal  
15 team?

16 A No.

17 Q Okay. Just as a housekeeping matter to finish up here,  
18 the documents that we showed you on the computer that  
19 we just received today, we would like to make exhibits  
20 to your deposition. So what we'd like to do is print  
21 these at lunch and bring them back, and if no one  
22 opposes, we'll just add them after the fact.

23 MS. KRISTENSEN: How many were there? There  
24 was at least that one letter.

25 MS. MATSUMOTO: There were -- I have the file





1 names --

2 MR. SNYDER: We'll provide you guys with  
3 copies.

4 MS. KRISTENSEN: I have follow-up questions  
5 if you're done.

6 MR. SNYDER: I just want to note that this  
7 wasn't cross-noted or anything.

8 MS. KRISTENSEN: I'm entitled to ask  
9 follow-up questions.

10 MS. MITCHELL: Were there 25 exhibits?

11 THE COURT REPORTER: Yes.

12 MS. MITCHELL: Thank you.

13

14

EXAMINATION

15 BY MS. KRISTENSEN:

16 Q Mr. McCarty, again, I'm Deb Kristensen. I'm counsel  
17 for each of the defendants in each of the four cases  
18 that you've been noticed here for today.

19 I want to talk a little bit about you were asked  
20 about your duties as an inspector for the Washington  
21 State Department of Ag. I think you said you started  
22 in June of 2010; is that right?

23 A That is correct.

24 Q Have your responsibilities changed in any way since you  
25 started working for Department of Ag?



1 A No.

2 Q And what is your job title?

3 A Environmental specialist 3.

4 Q Do you have a particular territory that you cover?

5 A I cover all of Eastern Washington east of the Cascades.

6 Q Okay. And could you just generally describe your  
7 responsibilities for the Washington State Department of  
8 Ag?

9 A Conducting routine inspections for the nearly 150  
10 dairies that are in my territory. I respond to  
11 complaints. I work with the producers and landowners  
12 to come into compliance if there's issues.

13 Q Are you the only inspector in your territory for the  
14 Department of Ag, or are there others?

15 A No. I'm the only one.

16 Q And I think you mentioned your immediate  
17 supervisor -- you have two immediate supervisors,  
18 Virginia Prest and Chery Sullivan; is that correct?

19 A Chery Sullivan is my immediate supervisor. Virginia  
20 Prest is the program manager.

21 Q What's the name of the program?

22 A Dairy nutrient management program.

23 Q Have both of those individuals stayed in that capacity  
24 during your entire time as the Department of Ag?

25 A No.



1 Q Have you had different people in those positions?

2 A Yes.

3 Q Who's that?

4 A Nora Mena was the program director from when I started  
5 until January of 2013, I believe. And then Chery  
6 Sullivan came in in August of 2012.

7 Q Who was in her position prior to that?

8 A Ginny Prest.

9 Q So did Ms. Prest move up?

10 A She was in another program for a while and then came  
11 back.

12 Q And then who was the person -- if you know, who was the  
13 inspector for your territory previous to you,  
14 immediately previous to you?

15 A Eric Bair.

16 Q And I think you just talked about you didn't have any  
17 overlap with Mr. Bair, correct?

18 A No. He'd already left.

19 Q For the 150 or so dairies that you routinely inspect,  
20 how do you set up -- is there like an inspection  
21 schedule or how do you go about, you know, deciding  
22 when to do particular dairies?

23 A They're on an 18- to 22-month schedule, so -- that we  
24 can catch them during, you know, a dry season and a wet  
25 season.



1 Q So it's not always the same time of year?

2 A It's not at the same time, no.

3 Q You went through a bunch of different documents. I may  
4 go through them a little bit just to ask you questions,  
5 but a couple of things that Mr. Snider asked you about  
6 were soil samples that were reviewed at each of  
7 dairies. During your routine inspection at the 150 or  
8 so dairies, is that something you always do is review  
9 soil samples?

10 A Yes.

11 Q During your review of those samples, at least as far as  
12 the Yakima Valley is concerned, what's your experience  
13 with nitrate levels and the soil samples that you've  
14 reviewed in the Yakima Valley?

