

In The Matter Of:

CARE

vs.

Cow Palace

Deposition of

Virginia Prest

February 25, 2014



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

3 COMMUNITY ASSOCIATION FOR)
4 RESTORATION OF THE)
5 ENVIRONMENT, INC., a)
6 Washington Non-Profit)
7 Corporation)
8 and)
9 CENTER FOR FOOD SAFETY, INC.,)
10 a Washington, D.C. Non-Profit)
11 Corporation)

12 Plaintiffs,)

13 vs.)

14 COW PALACE, LLC, a Washington)
15 Limited Liability Company,)
16 Defendant.)

17 COMMUNITY ASSOCIATION FOR)
18 RESTORATION OF THE)
19 ENVIRONMENT, INC., a)
20 Washington Non-Profit)
21 Corporation)
22 and)
23 CENTER FOR FOOD SAFETY, INC.,)
24 a Washington, D.C. Non-Profit)
25 Corporation)

26 Plaintiffs,)

27 vs.)

28 GEORGE & MARGARET, LLC, a)
29 Washington Limited Liability)
30 Company)
31 and)
32 GEORGE DERUYTER & SON DAIRY,)
33 LLC, a Washington Limited)
34 Liability Company)

35 Defendants.)

No. CV-13-3016-TOR

CERTIFIED COPY

No. CV-13-3017-TOR

1 COMMUNITY ASSOCIATION FOR
 2 RESTORATION OF THE
 3 ENVIRONMENT, INC., a
 4 Washington Non-Profit
 5 Corporation
 6 and
 7 CENTER FOR FOOD SAFETY, INC.,
 8 a Washington, D.C. Non-Profit
 9 Corporation

Plaintiffs,

No. CV-13-3018-TOR

vs.

10 D & A DAIRY, a Washington
 11 Partnership
 12 and
 13 D & A Dairy, LLC, a
 14 Washington Limited Liability
 15 Company,

Defendants.

16 COMMUNITY ASSOCIATION FOR
 17 RESTORATION OF THE
 18 ENVIRONMENT, INC., a
 19 Washington Non-Profit
 20 Corporation
 21 and
 22 CENTER FOR FOOD SAFETY, INC.,
 23 a Washington, D.C. Non-Profit
 24 Corporation

Plaintiffs,

No. CV-13-3019-TOR

vs.

25 HENRY BOSMA DAIRY, a
 Washington Proprietorship,
 aka HANK BOSMA DAIRY, aka
 BOSMA DAIRY,
 and
 LIBERTY DAIRY, LLC,

Defendants.



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DEPOSITION OF VIRGINIA PREST
Tuesday, February 25, 2014

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



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1 BE IT REMEMBERED that the deposition upon oral
2 examination of VIRGINIA PREST 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 VIRGINIA PREST, having been first duly sworn upon
8 oath, testified as follows:

9

10

EXAMINATION

11 BY MR. TEBBUTT:

12 Q Ms. Prest, are we ready?

13

14 MS. KRISTENSEN: Before we begin, I know
15 we're going to have a new transcript. So I just want
16 to make the record clear about this confidentiality
17 objection that we've gone through this morning. Again,
18 just so the record is clear and I don't have to keep
19 saying this over and over, there will be a number of --
20 anticipated there will be a number of documents that we
21 will be talking about today and asking the witness to
22 testify about that have been previously produced and
23 marked as confidential pursuant to a protective order
24 in this case.

24

25 We have had -- and I hope Mr. Tebbutt will agree
to continue using this shortcut -- a standing objection



1 to the confidentiality of those documents, both the
2 documents themselves and any testimony thereto. And so
3 instead of stopping every single time one of those
4 documents come up, I will refer to it as shorthand as
5 the confidentiality objection to that document and
6 testimony.

7 MR. TEBBUTT: And we will agree with that as
8 well as the fact that we will have a standing
9 disagreement as to whether the documents are indeed
10 confidential.

11 Q Ms. Prest, my name is Charlie Tebbutt. I represent
12 Community Association for Restoration of the
13 Environment and the Center For Food Safety in four
14 cases that are being discussed here today, including
15 the Cow Palace Dairy; Henry Bosma and Liberty Dairies,
16 which is one dairy; George DeRuyter and Sons Dairy; and
17 D & A Dairy.

18 A Okay.

19 Q Ms. Prest, if you would please state your address and
20 full name for the record.

21 A My home address?

22 Q Whatever you prefer.

23 A My name is Virginia Irene Prest. I live at 5322 75th
24 Court Southwest, Olympia, 98512.

25 Q Now, Ms. Prest, have you ever been deposed before?



1 A I have.

2 Q How many times?

3 A Once.

4 Q And in what type of case?

5 A When CARE -- I believe it was CARE was suing the
6 Department of Ecology over the CAFO permit.

7 Q Were you deposed in that case or did you testify in an
8 administrative proceeding?

9 A I think both. Best of my recollection.

10 Q All right. So then as -- is that the only time you
11 believe you've been deposed?

12 A Yes, I do. I think so.

13 Q Have you ever testified in court other than that one
14 instance that you talked about in front of the
15 pollution control hearings board?

16 A No. I don't believe so.

17 Q Just some basic background. Please, whenever I ask a
18 question, please wait until I'm finished. And give an
19 audible answer, so yes, no, or whatever else you need
20 to say. But nodding of head and inaudible or nonverbal
21 responses are not okay. Do you understand that?

22 A I understand that.

23 Q Okay. Thank you. And you recognize that you're under
24 oath here today?

25 A I recognize that I'm under oath.



1 Q And the purpose of this deposition is to elicit
2 information about dairies that you have been involved
3 with over the years and also your role as a
4 representative with the Washington Department of
5 Agriculture. Do you understand that?

6 A I understand that.

7 Q And that this testimony can be used for a number of
8 purposes, potentially in court in lieu of personal
9 testimony, perhaps to use to show whether your
10 testimony later at a trial is the same as what it is
11 here at the deposition. Those are two different uses
12 of the information. Do you understand that?

13 A I understand that.

14 Q I want you to be clear with me, if you don't understand
15 a question of mine, to say so. Otherwise I'll assume
16 you understood my question, okay?

17 A Okay.

18 Q You may also hear some objections interposed, either by
19 the attorney for the State of Washington or
20 Ms. Kristensen today. Just because those objections
21 are interposed does not mean that you cannot answer the
22 question. Do you understand that?

23 A I understand that.

24 Q You will be expected to answer the questions still.

25 A I understand that.



1 Q Okay. Thank you.

2 Can you please describe your educational history?

3 A I have a bachelor of science in agronomy from
4 Washington State University.

5 Q What year did you get that?

6 A 1987.

7 Q What particular kinds of courses did you take in
8 agronomy?

9 A In agronomy, so crop production, soils fertility, soils
10 classes, vegetable classes, seed classes, crop
11 physiology, so chemistry.

12 Q Do you have any postgrad experience? Or, I'm sorry,
13 postbachelor's degree education?

14 A I have a smidgeon.

15 Q Explain, please.

16 A I have some classes in ag engineering for irrigation
17 water management, a little bit of environmental
18 science, business and law. Just sort of, you know,
19 here's what it's about. That may be it.

20 Q Okay. And did you take all these classes in the same
21 time frame?

22 A The postgrad -- I mean, the postgrad was at WSU
23 Tri-Cities, so '89, '90, '91, somewhere around there.

24 Q So shortly after you had your BS?

25 A Yes. Within five years, I believe. I could look.



1 Q Were you enrolled in a graduate program?

2 A No.

3 Q Were these graduate-level courses or were these
4 undergraduate-level courses?

5 A They're graduate-level courses. I worked for WSU at
6 the time, so we could take classes.

7 Q Did you monitor the classes or did you take them for
8 grades, for credit?

9 A For credit.

10 Q And tell me again the first one that you said you took.

11 A I believe it was environmental law. I'd have to check.

12 Q Environmental law, but not at the law school, through
13 WSU?

14 A I don't think WSU has a law school.

15 Q Right. It was through WSU, right?

16 A Yes.

17 Q And you said you took an engineering class?

18 A An ag engineering class.

19 Q Can you describe that class a little, please?

20 A A lot about how water moves through pipes, a lot about
21 soil -- soil components as it fits into irrigation.
22 And so the class was really all about irrigation, so it
23 was infrastructure, irrigation water management,
24 becoming very familiar with the soil manuals, the
25 weather manuals, the types of documents that were used



1 to put together irrigation water management.

2 Q And was it general irrigation water management or was
3 it specific to a particular kind of industry?

4 A Agriculture. It was specific to agriculture.

5 Q Did that class entail discussions about the movement of
6 nitrogen through the soils and into ground water?

7 A Certainly.

8 Q So are you familiar with the nitrogen cycle?

9 A I am -- I am familiar with the nitrogen cycle. I
10 probably couldn't dictate it back to you at this point.

11 Q Any other class education that you've had?

12 A Around?

13 Q After college.

14 A Oh, you know, I've been through a couple of NRCS-type
15 classes. So technical assistance-type classes that
16 they might use to put together a nutrient management
17 plan.

18 Q You've participated in them in the audience or did you
19 help teach them or both?

20 A Mostly -- mostly for learning.

21 Q Okay. Please describe your work history for me,
22 starting with your present job.

23 A Presently, I'm the program manager for the dairy
24 nutrient management program. I'm been in that capacity
25 since February 1st of 2013. From April 1st through



1 February -- or through January 31st -- from April 1st
2 of 2012 through January 31st of 2013, was the program
3 manager for the animal health program in the animal
4 services division. And then prior to that, from April
5 1, 2006, to March 31, 2012, I was the lead inspector
6 for the dairy nutrient management program.

7 Q I'm sorry. Can you tell me again those dates?

8 A April 1, 2006, through March 31, 2012.

9 Q You were lead inspector?

10 A Yes.

11 Q And what did that particular job position entail?

12 A Supervising the inspectors in the field. Also one of
13 my responsibilities was putting together compliance
14 actions. So taking the recommendations for enforcement
15 from the field crew, working with them to develop that,
16 and then putting together the compliance actions.

17 Q And with your role as head of the dairy nutrient -- is
18 it the dairy nutrient management planning --

19 A Program.

20 Q Program. Nutrient management program?

21 A Dairy nutrient management program.

22 Q So it's just dairy that you're in charge of?

23 A That's right.

24 Q Do you still perform the similar role that you did as
25 lead inspector for putting together compliance actions



1 for this job?

2 A No. We have a new lead inspector, so I provide
3 guidance for her on putting these together. I mean,
4 essentially I'm responsible for what goes out the door.

5 Q Who's that person?

6 A Chery Sullivan.

7 Q Has she been in that job during the same time period
8 that you have been there?

9 A She started that job August of 2012. I believe August
10 1st.

11 Q Who was in that role before her?

12 A Between March and August?

13 Q Yes.

14 A No one. The position was vacant.

15 Q And so if an enforcement action or any kind of
16 compliance action, let's say -- any kind of compliance
17 action comes out of the Department of Agriculture, do
18 you review it first?

19 A Yes, sir, I do.

20 Q Does anyone else review it in your office?

21 A Right now?

22 Q Yes. Beyond you. Above your position.

23 A No, sir.

24 Q Does Director Hover review them before they go out?

25 A He will have the opportunity to review them if there's



1 a penalty involved. So the penalties are assigned by
2 Director Hover. Notice of corrections are signed at my
3 level.

4 Q Prior to your job as lead inspector as of April 1, '06,
5 what was your role? Were you still employed by the
6 Department of Agriculture?

7 A Yes, I was. I started with them on August 6, 2004, and
8 worked as an inspector in Eastern Washington through
9 March 31, 2006.

10 Q What was your employment prior to the Department of
11 Agriculture?

12 A I had four months off and before that I was with WSU at
13 the Prosser Research Station for, let's see, since June
14 something -- I don't know the date exactly -- of 1990.

15 Q What was your role there at Prosser Research Station?

16 A I was in the track of a research technician. So
17 started out -- by the time I left, I was a research
18 supervisor. In the beginning, I was a research
19 technician 1 or 2, I'm not sure.

20 Q And what type of research did you perform?

21 A Spent a lot of time -- I worked for a soil scientist,
22 so soil fertility, manure management, nutrient
23 management, sediment loading, some work also with the
24 pesticides registration, crop variety development for
25 beans, sugar beets, tiny bit of canola.



1 Q Did you have any particularized research specialty in
2 dairy management?

3 A Only in terms of nutrient management.

4 Q So in terms of nutrient management, then, a lot of that
5 was -- some of that focused on dairy nutrient
6 management?

7 A It was focused on manure. Manure, other nutrients,
8 crop production.

9 Q During the entire 14 years you were there?

10 A No. From -- started with Bob Stephens, I think, in
11 November of 1990, and I worked in that capacity, either
12 some kind of nutrient management, some irrigation
13 management, or water quality all the way through May of
14 1997.

15 Q And then your role switched to what?

16 A I spent six months with the pesticide registration
17 doing IR-4 work, which is doing efficacy studies for
18 pesticide application -- new pesticide registrations.
19 And after that, I moved to -- I moved to work with
20 Dr. An Hang in -- they called it alternative cropping,
21 but we grew dry beans, sugar beets, some canola.

22 MS. KRISTENSEN: What was the name? I'm
23 having a hard time hearing you. You said
24 Dr. Something.

25 THE WITNESS: An Hang.



1 Q Pardon me. I forget where you said you lived now.
2 Where do you live at present?
3 A I live in Olympia.
4 Q Did you live on the Eastside before that?
5 A I moved to Olympia on April 1, 2006. And so prior to
6 that, I lived in Prosser.
7 Q Okay.
8 A Which is in the Yakima Valley.
9 Q Are you married?
10 A I am not.
11 Q Ever been married?
12 A Yes.
13 Q Do you have children?
14 A Yes.
15 Q How many?
16 A Two.
17 Q I'm going to hand you what we marked as Exhibit 28.
18 (Exhibit No. 28 marked for identification.)
19 Q Have you seen this document before, Ms. Prest?
20 A Yes, I have.
21 Q And if you'll turn to the last page of Exhibit 28,
22 there's a list of five categories of documents to
23 produce for this deposition. Did you review those
24 requests?
25 A I did.



