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2 IN THE CIRCUIT COURT FOR THE 29TH JUDICIAL CIRCUIT
3 OF JASPER COUNTY, MISSOURI

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5 .

6 LONNIE BOYD, et al.,
7 Plaintiff,

8 .

9 vs. Case No. 12AO-CC00301

10 .

11 J.C. EHRLICH COMPANY, INC.,
12 MARS PETCARE US, INC., et al.
13 Defendants.

14 .

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16 .

17 VIDEOTAPED DEPOSITION OF
18 JOEY TYREE,

19 taken on behalf of the Plaintiff, pursuant to
20 Notice to Take Deposition, beginning at 9:23 a.m.,
21 on March 4, 2015, at The Popham Law Firm, 712
22 Broadway, Suite 100, in the City of Kansas City,
23 County of Jackson, and State of Missouri, before
24 Christina L. Yates, Certified Court Reporter.

25 .



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10 ALSO PRESENT:

11 Mr. Lonnie Boyd

12 Mr. Tim Faulhauber - (Videographer)

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1 THE VIDEOGRAPHER: Good morning. My name
2 is Tim Faulhaber, the videographer. The court
3 reporter is Christina Yates. We are with Appino &
4 Biggs Reporting Service. Today is the 4th day of
5 March, 2015 and the time is approximately 9:30
6 a.m. We are at the Popham Law Firm to take the
7 deposition of Joey Tyree in the matter of Lonnie
8 Boyd, et al versus J.C. Ehrlich Company, Inc., et
9 al. Case Number 12AO-CC00301. Would counsel
10 please state your appearances for the record?

11 MR. MACH: Scott Mach for Plaintiffs.

12 MR. SCHLOEGEL: And Mark Schloegel on the
13 Plaintiff's side.

14 MR. CLITHERO: Monte Clithero for Roth
15 Herford.

16 MR. BREWER: Gary Brewer for Roth
17 Herford.

18 MR. GELTING: Bruce Gelting, Presto-X,
19 J.C. Ehrlich.

20 MS. HALL: Lesley Hall, Elnicki, Inc.

21 MR. SAPPINGTON: Jacob Sappington, Frank
22 Vasquez.

23 MR. VANFLEET: Ryan VanFleet, J.C.
24 Ehrlich Company, d/b/a Presto-X.

25 MR. FANNING: Pat Fanning, MARS PetCare.



1 MS. OAKES: Anita Oakes for Plaintiffs.
2 JOEY TYREE,
3 called as a witness on behalf of the Plaintiff,
4 was sworn and testified as follows:

5 DIRECT-EXAMINATION

6 BY MR. MACH:

7 Q. Would you state your name, please?

8 A. Joey Tyree.

9 Q. And, Joey, where do you live?

10 A. (redacted)

11

12 Q. And what's your date of birth?

13 A. (redacted)

14 Q. And I understand you drove up here this
15 morning in the snow storm; is that right?

16 A. Yes. It was not fun, at all.

17 Q. We're going to ask you a number of
18 questions today. I'll have a chance to ask you
19 questions on behalf of some people who claim they
20 were injured as a result of being exposed to
21 various things, especially phosphine at the MARS
22 Pet Food plant. Are you familiar with the fact
23 that there's a lawsuit going on?

24 A. Yes.

25 Q. And you understand you have to give out



1 loud answers to us?

2 A. Yes.

3 Q. And you're being videotaped?

4 A. Yes.

5 Q. And I think I had the opportunity to meet
6 with you one time live maybe a year ago down in
7 Joplin, and you gave me some information about the
8 -- the situation at -- with Presto-X and MARS; did
9 you not?

10 A. Yes.

11 Q. And I think that's the only time you and
12 I have met?

13 A. Yes.

14 Q. Can you tell us -- I'm gonna ask you a
15 little bit about your background. Did you grow up
16 in the southwest Missouri, northeast -- or
17 northeast Oklahoma area?

18 A. Northeast Oklahoma primarily.

19 Q. And where did you go to high school?

20 A. Picher.

21 Q. Picher, Oklahoma?

22 A. Mmm-hum.

23 Q. And did you graduate high school?

24 A. Yes.

25 Q. And then did you get any secondary



1 degrees?

2 A. No.

3 Q. Did you do a little Juco?

4 A. No.

5 Q. And for what it's worth, I sent you a
6 subpoena in the mail. Is that right?

7 A. Yes.

8 Q. So, and you're honoring that today, and
9 we appreciate that.

10 A. Yes.

11 Q. Back after high school, what did you do;
12 what type of work did you do?

13 A. Miscellaneous stuff for about, you know,
14 five to seven years, just odd and end jobs. Did
15 multiple from refrigeration to sales to just
16 different stuff. I never did find nothing till I
17 started doing the pest control in '04.

18 Q. Did you also work at -- running a
19 forklift someplace right before you did Presto-X?

20 A. Yeah. Standard Transportation.

21 Q. And where is that?

22 A. It's in Joplin, multiple warehouses.

23 Q. How far is Joplin from where you live?

24 A. Approximately 50 -- about 50 miles.

25 Q. Okay. And after Standard, you went to



1 work for Presto-X. Tell us how you found out
2 about a job at Presto-X.

3 A. Michael Franklin was doing the pest
4 control.

5 Q. And did you know Michael Franklin?

6 A. Not other than just him coming in there
7 doing pest control.

8 Q. Okay. Did you learn about the job
9 through a ad in the paper?

10 A. Through Mike.

11 Q. Through Mike?

12 A. Yep.

13 Q. And so Michael Franklin told you there
14 was a job in pest control with what company?

15 A. Presto-X.

16 Q. Okay. Had you ever heard of Presto-X
17 before?

18 A. No.

19 Q. Had you ever done any kind of application
20 of any kind of pesticide before?

21 A. No.

22 Q. Didn't have any pesticide license of any
23 kind before then?

24 A. No.

25 Q. And you were at a place where you were --



1 was it a better job; is that what you --

2 A. No. A better job offer was the only
3 reason I took the job.

4 Q. Okay.

5 THE REPORTER: Can you repeat that last
6 part?

7 THE WITNESS: Better job offer was the
8 only reason I took the job.

9 BY MR. MACH:

10 Q. And about what time was that?

11 A. What do you mean what time?

12 Q. What year?

13 A. That would have been in '04.

14 Q. November of '04?

15 A. Mmm-hum.

16 Q. Is that a yes?

17 A. Yes.

18 Q. And the record shows that you were
19 employed by Presto-X from November 29th of '04
20 till you were fired on October 16, 2012. Does
21 that sound right?

22 A. rect.

23 Q. And at the time, did you have a -- you
24 know what a CDL is?

25 A. Yes.



1 Q. Did you have a CDL?

2 A. I did have a CDL with HAZMAT for quite
3 awhile.

4 Q. Okay. And did that -- was that one of
5 the things that was required for the job of pest
6 control?

7 A. Yes. That's what they wanted us to get.
8 I don't know if it was required for pest control,
9 'cause it's only used for fumigation purposes, but
10 they wanted us to get it, so ...

11 Q. And did you understand Presto-X is a
12 subsidiary of a company called Rentokil?

13 A. Yes.

14 Q. And Rentokil North America, is what I
15 have written down here is -- and they contracted
16 with a company called MARS PetCare?

17 A. Yes.

18 Q. Do you know where MARS PetCare was
19 located?

20 A. Yes.

21 Q. Where is that?

22 A. Joplin, Missouri.

23 Q. And is it right on the state line?

24 A. It's on the border, yep. Kansas and
25 Missouri.



1 Q. And then generally, from -- on November
2 -- or November of 2004, generally after that time,
3 can you tell us what pest control services you did
4 for MARS PetCare?

5 A. Back then, I'm not sure, to be honest,
6 that I did anything. I think I pretty much was
7 kind of a trainee with Mike Franklin at that
8 facility. But I never did take it over till after
9 it became MARS, to my belief.

10 Q. And you say when it became MARS. Did you
11 do some work there maybe when it was still called
12 Doane's --

13 A. Yes.

14 Q. -- Pet Care? Okay. So you did some work
15 for Presto-X when it was still Doane Pet Care, so
16 that would have been in 2000 -- late 2004, early
17 2005?

18 A. Yeah. Seems like they had a strike
19 somewhere in there. I don't remember exact.

20 Q. Okay. And then you were training with
21 Mike Franklin there?

22 A. Mmm-hum.

23 Q. Do you know where Mike Franklin is now?

24 A. I've tried to find him many times, I
25 can't.



1 Q. We've gotten some answers to
2 interrogatories, and they show his last address is
3 -- they don't know where he is either, so. But
4 you don't have any connection to him at this time?