15 A I would say a large percentage are within acceptable  
16 levels, below the 120 pounds per acre. There's always  
17 some anomalies out there that nobody really can  
18 explain.

19 Q When you come across these anomalies, what, if  
20 anything -- you mentioned that you work with producers  
21 to come into compliance as part of your job; is that  
22 correct?

23 A Yes.

24 Q Can you describe that for me? What do you mean by  
25 that?



1 A I'm going to go back through and we're going to check  
2 out their application records for manure being applied,  
3 if there was any commercial. We check crop history,  
4 maybe sure that the application dates won't  
5 affect -- or, I'm sorry, the testing dates weren't  
6 affected by an application date. Sometimes that  
7 happens, you know. The producers don't always have  
8 the -- they don't have access to their field man on a  
9 day-to-day basis, so sometimes the test -- soil tests  
10 come before the -- or come after an application, and so  
11 that can kind of be explained on why those high nitrate  
12 levels.

13 Other than that, soil samples, just in general,  
14 you're taking random samples across the field, and they  
15 could have, you know, hit a spot that had manure in it  
16 and -- or that the rest of it didn't have.

17 Q Do you have -- is your contact with the particular 150  
18 dairy producers, is it only once every 18 to 22 months?

19 A Unless there's been a complaint filed against them,  
20 yes.

21 Q I think you mentioned, in part of your history, you  
22 worked for the Idaho State Department of Ag, correct?

23 A Yes.

24 Q What were your job responsibilities there?

25 A I was working with beef and cattle producers in the



1 Snake, Salmon and Clearwater drainages to be in  
2 compliance with the Clean Water Act.

3 Q Were you doing --

4 A So moving -- recommending they move cows off the stream  
5 and provide offstream water.

6 Q Were there any -- you're doing inspections here in  
7 Washington. Did you do any of those similar activities  
8 in Idaho?

9 A Not with dairies, no.

10 Q With beef cattle?

11 A With beef cattle, yes.

12 Q Did that involve reviewing any type of water or soil  
13 samples?

14 A No.

15 Q What kind of information did you review with the beef  
16 cattle operators?

17 A Their proximity to streams and giving them  
18 recommendations for best management practices.

19 Q Do you have the documents in front of you that we've  
20 just gone over?

21 A Yes.

22 Q If you could pull out Exhibit 3 and 4.

23 A (Witness complied.)

24 Q I just had a couple of follow-up questions. Mr. Snyder  
25 went through each of these documents with you. If you



1 can turn first to Exhibit 3, which is from Cow Palace,  
2 the 2012 samples you see there. And there's the date  
3 range that you identified from March of 2012 through  
4 September 7th of 2012. Do you see that?

5 A Um-hmm.

6 Q Yes?

7 A Yes.

8 Q And then the numbers that, again, Mr. Snyder asked you  
9 about with respect to that third column there were 1.5,  
10 correct?

11 A Correct.

12 Q And then he had you compare with Exhibit 4. If you  
13 turn to COWPAL9250. It's on Exhibit 4.

14 A (Witness complied.)

15 Q And at the top there, what's the total nitrogen  
16 reported there per 1,000 gallons?

17 A It's 1.67.

18 Q Do you see the date of that reading?

19 A That would have been September 30, 2010.

20 Q Is that a reading, then, after those reported on  
21 Exhibit 3 page that we just looked at, first page?

22 A Yes.

23 Q We talked a lot about your actual inspection document.  
24 And that at some point it went from a paper copy to now  
25 I understand you have everything in electronic form; is



1           that correct?

2   A       That is correct, yes.

3   Q       Do you remember the time frame for when that transition  
4           happened?

5   A       Somewhere in 2011/12 we started moving towards that  
6           electronic version. We had some issues at the  
7           beginning of it regarding -- well, it was first a  
8           web-based program, and there's a lot of places in  
9           Eastern Washington that don't have Internet access, so  
10          I -- we would go back and forth between the paper copy  
11          and the electronic version. Now we've -- recently,  
12          we've come up with the offline program of that same  
13          program that I can go back, do my inspection, and then  
14          go back to my office and sync up once I could get  
15          Internet access.