1 Q And tell me what you did to comply with this request.

2 A I gathered the materials and made sure -- well, first
3 of all, I asked for Dan McCarty, our inspector in
4 Eastern Washington, to forward his regional file. I
5 wanted to make sure that we had a complete record.
6 During the last eight months or so, our program has
7 been taking all of our records and scanning them and
8 putting them into an electronic file with the intention
9 of using that as our main file.

10 Q Is that project complete?

11 A Our scanning project is complete. Our access project
12 is not quite complete.

13 Q When do you expect that to be done?

14 A Waiting for Department of Enterprise Services to give
15 us a cloud-like -- do you know what a cloud is?

16 Q Yeah. There's a few outside today. But I understand
17 the Internet cloud too.

18 A The electronic.

19 Q In general, I understand them.

20 A So I'm waiting for that.

21 Q Do you know when you expect that?

22 A Sometime this spring.

23 Q So other than Mr. McCarty's regional file, what else
24 did you do to comply with this request?

25 A Took Mr. McCarty's file and briefly reviewed the folder



1 list to make sure that we had -- had everything in
2 there. There was a couple things that were missing --
3 the technical assistance referrals were not in there --
4 so we got those scanned in there and put into the
5 electronic file.

6 Q And were those provided to us today?

7 A They're on the disk.

8 Q Mr. McCarty came on to the Department of Ag in, I
9 believe, 2010; is that correct?

10 A I think June. June 1st, somewhere around there.

11 Q So what did you do to determine whether you had files
12 dating back to 2005?

13 A I'm not sure I understand.

14 Q Look at the first request for production, it asks for
15 documents dating back to 2005. Did you see that?

16 A I see that, I'm sorry. So the Olympia file is the main
17 file. And it's supposed to be complete, all the way
18 back to the beginning of when the dairy was inspected.

19 Q So did you review those files in preparation for
20 providing the information that was provided today?

21 A Only inasmuch as going to the folder and making sure
22 that those were in there.

23 Q When you say "the folder" --

24 A The electronic folder, excuse me, which you have a copy
25 of.



1 Q So we have everything -- we should have everything back
2 to 2005?

3 A That is what my expectation is.

4 Q The second category of documents, we requested any
5 employee manuals or handbooks in your possession
6 outlining the guidelines by which such inspections are
7 or were to be conducted during the relevant time
8 period. Those weren't provided originally, were they?

9 A They were not.

10 Q Are there additional documents -- well, let me hand
11 you --

12 (Exhibit No. 29 marked for identification.)

13 Q You now have in front of you Exhibit 29. This is a
14 guidance document that says revised October 2008. Is
15 this the document that you provided this morning at
16 your counsel's request?

17 A Yes, sir.

18 Q So as of -- is this the most recent guidance manual?

19 A I believe it is. There were two documents in the file
20 that appeared to be exactly the same. But one said
21 2008 and one said 2010, so I sent them both. There's
22 no noticeable difference between the documents, but
23 there was two files in the electronic folder, so I sent
24 them both.

25 Q We don't have the cover page that says 2010.



1 A That's because they say 2008.

2 Q They both do?

3 A Yes. I think we were -- best I can recollect is we
4 were getting ready to sort of take a revision in 2010
5 and that project got sideways -- or sidelined.

6 Q Do you know why it got sidelined?

7 A I would be guessing, but I'm pretty sure that we had
8 two vacancies to fill in our inspection staff, one up
9 in Whatcom and one over in Eastern Washington, and I
10 probably got busy with that.

11 Q As lead inspector, was it your job to provide the
12 guidance manual and to update it?

13 A It was one of my jobs to sort of lead that effort.

14 Q This says revised 2008. What was the revision process
15 like that led to this document, Exhibit 28?

16 MS. KRISTENSEN: 29?

17 MR. TEBBUTT: Is this 29?

18 A This is Exhibit 29.

19 Q Sorry. Would you like me to repeat the question?

20 A No. You're asking me why did we revise --

21 Q No. What was the revision process like?

22 A So, you know, just pull it up. One of us would go
23 through it -- one of the inspectors would go through it
24 and, basically, it was kind of used as a learning tool.

25 Q I think my question is different, though. Prior to



1 this version in 2008, there was another version,
2 correct?

3 A Yes.

4 Q And you still have a copy of that version?

5 A I don't know. I would have to look.

6 Q Were you personally involved in making this guidance
7 manual revision in 2008?

8 A Yes.

9 Q Was that part of your job as lead inspector?

10 A It was part of all of the inspectors' jobs.

11 Q So that was what my question was trying to get at, was
12 who was involved in revising the manual?

13 A All of the inspectors involved were involved in doing
14 that.

15 Q So who were the inspectors?

16 A Let's see. In 2008, Cara McKinnon, who was in the
17 Puget Sound region; Jason Pentzer, who was at the time
18 in Whatcom or sort of northwest region; and Eric Bair,
19 who was in the Eastern Washington region.

20 Q Did you look through your files to see if there was a
21 prior version of this guidance manual before this one
22 came out in October 2008?

23 A I did not, but I know that there's a 2006 manual,
24 because I helped with that as well.

25 Q So it was revised -- a prior revision was 2006?



1 A Yes.

2 Q Did a guidance manual exist before 2006?

3 A No.

4 Q So that was the first one?

5 A Yes.

6 Q And who wrote that?

7 A That would have been a combination of Kirk Robinson,
8 who was the lead inspector at the time, myself from
9 Eastern Washington, Jeff Kanen [phonetic] from
10 northwest region, and Cara McKinnon.

11 Q I'd like to request a copy of the 2006 version, please.
12 (Request for production.)

13 Q Your counsel will get it.

14 The third category of documents listed in Exhibit
15 28 -- that's the notice of deposition -- what did you
16 do to ensure that you fulfilled that request?

17 A I don't think I fulfilled that request, as I read it.

18 Q So you haven't looked at all for those documents yet?

19 A All of the documents that are relating to the five
20 dairies --

21 Q Yes.

22 A -- those items are in there. I think I misread that.

23 Q Well, it does ask for all complaints related to the
24 named defendants. So that's the five defendants?

25 A Okay, yes. So that's --



1 MS. KRISTENSEN: You mean everything.

2 A Yes. For some reason I missed that.

3 Q And the fourth category of documents, what have you
4 done to fulfill that request?

5 A We have -- we have administrative staff in the agency,
6 and they asked me for the names of the people that
7 might be related to the dairies, and so I provided them
8 with the email addresses that I had with them and then
9 they did a total email vault search of my -- not only
10 my, but Nora Mena, Chery Sullivan, Dan McCarty, and
11 those should be on the disk.

12 Q Did you have other forms of communication with the
13 named defendants other than emails during that time
14 period of 2005 to present?

15 A Certainly phone calls.

16 Q Phone calls. Any letters?

17 A Not -- I don't believe so. I think it's all in the
18 file.

19 Q Any handwritten notes?

20 A No.

21 Q Did you ever receive any handwritten notes from any of
22 the defendants?

23 A I don't believe I have anything other than what's in
24 the file.

25 Q The last category of documents, all documents possessed



1 by Ag related to ground water, soil, surface water,
2 effluent manure sampling of the named dairy defendants
3 or the facilities or application fields.

4 What did you do to determine that you had complied
5 with this request?

6 A They would have been in their file.

7 Q So, for instance, all the other -- prior inspectors,
8 Mr. Bair, yourself, all of those records back to 2005
9 would be in the Olympia file?

10 A They're supposed to be. But I did pull the regional
11 file, and I can see right now that I gave you more
12 information than you asked for, because I gave you all
13 the history as well.

14 Q More information is always good. Thank you.

15 What information did you use to create the
16 guidance manual, the 2008 guidance manual and the 2006
17 guidance manual?

18 A I really can't tell you. It would have had to start
19 with what we used for the 2006. The 2008 would just be
20 updating it for what our procedures had become. We had
21 a pretty simple one to start in 2006, and as you
22 develop your processes and stuff, you're able to sort
23 of start filling in the blanks.

24 Q What was the process in 2006 that you said was simple?

25 A Well, we just -- we just put together what we were



1 doing in the field, sort of tailored it around what our
2 inspection form was. By the time we got to 2008, you
3 know, we have a -- sort of beefed up what the water
4 quality sampling and -- explained it in more detail.
5 So we added additional detail.

6 Q Do you have any kind of a bibliography or reference
7 cites to the references you used to create the guidance
8 manual?

9 A I do not.

10 Q So, for instance, specifics about nitrogen levels in
11 soil, for instance, what did you use as a scientific
12 basis to determine what guidance to provide to your
13 inspectors?

14 A So we used to also, at the same time, have a committee
15 called the ILTAC committee. It was the Interagency
16 Livestock Technical Assistance Committee. And that
17 combined people of NRCS, conservation district,
18 ecology, ag, and I'm sure I'm missing somebody. Oh,
19 and WSU. And so we would meet once a month and we
20 would talk about these different things and we had a
21 meeting in, I want to say, March of 2006. It could
22 possibly have been 2005. And we wanted to establish
23 some soil test -- soil test threshold levels that we
24 thought would be protective of ground water. You know,
25 and -- you're not asking that.



1 And so we sought the advice of soil scientists to
2 sort of help us come up with this.

3 Q And what levels did you come up with?

4 A We felt like that they needed to keep their soil test
5 levels at 30 or below.

6 Q 30 or below what?

7 A Excuse me. 30 parts per million nitrate. And I felt
8 like we needed to have a compliance threshold, where,
9 you know, we could talk to the producers about, look,
10 you've got to keep things 30 or below, but have a place
11 where you could warn them for -- and then actually
12 eventually take compliance if that's what it took.

13 Q So the 30 parts per million as nitrate, was there also
14 an application rate for total nitrogen that related to
15 that 30-part-per-million nitrate?

16 A No. It's based on an agro- -- we would ask the
17 producer to work on agronomic rates. So that's going
18 to be different on each crop. That's going to be
19 dependent on crop uptake or crop removal, however you
20 want to say that rate is.

21 Q The 30-parts-per-million nitrate level, at what level
22 of soil is that -- do you believe is protective? What
23 depth of soil?

24 A Oh, I'm sorry. 30 parts per million in the first 12
25 inches.



1 Q First 12 inches. Okay. Do you have any levels of
2 concern for depths greater than 12 inches in your
3 guidance manuals?

4 A I couldn't tell you. I didn't review it before. I
5 just don't remember if we ever got that far.

6 Q You were involved, were you not, in the development of
7 the 2006 CAFO general permit for CAFO -- general NPDES
8 permit; were you not?

9 A Sort of.

10 Q In what way were you sort of involved?

11 A I went to the public comment sessions. I believe I
12 made one public -- I mean, I made one comment. Beyond
13 that...

14 Q Were you involved in any interagency discussions about
15 the permit requirements?

16 A At the public meetings, I probably went to a couple of
17 LDOCs, but -- you know, my job in 2005, 2004, I was
18 new, and I was sitting at the back of the room. So,
19 you know, my comments might have gone through to my
20 boss or possibly -- I think I did make a comment about
21 the soil sampling depth. I felt like in Eastern
22 Washington they should be going deeper than one foot.

23 Q LDOC you mentioned. What does LDOC stand for?

24 A Livestock something Oversight Committee.

25 Q Does development refresh your recollection?



1 A Yes. Livestock Development Oversight Committee.

2 Q Who is on that committee?

3 A There was producers -- I couldn't tell you names. I
4 mean, I might be able to look at a list and say, yeah,
5 that makes sense, but producers and livestock
6 stakeholder groups, some environmental stakeholders, I
7 believe, and agencies -- state agency people.

8 Q So it was more than just government people?

9 A That's my understanding. I mean, that's my
10 recollection.

11 Q At one point, as you said, you were an inspector from
12 July 2004 through at least April 1, 2006. You were an
13 inspector in the Eastside, correct?

14 A On the Eastside, yes.

15 Q And what was -- describe your area of responsibility
16 geographically.

17 A Geographically? West of the Cascades. Excuse me, no,
18 east of the Cascades.

19 Q East. The other east. And approximately how
20 many -- was it all dairies that you were responsible
21 for or all CAFOs?

22 A It was about 165 dairies, and at the time I believe
23 there were six, maybe seven feed lots.

24 Q Beef feed lots?

25 A Beef feed lots that were covered under a CAFO NPDES



1 permit or not, and all dairies, whether they were
2 covered under an NPDES permit or not.

3 Q When you came on in 2004, do you know how many dairies
4 were subject to the NPDES permit?

5 A I'd be just guessing.

6 Q Can you give me an approximate number?

7 A 120 or so.

8 Q And now how many were under the NPDES permit?

9 A I believe it's somewhere between five and seven. It's
10 kind of a moving target.

11 Q So you had back in -- again, you did some inspections
12 of some of the defendant facilities, correct?

13 A I did.

14 (Exhibit No. 30 marked for identification.)

15 MS. KRISTENSEN: Same confidentiality
16 objection.

17 Q Ms. Prest, is Exhibit 30 that was handed to you, is
18 that your handwriting?

19 A That is my handwriting.

20 Q And you conducted an inspection on November 22, 2005,
21 at the Cow Palace Dairy, correct?

22 A That's what this inspection form says.

23 Q And tell me what Springer One is.

24 A Cow Palace has two milking parlors, and so each milking
25 parlor is assigned a unique agricultural ID by the food



1 safety program through the Department of Ag, so Cow
2 Palace -- this Cow Palace and this Springer One is now
3 known as Cow Palace 1 and Cow Palace 2.