5 A. Huh-uh.

6 Q. When would the last time you've seen Mike
7 Franklin been?

8 A. Wow. I would say, a guess would be like
9 '08, maybe.

10 Q. 2000 --

11 A. We hung out a lot, we were good friends
12 and, you know, we spent a lot of time together.

13 Q. Did he ever -- was he your boss then at
14 Presto-X?

15 A. No.

16 Q. Okay. So was he a technician?

17 A. He's just like I am, just, yeah, just --

18 Q. Okay.

19 A. -- yeah.

20 Q. And then he is the one that you learned
21 how to fumigate and aerate --

22 A. Do everything, really.

23 Q. Okay.

24 A. He was my -- yeah, pretty much trained me
25 on the whole pest control.



1 THE REPORTER: I'm going to ask that you
2 wait until he's completely finished with his
3 question before you answer.

4 THE WITNESS: Okay.

5 THE REPORTER: I can only take one person
6 at a time.

7 THE WITNESS: Okay, all right.

8 BY MR. MACH:

9 Q. Did you know a guy name Mike, is it
10 Ugolini?

11 A. Ugolini.

12 Q. Ugolini. Did you know him?

13 A. Yes.

14 Q. And was he your boss back then?

15 A. Yes.

16 Q. Did he run the Presto-X operation out of
17 Springfield, Missouri?

18 A. Yes.

19 Q. And when you were training with Mr.
20 Franklin, was that on-the-job training?

21 A. Yes.

22 Q. And did he train you at the MARS Pet Food
23 plant in Joplin?

24 A. Yes.

25 Q. Was he doing fumigation and/or aeration



1 of rail cars down at the MARS plant?

2 A. He was doing aerations. I don't know how
3 many fumigations, if he did any.

4 Q. Okay. So he would be one that was
5 aerating the rail cars when -- when you started to
6 work --

7 A. Yes.

8 Q. -- at the Joplin plant; is that right?

9 A. Yes.

10 (THEREUPON, Tyree Deposition Exhibit No 1
11 was marked for identification.)

12 BY MR. MACH:

13 Q. And we've had marked as Exhibit 1 a blow
14 up of the MARS plant, just a Google picture of the
15 MARS plant. Just -- can you identify that?

16 A. Yeah. Yes.

17 Q. That's -- that's Exhibit 1. And can you
18 show us on there, maybe you can even mark with a
19 red marker where you would generally -- you're
20 gonna have to keep that on, I think.

21 THE VIDEOGRAPHER: Yeah, yeah.

22 BY MR. MACH:

23 Q. We'll get you there. Could you mark on
24 that photograph, the blow up, Exhibit 1, about --
25 well, where would the rail cars come in from?



1 A. Over here.

2 Q. Okay. They'd come in on a -- on a spur;
3 is that right?

4 A. Yeah.

5 Q. And then they'd be directed into the MARS
6 plant?

7 A. Come in here.

8 Q. Okay. Making a red X as to where the
9 rail cars would come in. And then where would
10 they be parked to aerate?

11 A. Originally, here.

12 Q. Okay.

13 A. Back in, I don't recall when, but back
14 pretty --

15 Q. When Mike was teaching you --

16 A. Yeah.

17 Q. Okay.

18 A. Yeah. And then -- then we started
19 getting 'em --

20 Q. You can actually see maybe some rail cars
21 on that photo?

22 A. Yeah. They would be -- yeah. I mean,
23 you can use these as a reference then, if you
24 want. But --

25 Q. Okay. Why don't you just --



1 A. -- sometimes here.

2 Q. Okay.

3 A. And then sometimes they be underneath
4 that --

5 Q. Okay.

6 A. -- awning.

7 Q. Okay. And being underneath the awning,
8 that was right in the rail bay; is that right?

9 A. Yeah.

10 Q. Okay. And then why don't you put a fifth
11 X where they would park them sometimes where --
12 okay. Now, let's -- if you could put a one, two,
13 three, four, five on -- just above each one of
14 those Xs.

15 A. Okay.

16 Q. So we can talk about 'em. And now you
17 say early on -- or let's go to number one. Number
18 one is where they would bring -- or when you were
19 -- that's where they would bring the rail cars in
20 from; is that right?

21 A. Yeah. That's their first -- that's --
22 they come in from that way, and then they -- they
23 distribute either down where number two is X'd at,
24 which was -- which is where -- I don't know what
25 -- you know, why they put 'em there and then they



1 started moving 'em over there, but anyways. They
2 put 'em there from the -- originally, and then
3 later on, they started just putting them down the
4 rail.

5 Q. Right next to the building?

6 A. Mmm-hum.

7 Q. And so number two is where you and Mr.
8 Franklin would aerate cars when -- when you first
9 started at MARS; is that right?

10 A. Yeah.

11 Q. And I think you told me he taught you to
12 air 'em out for about 15 minutes; is that right?

13 A. Fifteen, 20 minutes, pull the tops and
14 pull --

15 Q. Then -- then they -- then you could
16 release them into the plant, correct?

17 A. Yes.

18 Q. And I think you also told me you didn't
19 use a Drager tube or any other measurement,
20 generally, when you were aerating back in '06,
21 '07, '08, '09 --

22 MR. VANFLEET: Object --

23 BY MR. MACH:

24 Q. -- is that right?

25 MR. VANFLEET: Objection, leading.



1 BY MR. MACH:

2 Q. You can go ahead and answer.

3 A. Yes.

4 Q. Well, let me ask you -- this way. Did
5 you generally use Drager tube or any kind of meter
6 when you would aerate cars at MARS?

7 A. No, I would not.

8 Q. Okay. Can you take the -- and then the
9 three, four and five areas would be -- where later
10 on where -- and MARS would park the train cars,
11 correct?

12 A. Yeah. They would -- they have their
13 own --

14 Q. It's like a little tug kind of thing;
15 isn't it, that rail tug?

16 A. Yeah. They have their own and they would
17 move 'em -- you know, I would always request them
18 to be out away from the plant, but it don't -- I
19 didn't always get what I wanted, so --

20 Q. Okay. And you say sometimes you even had
21 to aerate them in the rail bay?

22 A. Yes.

23 MR. FANNING: Objection, form.

24 BY MR. MACH:

25 Q. What -- what happened if you -- if you --



1 well, let me ask you this. Was there as much air
2 moving in the rail bay?

3 A. Yeah, sometimes -- sometimes probably,
4 because, you know, there is a wind tunnel through
5 there, so it blows pretty good through there.

6 Q. Did you like it if they put them in the
7 rail bay for you to -- to aerate?

8 A. I prefer for 'em not to be, just because
9 it's -- it's not out -- it's not out in the open
10 like it would be out -- you know, common sense
11 will tell you it needs to be out more in the open
12 than it would be underneath something.

13 Q. Okay. And when they put them in the rail
14 bay for you to aerate, was that generally because
15 they needed product right away?

16 A. Yeah, they would need --

17 MR. FANNING: Objection, form. You need
18 to wait for me to object --

19 THE WITNESS: I'm sorry.

20 MR. FANNING: -- and I'm sorry. But I
21 need to make sure when he asks the question -- I
22 need to be -- that I get that in before you start
23 talking.

24 THE WITNESS: Okay.

25 BY MR. MACH:



1 Q. Why did MARS have you aerate in the -- in
2 the rail bay?

3 MR. SAPPINGTON: Object to form.

4 MR. VANFLEET: Join.

5 MR. FANNING: Same objection.

6 BY MR. MACH:

7 Q. You can go ahead and answer.

8 A. Honestly, I don't have a clue.

9 Q. Okay. The -- the times that you would
10 aerate rail cars -- or did you do other work other
11 than aerating rail cars for MARS?

12 A. Yes. We did their pest control for the
13 whole facility.

14 Q. Okay. From -- do you -- do you know, was
15 it '05 that you and Mr. Franklin started aerating
16 cars at MARS, or '06, or do you know?

17 A. I do not recall.

18 Q. Okay. Was it sometime back in that time
19 frame, 2005, 2006, 2007?

20 A. I wish I could give a definite answer. I
21 hate to give a definite answer without knowing for
22 sure.

23 Q. Okay. Let me ask you this. You said Mr.
24 Franklin left at some point?

25 A. Yes.



1 Q. Had it been awhile that -- had you been
2 working with him all the way up until the time he
3 left?

4 A. Yes.

5 Q. Okay. And was it generally you and him
6 that would aerate cars together at the MARS plant?

7 A. Yes. And we generally would do the
8 service together, that's -- 'cause it's a big
9 plant, we'd always do it together.