16   Q       So when you started in 2010, were you actually doing  
17          the inspections in a paper form, correct?

18   A       Yes, ma'am.

19   Q       And then at some period in this time frame you just  
20          described, started transitioning to this Web-based  
21          form. I'm just trying to understand logistically how  
22          you did it. Did you carry a computer with you on these  
23          inspections or did you take notes and reenter it?

24   A       No. The Utis [phonetic] program, which is the newest  
25          version of our inspection reporting system, is all on





1 the computer. So when I go out and do an inspection, I  
2 will bring my computer and sit down with the producer.  
3 In the beginning, I did have paper copies that I  
4 brought with me, but we since then have put them all in  
5 electronic form.

6 Q So at least as of the last year or so -- I don't want  
7 to put words in your mouth -- but the reports that  
8 we've reviewed in terms of inspection reports would  
9 have been things that you completed on the computer  
10 during your actual inspection; is that right?

11 A There are some information, like the operator's name,  
12 their address, phone numbers, their ag ID number, the  
13 dairy, the county emails that autopopulate. And  
14 recently we've gone through all the files and put in  
15 the nutrient management conser- -- approval dates,  
16 certification dates from the -- from the nutrient  
17 management plan. That has all been autopopulated now  
18 too.

19 Q When you talk about autopopulated, is that information  
20 on your new form that is taken from your most recent  
21 form?

22 A Yes.

23 Q And that just comes in automatically by virtue of  
24 whoever designed that form; is that correct?

25 A Correct.



1 Q Because it is autofilled or whatever the right word is.  
2 When you do an inspection now, do you go through each  
3 of those line items with the producer to verify that it  
4 is still accurate or if there's any mistakes?

5 A Yes, I do. And we do have an opportunity, especially  
6 on the certification and approval dates, to make those  
7 corrections, or if they've been updated, we'll put that  
8 in there.

9 Q That was my next question: Do you have the ability to  
10 change the things that are autofilled to reflect the  
11 things that you've learned?

12 A Yes.

13 Q Do you, in fact, do that as part of your inspection?

14 A Yes.

15 Q It's a little bit hard to ask you about the document  
16 that I don't have in front of me. It was the May 17,  
17 2000, letter of warning that Mr. Snyder showed you.

18 A For what producer?

19 Q As far as I understand, there's two that may be an  
20 issue, based on your questioning. One was the one he  
21 showed you. I believe it was for Cow Palace. That's  
22 what my notes say. I don't think we have that. Is  
23 that correct?

24 MR. SNYDER: It's on the computer.

25 MS. MATSUMOTO: I can pull it up.



1 MS. KRISTENSEN: Can you pull it up so I  
2 don't have to ask questions later?

3 Q I'm going to show you the document as soon as I can,  
4 and so it's fair that you don't recall. But do you  
5 recall why you sent the May 17, 2013, letter to Cow  
6 Palace?

7 A Not off the top of my head.

8 Q Do you recall if you sent any similar letter to any of  
9 the other producers in these lawsuits?

10 A Not off the top of my head.

11 Q We'll come back to that when she gets it back up.

12 (Off the record.)

13 Q Can you turn to Exhibit 12?

14 A (Witness complied.)

15 Q This is the report that Mr. Snyder asked you about from  
16 April of 2011 with respect to an irrigation pond at the  
17 Bosma's. Do you see that?

18 A Yes.

19 Q And you investigated this particular complaint,  
20 correct?

21 A Yes.

22 Q Do you recall if you did -- you asserted any kind of a  
23 violation or notice of correction to Bosma based on  
24 this complaint?

25 A No. I sent an outcome letter dated May 4th.



1 Q Did you conclude that Mr. Bosma was in violation of any  
2 regs or laws as far as you're concerned?

3 A Being that it was going to be an irrigation ditch, I  
4 told them that if in the future they were to put manure  
5 in there, that they would need to meet our NRCS  
6 standards and specs.