4 Q Is Springer One now Cow Palace 2?

5 A Yes.

6 Q So at that time, it had just one ag ID number?

7 A No. It had two ag ID numbers, although if you see it,
8 there's a little question mark here.

9 Q Yes.

10 A So I don't have the 9133. That would be, I believe,
11 Springer One's. And at the time, we were doing -- I
12 mean, we were still trying to get our hands around
13 about the double parlors. So if they had two parlors
14 but they had common storage, common acreage, didn't
15 seem to make much sense to do two inspection forms for
16 the same thing.

17 Q Is this the first time that you inspected -- we'll just
18 call it Cow Palace for simplification purposes -- Cow
19 Palace?

20 A Rather suspect it is.

21 Q And how long did this inspection take?

22 A I can't tell that. It does not look like I put the
23 departure time down, right.

24 Q Yes. As you sit here today, can you recall how long
25 you took to inspect Cow Palace that day?



1 A I cannot. It would only be speculation.

2 Q Did you tour the entire facility?

3 A Yes.

4 Q How did you tour it?

5 A Partially around the -- where the sheds were close to
6 the office would have been on -- you know, by foot.
7 But towards around the back area it's quite a big
8 facility --

9 Q Yes, it is.

10 A -- we would have gone by truck.

11 Q And what did you do during that inspection? What did
12 you look at?

13 A Looking at this form, it looks like I looked at their
14 nutrient management plan.

15 Q Where do you see that?

16 A Right here. Yes. If they had the plan on site.

17 Q Uh-huh. So it says that they had one. Does it say
18 that you reviewed it?

19 A No. But I would have. If it wasn't -- if I hadn't
20 reviewed it, it would have probably been because it
21 wasn't on site, and so the answers would have been
22 different.

23 Q And you had no guidance manual at the time you did this
24 inspection, correct?

25 A I'm not going to swear to that, because I can't



1 remember if the 2006 manual, when we put that together.

2 Q How were you trained to do your inspection job?

3 A I came up to Whatcom County and went out with our lead
4 inspector, and they took me through three, four
5 inspections up in Whatcom County, and they came over to
6 Eastern Washington and we did an inspection there.

7 Q Do you remember what facility you looked at?

8 A Yes.

9 Q Which one?

10 A Henry Oords'.

11 Q What particular guidance were you given with respect to
12 verifying information from the producer?

13 A In regards to?

14 Q Well, let me ask this: Let's look at section II, line
15 7. It says the acreage LNMP was developed for 474.

16 A Came out of their nutrient management plan.

17 Q And then the current total acreage says 500. How did
18 you acquire that information?

19 A The producer told me what it was.

20 Q And same with line 8 in section II. Did the producer
21 tell you how much mature -- what does MA stand for?

22 A Mature animals, so that would be the combination of
23 milking cows and dry animals.

24 Q The total animals on site was 10,700, correct?

25 A That's right.



1 Q So the LNMP was developed for 9,500 animals; is that
2 correct?

3 A That's correct.

4 Q So this is more than a 10 percent increase in the LNMP,
5 correct?

6 A It would appear so.

7 Q Did you make a recommendation to update the LNMP
8 because the number of animals was above the number of
9 animals that the LNMP was developed for?

10 A It does not appear to be so.

11 Q And section VI, second page of Exhibit 30, No. 2 says,
12 "Are nutrient application records maintained?" And you
13 checked yes. And then you have under years maintained,
14 two years, correct?

15 A Yes, sir.

16 Q Is that a violation of the NMP requirements?

17 A So a nutrient management plan --

18 Q Yes.

19 A -- they have to have one --

20 Q Yes.

21 A -- it has to be approved, and it has to be certified.
22 Beyond that, they don't have to follow it.

23 Q So it's just for a suggestion?

24 A That -- you know, when I first took the job, I mean,
25 that was kind of an amazing thing to me. You would



1 think that it was certified, that would mean it would
2 be implemented and it would continue to be implemented,
3 but legally that's not the case.

4 Q Is that still the case, in your opinion?

5 A That's still the case except for the recordkeeping. In
6 2009, we now have a recordkeeping rule -- I mean, a
7 recordkeeping requirement, so it's a violation not to
8 maintain records that demonstrate agronomic rates for
9 five years. The catch on that is that they have to
10 keep the records, but it's hard getting them to
11 agronomic rate.

12 Q So it says, for instance, in the NMPs that they're
13 required to keep application records for at least three
14 years.

15 A It varies across every single conservation district. I
16 mean, there isn't --

17 Q In the Yakima Valley, it's three years, is it not?

18 A I don't know. I couldn't tell you.

19 Q Handing you what's been marked as Exhibit 25 from the
20 McCarty deposition, you see section 5.7?

21 A (Witness reviewed.)

22 MS. MITCHELL: It would be more convenient --
23 I can loan Ginny my copy and you can have yours back.
24 Would that work better?

25 MR. TEBBUTT: Either way is fine.



1 MS. KRISTENSEN: What page is that?

2 MR. TEBBUTT: It's page 20.

3 Q Do you see the mandatory recordkeeping section?

4 A Yes.

5 Q So the requirement is -- actually is that they must be
6 made available to the Department of Agriculture and
7 maintained on site for five years, correct?

8 A Correct.

9 Q So looking at the Exhibit 30, they only had two years'
10 worth of nutrient application records?

11 A What year is that?

12 MS. KRISTENSEN: Objection as to time. It
13 tends to misstate her testimony.

14 A So this inspection report?

15 Q Yes. 2005.

16 A Right. That law did not come into play until 2009.
17 And so this nutrient management plan reflects the law
18 that came in 2009. And so for the first two years, it
19 was that they had to maintain -- they had to have three
20 years' worth of records. And then starting in 2011,
21 which this -- which this, I believe, is 2012, report
22 they had to have five years' worth.

23 Q So are you saying that RCW 90.64 is just a guidance
24 legislation?

25 A No.



- 1 Q What are you saying, then?
- 2 A I'm saying --
- 3 Q Do the dairy producers have to follow that law?
- 4 A Yes.
- 5 Q On the last page of Exhibit 30, you had a couple of
- 6 suggestions -- or at least one suggestion about
- 7 sample -- manure sample reported in pounds per 1,000
- 8 gallons.
- 9 A Correct.
- 10 Q Pounds per 1,000 gallons of what?
- 11 A Pounds of nitrogen or pounds of P205 or pounds of K20.
- 12 Q And P205 is what?
- 13 A Is phosphorus.
- 14 Q And K20?
- 15 A Is potassium.
- 16 Q Did you follow up with Cow Palace to see if they did
- 17 that?
- 18 A I doubt it.
- 19 Q You doubt that you followed up?
- 20 A Correct.
- 21 Q You also said that in the last line of your handwritten
- 22 notes, "P levels need some attention."
- 23 A Correct.
- 24 Q What did you do to follow up about that?
- 25 A I would have put the next inspector, Eric Bair -- I



1 would have provided him some guidance to follow up on
2 both of these things. You asked if I followed up.

3 Q So it would have been Eric?

4 A Yes. I'd already moved to Olympia.

5 Q Do you recall what guidance you gave to him to follow
6 up?

7 A No.

8 Q When you say "P levels need some attention," what kind
9 of attention do they need?

10 A I think that they needed to recognize that their
11 phosphorus levels were above 100, would be my guess.

12 Q And what's the level of concern for you for phosphorus?
13 Or at least at the time for 2005?

14 A At the time it was 100 parts per million.

15 Q Has that concern level changed since then?

16 A No. The only difference that may have -- that I think
17 needs to be thought about is that -- or considered is
18 that phosphorus is normally attached to the sediment,
19 and so you worry about it running off the fields. But
20 most of the fields in the Yakima Valley have berms
21 around them and they contain the phosphorus
22 levels -- or they contain the manure inside the field.

23 Q Most of them, but that's a situation that's in flux.
24 They're not always perfect, are they?

25 A No.



- 1 Q Erosion causes problems with those berms, right, and
2 erosion is caused by what factors?
- 3 A Water.
- 4 Q Wind?
- 5 A Wind.
- 6 Q Equipment?
- 7 A Could be.
- 8 Q So you inspect -- in general, in your nutrient
9 management program you inspect a facility once every 18
10 to 22 months; is that correct?
- 11 A That is the program's goal. For routine -- for routine
12 inspections. So there's other inspections that
13 are -- that may occur in between there.
- 14 Q And those would be complaint-driven inspections.
- 15 A Or follow-up.
- 16 Q If there was a problem that you believed from a prior
17 inspection at a certain level of concern, then you
18 would follow up?
- 19 A Yes.
- 20 Q What level of concern does it take to do follow-up?
- 21 A So if they have issues with their collection conveyance
22 or storage of the manure, elevated soil tests, I might
23 follow up instead of waiting two years, try to get back
24 that next fall.
- 25 Q Like for instance, P levels of concern?



1 A Well, I probably wouldn't do that for P levels, but
2 nitrogen levels.

3 Q Nitrogen only?

4 A Predominantly.

5 Q And what level is your concern for nitrogen? What
6 would cause you to follow up in shorter order than the
7 normal 18- to 22-month routine?

8 A Consistent values from one field at 30 parts per
9 million -- above 30 parts per million. So, I mean,
10 that's not a perfect --

11 Q Can you also determine that in pounds per acre, or --

12 A Sure.

13 Q What's the formula you use to convert --

14 A Ballpark, it's 3.5.

15 Q 3.5 times the parts-per-million nitrate to pounds per
16 acre?

17 A Right. So 105.

18 Q So is that the same level for the Eastside as the
19 Westside, the same formally is 3.5?

20 A It's a ballpark. If you have bulk density, you get a
21 little bit closer to it.

22 (Exhibit No. 31 marked for identification.)

23 MS. KRISTENSEN: Same objection on
24 confidentiality.

25 Q Ms. Prest, do you recognize the handwriting on Exhibit



1 31?

2 A Yes, I do. It's mine.

3 Q And that's a -- what kind of an inspection is that?

4 A It is a technical assistance.

5 Q And this is approximately less than two months after

6 the -- your first inspection of the Cow Palace

7 property, correct?

8 A That's correct.

9 Q And this one has both an arrival time and a departure

10 time?

11 A Yes, it does.

12 Q What was the purpose of the technical assistance visit?

13 A So it appears that they were making an irrigation

14 application, and that it was resulting in pooling in a

15 low spot of the field.

16 Q Who made the technical assistance request?

17 A I don't think anyone made the technical assistance

18 request. That doesn't --

19 Q How would you have come to the facility? Just on your

20 own?

21 A Yes.

22 Q Just stopped by to provide technical assistance out of

23 the blue or -- that's not something that you normally

24 do.

25 A Well, now I'm just recollecting, okay.



1 Q Sure. We're doing the best we can. It was eight years
2 ago?

3 A I'm doing the best I can. And I would really love to
4 be able to look at the records, the weather records,
5 whether it was snowing. But there was a time
6 that -- you know, it was cold weather, some freezing,
7 some snow, and I was doing what they call surveillance
8 and driving around and looking to see what was going on
9 in the dairies in terms of land applications. This was
10 something that, you know, wasn't done all the time, so
11 I stopped and I provided them some technical
12 assistance.

13 Q And is it typical to see irrigation going on in the
14 middle of the winter?

15 MS. KRISTENSEN: Objection. Vague. Calls
16 for speculation.

17 Q Go ahead and answer.

18 A It wasn't that winter. If this is the winter I'm
19 thinking, it wasn't. This wasn't the only place I
20 stopped to provide technical assistance.

21 Q Right. But my question was: Is it typical to see
22 irrigation occurring in the middle of the winter?

23 A I don't think it happens very often at all now,
24 Charlie.

25 Q Did it happen more regularly back then?



1 A Yes.

2 Q And this was irrigation application not of well water,
3 but of manure water, correct?

4 A That would be speculation on my part.

5 Q Do you have any idea looking at this document whether
6 it was manure irrigation that was occurring?

7 A I really don't.

8 Q Why would they be irrigating in the middle of the
9 winter?

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

12 A I can't answer that question, Charlie.

13 Q Did you ask them that question during this inspection?

14 A I can only -- I'm reading this, and I'm trying to match
15 up what I felt like was an issue going on in the early
16 days.

17 Q Right.

18 A And then, you know, the one part of me goes, Well, you
19 know, irrigation water is turned off on X amount of
20 days, but -- I mean, there's no irrigation running.

21 But I think they have access to wells, and so they may
22 have wells that they could irrigate from.

23 Q They could certainly irrigate from their manure ponds,
24 correct?

25 A They certainly could. But I don't -- I don't have



1 anything on here that can -- that I can definitively
2 answer.

3 Q Can you recollect whether the water that was coming out
4 of the irrigation systems was brown or clear?

5 A No.

6 Q You didn't ask them whether it was coming from a well
7 or a pond?

8 A I'm sure that I was making the assumption that it was
9 manure. But clearly I don't have anything here that...

10 (Exhibit No. 32 marked for identification.)

11 MS. KRISTENSEN: Same confidentiality
12 objection.

13 Q Ms. Prest, this was an exhibit of the Cow Palace
14 nutrient management plan, the present one, from
15 Appendix B, and it's just the excerpts of the -- well,
16 one of them is the first page after the appendix list.
17 What's present?

18 A The annual available nutrient values after losses.

19 Q The first one is the nutrient utilization worksheet,
20 but the ones that I'm most interested in start on page
21 514 and run through 520.

22 A I don't see the page numbers.

23 Q Sorry. Down at the very bottom. It's COWPAL 000514
24 through 520.

25 Do you see those?



1 A I do.

2 Q These are irrigation water management worksheets,
3 correct?

4 A It does appear.

5 Q And have you reviewed Cow Palace's DNMP in the past?

6 A This one? No.

7 Q But this is a typical irrigation water management
8 worksheet, isn't, for a dairy?

9 A I think it has the components that go into a
10 typical -- this may be an NRCS practice.

11 Q And the irrigation schedule denoted on page 514 shows
12 irrigation happening from April through October,
13 correct?