10 Q. Okay. So you and him might go and aerate
11 a rail car and then release it to go into the
12 plant?

13 A. Yes.

14 Q. And then after he left, you would
15 continue to do that work by yourself?

16 A. Not always.

17 Q. Okay. Who else would do the work
18 aerating rail cars?

19 A. There would be me, Corkey Long, Rick
20 Hahn, Robert Huffman. There was several people
21 that's put out there to aerate the rail cars.

22 Q. Was Corkey Long primarily after the OSHA
23 was there in --

24 A. Yes.

25 Q. -- 2012?



1 A. Yes.

2 Q. And Mr. Hahn, I've only seen him on one
3 invoice for aerating a rail car at MARS. Does
4 that sound -- was he out there a lot, or was it a
5 very occasional thing for him?

6 A. Yes. He was out there along with me.

7 Q. And would you and him aerate together?

8 A. Yes.

9 Q. Okay. And would you and him aerate the
10 same way?

11 A. Yes.

12 Q. Now, aeration, I've talked about, that is
13 -- uses the term clearing of rail cars; is that
14 right?

15 A. Yes.

16 Q. What is clearing of a rail car mean?

17 A. Basically it's -- it's getting -- the
18 product is good to go.

19 Q. So you've cleared it to enter the plant;
20 is that right?

21 A. Yes.

22 Q. And you're aerating the poisonous gas
23 phosphine gas out of these rail cars; is that
24 right?

25 A. Yes.



1 Q. Can you help me with some terms here? It
2 looks like from the records, it was generally
3 either corn or meat and bone cars that were
4 treated with phosphine; is that correct?

5 A. Yes.

6 Q. And what -- can you tell us what meat and
7 bone was, when you'd have a meat and bone car
8 coming into the pet food plant?

9 A. What it -- what it is?

10 Q. Yes.

11 A. It's just some powder material, like dirt
12 almost but --

13 Q. Okay. And did it sit -- was it -- did it
14 get stiff or whatever in the -- on the rail car --

15 A. I don't know. I never did really look at
16 it that close.

17 Q. Okay. And what -- what type of
18 treatment, phosphine treatment did the -- did the
19 meat and bone cars get?

20 MR. FANNING: Objection, form. You can
21 answer. I'm just ...

22 A. Okay. Generally they came with a piece
23 of cardboard, duct tape, the phosphine would be on
24 the duct tape and you'd just pull it out.

25 BY MR. MACH:



1 Q. And let's look at Exhibit 5. I'm gonna
2 hand you what's been marked as Exhibit 5.

3 (THEREUPON, Tyree Deposition Exhibit No 5
4 was marked for identification.)

5 BY MR. MACH:

6 Q. And is that the type of rail cars that
7 came in with various products into the MARS plant?

8 A. Yes.

9 Q. And those are called hopper cars; is that
10 right?

11 A. I don't know what they call 'em.

12 Q. Okay.

13 A. They're just rail cars to me.

14 Q. Okay. And -- and they would have a
15 hopper at the bottom and they'd have hatches on
16 the top, correct?

17 A. Yes.

18 Q. And can you help me with some other
19 terms? We've talked about clearing. What's the
20 term under gas mean?

21 MR. FANNING: Objection, form.

22 THE REPORTER: I'm sorry?

23 MR. FANNING: Objection, form.

24 BY MR. MACH:

25 Q. You can go ahead and answer.



1 A. Under gas means it's -- it's fumigating
2 at that time.

3 Q. And tell us what fumigation means.

4 A. Means you're putting the poisonous gas
5 inside something and you have to measure it by
6 cubic feet and square feet, and you put that much
7 gas in there and it's supposed to kill everything
8 inside that for a period of time. And then you
9 pull it out and air it out.

10 Q. And when you air out, that's called
11 aeration; is that right?

12 A. Yes.

13 Q. Do you know what an FMP is?

14 A. Yeah.

15 Q. What is that?

16 A. Fumigation Management Plan.

17 Q. Okay. Did you ever make any fumigation
18 management plans?

19 A. No.

20 Q. That was left to your superiors; is that
21 right?

22 A. Yes.

23 Q. Do you know what goes in a fumigation
24 management plan?

25 A. No.



1 Q. And after the fact, have you been aware
2 -- made aware that a fumigation management plan is
3 required for all fumigations?

4 A. Yes.

5 Q. But you didn't know that at the time?

6 A. No.

7 Q. And you actually did fumigations at the
8 MARS plant; is that right?

9 A. Yes.

10 Q. And when you did fumigations yourself at
11 the MARS plant, like for a trailer or for rail
12 cars, did you do a fumigation management plan?

13 MR. FANNING: Objection, form.

14 BY MR. MACH:

15 Q. You can go ahead and answer.

16 A. I didn't personally.

17 Q. Did anybody do it?

18 A. I don't know --

19 MR. FANNING: Same objection.

20 MR. VANFLEET: Objection, calls for
21 speculation.

22 BY MR. MACH:

23 Q. What's a Drager tube?

24 A. It's a little glass looking and seal that
25 takes a reading from a car.



1 Q. A reading -- you're talking about a
2 reading from a rail car?

3 A. Yeah. Or whatever you're fumigating,
4 whether it's a trailer or rail car or hopper
5 or ...

6 Q. And is that used in the aeration process?

7 A. I'll say yes.

8 Q. Okay. Do you generally use it in the
9 aeration process?

10 A. No.

11 Q. And there are also some electronic
12 detecting devices that will detect phosphine; is
13 that right?

14 A. Yes.

15 Q. Did you ever have one of those electronic
16 devices?

17 A. No.

18 Q. Do you know if Presto-X and it's home --
19 or Springfield office had any of those devices?

20 A. No.

21 Q. Do you know if any of the folks at MARS
22 had any of those devices?

23 A. Yes.

24 Q. How did you become aware that the MARS
25 people were using or wearing electronic monitoring



1 devices for phosphine?

2 A. 'Cause I would be -- I'm observing and I
3 saw them with them on.

4 Q. Okay.

5 A. Yeah.

6 Q. And the MARS workers would be working
7 around you; is that right?

8 A. Yes.

9 Q. I want to hand you what's been marked as
10 -- whoops, Exhibit 21 --

11 (THEREUPON, Tyree Deposition Exhibit
12 No 21 was marked for identification.)

13 BY MR. MACH:

14 Q. -- and ask you if you can identify what's
15 on that exhibit?

16 A. It's a placard.

17 Q. Okay. And what's a placard?

18 A. Generally states the name and it looks
19 like must have got a name, phone number, address
20 and how many pieces of gas they used. And it
21 should have a time and it should have a date as
22 well, and the time that -- you know, for it to be
23 released and time it was done.

24 Q. And does that picture, Exhibit 21, fairly
25 and accurately represent what a placard would look



1 like when it came into the MARS plant, you were
2 going to go aerate?

3 A. Yes.

4 Q. And does it have the skull and crossbones
5 on it, generally?

6 A. Yes.

7 Q. Indicating that it's poison in the -- in
8 the rail car?

9 A. Yes.

10 Q. And where were those placards supposed to
11 be?

12 A. They are supposed to have one on each
13 side and one on the ends, both ends. Supposed to
14 have four, plus the top.

15 THE REPORTER: Repeat that last part.

16 THE WITNESS: What's that?

17 THE REPORTER: I didn't hear the last
18 part.

19 THE WITNESS: Supposed to have them on
20 both ends and on each side.

21 BY MR. MACH:

22 Q. How about on the top on the hatches?

23 A. You know, I don't -- I don't know that
24 you're supposed to have them up there. You can.

25 Q. Were there sometimes placards on the --



1 A. Top?

2 Q. -- hatches?

3 A. Yes.

4 Q. Sometimes there weren't placards even on
5 the rail cars, though, right?

6 A. Yes.

7 Q. Was that a problem?

8 A. Could be.

9 Q. The placards are the only warning that
10 would say that there's poison phosphine gas in
11 this rail car; correct?

12 A. Yes.

13 Q. And these rail cars, did they come in --
14 were they sealed in any way?

15 A. If they were done with the meat and bone
16 they were, but if they came in with corn, they
17 were not.

18 Q. Okay. Do you know how the phosphine,
19 that made the phosphine gas was put in the -- the
20 corn cars?

21 A. Not specifically, no. I --

22 Q. Was it -- was it the same type of thing
23 on cardboard, or was it injected into the corn
24 some way?

25 A. Injected into the corn.



1 Q. And was it tablets that turned into
2 powder?

3 A. Yes.

4 Q. Could you describe those for us?

5 A. They're pellets, is what they're --
6 they're called. They're Phostoxins pellets or ...

7 Q. Did you ever use or see -- you didn't
8 necessarily use it, but Fumitoxin; was that
9 another product that was used?