7 Q But this did not account for any type of violation as  
8 of May 2011, correct?

9 A No.

10 Q Turn now to 13 and 14, if we can put those kind of side  
11 by side again.

12 A (Witness complied.)

13 Q 13 is a letter from you dated March 2, 2011, regarding  
14 your inspection of the Bosma facilities in February of  
15 2011.

16 A Yes.

17 Q And if you turn to page 360 of that and your comments  
18 at the end there, and then if you could, take  
19 exhibit -- the other exhibit I just referred to, 14,  
20 and turn to page 271 of that. Those are soil sample  
21 records that Mr. Snyder asked you about.

22 A Okay.

23 Q Mr. Snyder asked you about those nitrogen NO3 levels  
24 there, and you said that those -- I don't want to put  
25 words in your mouth, but I think you characterized



1 those as high. And one of the things you said is you  
2 didn't know if double cropping was occurring at the  
3 time. He asked you do you know why those were high.  
4 Was that accurate?

5 A That would be, yes.

6 Q If you look back on Exhibit 13 in your notes there  
7 under the comment section there --

8 A Yes. They were --

9 Q Does that help you remember?

10 A Yes. They are double cropping.

11 Q And what, if anything, was the significance of double  
12 cropping at this time?

13 A They've got -- in the fall they will plant -- as soon  
14 as the corn is harvested, they will plant triticale,  
15 which will grow through the winter and into the spring,  
16 and they'll harvest it as a haylage or silage for  
17 cattle feed. So it will be taking up some nutrients in  
18 the wintertime. And then when that comes off in the  
19 spring, they will plant corn right behind it.

20 Q So that's the double cropping?

21 A That's what double -- yes.

22 Q Does double cropping have the effect of pulling out  
23 more nutrients from the soil?

24 A Yes, ma'am.

25 Q Mr. Snyder asked you about updating nutrient management



1 plans, and he kind of went through a series of  
2 questions there. And I think you identified two ways  
3 that producers do an update to their nutrient  
4 management plan. One was to hire a private consultant,  
5 and the other was to work with the conservation  
6 district, correct?

7 A Correct.

8 Q I think you said all the dairies you work with work  
9 with the conservation districts; is that correct?

10 A No. Most of them work with the conservation district.

11 Q Do you know if Cow Palace works with the conservation  
12 district?

13 Are you looking for a report?

14 A Yes. If they use N3 or -- I think just GDR does.

15 Q George DeRuyter?

16 A Yeah. I don't know if -- I can't -- there are some  
17 summary sheets here, but I don't know if they're  
18 from -- they're an outside consultant rather than N3.

19 Q As least from the records you've looked at, you know  
20 that the DeRuyters use N3, correct?

21 A Yes.

22 Q Do you know one way or the other what the Bosmas do?

23 A No, I don't.

24 MS. KRISTENSEN: Did you find that letter?

25 MS. MATSUMOTO: I have the May 17th letter



1 for Bosma/Liberty. The letter I have for Bosma is not  
2 on this letterhead.

3 MS. KRISTENSEN: Let's try that if you could.  
4 This is one you want to have as an exhibit, right?

5 MS. MATSUMOTO: Yes.

6 Q Mr. McCarty -- I'm sorry it's so complicated. This is  
7 the documentation I think Mr. Snyder asked you about  
8 before. It looks like it's one of the documents  
9 produced that day.

10 A I wrote several letters of warning that day and that's  
11 why the New House Dairy was on this.

12 Q Do you recall if you wrote a letter -- that similar  
13 letter of warning to Cow Palace that day?

14 A I don't remember if I did or not.

15 Q Do you remember if -- so we're talking about the George  
16 and Margaret, D & A, Liberty/Bosma. And Cow Palace.  
17 Other than the letter you see on the computer screen to  
18 the Bosmas, did you write a similar letter to any of  
19 the other defendants?

20 A I can't remember at this time.

21 Q Do you recall why you wrote that letter on May 17th?

22 A Yeah. I had just done an inspection, routine  
23 inspection on April 10th, and after reviewing their  
24 records, we determined that they had the high nutrient  
25 level.