14 A On 514 I show from May through September.

15 Q All right. There was no irrigation in April. But
16 there is --

17 A Well, it's a schedule.

18 Q Right.

19 A So it's -- I mean, it's kind of like a plan.

20 Q But that indicates that irrigation is not to occur from
21 November through March, doesn't it?

22 A No. To me it just looks like a plan. I mean, if they
23 have a crop in the field during the winter, which I am
24 assuming they would, but it does not -- we'd have to go
25 back to field 6 and look at the -- what they planned



1 for.

2 Q Is field 6 on here?

3 A Hold on. Well, first of all, we'd have to know what
4 cropping system this is for -- for either one of these
5 is for. I can't tell off the bat.

6 Q Let's move on.

7 A But if this is for their tree fruit, this is probably a
8 reasonable irrigation schedule for their tree fruit.

9 Q For tree fruit. Oh, I see, from April to October?

10 A I see they have tree fruit. So it may be for that.

11 Charlie, are we done with this?

12 Q Yes. So during your time as lead inspector, you would
13 still go out into the field and inspect various
14 facilities; is that correct?

15 A That's correct. I had a region, so all of southwest
16 region and Western Washington and still went all over
17 the state.

18 (Exhibit No. 33 marked for identification.)

19 MS. KRISTENSEN: Same objection on
20 confidentiality.

21 MR. TEBBUTT: I note that there's no
22 confidentiality for page 437, just 438 and 439.

23 Q Handing you -- you have in front of you Exhibit 33.

24 You conducted an inspection on October 23, 2008, of Cow
25 Palace, correct?



1 A Correct.

2 Q And why did you conduct that inspection rather than
3 someone else in your office?

4 A We -- the program was doing some emphasis on just
5 lagoons in general, so taking a look at whether they
6 were -- sort of like an informal look at how they were
7 managing the lagoons, how they were going into winter.
8 We started -- you know, this emphasis started up in
9 Whatcom County, because we were having lots of
10 instances with -- strike that, please. Not lots, but
11 several instances of land applications that happened
12 early because they didn't have adequate storage
13 capacity. So we -- we're trying to figure out -- not
14 Eastern Washington, in Western Washington. So we were
15 trying to figure out whether they had adequate storage
16 facility and they didn't go into winter properly
17 prepared or if they needed more storage.

18 So we did that on the west side of the state and
19 in 2008. We thought, well, this is such a great idea,
20 and we'll go over to Eastern Washington, not thinking
21 about the double cropping that happens over there. So
22 this was --

23 Q Does double cropping happen in all facilities on all
24 fields in the Eastside?

25 A I would not say that.



1 Q And you -- on that -- on October 23, 2008, what did you
2 do?

3 A So this would have been a walk-through evaluation of
4 all of their liquid storage, so all of their lagoons.
5 And as you can see back here, this is sort of a -- talk
6 about each lagoon, how much -- you know, how much
7 manure was in it, what the solids...

8 Q And you came to a conclusion that there were -- that
9 all of the lagoons were at approximately 25 percent
10 full, correct?

11 A What this tells me is that they were in excellent
12 shape.

13 Q But my question was about how much --

14 A 25 percent.

15 Q -- manure was in there?

16 A Well, they had 25 percent of the liquid. I mean, they
17 have tons of storage.

18 Q So but when you're going into winter, you want to be
19 down as close to zero as possible, don't you?

20 A Not necessarily. I mean, we could look at their
21 nutrient management plan and go back to these waste
22 calculation sheets, and it will tell you how much
23 months' storage they have. So it's all about managing
24 storage.

25 Q What's the minimum amount of time that they need so



1 have storage for going into winter?

2 A In Eastern Washington?

3 Q Yes.

4 A I do not know what they plan for, but we see it as

5 little as four months in Western Washington and we see

6 it as much as 18 months.

7 Q Eighteen months?

8 A Yeah.

9 Q In Western Washington?

10 A In Western Washington.

11 Q In Eastern Washington, it's, what, 120 days, 180 days?

12 A I don't think they have a -- that's nothing specified.

13 Q And did it say on Exhibit 33 how long you were there?

14 A No.

15 Q How long do you typically spend on lagoon inspections?

16 A It would depend on how many lagoons they have, where

17 they were located. I would say, ballpark, maybe 15

18 minutes per lagoon. Looks to me like one, two, three,

19 four, five, six. And West Arms is off site, I believe,

20 so that's seven, eight. So that calculates up to about

21 two hours, but I would be surprised if it took that

22 long.

23 Q Do you recall whether you walked or drove around to

24 look at the --

25 A The ones that were off site? I'm sure we drove.



1 Q Just all of them. Okay.

2 Handing you what's been marked previously as
3 Exhibit 25, I'm showing you page 487. That's down in
4 the lower right-hand corner. It's page 21 of the Cow
5 Palace nutrient management plan. Do you see the last
6 paragraph that starts off -- an annual report
7 summarizing discharges, et cetera?

8 A Um-hmm.

9 Q Have you ever seen an annual report from any of the
10 dairies on the Eastside?

11 A I have seen a couple that were associated with CAPO
12 NPDES permit. So I don't know if that's a holdover
13 from when they were permitted. Didn't they used to be
14 permitted?

15 Q I'm not sure. The record will have to reflect that.

16 So my question is: Have you ever seen an annual
17 report for Cow Palace?

18 A Boy, I can't -- I can't answer that question.

19 Q How about for Bosma Dairy? Have you ever seen an
20 annual report for Bosma Dairy?

21 A Can't answer that question. Not reliable. I could
22 look at the files to see if they were providing annual
23 reports as a part of the CAPO NPDES permit in that
24 file.

25 Q But this is the dairy nutrient management plan.



1 A I understand that.

2 Q So if they had an annual report as part of the dairy
3 nutrient management plan, it would be in your file,
4 right?

5 A No.

6 Q Not necessarily?

7 A They're not required to provide that to us.

8 Q Just to inspectors?

9 A They're not required to provide it even to the
10 inspectors. If they had this, it might be available
11 for review while they were on site, but these annual
12 reports for summarizing and providing that, generally
13 is something that would be a requirement of an NPDES
14 CAFO nutrient management plan.

15 Q Once again, I'm going to show you page 20, which is
16 COWPAL 000486, the section 5.7, mandatory
17 recordkeeping. That section that we just discussed is
18 part of section 5.7, mandatory recordkeeping, isn't it?

19 A It is part of that section.

20 Q Moving on to -- oh, while we're on Cow Palace, who do
21 you know at Cow Palace?

22 A I've met Mr. Dolsen.

23 Q Which Mr. Dolsen?

24 A Bob Dolsen. I've met Adam Dolsen during an inspection.
25 But he's been -- he wasn't at the dairy the last time I



1 was there.

2 Q When was the last time you were there?

3 A Last fall.

4 Q Who did you see at the dairy last time you were there?

5 A Bob Dolsen and Jeff Boivin.

6 Q And what did you discuss with Mr. Boivin and Mr. Dolsen
7 last fall?

8 A Actually was taking my boss, the director, around to
9 show him around.

10 Q And how much time did you spend there and what did you
11 talk about?

12 A We probably spent 45 minutes, and it wasn't -- it
13 wasn't a place -- I mean, it wasn't a visit for me to
14 talk to them. It was a visit for my new boss to get to
15 know some of the dairies in Eastern Washington.

16 Q What did you do while you were there?

17 A We toured their composting facility, took a look at
18 that.

19 Q The one on the north end of the property over towards
20 the canal?

21 A The one on the north end of the proper- -- the dairy
22 proper, so the main facility, behind the animal
23 housing.

24 Q What else did you do?

25 A That's about all we did there.



1 Q Didn't take him around to all the lagoons and any of
2 the application fields?

3 A No. We weren't there for an inspection.

4 Q Do you recall what was discussed?

5 A No.

6 Q Anything particular about any upcoming permits?

7 A No. I didn't know there were any upcoming permits.
8 Unless you're talking about the CAFO permit.

9 Q The CAFO permit, yes.

10 A I don't think we discussed that. We had a couple
11 vehicles. I was riding with Jeff, my boss, his policy
12 assistant, and I believe it was Bob Dolsen and -- we
13 didn't have enough room to put everybody in one.

14 Q Was there any discussion about the EPA legal action?

15 A There wasn't discussion about EPA legal action, per se.
16 There was discussion about the amount of money that it
17 cost to do the monitoring efforts.

18 Q What kind of monitoring efforts?

19 A I believe what is requiring them to do is ground water
20 monitoring and some additional soil testing and other
21 things.

22 Q And how much money was being discussed, the cost?

23 A I couldn't tell you that. I don't know.

24 Q Thousands?

25 A I don't know.



1 Q Hundreds of thousands?

2 A Don't remember.

3 Q Was it Bob Dolsen who was doing the discussion about
4 the cost?

5 A I don't remember that either.

6 Q What do you remember from the conversation?

7 A Just that it costs a lot of money for them to do
8 monitoring efforts.

9 Q Was there any discussion about the cases that are
10 pending that we're asking you about now, the citizen
11 suits?

12 A I don't think so.

13 Q In your past dealings with Cow Palace, who else have
14 you dealt with?

15 A Dirk Porter.

16 Q Who is he?

17 A He worked for Cow Palace in the early, you know, 2005.
18 I'm not even sure -- exactly -- I can't remember if he
19 was the one who was in charge of the manure management
20 section or -- I mean, it's a big facility, and so
21 different people do different things, or if he just
22 happened to be the person that was in there the day
23 that I stopped by.

24 Q Was he Jeff Boivin's predecessor, do you know?

25 A I don't know the answer to that either, because I think



1 Jeff might have been around in those days too.

2 Q Was Mr. Porter present in the meeting you had in the
3 fall?

4 A No.

5 Q Just a few months ago?

6 A No. Because I did ask Jeff about him.

7 Q Do you have any notes of the meeting that occurred last
8 fall?

9 A (Witness shook head negatively.)

10 Q Anything in your schedule book?

11 A Other than there might be something in my calendar.

12 Q What other facility did you visit during that tour with
13 Director Hover and -- who was his assistant?

14 A Julie Morton.

15 Q Who else did you visit?

16 A George DeRuyter.

17 Q And who was present at the George DeRuyter Dairy?

18 A George and Dan.

19 Q What did you discuss with them?

20 A We took a look at their facility.

21 Q What did you discuss with them?

22 A I didn't discuss anything with them.

23 Q You were present during the discussion?

24 A Yes, I was there, but I remember it was --

25 Q What was discussed?



1 A We were talking about digesters, different ways to use
2 the manure, composting. That was really what we were
3 talking about, was to go over and see how these dairies
4 are managing their manure. George DeRuyter has a
5 digester. Cow Palace has a fabulous composting
6 operation. And I think that they do a pretty darn good
7 job of removing a lot of nitrogen out of the valley,
8 and I wanted the director to see that.

9 Q Was there any discussion about the EPA enforcement
10 action or the citizen enforcement actions?

11 A No.

12 Q None whatsoever?

13 A No. Other than I found out that the director's cousin
14 is Jan Whitefoot.

15 Q How did that come about?

16 A Talking about he used to work there during the summers,
17 so he was just talking about his different relatives in
18 the valley. We were just down by the Jones family
19 farm. Have you been there?

20 Q I don't know.

21 A There's a nice fruit and vegetable farm just down the
22 road. The director spent summers with them.

23 Q What did the director have to say about Ms. Whitefoot?

24 A Just that she was his cousin.

25 Q Did the DeRuyters question him about that?



1 A No.

2 Q What other facilities did you visit?

3 A I don't think we went anywhere else that day. I don't
4 think we went anywhere else that day.

5 Q Are those the only two facilities that you visited in
6 Eastern Washington?

7 A That day.

8 Q What about the next day?

9 A Not with the director. The next day -- I didn't visit
10 any facilities the next day. I go over to Eastern
11 Washington through my regular work from time to time.

12 Q Just that you implied that there were other visits with
13 Director Hover with other facilities.

14 A There was not. I'm sorry. I misunderstood.

15 Q You had occasion to visit the Bosma facilities, as
16 well?

17 A Yes.

18 MS. KRISTENSEN: Charlie, is this a good time
19 to take a quick break?

20 MR. TEBBUTT: Sure.

21 (Off the record.)

22 Q You're still under oath. Do you understand that?

23 A Yes, I do.

24 Q As we were concluding just before the break, you
25 mentioned I believe it was fabulous that -- I think it



1 was George DeRuyter's digester was moving nitrogen out
2 of the valley.

3 A No, actually, I was sort of talking collectively Cow
4 Palace and George DeRuyter, Bosmas and collectively a
5 whole bunch of other -- I think they're moving about 40
6 percent of the nitrogen out of Yakima Valley.

7 Q Why is that a good thing?

8 A Well, because it's going to other uses. It's going to
9 crop production up in Horse Heaven, it's also going to
10 soil amendment companies, going into nurseries. So
11 they're taking the nitrogen out of a place where maybe
12 they don't need it and they're putting it into a place
13 where they do.

14 Q What indicates to you that they don't need that much
15 nitrogen in the lower Yakima Valley?

16 A Well, probably because early on in the early days their
17 soil samples I thought were a little bit high.

18 Q Early on in the early days. What does that mean?

19 A So 2004, 2005. When I first came to work for this
20 program -- if you remember, there's this transition --
21 was at Department of Ecology. And they were coming
22 over to Department of Ag, the same time frame that was
23 going on there. I don't know if you remember this or
24 not, but nutrient management plans were all supposed to
25 be certified by December 31st of 2003. And during that



1 time while they were developing the nutrient management
2 plans, approving the nutrient management plans and
3 getting them certified, there was not a lot of emphasis
4 put on recordkeeping. So one of the first things that
5 I noticed was that there was a lot of producers that
6 didn't have soil test records, they didn't have land
7 application records. So, you know, I come by this
8 interest in agronomy from my education and my career,
9 and it's -- I don't know how you can make an agronomic
10 application if you don't have all these records.