10 A. Yes.

11 Q. So Phostoxin and Fumitoxin. Do you know
12 the names of any of the other poison phosphine
13 gases that were used?

14 A. We primarily used Fumicel. That was
15 mainly the one we used.

16 Q. Okay. And Fumicel, was that -- what --
17 was that both tablets -- and did they also use
18 them on the cardboard, or was Fumicel just on the
19 cardboard?

20 A. Fumicel usually -- you usually hang it.
21 You don't usually put it on cardboard because it's
22 so big.

23 Q. Okay.

24 A. You're talking, you know, a pretty good
25 little pouch versus -- those Fumitoxins are only



1 about like that, so you can put --

2 Q. And the -- the cells you're talking
3 about, those would actually be cloth; is that
4 right, and hung?

5 A. Yeah, the Fumicel would be, but ...

6 Q. Do you know what a restricted use
7 pesticide is?

8 A. Anything that's dangerous, you know.

9 Q. Were these phosphine products that you
10 just talked to us about dangerous?

11 A. Yes.

12 Q. And were they restricted-use pesticides?

13 A. Yes.

14 Q. And could you buy a restricted-use
15 pesticide like at Wal-Mart or the hardware store?

16 A. Not to my knowledge.

17 Q. And they have to come through a dealer,
18 correct?

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

20 Q. Okay. You don't know?

21 A. I do not know.

22 Q. Do you know what FIFRA is, F-I-F-R-A?

23 A. I've heard it.

24 Q. You've heard of it?

25 A. Yes.



1 Q. Okay. If I told you it was a Federal
2 Insecticide Fumicide and Rodenticide Act, does
3 that ring any bells?

4 A. Yes.

5 Q. And that's a federal law, right?

6 A. Yes.

7 Q. And when we talk about law, do you -- do
8 you understand in this -- with a restricted-use
9 pesticides, the term, the label is the law?

10 A. Yes.

11 Q. And can you explain what you understand
12 by that term?

13 MR. FANNING: Objection, form.

14 BY MR. MACH:

15 Q. I just want you to explain what you know
16 about the meaning of the label is the law.
17 Because they use that in your teaching --

18 A. Yeah.

19 Q. -- correct?

20 A. Label is the law meaning -- follow all --
21 follow all directions on the label.

22 Q. Okay. And the label would consist of the
23 label on the actual Phosphine poison product, and
24 it would also be the entire applicator's manual,
25 correct?



1 A. Correct.

2 Q. And do you know what an applicator's
3 manual is?

4 A. Yes.

5 MR. MACH: Can you see if these are on my
6 desk? Maybe they're here.

7 BY MR. MACH:

8 Q. I'm looking for an unmarked copy of the
9 applicator's manual.

10 A. Okay.

11 MR. SCHLOEGEL: Yeah, they're here, the
12 Fumitoxin.

13 MR. MACH: There they are. There we are,
14 they're just buried.

15 (THEREUPON, Tyree Deposition Exhibit No 2
16 was marked for identification.)

17 BY MR. MACH:

18 Q. We're going to put Exhibit 2, hand you
19 Exhibit 2 and ask you if you can identify that?

20 A. Fumitoxin.

21 Q. Okay. And I'm also going to mark a 2A,
22 just because you can't read everything on 2.

23 (THEREUPON, Tyree Deposition Exhibit
24 No 2A was marked for identification.)

25 BY MR. MACH:



1 Q. And can you identify that as a Fumitoxin
2 applicator's manual also, Exhibit 2A?

3 A. Yeah.

4 Q. The reason I marked 2A is because 2, if
5 you look at -- the date on that is R 7/10. I
6 think that means Revised 7 of 2010. Do you see
7 that at the bottom?

8 A. Yes.

9 Q. And that would have been when you were
10 working -- aerating at the MARS plant, correct?

11 A. Yes.

12 Q. And it's all in black and white, so I
13 just marked 2A. Would that -- would the label or
14 the applicator's manual back in 2010 have had the
15 red labeling that you see on 2A?

16 A. Would it have?

17 Q. Yes. Where it says restricted-use
18 pesticide?

19 A. I don't know.

20 Q. Okay. 2A, in any event, has in red on
21 the front, Restricted-use pesticide due to high
22 acute inhalation toxicity of phosphine gas for
23 retail sale to dealers and certified applicators
24 only, for use by certified applicators or persons
25 under the direct supervision and only for those



1 uses covered by the certified applicator's
2 certification. Do you see that at the top?

3 A. Yes.

4 Q. And was that your understanding of what
5 part of the label was back when you were using
6 phosphine?

7 A. Yes.

8 Q. Did you ever read an applicator's manual,
9 that you recall?

10 A. Yes, I have.

11 Q. Okay. And you understand that the label
12 is the law in the -- the applicator's manual is
13 part of the law then; is that right?

14 A. Yes.

15 Q. And you're supposed to follow the
16 applicator's manual completely, correct?

17 A. Yes.

18 Q. The purpose of the label is to tell you
19 how to use the phosphine poison product and how to
20 prevent injury or health problems to others --
21 yourself and others, correct?

22 MR. VANFLEET: Objection, leading, calls
23 for speculation.

24 BY MR. MACH:

25 Q. Now, this Exhibit 2 is about 40 pages



1 long.

2 A. This the one you're on?

3 Q. Yeah, Exhibit 2 there in front of you.

4 And you see on the very front of it, it says near
5 the top that, A fumigation management plan must be
6 written for all fumigations prior to actual
7 treatment. That's one of the first things on
8 there, correct?

9 A. Yes.

10 Q. But you, at times, fumigated without a
11 fumigation management plan; isn't that right?

12 A. Yes.

13 Q. And then the -- just -- I just want to
14 spin through this a little bit. Did you get any
15 annual training from anyone on how to aerate rail
16 cars?

17 A. No.

18 Q. The only training you got was the on-the-
19 job training from Mr. Franklin; would that be
20 fair?

21 A. That's correct.

22 Q. When you did fumigation, did you review
23 the fumigation applicator's manual before you did
24 fumigation?

25 A. When I did a fumigation, correct, yes, I



1 did.

2 Q. And you knew you were supposed to review
3 it before?

4 A. Yes.

5 Q. And the most important part of fumigation
6 is the aeration, correct?

7 A. Yes.

8 MR. FANNING: One second. Objection.

9 BY MR. MACH:

10 Q. Let's -- let's flip over to where it
11 starts on Page 1 here. Did you ever recall a
12 smell that was associated with phosphine gas?
13 Like a garlicky smell?

14 A. I would say yes. I mean, once I got --
15 did I get told that? No. But --

16 Q. But did you smell it in your --

17 A. -- you can smell different stuff,
18 chemicals smell different, so ...

19 Q. Did you associate a garlic smell with the
20 phosphine?

21 A. Yes.

22 Q. And then on Page 1, it talks about first
23 aid. It says, "Symptoms of exposure to this
24 product are headache, dizziness, nausea,
25 difficulty in breathing, vomiting, diarrhea. In



1 all cases of overexposure, get medical attention
2 immediately. Take victim to a doctor or emergency
3 facility -- treatment facility." Do you see that
4 up at the top?

5 A. Yeah.

6 Q. And did you ever feel that you got sick
7 from smelling the phosphine?

8 A. No.

9 Q. Okay. Did you ever get it on your skin
10 or clothing?

11 A. Not to my knowledge.

12 Q. And did you understand from this that you
13 wanted to avoid inhaling phosphine gas?

14 A. Yes.

15 Q. Did you ever use a mask or respirator
16 when you did your aerating?

17 A. One time whenever OSHA was there, is the
18 only time I ever used it.

19 Q. And did you understand from the manual
20 that, anytime you didn't know the concentration of
21 phosphine or if it was over .3, that you needed to
22 wear a respirator; were you ever taught that?

23 A. No.

24 Q. Page 2 down near the bottom, it says
25 "Phosphine gas is highly toxic to insects,



1 burrowing pests, humans and other forms of animal
2 life." You knew that, correct?