1 Q Did you subsequently withdraw that letter of warning?

2 A Yes, we did.

3 Q Do you recall --

4 A I remember this now.

5 Q Do you recall why?

6 A Because it didn't accurately describe the nutrient  
7 issue.

8 Q Can you be more specific? What about it was not  
9 accurate?

10 A If memory serves me correctly, it was the part -- the  
11 first sentence -- or the sentence that says "your  
12 records continued to be insufficient to show agronomic  
13 rates were used on multiple fields."

14 Going off the top of my head on this one. After  
15 reviewing the records, you know, it was -- I should  
16 have been using a letter formatted with the high  
17 nitrogen -- or high nutrient values in the fields.

18 Q What do you mean by that? I don't understand what that  
19 means.

20 A I was -- I was given the format on this as a template,  
21 and it didn't accurately represent what I was trying to  
22 get across. So we went back and we took that letter  
23 out and replaced it with one that -- that just strictly  
24 commented on -- or that -- on the agronomic  
25 application. Or it didn't include the lack of





1 agronomic application, just the high nitrate levels or  
2 the drain levels.

3 Q Okay. Walk me through that. You just kind of told me  
4 in general. You sent out this letter dated May 17th.  
5 Did you hear back from the -- what caused you to do  
6 anything further with respect to that letter?

7 A My boss said -- I believe it was Ginny received a phone  
8 call from Bosmas that said this was -- that they didn't  
9 think that this letter really represented the  
10 situation. And so we -- Ginny and I drafted another  
11 letter and replaced -- retracted this one, and -- that  
12 more accurately represented what we were -- what the  
13 issues were.

14 Q Okay. And I know we don't have that in front of us,  
15 but do you recall with any greater detail what that new  
16 letter said?

17 A I can't recall at this time.

18 MS. KRISTENSEN: I wonder if it's included.

19 MS. MATSUMOTO: I believe I saw one for one  
20 of the other facilities.

21 MS. KRISTENSEN: Maybe one of the many things  
22 we'll do at lunch is check and see if we can find that  
23 follow-up letter.

24 What other facility did you see, Sarah?

25 MS. MATSUMOTO: I'm not sure. I don't think



1 it was with respect to Bosma.

2 Q Was the subsequent letter -- this is the May 17th  
3 letter. So was the subsequent letter also a letter of  
4 warning?

5 A Yes, I believe so.

6 Q Were there any further actions taken by Department of  
7 Ag with respect to that letter of warning?

8 A No.

9 Q Did you have any further discussions -- did you have  
10 any discussions with anyone at the Bosma facility about  
11 that subsequent letter?

12 A Not regarding the subsequent one, no.

13 Q Do you know when your next inspection of any of the  
14 defendant dairies is scheduled to occur?

15 A Not without my computer -- without my computer, I don't  
16 have it. But Cow Palace, we did theirs March 2013. So  
17 somewhere between 18 and 22 months later we'll do  
18 theirs.

19 Q Is there any reason why you would conduct an  
20 investigation of a facility outside your normal 18 to  
21 22 months?

22 A Only if there was a complaint.

23 Q But without a complaint, you just stick to the normal  
24 schedule?

25 A Yes.



1 Q Does your routine inspection schedule get altered in  
2 any way depending on what you find at a facility?

3 A Yes. If there's -- if there is some potential to  
4 pollute, I will put them down to that 18 months. If  
5 there's not been issues in the past, they may get  
6 bumped out to that 22 months.

7 Q Have any of the four defendant dairies that are  
8 involved in these lawsuits been kicked off the routine  
9 schedule and put on that shorter time frame?

10 A Not that I'm aware of.

11 Q In your opinion, is Cow Palace in compliance with the  
12 inspections that you've conducted so far?

13 MR. SNYDER: Objection. Speculative.

14 A The inspection that I did in March 2013 -- yes, March  
15 12, 2013, they were in compliance.

16 Q Same question with respect to the Liberty Bosma  
17 facility.

18 MR. SNYDER: Objection. Speculation.

19 A On the April 10, 2013, we did find them out of  
20 compliance. We gave them a warning letter for record  
21 issues and application issues.