11 Now, I'm talking in general, here, not
12 specifically to these facilities. So, collectively, I
13 felt like in the Yakima Valley there was more nitrogen
14 than what they had -- what they could account for their
15 land base. And so that's part of the whole technical
16 assistance and sort of the shift on -- you know, we
17 started working on trying to get a soil test threshold
18 that was agreed upon between NRCS, the technical
19 assistant people, Land Grant University, and the
20 regulators so we could give them a target. They didn't
21 have a target before.

22 Q And that's where the 30 parts per million that came up?

23 A That's where it came up. And there was lots of
24 discussion going on with Ag and Ecology and all of the
25 other groups about whether it should be 15 or whether



1 it should be 20. And I'm just going, Hey, at least we
2 put something out there. Gave them a target and got
3 them started on it. That's not just the Yakima Valley.
4 This is the whole state. We put that out there, the
5 producers can rise to the challenge and they can work
6 on that. And they have. They've done a good job.
7 They're the only ones that are being regulated out
8 there. There is no else looking at what's going on
9 with the other farming enterprises.

10 Q What besides soil sampling can be done to determine the
11 migration of nitrogen?

12 A Well, I think you can -- you can take -- you can take
13 water tests from wells and you can see where it's at.
14 But if you think about it, Charlie, it took a long time
15 to get there. A long time.

16 Q What do you base that on?

17 A I base that on you take a foot of soil, you talk about
18 the amount of air spaces that are in there and then you
19 sort of calculate out idealistically -- I mean, this is
20 all just sort of putting it together -- how much
21 irrigation -- what their irrigation right is, how much
22 they irrigate, how that can go. But with manure, it's
23 not quite that straightforward or that simple. I mean
24 you take a pound of manure, a pound of nitrogen and
25 manure, and only about 50 percent of that is going to



1 be available during the first year of the cropping
2 system, and then the next year another 25 percent, and
3 then the next year another --

4 Q Where does some of that residual go?

5 A You have to account for it in your nutrient balance --
6 I mean, your nutrient budget for your soil.

7 Q Some of it goes below the root zone, does it not?

8 A It can.

9 Q Doesn't it automatically? If the roots -- if the
10 roots don't --

11 A Any --

12 Q Just a moment. Let me finish my question.

13 If the crop doesn't take it up, it has no place to
14 go but down, does it?

15 MS. KRISTENSEN: Objection. Calls for
16 speculation. Incomplete hypothetical.

17 A So nitrogen -- nitrate, nitrogen, okay?

18 Q All right.

19 A It's negatively charged molecule, so it's going to go
20 -- or positively charged. But whatever it is, it's not
21 going to stick to the soil particle. It's going to go
22 with the water. So if it's not used in that cropping
23 root zone, you bet it can escape and it can go down.

24 Q It has nowhere else to go but go down once it's in the
25 soil column and it's not taken up by the crop, correct?



1 A I'm not disagreeing with that. All I'm saying -- am I
2 allowed to finish this?

3 Q You answered my question.

4 A So does that mean no, I'm not allowed to finish this?

5 MS. KRISTENSEN: You can always answer. You
6 can go ahead.

7 Q If you want to continue --

8 A All I --

9 Q -- but you've answered my question.

10 A -- all I want to say is it's little bit shortsighted to
11 just look at manure, from my point of view, because I
12 think about a bag of fertilizer, and that is formulated
13 to be delivered right now this year. And if it's not
14 used, there's another source.

15 Q Okay.

16 A Thank you.

17 (Exhibit Nos. 34 & 35 marked for identification.)

18 Q Ms. Prest, you have in front of you Exhibit 35, which
19 is an email from you to multiple people at the
20 Department of Agriculture.

21 A Yes.

22 Q And some of the Dolsens, Washington Dairy Federation?

23 A This is the meeting I was talking about earlier.

24 Q Okay. And that meeting took place when?

25 A September 17th, 2013.



1 Q And you mentioned that -- earlier you mentioned Bob
2 Dolsen and Jeff Boivin were present?

3 A Yes.

4 Q Were any of the Dairy Federation representatives
5 present?

6 A No. Jay Gordon, Dan Wood.

7 Q Dan Wood. You didn't mention him earlier, did you?

8 A No, I did not.

9 Q Is there a reason you didn't mention his presence
10 earlier?

11 A I just didn't remember it.

12 Q So you --

13 A And Ted Maxwell is my boss, my direct supervisor.

14 Q And who is Jeff B.? Oh, Jeff Boivin.

15 A Jeff Boivin.

16 Q Bill Dolsen, was he present?

17 A Bill Dolsen, he was. Steve George was not there, I
18 don't think.

19 Q And what did Mr. Wood have to say about the
20 litigation -- the citizen litigation, if anything?

21 A You know, I don't remember that.

22 Q Was it mentioned?

23 A It may have been, Charlie, but my whole thing was to
24 get this group of people together, and I didn't -- I
25 mean, I didn't sit hovering around Doctor -- I mean,



1 Director Hover.

2 Q I'm just asking if you recall whether it was mentioned
3 at all.

4 A I don't remember.

5 Q Don't you think that would be a natural part of the
6 discussion?

7 A I'm sure it was, but I don't know that I was there. I
8 wasn't with them every minute of the way.

9 Q So impacts from the EPA consent decree were discussed
10 both with Mr. DeRuyter and Mr. Dolsen, correct?

11 A It was on the agenda, is what it looks like to me.

12 Q Do you know if that agenda came to fruition?

13 A We didn't sit down and have a formal discussion. So as
14 I was explaining earlier, there were different
15 vehicles. People were piled in. I have been working
16 around these people for a long time. I was just trying
17 to get my boss to be able to -- my bosses to be able to
18 get to know other people.

19 Q Did Mr. Wood or anyone from the Dairy Federation help
20 set the agenda for this meeting?

21 A No, this was mine.

22 Q Did you have any discussions with Mr. Boivin prior to
23 this meeting?

24 A No, I did not.

25 Q About the meeting?



1 A I did not.

2 Q With Mr. Gordon?

3 A Possibly.

4 Q Possibly. Do you keep a log of phone conversations --

5 A I do not.

6 Q -- with outside people, people outside the agency?

7 A I do not.

8 Q Let's take a look at Exhibit 34. This is an

9 inspection --

10 MS. KRISTENSEN: I don't have a copy.

11 MR. TEBBUTT: Sorry. That's because I have

12 them all here.

13 Q -- an inspection of the Henry Bosma Dairy.

14 A Yes.

15 Q Well, it has multiple names: H&S, Liberty Dairy, Hank

16 Bosma, right?

17 A That's right.

18 Q You have different ID numbers for these facilities?

19 A Doesn't look to. Looks to me like these were the

20 attempt at -- so this is probably 9199, 9612.

21 Q So one for Liberty, one for H&S?

22 A Right. Because the parlors are what is labeled by the

23 ag ID.

24 Q And that's for the milk production purposes?

25 A Yes.



1 Q Not environmental compliance issues?

2 A That's right. If this facility were to have a CAFO
3 permit, because they have contiguous borders and they
4 share common storage and that they share common land,
5 they would be considered one facility. So we do the
6 same thing with mixed results.

7 Q So this is a routine inspection. How long were you
8 there that day?

9 A I have no idea. But I'd been working for them about
10 one month and six days.

11 On this --

12 Q No question is pending. Just a second.

13 A I was going to help you figure out how much time I
14 spent there if you have the last page.

15 Q That's all we have.

16 I notice in section II -- starting in section II,
17 line 7 and continuing into section III, there are a
18 number of -- a number of numbers blacked out.

19 A Yes.

20 Q Did you black those out?

21 A I don't know if I blacked these ones out, but they
22 would have been redacted per -- at the time that -- not
23 during this inspection, no, I did not.

24 Q You put the actual numbers in there?

25 A Yes.



1 Q When were these redacted?

2 A Probably from a public disclosure request.

3 Q Do you have any idea when?

4 A No. I don't know if it was --

5 Q In 2004 this information was not redacted from these
6 forms, correct?

7 A No. They wouldn't have been redacted until -- as it
8 sits in its native format in the actual inspection
9 report, they're not redacted in the official record.
10 But when this information is requested during a public
11 disclosure request, we're required to put in ranges.

12 Q And when were you required to put those ranges?

13 A I'd have to look when that passed.

14 Q It was after you started as inspector, correct?

15 A Oh, yes.

16 (Exhibit No. 36 marked for identification.)

17 Q While we're on the topic -- I should have followed up
18 with this earlier -- Exhibit 36 is an email from GDR to
19 you. That's -- is that George DeRuyter Dairy, is your
20 understanding?

21 A Yes, it is.

22 Q And came from Dan DeRuyter?

23 A Yes.

24 Q And it's an email from you to Bill Dolsen, Dan
25 DeRuyter, cc'd to numerous other people, including the



1 Washington State Dairy Federation; do you see that?

2 A Yes, I do.

3 Q Does reading this email refresh your recollection of
4 what was discussed at both the Cow Palace Dairy and
5 George DeRuyter Dairy with your director and others
6 there?

7 A I don't think I have anything other to add other than
8 what I've told you.

9 Q What about the pressure in the dairy industry and
10 agriculture in Washington are under?

11 A I think they are under a lot of pressure.

12 Q What kind of pressure?

13 A I think that have a lot of pressure from regulatory
14 interests. I think they have a lot of pressure from
15 environmental interests. I think they have a lot of
16 pressure from economic interests.

17 Q Do you think any of that pressure is legitimate?

18 A I think that there is a good reason to take a look at
19 them, but I think that some of the pressures are not
20 willing to recognize the improvements that they've
21 made.

22 Q But there's still a problem there. You recognize that
23 there's a problem there; is that correct?

24 MS. KRISTENSEN: Objection. Vague.

25 A I don't --



1 Q You don't think there's a problem with the dairy
2 industry?

3 A I think that the dairy industry has gone a long way to
4 make a lot of improvements.

5 Q Do you think there was ever a problem?

6 MS. KRISTENSEN: Objection. Vague.

7 A In my --

8 Q I'm just looking for your honest answer.

9 A I know. In my honest opinion, I will tell you back in
10 the early '90s I thought there was a horrendous
11 problem.

12 Q What about in the 2000s?

13 A I think they've made a lot of improvements.

14 Q What are the improvements that you've seen made?

15 A I think they do a much better job with their agronomic
16 applications. I think they do a much better job with
17 their nutrient balance. I think that 90 percent of the
18 dairies are meeting compliance and better.

19 Q What's compliance?

20 A They don't have discharges. They're making --

21 Q Discharges to what? To surface water?

22 A Waters out of the state. Yes, we're still having that
23 connection -- that problem making the connection
24 between surface water and -- excuse me, about what's
25 going on in the surface and what's going on in the



1 ground water. There's 80 feet, for the most part, to
2 the shallow ground water.

3 Q And ground water is waters in the state of Washington
4 too, correct?

5 A Yes, they are.

6 Q So do you have a concern that the dairies are causing
7 contamination of those ground waters?

8 A I have a concern with some dairies.

9 Q Not all? Not all the dairies in Eastern Washington?

10 A No.

11 Q What about lagoons? Are you concerned that the lagoons
12 have a hydrologic connection to the ground water?

13 MS. KRISTENSEN: Objection. Lack of
14 foundation.

15 A I am not an engineer but I think that most of those
16 lagoons have been built to NRCS practice standards, and
17 I think that the likelihood of them having a hydrologic
18 connection is limited.

19 Q So are you saying that you think the lagoons are
20 impermeable?

21 MS. KRISTENSEN: Objection. Calls for
22 speculation --

23 A No. I'm not saying --

24 MS. KRISTENSEN: Hold on, please. This is an
25 important line of questioning, and I need to be sure



1 that -- we're speaking over each other, and I need to
2 be able to make an objection for the record after
3 Charlie asks one of these types of questions, and then
4 go ahead and answer. I don't want to prevent you from
5 answering, but I just need the opportunity to make that
6 objection for the record.

7 So my objection is lack of foundation, calls for
8 speculation.

9 Q Go ahead and answer.

10 A I don't have a professional enough background to be
11 able to make that assessment. But I think even lagoons
12 that have been -- just in sort of taking a look at
13 things, even lagoons that have geotech-style liners,
14 any kind of liners, so whatever you're lagooning up,
15 whether it's manure or whether it's sewage, I'm not
16 sure any of them are impermeable.

17 Q But lagoons built into the earth are clearly not
18 impermeable, are they?

19 MS. KRISTENSEN: Objection. Calls for
20 speculation. Lack of foundation.

21 A I can't answer that question.

22 Q You spent how much years at the Prosser Research
23 Station looking at manure management issues at dairies,
24 correct?

25 A Not of lagoons. I'm an agronomist, so cropping.



1 Q Did you see after -- there were -- you probably are
2 familiar with a number of lawsuits that were brought
3 against a number of dairies, including these very same
4 four dairies in the late 1990s and the early 2000s?

5 A I have a little bit of familiarity of that, but mostly
6 it was going to one CAFO permit meeting in Ellensburg
7 and listening to everybody yell and scream and
8 thinking, you know, this is all very interesting, but
9 not where I want to spend my time.

10 Q That meeting was about what? That was back during the
11 Clean Water Act cases?

12 A Yeah. Well, I don't know. I think it was Ecology
13 bringing the first permit, the one that was maybe the
14 end of the '90s.

15 Q The '96 permit?

16 A Could be.

17 Q That was then superseded by the 2006 permit?

18 A Yes.

19 Q Which now we're eight years later into the next permit
20 cycle?

21 A They're getting on it.

22 Q You refer again in Exhibit 36 to the regulatory
23 framework you guys are operating under. What
24 regulatory framework do you think that is?

25 A That the dairies are operating under?



1 Q Yes.

2 A I think that they have pressures from Department of
3 Agriculture to comply with dairy nutrient management
4 program. I think they have Department of Ecology
5 pressures. They have Department of Health. There's a
6 lot.