3 A. Yes.

4 Q. And on down on Page 3, there's a list of
5 precautionary statements, hazards to humans and
6 domestic animals. Do you see that?

7 A. Where do you see that at?

8 Q. Down at the bottom of Page 3. You'd
9 agree the phosphine gas from Fumitoxin could be a
10 hazard to humans --

11 A. Yes.

12 Q. -- is what I'm getting at. Yeah. And
13 I'm not working ya through the whole 40 pages
14 here --

15 A. Okay.

16 Q. -- I've just got some things I wanted to
17 ask you about. Did you know that it was mixture
18 of moisture and air that cause the phosphine
19 pellets or -- to -- to start to react and create
20 phosphine gas?

21 A. Yes.

22 Q. Did you ever open a phosphine-containing
23 cannister to do a fumigation?

24 A. Boy, I can't recall if I did or not. I
25 don't -- I don't personally know that I've used



1 Fumitoxin --

2 Q. Okay.

3 A. -- myself. What mostly we used was
4 Fumicel.

5 Q. Okay. Would you use the Fumicel, what --
6 what did it come in?

7 A. It would come in a silver package, and
8 then inside that package was the actual gas --

9 Q. Okay.

10 A. -- that we put out. It was just a
11 packet, I mean. This Fumitoxin, I don't know that
12 we ever -- I don't remember using it at all,
13 but ...

14 Q. But it -- it may be used on rail cars
15 that came in, correct?

16 A. Yes, yes.

17 Q. And on Page 5, it explains at the top,
18 Fumitoxin tablets and pellets are restricted-use
19 pesticides due to high acute inhalation toxicity
20 of phosphine gas. And it says, Read and follow
21 the complete label, which contains instructions
22 for the safe use of the product. Do you see that?

23 A. Yes.

24 Q. And you agree with that, correct?

25 A. Yes.



1 Q. And then on Page 8, it gives the minimum
2 exposure periods for Fumitoxin. Do you see that?

3 A. Yes.

4 Q. And that was the minimum that you could
5 have them in a sealed rail car in order to kill
6 all the insects and bugs that are in there,
7 correct?

8 A. Correct.

9 Q. And were bugs, to your knowledge, a big
10 problem in grain?

11 A. Yes.

12 Q. And when -- when a car would come to
13 MARS, a rail car, like, full of corn, it may come
14 from Kansas City or Omaha or Aspinwall, Iowa,
15 right?

16 A. You're right, anywhere.

17 Q. And when it came in, you would know where
18 it came in from from the placard, correct?

19 A. Correct.

20 Q. And the placard, did it also tell you
21 when it had been fumigated?

22 A. Sometimes you could read it; sometimes
23 you could not.

24 Q. Okay.

25 A. Due to -- you know, we didn't get those



1 usually for two to three weeks, so ...

2 Q. Okay. So the placards often were worn
3 off and you couldn't read 'em, correct?

4 A. Mmm-hum.

5 Q. Is that a yes?

6 A. Yes.

7 Q. And so sometimes -- or most of the time,
8 was it, that you couldn't read the date or -- and
9 time that it came in?

10 A. I'd say, you know, 60/40. Sixty percent
11 I could see 'em and 40 I couldn't.

12 Q. Either way, it didn't change the way that
13 you aerated the car, though, correct?

14 A. Correct.

15 Q. You still -- tell us how you'd do it.
16 What would you -- and looking back at Exhibit 1,
17 where would you park when you came into the MARS
18 plant? And maybe mark that with a blue marker and
19 just put --

20 A. Various, I mean, it depends. I mean, if
21 this was open, this is a -- this is a fence. So
22 if that gate's open, I'd go there, I'd park over
23 here. This -- this little gate here. And then
24 right here is where I primarily parked.

25 Q. Okay. And if you parked at the top, was



1 that because you had to come through the main
2 gate?

3 A. Yeah. I go through the main gate versus
4 going down here, depending on the time and, you
5 know, my schedule, my work schedule.

6 Q. And put a P on top of each one of those
7 three X's, if you would, telling me where you
8 parked. And would you put just a little J.T. so
9 we know all those marks are yours on -- on all of
10 those?

11 A. All these?

12 Q. Yeah.

13 THE VIDEOGRAPHER: Hey, Scott, you're
14 actually in my shot --

15 BY MR. MACH:

16 Q. Okay. And now you've completed putting a
17 J.T. on everything you've marked. And the three
18 Ps are where you parked if you were going to
19 aerate a rail car?

20 A. Yeah.

21 Q. Okay. And that last one you put on was
22 down at the biscuit end of the plant?

23 A. Yeah. Sometimes they'd be -- you know,
24 it would be down there, it just depend. There was
25 really no rhyme or reason why they were there.



1 Q. And I notice most of the documents that
2 Presto-X have say a time in and a time out.

3 A. Yes.

4 Q. So would you put the time that you
5 actually came in the plant and the time you left
6 on the documentation?

7 A. When we would invoice -- invoice those,
8 we'd invoice 30, 40 at a time. We never -- you
9 know, so there was no time every morning, put a
10 time in and a time out.

11 Q. Okay. That was before OSHA came, and the
12 way you did was -- and you'd just give 30 -- or
13 you might have a 31 or a 41 cars --

14 A. Yeah. There was no -- yeah.

15 Q. So you did no documentation of each rail
16 car that came in?

17 A. Correct.

18 Q. And the -- so you'd come into the plant,
19 you'd get -- who would you get a call from; how
20 would you find out that they needed a car aerated?

21 A. Either Justin Jackson, somebody from the
22 lab, whether it be, you know, Ed or Terri, any of
23 them people, they would call me.

24 Q. And these were all MARS employees that
25 would call?



1 A. Yeah.

2 Q. And there's another term, consignee. Was
3 MARS the consignee of these rails cars?

4 MR. FANNING: Objection, form.

5 MR. VANFLEET: Join.

6 A. I don't know.

7 BY MR. MACH:

8 Q. You don't know the term consignee? No?

9 A. No.

10 Q. Okay. So, anyway, you get a call from
11 MARS that they needed one, two, three, maybe four
12 rail cars aerated. Is that right?

13 A. Correct.

14 Q. And tell me what you'd do.

15 A. If I could get to 'em, I got to 'em right
16 then. If I couldn't -- you know, if it's
17 something where I'm out of town and I had to wait
18 to do it till I got back home, then I'd do it
19 then.

20 MR. FANNING: Object.

21 A. It just -- it would vary. If they needed
22 it right then, I'd do whatever I could do to get
23 there, but ...

24 BY MR. MACH:

25 Q. And when you say if they needed it right



1 then, was that because they needed product to get
2 into the plant?

3 MR. FANNING: Objection, form.

4 MR. VANFLEET: Join.

5 A. Yes.

6 BY MR. MACH:

7 Q. And when you would get a call from the
8 plant saying we need you right now, would you --
9 would you try to get there right then?

10 A. Yes.

11 Q. Was MARS a big client?

12 A. Yes.

13 Q. Where else did you work, other than at
14 MARS, during the eight years you worked for
15 Presto-X?

16 A. Schreiber Foods, Cliffstar. I did some
17 footwork at Jasper Products, Bagcraft in Baxter.
18 Just various places --

19 Q. Was MARS the biggest client you had in
20 Joplin?

21 A. Total revenue, yes.

22 Q. And so you'd get a call from somebody at
23 MARS saying we need a rail car aerated, correct?

24 A. Yes.

25 Q. 'Cause if it was under gas, they couldn't



1 use it until it was aerated, correct?

2 A. Yes.

3 Q. So what would you do?

4 A. I would just -- when I got there, and you
5 get there and go out this railway and go get up on
6 the rail car and cut their seals and open the
7 hatches, pull the gas, let it sit there for 15
8 minutes.

9 Q. Okay. Then -- would you close the hatch
10 then?

11 A. No. I a lot of times I'd leave it open
12 because they got to go back out and -- they got to
13 probe it and check it.

14 Q. Okay. So they were -- if they were ready
15 to use that --

16 A. Yeah.

17 Q. -- rail car right after you left it for
18 15 minutes. They have to -- do the MARS guys have
19 to climb up there and probe it?

20 A. Yes.

21 Q. Okay. So they use the same open hatches
22 as what you've just cleared maybe 15 minutes
23 earlier; is that right?

24 A. Yes.

25 Q. Okay. And so -- and did you ever use a



1 harness when you'd climb up on the rail cars?