22 Q Have you had any follow-up with them on those two  
23 issues?

24 A No.

25 Q Do you -- is that --



1 A Because they have the elevated nitrate levels -- or  
2 nutrient levels, those -- I'll review them at the next  
3 routine inspection.

4 Q What document are you looking at?

5 A 8, page 365.

6 Q Those two concerns that you've identified on 365, those  
7 aren't enough, in your opinion, to make your routine  
8 inspection schedule be altered; is that correct?

9 MR. SNYDER: Objection. Mischaracterizes.

10 A That is correct. I think the nutrient levels, they  
11 need to have several cropping cycles to evaluate the  
12 effectiveness of what's being done.

13 Q Okay. Based on your most recent inspection, is D & A  
14 Dairy in compliance?

15 MR. SNYDER: Objection. Speculation.

16 A From the March 13, 2013, they were out of compliance  
17 for the same -- I believe for the same issues, the high  
18 nitrate levels.

19 Q Were those issues that you just identified with D & A  
20 enough to kick them out of their otherwise routine  
21 inspection?

22 MR. SNYDER: Objection. Mischaracterizes.

23 A No.

24 Q Same question with respect to George DeRuyter & Sons  
25 Dairy. Based on your inspections, are they in



1 compliance?

2 A Based on the March 2013 --

3 MR. SNYDER: Calls for speculation.

4 A -- they were also out of compliance due to the high  
5 nutrient levels and soil samples.

6 Q Based on what you just identified, was that enough to  
7 kick them out of the routine schedule that you  
8 previously discussed?

9 A No.

10 MR. SNYDER: Objection. Mischaracterizes.

11 Q Turn to Exhibit 16, if you could, page 131.

12 A Page 15?

13 Q Exhibit 16, page -- last three numbers are 131. And  
14 looking at your comments there, again, Mr. Snyder asked  
15 you about all of that, and he asked you about -- you  
16 see in paragraph 8 there under soil nitrate-N,  
17 you -- this is your typewritten notes; is that correct?

18 A That is correct.

19 Q I see that after those numbers for the one, two, three,  
20 four fields that you've identified -- or five fields  
21 you write "samples were taken right after manure  
22 application were made." Do you see that?

23 A Yes.

24 Q What significance, if anything, does that have?

25 MR. SNYDER: Objection. Speculation.



1 A The samples -- these particular fields, again, it was  
2 one of those instances where the field men were unable  
3 to get to the field before the manure application took  
4 place, and so we were seeing these high elevated  
5 levels, nutrient levels. But the available nitrogen in  
6 that manure is not readily available for plant  
7 consumption.

8 Q Okay. I'm trying to -- you just -- for whatever  
9 reason, you included that comment in your comment  
10 section. Why did you include that comment, and  
11 specifically about "samples were taken right after  
12 manure applications were made"?

13 A Because those numbers were high, higher than our  
14 threshold. Usually our -- those numbers -- or the  
15 numbers that we're looking for in soil tests are done  
16 before an application, not after.

17 Q So the timing of the test in terms of when the manure  
18 was applied affects the end result, correct?

19 A Yes.

20 MR. SNYDER: Objection. Mischaracterizes.

21 Q And you had received high numbers for nitrates on the  
22 fields you identified, and part of that, at least, you  
23 are explaining by the comment that samples were taken  
24 right after manure applications were made, right?

25 MR. SNYDER: Objection. Mischaracterizes.



1 A Yes.

2 Q Another comment you have in here, it talks about double  
3 cropping. Do you see that?

4 A Yes.

5 Q Does that affect the results of the nitrogen in the  
6 soils that you would see?

7 MR. SNYDER: Objection. Speculation.

8 A They will not quite double, but almost double the  
9 amount of nutrient uptake because you've got two crops  
10 growing on them.

11 (Off the record.)