7 Q Do you consider yourself a representative of the dairy
8 industry?

9 A No.

10 Q Isn't that part of Department of Agriculture's mission
11 to --

12 A Yes.

13 Q -- let me finish my question, please.

14 A Sorry.

15 Q -- to move along and support agriculture in the state
16 of Washington?

17 A I work for a water quality program. That's our primary
18 goal. Our second --

19 Q What's your mission?

20 A -- our second goal -- mission -- so our mission, water
21 quality.

22 Q Is Department of Agriculture?

23 A That's part of it.

24 Q What's your mission in the water quality division?

25 A To protect water.



1 Q Do you have a stated mission?

2 A I'm not sure I understand.

3 Q Do you have a written mission?

4 A Yes.

5 Q And that is available somewhere on your website or
6 something to that effect?

7 A Sure. You bet.

8 Q All right.

9 (Exhibit No. 37 marked for identification.)

10 Q Ms. Prest, I'm handing you a six-page document, Exhibit
11 37. First page is a letter from Steve Bosma to you
12 about a recent trip. Do you see that?

13 A I do.

14 Q And that recent trip was -- if you look at the fifth
15 page of that document, CARE 8563, does that refer to
16 your recent trip on April 8, 2005?

17 A No. I don't think so. I'm assuming it was vacation.

18 Q Oh, okay. So it's not referring to an inspection
19 report or something like that -- an inspection?

20 A He'd be pretty friendly. I'm pretty sure it was a
21 vacation.

22 Q So you must have had a chat with Mr. Bosma, Steve
23 Bosma, shortly before receiving this letter?

24 A That would be my guess.

25 Q Were you following up on a request for information? Go



1 ahead and look at the whole document, if you want.

2 A Thank you. That would be what I think is happening, is
3 that he's following up on my follow-up.

4 Q You had asked for records that he didn't provide,
5 correct?

6 A Correct.

7 Q So he's following up months later with that
8 information?

9 A Well, it looks to me like on April 8th I requested
10 specific records. And I asked for it to be in my
11 office by May 15th. And it looks like I did not follow
12 up until June 15th and he followed up on July 14.

13 Q Let's take a look at the third page of the document.
14 Well, let's first look at the second page of the
15 document, which is 8560. It says sample ID for pounds
16 of nitrogen per 1,000 gallons?

17 A Yes.

18 Q Those poundages were, what, 11.8, 11.6, 11.9, correct?

19 A Of total nitrogen. So that's not nitrate.

20 Q Total nitrogen. My apologies.

21 A No worries.

22 Q The third page has listings of NO3 and at one foot both
23 in milligrams per kilogram, which is the same as parts
24 per million, correct --

25 A That's right.



1 Q -- and pounds per acre?

2 A Yes.

3 Q With your concern at 30 parts per million, the first 12
4 entries on that page all have levels higher than 30
5 parts per million, correct?

6 A Correct.

7 Q And some -- and in one case, seven times higher than
8 that number, correct?

9 A Yes.

10 Q Than your level of concern?

11 A Yes.

12 Q Did you follow up with any letter expressing, then, the
13 concerns about the high nitrogen levels?

14 A I don't see it there in these documents.

15 (Exhibit No. 38 marked for identification.)

16 Q Another inspection of the Bosma and Liberty Dairies,
17 correct, by you?

18 A Yes, sir.

19 Q And the second page, this one indicates that you were
20 there for an hour and 15 minutes, correct?

21 A Okay. Yes.

22 Q This inspection report indicates that approximately
23 40 -- the lagoons were approximately 45 percent full,
24 correct?

25 A Correct.



1 Q Do you consider that to be fair -- I'm sorry, do you
2 consider that to be proper capacity management?

3 A I wasn't truly worried about that. They still had
4 triticale crops that they could put their storage on.

5 Q And you made a recommendation on the second page.

6 A I'm sorry?

7 Q On the second page of the report.

8 A I'm just recording. It says currently --

9 Q On the bottom?

10 A Yes.

11 Q "Recommend continued renewal of solids and liquid to
12 land application to ensure adequate storage capacity."

13 A But it also says down at the bottom that they're
14 currently...

15 Q Okay.

16 MS. KRISTENSEN: Can you read that last part
17 of that, because mine is cut off.

18 A "Currently pumping to land application." But I'm
19 filling in the bottom of the...

20 Q It's your handwriting, correct?

21 A Yes.

22 Q So you recognize what it is supposed to say?

23 Who are you familiar with from the Bosma Dairies?

24 A I have met Henry, Jr., once, maybe twice. And I -- the
25 times that I've been there, Steve is the one who has



1 taken me around the dairy.

2 Q Have you met Henry, Sr.?

3 A No.

4 Q Never?

5 A Not that I remember anyway.

6 Q Do you recall getting a phone call from one of the

7 Bosmas sometime in the spring or summer of 2013?

8 A I need more information about that.

9 Q It was particularly about a warning letter. Does that

10 refresh your recollection?

11 A No. Sorry.

12 Q Handing you what's been marked as Exhibit 26. Does

13 Exhibit 26 refresh your recollection about a phone call

14 from one of the Bosmas?

15 A Honestly, no.

16 Q Mr. McCarty testified earlier today that you received a

17 phone call from, I believe it was, Steve Bosma in

18 response to this letter. Does that refresh your

19 recollection?

20 A Honestly, Charlie, no.

21 Q And that's -- as a result of that phone call, you

22 changed this letter to read something else.

23 A Okay.

24 Q Doesn't refresh your recollection at all?

25 A No. Is this the record?



1 Q That's the letter that Mr. McCarty testified caused one
2 of the Bosmas to call you.

3 A And the change?

4 Q There was some change in the letter after that. None
5 of that refreshes your recollection from six months ago
6 or so?

7 A Not from Bosmas, no.

8 Q Moving to the DeRuyter Dairies.

9 MS. KRISTENSEN: Same objection on
10 confidentiality.

11 (Exhibit No. 39 marked for identification.)

12 Q March 29, 2005, you inspected the D & A Dairy, correct?

13 A Yes, sir.

14 Q Did you know that this used to be also called the S & S
15 Dairy before Dan DeRuyter took it over?

16 A I did.

17 Q How did you know that?

18 A It was in the files.

19 Q Had you ever met Mr. Steve DeRuyter?

20 A Yes, he's down in Pasco now.

21 Q Did you ever inspect his facility down there?

22 A In Pasco? Yes.

23 Q And this indicates at the very -- in section I,
24 question 3, "Is the farm covered by an NPDES permit?"
25 Answer was yes, correct?



- 1 A Correct.
- 2 Q And that both this facility at the very bottom of the
3 page and the George DeRuyter Dairy are under the same
4 management?
- 5 A Correct.
- 6 Q And they shared manure management systems?
- 7 A They don't have contiguous borders. They do share some
8 land and they do share some facilities. So we still
9 maintain them as two separate. It's just a mere
10 technicality, but it's that sort of shared border of
11 land.
- 12 Q And then in your comments in section VI you talk about
13 development of consistent soil sampling program, timing
14 and lab selection.
- 15 A Yes.
- 16 Q Did you have concern that their soil sampling program
17 was inadequate?
- 18 A Must have.
- 19 Q And it said "watch P levels"?
- 20 A Okay.
- 21 Q Is that correct? Do you agree with that?
- 22 A I'm trying to find the "watch P levels."
- 23 Q In that same area, section VI.
- 24 A Oh, there it is, yes.
- 25 Q And then again on the last page, the last star is



1 "Develop consistent soil sampling program, timing --
2 after crop removed and prior to nutrient input,
3 parentheses, manure" --

4 A -- "or commercial fertilizer."

5 Q You asked them to develop a consistent program,
6 correct?

7 A Correct.

8 Q Do you know if they ever did?

9 A I can't tell from this inspection report.

10 Q From your recollection, you don't remember whether
11 they've done good recordkeeping?

12 A No, I can't tell you that.

13 (Exhibit No. 40 marked for identification.)

14 Q Exhibit 40 was a letter indicating that you would be
15 inspecting the facility in a couple weeks.

16 A Correct.

17 Q Is it Department of Agriculture's policy to give
18 advance notice before inspecting facilities?

19 A Only for routine inspections.

20 Q But for all routine inspections?

21 A Yes.

22 Q And how much notice do you give?

23 A I think it varies. Sometimes, you know, I like to give
24 two weeks' notice so they can get all their paperwork
25 together. But I think it varies across inspectors.



1 Q And you're reminding them about what information to
2 have available, correct?

3 A Yes, sir.

4 (Exhibit No. 41 marked for identification.)

5 MS. KRISTENSEN: Same objection on
6 confidentiality.

7 Q Exhibit 41 is the inspection report that you informed
8 the DeRuyters you would be having in Exhibit 40,
9 correct?

10 A Yes. And also 39.

11 Q 39 is the inspection of D & A Dairy --

12 A Thank you.

13 Q -- and 41 is the George DeRuyter Dairy, correct?

14 A Yes.

15 Q Hard to distinguish because it's the same person you
16 deal with, Dan DeRuyter, correct?

17 A Right.

18 Q Line -- section II, line 7, acreage plan was developed
19 for 570 acres. Current total acreage, 503 acres,
20 correct?

21 A Correct. But on this one, same producer. The plan was
22 developed for 96 and he had 376 acres.

23 Q How did you distinguish whose was whose, whose land was
24 whose?

25 A I didn't worry about that.



1 Q How did you determine what land was available?

2 A What the producer told me. Same producer.

3 Q Of course. How do you verify that that information is

4 correct?

5 A The land?

6 Q Yes.

7 A Well, I didn't verify it.

8 Q And in the comments you said, "Work to improve

9 collection of application records," among other things,

10 correct?

11 A Yes.

12 Q And it says, "Watch soil test end levels"?

13 A Is this on the last page?

14 Q Also in section VI, Nutrient Application.

15 A So I am seeing "good soil test values for N."

16 Q Where do you see those?

17 A The first -- so section VI, second line -- the comments

18 second line, starting with "good soil test values for

19 N. Work to improve calculation of agronomic" -- or

20 collation -- looks like "collation of agronomic

21 records."

22 Q Application records?

23 A Yes. Excuse me. Application records. "Soil and

24 manure" -- missing word -- "test recently taken. Dan

25 to send copies."



1 Q Right. Then it says, "Watch" --

2 A "Watch soil test P levels."

3 Q That's P. Just wanted to check.

4 (Exhibit No. 42 marked for identification.)

5 Q Ms. Prest, do you see Exhibit 42, session notes from a
6 Conservation Partners Lagoon meeting? Do you recall
7 that meeting?

8 A Vaguely.

9 Q Did you present at that meeting?

10 A I possibly could have on a -- yes. That's correct.

11 Q You did present?

12 A (Witness nodded head affirmatively.)

13 Q And what did you present about?

14 A I talked about -- so NRCS was this technical assessment
15 tool that they thought would help sort of get at in
16 evaluating lagoons. And WSCA took a small grant and we
17 used the tool on the lagoons in the Puget Sound. And
18 it really -- I mean, it really came out more of a
19 qualitative assessment than a quantitative assessment.
20 I mean, we couldn't -- using this tool, we couldn't
21 determine whether the lagoons were -- well, what the
22 tool ended up being is really to talk about if they
23 were maintaining the lagoon, if they were doing the
24 proper operation and maintenance. And I think that
25 they had the idea of using this tool to determine if it



1 was leaking or not.

2 Q What was the tool? Was it a physical tool or --

3 A No. No. It's an NRCS -- it's a --

4 Q A narrative tool?

5 A Kind of a checklist. You go through and you fill it
6 out. You walk up the bank and it's this much slope.
7 You walk the width of the dike, and it's this wide.
8 You figure out the tools and then you talk about how
9 full it is; you talk about how many solids are in
10 there; you take a look at if it's connected to more
11 than one lagoon; what that part of the structure looks
12 like; whether they're doing good operation and
13 maintenance; about the slope, where it can back down
14 the agitator, those kinds of things.

15 Q It was all purely a narrative tool --

16 A Pretty much.

17 Q -- a checklist.

18 A So what I presented was I'd taken this tool up to a
19 very small dairy in Whatcom County that the
20 conservation district did not care for their lagoon, so
21 I took it up there to use on their lagoon. And that's
22 what this is about.

23 Q What was your assessment of the tool?

24 A That I wasn't an engineer and I couldn't tell. I could
25 tell whether there was adequate -- I mean, whether they



1 were maintaining it in terms of taking out the solids
2 or maintaining the dikes, those kind of conditions.

3 Q So every -- was everything that came out of this
4 discussion based around the tool?

5 A Yes.

6 Q So the items we need to work on on the last -- the
7 bottom of the third page of Exhibit 42 running through
8 the end are all based on the tool, all these
9 recommendations?

10 A Right. But now, you know, I'm not presenting on all of
11 this, you understand that.

12 Q But my question was whether --

13 A This is my smaller part --

14 Q Hang on a second. The assessment tool was the topic of
15 this entire meeting?

16 A Exactly.

17 Q So the recommendations -- my question is: Are the
18 recommendations that came out of this, the items we
19 need to work on, all based on that tool, of trying to
20 improve that tool, or was it more general about lagoon
21 seepage and problems generally?

22 A So are you talking about these bottom right here, this
23 bottom paragraph, Items We Have Agreed With?

24 Q Starts on 26492 at the very bottom --

25 A These recommendations.



1 Q -- and running for the next two and a half pages.

2 A Thank you.

3 So could you ask that question again?

4 (Question read as follows:)

5 "QUESTION: My question is: Are the
6 recommendations that came out of this, the items we
7 need to work on, all based on that tool, of trying to
8 improve that tool, or was it more general about lagoon
9 seepage and problems generally?"

10 A So most of this meeting was around the tool, and this
11 was at the very beginning. This was at the very
12 beginning of the draft of the tool. And so my
13 recommendation is this was all based on the tool.

14 Q Looking at the very last page of Exhibit 42, the third
15 item, "Develop action plan templates for high and
16 medium risk facilities," to be done by November 2011.
17 Was that ever done?