2 A. On occasions.

3 Q. Do you know if OSHA requires you to use a
4 harness if you're up on top of a rail car working?

5 A. I do not know.

6 Q. You never got any training on that issue?

7 A. No.

8 Q. Did you have a harness provided to you by
9 Presto-X?

10 A. I did get one -- I didn't the whole time
11 I was there, but yes, I did get one at a point in
12 time but I don't recall when.

13 Q. Okay. And did you generally use it, or
14 did you just use it the day that OSHA came?

15 A. I just used it the day OSHA was there.

16 Q. And that was in July of 2012?

17 A. Yes.

18 Q. And you didn't have a meter during the
19 time, general time 2008, 2009, 2010, 2011 that you
20 aerated cars at MARS?

21 A. No.

22 MR. VANFLEET: Objection, leading.

23 THE REPORTER: Was that -- who was that?

24 BY MR. MACH:

25 Q. Did you -- did you carry anything with



1 you then when you went to -- to do the clearing of
2 a rail car?

3 A. I carried my snips I cut the seals with
4 and, you know, I'd tear the plastic off and stuff
5 like that --

6 Q. Okay. So you'd park your truck --

7 A. Mmm-hum.

8 Q. -- and then you'd go over and find the
9 rail car that was under gas, right?

10 A. Yes.

11 Q. And then you'd climb up on it?

12 A. Yes.

13 Q. And would you just have your snips; is
14 that the only thing you had -- took with you?

15 A. Yes.

16 Q. Didn't take a respirator, didn't take a
17 meter, didn't take a Drager tube?

18 A. No.

19 Q. And you'd -- how would you -- is it like
20 a plastic seal if it was a -- was it meat and
21 bone?

22 A. Usually come with a plastic seal and then
23 the cardboard was underneath the plastic seal.

24 Q. Okay. And so you'd use the snips to cut;
25 is that right?



1 A. Yes.

2 (THEREUPON, Tyree Deposition Exhibit
3 No 2B was marked for identification.)

4 BY MR. MACH:

5 Q. And -- I think Mark just gave me -- why
6 don't we mark this as Exhibit 2B. Hand you what's
7 been marked as 2B and ask you if you can identify
8 that? Is that a Fumicel applicator's manual?

9 A. Yes.

10 Q. Okay. So -- and we know you used that
11 product --

12 A. Yes.

13 Q. -- too, correct? Okay. So all exhibits
14 2, 2A and 2B are all applicator's manuals,
15 correct?

16 A. Yes.

17 Q. And they're all for products that you
18 used at one time or another, although 2A was
19 actually -- it says it was invented after you --
20 after you left. I think it's in 2013, date at the
21 bottom of that one.

22 MR. FANNING: I don't mean to interrupt,
23 but is 2A the same as 2, it's just more legible?

24 MR. MACH: It's a newer version of it is
25 all. And it's got -- it's color. I didn't have



1 a --

2 A. The same -- same EPA and everything.

3 MR. FANNING: Yeah. But it's the same
4 product --

5 MR. MACH: Same -- right, right.

6 MR. FANNING: -- that's what I'm saying.
7 And 2B is Fumicel.

8 MR. MACH: Right.

9 A. I didn't use Fumitoxin a lot at all.

10 BY MR. MACH:

11 **Q. Okay. But you did use the Fumicel?**

12 A. Yeah, Fumicel and it -- yes.

13 **Q. Okay.**

14 A. Yes.

15 **Q. And that was when you'd actually aerate
16 your -- or actually fumigate yourself?**

17 A. Yes.

18 **Q. But rail cars may come in under gas with
19 the Fumitoxin and Phostoxin, correct?**

20 A. Yeah. They didn't ever come in with
21 these.

22 **Q. Okay. And when you're referring to that,
23 they didn't come in with Fumicel?**

24 A. They did not come in with Fumicel.

25 **Q. And going back to that Exhibit 2 -- let's**



1 see if we can find Exhibit 2.

2 A. That's 5.

3 Q. Exhibit 2. If you look at Page 8 on that
4 Exhibit 2, it talks about the minimum exposure
5 periods for Fumitoxin.

6 A. Yes.

7 Q. And you told me sometimes you'd know from
8 the placard when it was fumigated and sometimes
9 you wouldn't, because the placard would be
10 illegible?

11 A. Yes.

12 Q. Or gone?

13 A. Or gone.

14 Q. Did you have problems with the placards
15 being gone at train cars at the MARS plant?

16 A. Yes.

17 MR. FANNING: Objection, form.

18 BY MR. MACH:

19 Q. When did that start, or was it something
20 that happened throughout your career?

21 A. No, we didn't start getting a lot of
22 fumigated cars until, you know, seemed like later
23 towards the end of my tenure with Presto-X. I
24 don't really know if they're -- you know, I just
25 know that when the -- when we started noticing



1 there were a lot that didn't have no placard on
2 'em, and some of 'em might have one placard on 'em
3 and might have three.

4 Q. Okay. Let's flip over to Page 11. Do
5 you see respiratory protection there?

6 A. Yes.

7 Q. And it says, "When respiratory protection
8 must be worn. Respiratory protection is required
9 when concentration levels of phosphine are
10 unknown." Do you see that?

11 A. Yes.

12 Q. And when you'd be clearing rail cars, you
13 didn't know what the phosphine level was, 'cause
14 you didn't use a meter or a Drager; did you?

15 A. Correct.

16 Q. But you did not wear a respirator; is
17 that right?

18 A. Yes.

19 Q. Was that because you'd never been trained
20 to use a respirator?

21 MR. VANFLEET: Objection, leading.

22 A. Yes.

23 BY MR. MACH:

24 Q. When you had -- when did you get your
25 respirator; do you know? Was it when you first



1 started at Presto-X, or was it later on?

2 A. I didn't get a -- you mean personal
3 respirator?

4 Q. Yes.

5 A. We didn't -- I didn't get no personal
6 respirator for myself.

7 Q. So Presto-X was -- knew you were aerating
8 rail cars but did not provide with you a
9 respirator?

10 A. Correct.

11 Q. Did you get a respirator then when it was
12 -- when OSHA came in 2012 to do the plant
13 inspection?

14 A. Yes.

15 Q. That was the first time you got a
16 respirator?

17 A. Yes.

18 Q. And was that provided by Presto-X?

19 A. Yes.

20 Q. Who provided that to you?

21 A. Sam Fears.

22 Q. And was that with a meeting with Sam?

23 A. Yes.

24 Q. Did he tell you you needed to use a
25 respirator when OSHA was there?



1 A. Yes.

2 Q. What else did he tell you in that
3 meeting?

4 A. Just make sure I follow all -- everything
5 I need to do, to make sure I do it right.

6 Q. Did he tell you to make sure you brought
7 your Drager tube?

8 A. Yes.

9 Q. Did you tell him you usually didn't use a
10 Drager tube?

11 A. Yes.

12 Q. Okay. What did he say to that?

13 A. He didn't say anything to me, to my
14 knowledge.

15 Q. And you were never put on probation,
16 never given any kind of warning or anything that
17 you'd done anything wrong; is that right; in your
18 work with Presto-X at MARS?

19 A. Right.

20 Q. And do you know when that meeting took
21 place with Sam Fears? Was it a day or two before
22 you did the OSHA inspection?

23 A. I don't recall exactly.

24 Q. And did he give you the actual respirator
25 at that time?



1 A. Yes.

2 Q. Were you fit tested for that respirator?

3 A. Yes.

4 Q. And did -- who did the fit testing on it?

5 A. He did.

6 Q. Was there any documentation of the fit
7 test?

8 A. I do not recall.

9 Q. Do you know if Sam Fears was certified to
10 do fit testing?

11 A. I do not.

12 Q. Did you have a beard at that time?

13 A. Did I?

14 Q. Mmm-hum.

15 A. No.

16 Q. Okay.

17 A. No, I didn't have no beard. You couldn't
18 have no hair with Presto-X. Had to be clean
19 shaved.

20 Q. So that was a rule at Presto-X that you
21 couldn't have any facial hair?

22 A. Yeah. No.

23 Q. And you knew that rule?

24 A. Yeah.

25 Q. Was there -- was there any standard



1 operating procedures that you had to sign off on
2 at Presto-X?

3 A. Not to my knowledge.

4 Q. You know, a lot of times big companies
5 have paperwork that you have to sign off on saying
6 you understand, you've read the standard operating
7 procedure. Did you ever have to do that?