12 MS. KRISTENSEN: Subject to seeing some  
13 different or new document, I'm done with my questions.

14 MR. SNYDER: I'm going to ask a couple  
15 follow-up questions and we'll be done.

16

17 FURTHER EXAMINATION

18 BY MR. SNYDER:

19 Q Mr. McCarty, earlier you were talking about your work  
20 with the Idaho Department of Agriculture and  
21 doing -- working with beef cattle. Was that work  
22 similar to the inspection, the dairy inspections you're  
23 doing today?

24 A No. It was nothing close. We were not reviewing any  
25 kind of nutrient or soil testing or anything like that.



1 We were trying to get them off the creeks.

2 Q You were asked about the 5/17 letter of warning, and  
3 you mentioned it was revoked later on, and a new letter  
4 was sent.

5 A Yes.

6 Q That same letter still mentioned that there was a  
7 problem with elevated nutrient levels in the soil,  
8 right?

9 A Yes.

10 Q Did it tell Bosma and Liberty Dairies what to do to  
11 address that?

12 A I don't recall without the letter.

13 Q We're talking about sampling in the fields and how it  
14 hit a spot with manure in it.

15 A It just hit a sample that was not representative of the  
16 field itself.

17 Q Do you know whether the samples that are collected  
18 are -- multiple samples are collected and then combined  
19 together?

20 A I don't take any of the tests, so I have no knowledge  
21 of...

22 Q Does the Department of Ag -- Washington Department of  
23 Ag or do you tell dairies how to take soil samples?

24 A No. There is a soil sampling protocol that I believe  
25 is put out by extension that tells them how to do it.





1 Q Do you know what that document says?

2 A No.

3 MR. TEBBUTT: Could you speak up?

4 THE WITNESS: No, I don't.

5 Q About double cropping on fields, we were talking about  
6 one of the inspection reports said they were double  
7 cropping. Did you identify what fields were being  
8 double cropped? I believe we were talking about Bosma.

9 A On Bosma's, I think I had a comment on there that all  
10 fields were being double cropped except their Trevino  
11 field.

12 Q Is that all the fields total, or all the fields that  
13 you identified as having high nitrate values?

14 A I can't recall that.

15 Q And did you -- how did you verify that double cropping  
16 was occurring?

17 A I took their word for it.

18 Q That's all I have.

19 (Off the record.)

20

21 MS. HOLMES: Just so we can clear up the  
22 record, we have -- we discussed before the break adding  
23 Exhibits 26 and 27, which were two documents produced  
24 today by the Washington Department of Ag to the  
25 deposition of Dan McCarty. By stipulation of counsel,



1 those will be added to the record.

2 MS. KRISTENSEN: And I'll make a note that I  
3 have the same standing objection that I talked about  
4 this morning with respect to both 26 and 27.

5 (Exhibit Nos. 26 & 27 marked for identification.)

6 (Deposition concluded.)

7 (Signature reserved.)

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1 CHANGE AND SIGNATURE SHEET

2 I, the undersigned, DAN MCCARTY, do hereby certify  
3 that I have read the foregoing deposition and that, to the  
4 best of my knowledge, said deposition is true and accurate,  
5 with the exception of the following corrections listed  
6 below:

5 PAGE	LINE	CHANGE
6		
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20 \_\_\_\_\_  
 21 Date Signature

22 Case name: CARE v. Cow Palace, et al.  
 23 Cause Nos.: CV-13-3016-TOR, CV-13-3017-TOR, CV-13-3018-TOR,  
 CV-13-3019-TOR  
 24 Date taken: February 25, 2014

25 Return to: Central Court Reporting  
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CERTIFICATE

I, KYLIE HAMMINGTON, a Certified Court Reporter, do hereby certify that I reported in machine shorthand the deposition of DAN MCCARTY, called as a witness at the instance of the Plaintiff, for purposes of discovery in the above-entitled cause; that the said witness was duly sworn by me; that the reading and signing of the completed deposition by the witness was reserved; that the foregoing transcript was prepared under my personal supervision and constitutes a true record of the testimony of the said witness.

I further certify that I am not an attorney or counsel of any parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

DATED this 17th day of March, 2014.

\_\_\_\_\_  
Kylie Hammington, CCR, RPR  
Certified Court Reporter



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