18 A By?

19 Q Was it ever done?

20 A I think you would probably have to ask NRCS that.

21 Q The reason I ask is that at the top, it says
22 "Milestones and Timelines," and your name, Ginny --
23 that would be you, correct?

24 A Yes.

25 Q -- are responsible -- among others are responsible to



1 complete that.

2 A Ginny is the lead inspector. Nora is the community
3 program manager, Sally and Larry are both engineers at
4 NRCS.

5 Q So you were part of the team that was assigned to
6 complete these tasks, right?

7 A That's right.

8 Q My question is: Did you complete the third task by
9 December 2011?

10 A Task No. 3, the outreach plan, developing and
11 identifying --

12 Q "Develop action plan templates for high and medium risk
13 facilities." Did you ever do that?

14 A No.

15 Q Did you ever do the fifth one, "Sample testing of
16 assessment tool with 50 lagoons"?

17 A Yes.

18 Q And what report do you have that shows the results of
19 that?

20 A Actually, we gave all of the results plus the small
21 database to NRCS. That was part of our agreement, that
22 we would collect the information, we put it into a
23 small database, and we delivered that to NRCS.

24 Q Do any of these 50 lagoons include lagoons in the lower
25 Yakima Valley?



1 A No. They're all in the Puget Sound. And it just might
2 be worth noting --

3 Q Well, there's no question pending, so let me ask a
4 question.

5 Does Department of Ag still have the results of
6 that assessment tool of the sampling of the 50 lagoons?

7 A I believe we do.

8 Q When did you first have contact with Jay Gordon from
9 the Washington State Dairy Federation?

10 A Oh, boy. That would be way back.

11 Q In your days at Prosser?

12 A I'm sure I met him when I was there at some point or
13 another.

14 Q How often do you talk to Mr. Gordon now?

15 A Probably once or twice a month.

16 Q And have you talked to him about the CAFO permit that
17 Washington Department of Ecology is working on?

18 A Certainly.

19 Q What's the substance of the conversation?

20 A When is it going to come out? What do we think is
21 going to be in it? He's seen drafts; I've seen drafts.

22 Q He's seen drafts? He's told you that?

23 A Yes.

24 Q You've seen drafts. So have you made comments to
25 Mr. Gordon about what's in it?



1 A Only the piece around ground water -- not ground water,
2 excuse me. Soil test. The soil test.

3 Q What have you two discussed about the soil monitoring?

4 A Just the soil test level.

5 Q What have you discussed about it, specifically?

6 A That they're probably going to have to do more than
7 they're doing.

8 So have you seen the draft permit?

9 Q This is my deposition, okay? I ask the questions,
10 please.

11 A Okay.

12 Q What is recommended soil monitoring level in the draft
13 permit?

14 A The draft that I saw was 15 parts per million.

15 Q When did you see that draft?

16 A It was probably a year ago.

17 Q Have you seen any more recent than that?

18 A I have not.

19 Q Do you agree or disagree with the 15-part-per-million
20 level in the draft permit?

21 A I don't know if I -- I don't have an opinion about that
22 yet.

23 Q Have you expressed that opinion to Mr. Gordon about
24 what your --

25 A That I don't have an opinion?



1 Q Whether you have -- let me rephrase it.

2 Have you expressed any opinion to Mr. Gordon about
3 the levels in the draft permit and whether they're
4 reasonable or not?

5 A That would not be my place.

6 Q That's not what I asked.

7 A I understand that.

8 Q I'm asking if you did that.

9 A If I have, I don't recall. I mean, not specifically to
10 talk about -- we've talked probably -- probably have
11 talked that the 15 parts per million -- but whether
12 that's reasonable or not, that's not part of our
13 discussion.

14 Q Did Mr. Gordon say whether it was reasonable or not?

15 A I don't remember.

16 Q Did he lobby you to try to raise the number?

17 A I can't do anything about it.

18 Q That's not my question. Did he lobby you to try to
19 raise the number?

20 A No. Mr. Gordon did not lobby me to try to raise the
21 number.

22 Q Did Mr. Wood lobby you to try to raise the number?

23 A Absolutely not.

24 Q Anyone in the industry try to lobby you to raise the
25 number?



1 A No.

2 Q Are you aware of any conversations between someone in
3 the industry and your boss, Bud Hover, about whether to
4 raise the levels in the draft permit?

5 A No.

6 Q Did you have any discussions with Mr. Gordon about
7 whether ground water monitoring was required in the
8 draft permit?

9 A I don't believe so.

10 Q Was there ground water monitoring required in the draft
11 permit?

12 A I don't remember that.

13 Q This is the work you do, correct?

14 A I understand that.

15 Q You don't remember whether that was in the draft permit
16 or not?

17 A I don't remember whether that was in the draft permit.
18 I was still sort of reeling from the 15 parts per
19 million on the soil test.

20 Q You wouldn't have been reeling if there has been ground
21 water monitoring required?

22 A No. I would expect that.

23 Q You would expect that -- you think that's the proper
24 thing to do?

25 A No, I don't.



- 1 Q Have you exchanged any written communication with
2 Mr. Gordon about the terms of the permit?
- 3 A No.
- 4 Q Have you exchanged any written communication with
5 anyone else in any of your sister agencies about the
6 terms of the permit?
- 7 A John Jennings.
- 8 Q How many correspondences have you had with him about
9 the permit?
- 10 A Gosh, I'm not sure, but not very many.
- 11 Q More than five?
- 12 A Can we put a time frame on it? You mean ever?
- 13 Q No. Since you saw the draft permit a year ago.
- 14 A Probably.
- 15 Q More than five?
- 16 A Probably.
- 17 Q And do you copy other people within your agency on
18 those communications?
- 19 A No.
- 20 Q Just be to John Jennings?
- 21 A John Jennings.
- 22 Q Not Tom Tebb?
- 23 A No.
- 24 Q Not Bud Hover?
- 25 A No.



1 Q Have you had any conversations with anyone within the
2 Department of Health about the proposed permit limits,
3 the draft permit limits?

4 A No, I have not.

5 Q How about any other agencies?

6 A I don't think so.

7 Q How about with NRCS?

8 A No.

9 Q How about with WSU? Any professors or people who might
10 be providing scientific input?

11 A I don't think so, Charlie.

12 So, I mean, this --

13 Q There's no question pending.

14 Have you had any conversations with the Northwest
15 Dairy Association representatives about the permit
16 terms?

17 A Who are they?

18 Q Darigold?

19 A No, I have not.

20 Q Have you had any conversations with any of the
21 producers about the terms of the proposed permit?

22 A No, I have not.

23 Q Have you received any communications from any producers
24 about the terms of the permit?

25 A No, I have not.



1 Q No phone calls?

2 A (Witness shook head negatively.)

3 Q No emails?

4 A (Witness shook head negatively.)

5 Q No letters?

6 A No.

7 Q No, no, no? Is that correct?

8 A No, no, no. That's correct.

9 Q We need verbal answers. Thanks.

10 Do you know Bob Naerebout?

11 A I've heard the name. Is he -- I don't know the man.

12 Q Do you know what he does?

13 A I want to say he's similar to Jay in another state.

14 Q Idaho. Idaho Dairymen's Association. Executive

15 director.

16 A Okay.

17 Q Ever had any conversations with him?

18 A Not that I know of.

19 Q Have you ever had any conversations with Lori Terry

20 Gregory?

21 A Oh, I believe she was involved in a court case, the

22 CAFO permit.

23 Q Right. Have you had any conversations with her?

24 A Only in that case.

25 Q How about Patrick Ryan?



1 A I have talked to Patrick Ryan. It's been quite some
2 time when he was -- when Henry Oords was still the
3 owner of his dairy. Patrick is his lawyer.

4 Q From Stoel Rives out of Portland? Pat Ryan?

5 A I don't know where he's from.

6 Q Did Mr. Ryan call you?

7 A Yes.

8 Q About what?

9 A About Henry's facility.

10 Q What about it?

11 A I think you probably need to talk to Mr. Ryan about
12 that.

13 Q I'm asking you what your conversation was with
14 Mr. Ryan.

15 A I don't remember what it was about.

16 Q How long ago?

17 A I believe that Henry had a discharge in 2006 or 2007,
18 so it would have been around that enforcement action.

19 Q Do you recall meeting Marcy Ogden?

20 A Yes, I do.

21 Q Did you go to her house?

22 A I did.

23 Q On how many occasions?

24 A I stopped at her house in Sunnyside several times. I
25 did stop and see her where she was working in



1 Ellensburg some time ago.

2 Q How long ago did you stop and see her in Ellensburg?

3 A Right after the agency started talking about ground
4 water and ground water protection.

5 Q When was that?

6 A 2008, maybe, 2009.

7 Q When you say "the agency," are you referring to the
8 Department of Agriculture?

9 A Department of Agriculture, Department of Ecology.

10 Q Because you said "the agency."

11 A Agencies.

12 Q Agencies. Pardon me.

13 A Sorry.

14 Q And you went to Ms. Ogden's house at one point?

15 A Yes.

16 Q And discussed with her what?

17 A She had made a complaint about a field that was behind
18 her house and her well had high levels of nitrate, and
19 so in those days, we weren't just following dairies, we
20 were doing all livestock operations. So I went to
21 respond to the complaint.

22 Q And what did you do in response to the complaint?

23 A Took her information, took a look at her well.

24 Q Did you take tests, samples of her well?

25 A No.



1 Q Did you see sample reports of her water?

2 A She had sample reports from Heritage University, but I
3 don't know if I actually saw a test, but it seems to me
4 that I did.

5 Q Did you tell her that her water was safe to drink?

6 A I did not tell her that.

7 Q Did she offer you a glass of water to drink and you
8 said the water is fine to drink?

9 A I did not tell her that.

10 Q She offered you a glass of water to drink, didn't she?

11 A I don't remember that.

12 Q Do you remember that you refused to drink it?

13 A No, I don't, Charlie.

14 (Exhibit No. 43 marked for identification.)

15 Q Ms. Prest, you may recall we had a conversation about
16 these documents in front of the Pollution Control
17 Hearings Board.

18 A I remember that.

19 Q You do?

20 A I do.

21 Q You remember that?

22 A I remember that. That's the only question you asked
23 me.

24 Q I'm glad you remember that. And you were -- you had
25 inspected the Ev and Hank Haak facility on August 17,



1 2005, correct?

2 A That's -- yes.

3 Q And, in fact, it wasn't any routine inspection. That
4 was a complaint-driven inspection, right?

5 A Correct.

6 Q And in the third paragraph of your letter, "On
7 Wednesday, August 17th, I conducted a routine
8 inspection" is incorrect, isn't it?

9 A It appears to be.

10 Q Later in that paragraph you say, "Periodically
11 extensive cleaning of lagoons to remove solids is
12 critical to maintain lagoon volumes for winter storage.
13 While the practice is unsightly and creates unpleasant
14 odors, it is an acceptable practice."

15 The practice in this case involved the removal of
16 a tremendous quantity of lagoon solids from a lagoon
17 that was spread over many acres of a field in the Haak
18 Dairy, correct?

19 A Yes.

20 MS. KRISTENSEN: Objection. Relevance. This
21 case is dismissed. It's prejudiced. No reference to
22 the Haaks in this case. I just object to relevance.

23 MR. TEBBUTT: Relevancy is reserved for
24 trial.

25 Q Is it still your position that what Mr. Haak did in



1 If you could turn to Exhibit 31, just one of the
2 documents Mr. Tebbutt asked you about.

3 A Cow Palace?

4 Q Correct. There's a couple of different dates, and I
5 just want to make sure I know what is the date that you
6 meant. Because on the first page, on the date of
7 inspection, it says 1/5/06. On the second page the
8 date is 1/5/05, and then on the third page they have
9 1/5/06, 1/6/05 on your signature. I know there's just
10 transposition, but I'm trying to figure out --

11 A No.

12 Q -- would be in 2005 or 2006?

13 A I believe this would have been in 2006, and the reason
14 that I believe that is because when we had this form
15 and when I was over there, I would prefill out the top
16 parts, so that when I was on the dairy, I didn't have
17 to take time filling out a form. It was trying to be a
18 little more efficient with my time and their time.

19 Q So you think the correct, then, date is that date of
20 inspection on page 1, for instance, 1/5/06?

21 A Right. And my guess would be it's January of the new
22 year, and I was still -- got the old year in there.

23 Q That's all I have of that document.

24 MR. TEBBUTT: That's it? You're done?

25 MS. KRISTENSEN: No. With that document.



1 Q If we turn to Exhibit 42 in your pile, if you turn to
2 the last page there.

3 A (Witness complied.)

4 Q Mr. Tebbutt was asking you about various milestones
5 listed there on that last page and whether they were
6 ever done and who did them, and you had a comment of
7 saying something -- it might be worth noting, and you
8 were cut off. So my question to you is: What were you
9 going to note with respect to that?

10 A Well, in the end of March, I moved from the dairy
11 nutrient management program over to animal health
12 program, and I came back about ten months later. And
13 so this tool, this assessment and this tool was done
14 over 12 months, was supposed to be done by December
15 31st. I came back, you know, January 31st and sort of
16 put that together.

17 And so as far as what got done when, all I know is
18 that the form looked totally different than what it did
19 when I left at the end of April, so there was a change
20 in the form. But I know that there was 500 or so
21 lagoons that were assessed. So I started it and I
22 finished it. But I was gone for most of it.

23 Q You were gone in the middle part, then?

24 A The big -- you know, nine months of the project I was
25 gone.



1 Q Turn to Exhibit 34, if you could. I'm not sure if it
2 relates to this document, but my notes are during the
3 discussion with Mr. Tebbutt, you made a comment that 40
4 percent of the nitrogen or nitrate --

5 A Nitrogen --

6 Q Nitrogen is going out of the Yakima Valley currently?

7 A That's the best I can figure.

8 Q What do you base that on?

9 A So in 2012, I sort of became aware of this sort
10 of -- the exports that were leaving the Yakima Valley,
11 and at that time, we were able to sort of talk to the
12 producers and we figured it was about 25 percent. So
13 they've upped that, so that's what my assessment was.
14 I have a little bit better documentation for the 2012.
15 I don't know exactly who -- what specific producers are
16 going. I don't have names of producers, because a lot
17 of producers didn't want their names, but they were
18 willing to provide the information.