8 MR. SAPPINGTON: Object to form.

9 A. Not to my knowledge.

10 BY MR. MACH:

11 Q. Do you know what a certified applicator
12 is?

13 A. No, I do not.

14 Q. Okay. At the bottom of Page 11 in
15 Paragraph 11, it says, Requirements for certified
16 applicator to be present and responsible for all
17 workers as follows. Do you see that?

18 A. Yes.

19 Q. Did you never -- did you ever know when a
20 certified applicator had to be present at a
21 fumigation or an aeration or a trained person?

22 MR. FANNING: Objection, assumes facts
23 not in evidence.

24 MR. VANFLEET: Join.

25 A. No.



1 BY MR. MACH:

2 Q. You were never taught that?

3 A. No.

4 Q. Now, on Page 12 of Exhibit 2, you see it
5 says under Paragraph 12 it says, "Training
6 requirements for receipt of in-transit vehicles
7 under fumigation." Would that -- would you read
8 that to be what you were doing basically at the
9 MARS plant, receiving in-transit vehicles under
10 fumigation?

11 A. Yes.

12 Q. Okay. And it says, "The train person
13 must -- person or persons must be trained by a
14 certified applicator following the EPA accepted
15 product applicator's manual that must precede or
16 be attached to the outside of a transport vehicle,
17 or by other training which is accepted by local
18 and/or state authorities." Do you see that?

19 A. Yes. Do you know if you were ever a
20 trained person or a certified applicator for using
21 phosphine products? Or aerating?

22 MR. VANFLEET: Objection, foundation.

23 A. I don't know.

24 BY MR. MACH:

25 Q. And it says there in the end of that



1 paragraph, that the training date must be logged
2 and maintained in the employee's safety training
3 record for a minimum of three years. Do you know
4 if you were ever certified, if those records were
5 kept for three years?

6 A. I do not know.

7 Q. And it says -- the next piece of it says,
8 "This training must cover the following items each
9 of which may be found in this manual. A, how to
10 aerate the vehicle and verify that it contains no
11 more than .3 parts per million phosphine." Do you
12 see that?

13 A. Yes.

14 Q. And you generally didn't verify the
15 phosphine level; is that right, until July 31st,
16 when OSHA came?

17 A. Yes.

18 Q. And then C says, How to determine when
19 respiratory protection must be worn. You didn't
20 use a respirator or weren't even provided a
21 respirator until the July 31, 2012 visit by OSHA;
22 is that right?

23 A. Correct.

24 Q. And then it says, Under D, How to protect
25 workers and nearby persons from exposure to levels



1 above the eight hour time weighted average, T-W-A
2 of 0.3 parts per million or 15 minute short-term
3 exposure limit S-T-E-L of 1.0 parts per million of
4 phosphine. Do you see that?

5 A. Yes.

6 Q. Did you do anything to protect the MARS
7 workers or were you trained in anything on how to
8 protect the MARS workers that were unloading the
9 rail cars?

10 A. I was not.

11 Q. Proper -- and then E is proper removal of
12 the placards. Were you taught how to do that?

13 A. I mean, I don't know what we were taught.
14 I was to do it, you know, Mike said to pull them
15 off when we're done with it.

16 Q. Okay. So you would open up a rail car,
17 let it air out for about 15 minutes, and then
18 you'd take the placards off, is what you were
19 doing to aerate the rail cars at MARS; is that
20 fair?

21 A. Yes.

22 Q. And that went on for several years anyway
23 before you were terminated?

24 A. On my training that -- yeah.

25 Q. And Mr. Franklin taught you that? Is



1 **there somebody else named Ashley that did some**
2 **training with you?**

3 A. Ashley Emerick (spelled phonetically)?

4 **Q. Yes.**

5 A. He just did regular pest control with me,
6 he didn't do any kinda fumigation training with
7 me.

8 **Q. Okay. And then the last one under the**
9 **training says, How to follow proper residual**
10 **disposal instructions. Do you see that?**

11 A. Yes.

12 **Q. And what -- what were the proper ways to**
13 **dispose of the poisons phosphine residue at the**
14 **MARS plant when you'd take it out of a rail car?**

15 A. Generally you take it and we'd have to
16 put it underneath the -- if there was water and
17 soap and, you know, magnesium, and then if it was
18 just aluminum phosphide, you'd just use water.

19 **Q. Okay --**

20 A. Submerge 'em and --

21 **Q. Where would you do that?**

22 A. I'd do it at home.

23 **Q. You'd take them to your house?**

24 A. Yes.

25 **Q. So you'd carry the Fumicel, used Fumicel**



1 back in your truck to your house?

2 A. Yes.

3 Q. And you'd do the -- you'd do the disposal
4 of it at your house; is that right?

5 A. Yes, 'cause I --

6 Q. And after it was neutralized, you would
7 do what, would you just put it in the trash?

8 A. Put it -- I put it in a -- I have their
9 own little bags I put them in, and tie them up,
10 put them in the trash by theirselves.

11 Q. Okay. Do you know if your superiors, did
12 Mr. Fears or Mr. -- I don't know how to say it --

13 A. Ugolini?

14 Q. -- Ugolini, do you know if they knew you
15 were taking the phosphine residue home?

16 A. I assumed they did, 'cause that's the way
17 I got trained to do it. That's how Franklin did
18 it.

19 Q. Okay. So Franklin would take it home.
20 You didn't ever dispose of it on site then?

21 A. No.

22 Q. And you didn't have a place at the MARS
23 plant to dispose of the phosphine --

24 A. No.

25 Q. -- residue products on site?



1 A. Only --

2 Q. So after you do it --

3 THE REPORTER: What? I'm sorry.

4 BY MR. MACH:

5 Q. She didn't get the last thing. I don't
6 know what you said either.

7 A. I don't know -- I don't know what I said
8 either.

9 Q. Okay. We'll -- we'll -- we'll just go
10 on. So I've got this straight, when you - what
11 would you do, would you throw them on the ground,
12 the Fumicels, or how would you get them off the
13 top of a rail car --

14 A. They were on the cardboard deal, so
15 they'd just -- you just lay it down, you know,
16 toss it off the top to the ground.

17 Q. Okay.

18 A. Then you'd pick it up when you're done
19 and take it to your truck.

20 Q. Okay. And how about the plastic seals?

21 A. The -- the plastic seals, they were all
22 them -- they weren't plastic, they were metal or
23 steel.

24 Q. Okay.

25 A. They usually just stay on top of the rail



1 car.

2 Q. Okay. And was there ever anything that
3 looked like plastic wrap or anything on these --

4 A. Yes. The plastic wrap that went over the
5 top of the --

6 Q. Yes.

7 A. Yeah.

8 Q. So there was like plastic wrap that went
9 across the top of the -- of the sealed rail car,
10 correct?

11 A. Meat and bone, yes.

12 Q. Okay. And that would keep the -- and
13 then underneath it was where the phosphine product
14 would hang?

15 A. Yes.

16 Q. And that's the part you'd take home?

17 A. Yes.

18 Q. Was there ever a residue on the corn that
19 you saw?

20 A. There was some, sometimes some gray
21 residue on -- on top there.

22 Q. Okay. And it was -- was it a real gray
23 color?

24 A. Yeah.

25 Q. If it was blue, was it partly unspent; do



1 you know?

2 MR. FANNING: Objection -- sorry.

3 MR. VANFLEET: Objection, foundation.

4 BY MR. MACH:

5 Q. You can go ahead and answer if you know.

6 A. I don't know.

7 Q. Did you ever see any blue residue on any
8 of the corn?

9 A. I don't recall.

10 Q. Do you know if the preferred method of
11 measuring phosphine for Presto-X in the period of
12 2004 when you started, until 2012, was it to use
13 the Drager tubes, as opposed to any electronic
14 monitoring?

15 A. To my knowledge, yes.

16 Q. And when was the first time that you ever
17 got any electronic monitoring device from Presto-
18 X?

19 A. That was September, I think, of '12.

20 Q. Just --

21 A. I believe.

22 Q. Just the month before you were
23 terminated?

24 A. Yeah. I think that was when I got the
25 Pac 7000.



1 Q. And a Pac 7000 is a type of monitoring
2 device that's an electronic device that can
3 register the level of phosphine?

4 A. Yes.

5 Q. And did you start after OSHA was there in
6 September of 2012 testing the level of phosphine
7 on every load that you aerated?