19 Q So tell me about that. How do you collect that
20 information?

21 A Organics was taking a lot of that information, and we
22 did have some dairies that would tell us. But like all
23 the Organics, the people that were working with
24 Organics, which is a company that handles compost
25 specifically, he maintained their confidentiality. But



1 there were several other producers that were willing to
2 give us their name and tell us how many pounds they
3 were exporting, because they are required to keep
4 records of that.

5 Q In that same information, you made a note to
6 Mr. Tebbutt saying something about it was short-sighted
7 to just look at manure because of other potential
8 sources. Do you recall that testimony?

9 A Yes.

10 Q What did you mean about it being shortsighted? What
11 did that mean?

12 A So I think that history shows that there was a lot of
13 commercial fertilizer that was also going into the
14 Yakima Valley. Commercial fertilizer is just
15 formulated and designed so that it can be delivered
16 during that crop year. And so the other thing is, is
17 that, you know, if you're not adjusting your fertilizer
18 practices based on what your crop yields are and what
19 your soil tests are, and if you're just doing it the
20 way you do it every year, I mean, that's the whole
21 shift we're trying to make regulatorily in the dairy
22 world, is to say stop. You've got to take your soil
23 test and you need -- the timing is so important, and
24 you need to do this before you're putting on manure.

25 You know, I think that this industry has come just



1 a long, long way, and I think they're just at odds with
2 getting any recognition for that. So they don't tell
3 their story very well, and we certainly don't tell our
4 story very well. I mean, I'd like to think that
5 Department of Ag was a piece of trying to get agronomic
6 applications and records on their farms, but it's
7 really the producers that have to decide whether
8 they're going to implement that policy on their farm or
9 that path. And I think they've done a good job. Has
10 everybody done it? No. But a big percentage of the
11 producers have.

12 We keep records of -- on the inspection reports
13 that we have now, we keep records of how many acres the
14 farm has that meets this sort of acceptability level or
15 needs improvement for most nitrogen and phosphorus. So
16 statewide, the way it's calculating up, is about 95
17 percent. But in the Yakima Valley, it's somewhere
18 between 85 and 87 percent.

19 Q That are meeting that number?

20 A Are meeting that number. So, I mean, there's 13
21 percent of the acres out there that still have to come
22 up to that, and I show that as really good progress.
23 What I don't have is -- back in 2004 and 2005, what I
24 don't have is good records to be able to show -- I
25 don't have an easy way to get at showing who had



1 records and who didn't. I mean, I remember my little
2 sister coming up to visit one November, and I had her
3 sit down and go through all my records -- she needed
4 something to do to stay out of trouble -- and go
5 through and see who is actually keeping records. If I
6 could find that spreadsheet, I could actually put
7 something to it.

8 Q So I just want to understand what you just were talking
9 about. So when you talk about this 85 to 87 percent of
10 acreage in the Yakima Valley, is that just for dairies
11 or is that for all agricultural uses in the Yakima?

12 A The only information that anybody has, specific
13 information, is about dairies. None of the other
14 livestock operations have any regulation. None of the
15 farms have any regulation. And so, I mean, really the
16 big piece is we don't know.

17 Q Is there any move by your agency to get at that kind of
18 information, to answer the question about we don't
19 know? Is there any move by your agency to get that
20 kind of information?

21 A You know, all -- Department of Agriculture, Department
22 of Ecology Washington State Conservation Commission,
23 those three sister agencies have been talking about how
24 we can get at that or at least get at third-party
25 applications, something.



1 Q But nothing yet, is that what you're saying?

2 A We talk about it.

3 Q Mr. Tebbutt asked you about the mission of your
4 program. And the name of your program is?

5 A Dairy nutrient management program.

6 Q Can you remind he what your answer is? What's the
7 mission of that program?

8 A It's a water quality program that protects waters of
9 the state, but also supports agriculture.

10 Q Does your agency have any type of coordination at all
11 with the federal side of things, with the EPA in terms
12 of water quality issues?

13 A I'm not sure what you mean by "coordination." So we're
14 delegated state, and so the CAPO permit is actually
15 held at Department of Ecology. So we do the
16 inspections and we review the nutrient management plans
17 for the CAPO permits, the ones that are there. We
18 also -- if there's a discharge to waters of the state,
19 you know, like we had three, I think it is, up in the
20 Northwest here recently, and so Ecology will ask us,
21 you know, for an opinion about whether they should be
22 permitted as CAPO or not.

23 Q Are you aware of the fact that each of the four dairy
24 defendants in these cases have entered into a consent
25 order with the EPA?



1 A Yes.

2 Q Do you know any of the details of that?

3 A I know from -- so I talked with Tom Eaton frequently,
4 as well, and so I know that there's some ground water
5 monitoring. I know that there's some soils -- soil
6 testing and some other things. But I've been asking
7 for the soil testing, and I just haven't got to see
8 that yet.

9 Q Prior to the consent orders being entered by -- between
10 the dairy defendants and the EPA, did anyone at EPA
11 ever come to you or your agency asking for information
12 about water quality issues in the Yakima Valley?

13 A We gave them a lot of stuff. So we register the
14 dairies every two years, and so we had put together an
15 inventory of how much manure that might need, so
16 hypothetically the amount of manure.

17 It's all based on NRCS, their handbook, how much
18 nitrogen that might mean, how much phosphorus. So we
19 provided that information that they asked for, animal
20 numbers that they asked for.

21 Q Were you involved in providing that information to EPA?

22 A I was.

23 Q Who at EPA did you deal with?

24 A Chan. Long last name. I couldn't --

25 Q I've seen the name in emails too.



1 A Starts with a P. Eric Winiecki. One other person that
2 I can't recall his name.

3 Q And did you ever meet with folks at EPA?

4 A Yeah. That's the person. Eric Winiecki and this other
5 person came down to the Department of Ag.

6 Q Here in Olympia, or Tumwater?

7 A Yes. They wanted to review records, so it was a public
8 disclosure-type issue. So we have records of that.

9 Q Do you remember when that was?

10 A No.

11 Q Were you physically present for that meeting, or did
12 you -- were you just aware of it?

13 A No. I was in the office -- I mean, in the conference
14 room.

15 Q With those other folks?

16 A Yes. Eric Winiecki and whoever this other person was.

17 Q And what was the purpose of that meeting? Was it just
18 to review records?

19 A Yes.

20 Q Do you recall what records specifically they were
21 looking for?

22 A No. But it would be in the public disclosure request
23 file.

24 Q Other than that one meeting you've just identified
25 where folks from EPA came down here, did you have any



1 other meetings with EPA?

2 A I talk to Tom Eaton probably every other week.

3 Q Still do?

4 A Still do. Well, we're both involved in the work on the
5 Kalama in the Yakima Valley. We're both involved in
6 some of the agency discussions around third-party
7 applications.

8 Q Any further conversation with Mr. Winiecki?

9 A I haven't talk to Eric in a long time.

10 Q Other than Mr. Eaton and talking to Mr. Eaton, anyone
11 else in the EPA that you've talked to and specifically
12 with respect to water quality issues in the Yakima
13 Valley?

14 A I don't know if I would call it talking to him or if he
15 was talking at me but Dennis McLerran.

16 Q When was that?

17 A The most recent was, I think, a couple of weeks ago,
18 about three weeks ago. The end of January. I want to
19 say the 27th or so of January.

20 Q Can you tell me about that meeting?

21 A So EPA has been providing a lot of encouragement to the
22 state agencies to develop a plan to take a look at
23 third-party applications. So we were having a
24 discussion about that, and basically we were in this
25 discussion about what Department of Ag can do, and I



1 think Department of Ag can do a lot, but we don't have
2 the authority. Department of Ecology has the
3 authority.

4 Q Was anybody from -- who else was involved in that
5 meeting?

6 A There were people from Department of Ag. So Bud Hover,
7 Julie Morgan. This is the -- you've heard of the
8 directors talks, so it was -- Department of
9 Agriculture, Ecology, Conservation Commission, EPA,
10 NRCS.

11 Q Where did that meeting happen?

12 A In Lacey. And it was primarily around third-party
13 application and other sort of water
14 quality-related -- specific to livestock.

15 Q Has there been any further developments in that? Has
16 anyone started developing a plan, a proposal?

17 A I think Department of Agriculture is pulling together
18 the stakeholder group of the ag interest. And they're
19 going to work with the agronomic application interests
20 on that.

21 Q Are you involved in that at all?

22 A None of the other agencies are at this time.

23 Q You mentioned that the most recent time you met with
24 Director McLerran was back in January. Had you
25 previously met with him --



1 A Yes.

2 Q -- on water quality issues?

3 A I mean, the whole group has been discussing this for a
4 year and a half.

5 Q A year and a half?

6 A Or so.

7 Q And when you meet the group, just want to make sure I
8 understand --

9 A So the directors.

10 Q -- of all the agencies --

11 A Right.

12 Q -- of Ecology, Ag --

13 A So Department -- EPA sent a letter to Department of Ag
14 and Department of Ecology, and they had three things
15 that they wanted the agencies to get worked out. So
16 lagoons is one, how to determine that they're not
17 leaking; third-party application; and ground water
18 monitoring.

19 Q Do you remember when that letter went out?

20 A December 4th of 2012 is what's on the letter I have.

21 Q Have you, on behalf of the Department of Ag, been asked
22 to address any of those three things?

23 A Just to participate in a group. I mean,
24 we -- there's -- I mean, there's several of us that are
25 working on it.



1 Q Is anyone taking -- I'm trying to understand how -- so
2 EPA sends this letter and they have three things that
3 they want these agencies to do. How are the agencies
4 responding to that? Are groups formed? Are people put
5 in -- I'm trying to understand how they responded to
6 that.

7 A So there has been three or four different directors
8 meetings. Sometimes it's three directors, sometimes
9 it's five, depending on how that all works. So they
10 have discussions. They have discussions of ideas.

11 Q Is there any kind of milestones or things -- or
12 timelines that have been established yet with respect
13 to any of the three areas that you've identified?

14 A I think they always have something that they're going
15 to work on next, so I believe that that's one of the
16 things that Director Bellan is working on with their
17 add-in water quality.

18 Q I'm trying to understand. So without having seen this
19 December 4, 2012, letter, was there a specific time
20 frame that's requested that these things get done in,
21 or just rather we want you to start looking at these
22 three things?

23 A I don't remember if there's a time frame. I'm sorry
24 about that. I mean, if it was, it couldn't have been
25 very many of them.



1 Q Do you know what, if any, efforts have been undertaken
2 with respect to the first item, the lagoons, and
3 whether or not it can be determined if they're leaking?

4 A The only effort that I know of that's been put into
5 this, except for, you know -- I mean, I'm sure their
6 groups are discussing it, but the only thing I know
7 about is Whatcom Conservation District wanted to do a
8 seepage study, and when we penalized -- when we collect
9 penalties from dairies, it goes into a specific account
10 that has to be used for either education or research,
11 so they submitted a grant proposal to us to do this
12 seepage study, and they're just about finished up with
13 that.

14 Q So they were successful in doing that -- they actually
15 did the study?

16 A Yeah, they actually did one. They took a look at four
17 different lagoons up in Whatcom County and so
18 were -- they just provided this draft copy; they're
19 working on this finalized draft. We'll put it up on
20 our website as soon as it's done.

21 Q Have you reviewed it?

22 A I've reviewed it. But there were some things that we
23 couldn't tell what the design specifications were from
24 a couple of the lagoons, so we're just waiting for
25 them -- and a couple of other conclusions that we felt



1 Q You were talking about having numbers about some 85 to
2 87 percent of --

3 A Yes. That's off of our inspection reports.

4 Q Hold on a second. Let me ask the question first.

5 85 to 87 percent of dairy acreage is within
6 acceptable limits, is that what you were saying, for
7 acceptable nitrogen. Did I get that right?

8 A Within what we're calling this 35 to 45 parts -- you
9 know, below 45 parts per million.

10 Q Below 45 parts per million?

11 A Yes.

12 Q Where does the 45 parts per million come from?

13 A Our compliance standard.

14 Q Do you know who owns Organics Composting?

15 A I don't know who owns it. I know who I worked with.

16 Q Who is that?

17 A Russ Davis.

18 Q And do you know who his boss is?

19 A I do not.

20 Q Do you know if it's owned by any of the dairymen,
21 Organics?

22 A I don't think so. I think it was just recently sold.

23 Q To whom?

24 A Another company, and I don't -- I mean, this was just
25 kind of casual conversation.



1 Q You don't know who owned it before?

2 A No, I really don't. All my dealings with Organics was
3 with Russ Davis.

4 Q When you gave information to EPA, did they do a public
5 records request, or did you just -- was it interagency
6 cooperation?

7 A They did do a public records request, but when we do
8 public records request to agencies, we don't redact.

9 Q With regard to the acreage you were talking about, 85
10 to 87 percent, do you have that specific information
11 you were talking about, about whether acreage was
12 within limits for the four dairies we've been talking
13 about today specifically?

14 A Yes.

15 Q So you do -- you have it dairy by dairy?

16 A I can get it dairy by dairy.

17 Q And field by field?

18 A No, I don't have it field by field.

19 Q That's all I have.

20 (Deposition concluded.)

21 (Signature reserved.)

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CERTIFICATE

I, KYLIE HAMMINGTON, a Certified Court Reporter, do hereby certify that I reported in machine shorthand the deposition of VIRGINIA PREST, 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 20th day of March, 2014.

Kylie Hammington, CCR, RPR
Certified Court Reporter



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