8 A. Yes.

9 Q. And then did you get any extra training
10 at that time on how to use the Pac 7000?

11 A. Nope.

12 Q. So you were just handed the device and
13 said go -- go to it?

14 A. Correct.

15 Q. Did you ever get a reading on that Pac
16 7000?

17 A. Yes.

18 Q. Okay. And would you record that reading
19 anywhere?

20 A. I would keep it for my own use. I did
21 not put it down anywhere.

22 Q. Okay.

23 A. Because that's -- we wouldn't let it go
24 until it got to that point.

25 Q. Okay. You wouldn't let it go into the



1 plant until it got to a .3?

2 A. Yeah.

3 Q. And that's .3 parts per million?

4 MR. FANNING: Object, leading.

5 Objection, form.

6 BY MR. MACH:

7 Q. You can go ahead and answer.

8 A. Yes.

9 Q. Now, the -- when you were working with
10 Mr. Franklin, were you doing fume -- or aerations
11 at the MARS plant soon after you got your initial
12 training?

13 A. Yeah, it was pretty soon, but I don't
14 recall how --

15 Q. Well, you started in -- the end of 2004.
16 By 2005 or by the time at MARS, the strike was
17 over, were you and Mr. Franklin fumigate -- or,
18 excuse me -- aerating rail cars at MARS?

19 A. If we did, we didn't do very many
20 because, I mean, like I said, we didn't -- we
21 didn't really start getting a lot of rail cars
22 until late in, you know --

23 Q. Like how late?

24 A. Probably '08, '09, you know. It was --

25 Q. And when you took the state exam for



1 pesticide technician or certification, there's
2 various different parts that you have to pass,
3 correct?

4 A. Yes.

5 Q. And there's a part about, oh, termites
6 and there's a part about the general part of using
7 a pesticides, and then there's a part of right of
8 way and then there's a part that's on fumigation.
9 And when you first -- and then that'll read on
10 your license, correct?

11 A. Yes.

12 Q. 'Cause you have to be licensed to use any
13 of these --

14 A. Yes.

15 Q. -- restricted-use products, right?

16 A. Yes.

17 Q. Did you have any difficulty getting your
18 fumigation part passed?

19 A. Yes.

20 Q. It's a hard test; wasn't it?

21 A. Yes.

22 Q. Do you know how many times you failed the
23 fumigation part?

24 A. Like eight times, to my knowledge. It
25 may have been more than that. (Inaudible).



1 THE REPORTER: What was that?

2 THE WITNESS: It wasn't much.

3 BY MR. MACH:

4 Q. And I believe you finally passed it in
5 August of '08, the records show. Does that sound
6 right?

7 A. Yeah.

8 Q. So during 2005, 2006, 2007 until August
9 of 2008, you had failed the fumigation exam that
10 the state gives, correct?

11 A. No. I think -- I mean, I only took it
12 for, like, six months. 'Cause you have to take a
13 certain test every year.

14 Q. Okay. You may not have taken the
15 fumigation exam back in '05, you didn't start
16 taking it maybe -- and I think the records will
17 show when you started taking them maybe?

18 A. Yes.

19 Q. But you think you failed it, like, seven
20 times over a seven month -- or eight times --

21 A. Yeah.

22 Q. -- over a seven-month period?

23 A. Yeah. Or I'd have to go take it a month.

24 Q. Who wanted you to pass that fumigation --

25 A. Ugolini.



1 THE REPORTER: Who?

2 THE WITNESS: Ugolini.

3 BY MR. MACH:

4 Q. Did you get any feedback from him about
5 failing the fumigation part of the exam?

6 A. No. Just wanted me to get it.

7 Q. He just wanted you to get it, right.

8 A. Get my license.

9 Q. On Page 13 of Exhibit 2, it talks about,
10 at Paragraph 15, applicator and worker exposure.
11 And it says, again, "Above -- approved respiratory
12 protection must be worn if concentrations exceed
13 the allowable limits or when concentrations are
14 unknown." Did any of the MARS people wear
15 respirators when they were working around these
16 rail cars?

17 MR. FANNING: Objection, form.

18 A. Not to my knowledge.

19 THE REPORTER: Who's that? Sorry.

20 BY MR. MACH:

21 Q. Did you get any training from anyone at
22 MARS on how to aerate rail cars?

23 MR. FANNING: Objection, assumes facts
24 not in evidence.

25 A. Not to my knowledge.



1 BY MR. MACH:

2 Q. Did you know who Mr. Vasquez was?

3 A. Yes.

4 Q. Who was that?

5 A. The safety coordinator.

6 Q. Okay. And his name Frank Vasquez for a
7 -- a time; is that right?

8 A. Yes.

9 Q. Were you aware that he got terminated?

10 A. Yes.

11 Q. Do you know why he got terminated?

12 A. No.

13 Q. Did -- and he was a MARS employee,
14 correct?

15 A. Yes.

16 Q. Did he ever do any training with you --
17 MR. FANNING: Objection.

18 BY MR. MACH:

19 Q. -- on aeration or use of phosphine?

20 A. No.

21 MR. FANNING: Objection, form.

22 BY MR. MACH:

23 Q. How did you meet Frank Vasquez?

24 A. When I -- I think when very first
25 started, we had to go in there and sit through --



1 you know, they have an initial thing they do where
2 they -- where you learn about the plant and stuff.
3 So we had to learn about that, and that's the only
4 thing I ever had --

5 Q. Was that the --

6 A. -- that I know of.

7 Q. They never gave you any pamphlets or any
8 standard operating procedures for MARS; is that
9 right?

10 A. No.

11 Q. Do you know if MARS had a standard
12 operating procedure for the use of -- or aeration
13 of rail cars --

14 MR. FANNING: Objection --

15 BY MR. MACH:

16 Q. -- treated for phosphine?

17 MR. FANNING: Objection, speculation,
18 assumes facts not in evidence.

19 A. I don't know.

20 BY MR. MACH:

21 Q. You never saw one, in any event; did you?

22 A. No.

23 Q. Did you ever use your monitor in the rail
24 bay or do a Drager in the rail bay area when you
25 would clear a car in the rail bay?



1 A. No.

2 Q. Were there ever any engineering controls
3 like increased ventilation, fans, anything like
4 that used when you did aerations for MARS?

5 MR. FANNING: Objection, form.

6 A. No.

7 BY MR. MACH:

8 Q. On Page 8 -- excuse me -- 16 of Exhibit
9 2, if you look at 18.2. It talks about non-food
10 commodities. And it says, "Aerate all non-food
11 commodities to 0.3 parts per million or less of
12 phosphine." It says, "Monitor densely-packed
13 commodities to ensure that aeration is complete."
14 Do you see that?

15 A. Yes.

16 Q. Was the meat and bone, was that a
17 densely-packed commodity?

18 MR. VANFLEET: Objection, speculation.

19 MR. FANNING: Assumes facts not in
20 evidence.

21 MR. SAPPINGTON: Join.

22 A. I don't know.

23 BY MR. MACH:

24 Q. Do you know what a densely-packed
25 commodity would be?



1 A. No.

2 Q. Did you ever ask anybody, since that was
3 part of the requirement in the applicator's
4 manual?

5 A. No.

6 MR. VANFLEET: Objection, argumentative.

7 MR. FANNING: Assumes facts not in
8 evidence, misstates the record.

9 A. No.

10 BY MR. MACH:

11 Q. On Page 18, Paragraph 21 of Exhibit 2, it
12 talks about required written fumigation management
13 plan. And you can read that first paragraph, but
14 near -- it says -- well, it says, "The certified
15 applicator is responsible for working with the
16 owners and/or responsible employees at the
17 structure and/or area to be fumigated to develop
18 and follow a fumigation management plan. State,
19 county, local authorities may also have specific
20 requirements. The FMP must be written prior to
21 every treatment, including fumigation treatment
22 for burrowing pests." Do you see that?

23 A. Yes.

24 Q. So there was a requirement that a
25 fumigation management plan be made for every



1 fumigation that's part of the label, which is part
2 of the law, right?

3 A. Correct.

4 MR. FANNING: Objection --

5 BY MR. MACH:

6 Q. And --

7 MR. FANNING: Objection, form. And can
8 you just give a little pause? I'm sorry, but I --
9 I can't get it in very quickly.

10 THE WITNESS: Will do.

11 BY MR. MACH:

12 Q. And -- and you did a couple of rail car
13 fumigations and also -- or excuse me. Yeah,
14 fumigations and a couple of trailer fumigations
15 for MARS at the MARS plant, correct?

16 MR. FANNING: Objection, assumes facts
17 not in evidence.

18 A. Yes.

19 BY MR. MACH:

20 Q. And those were done without any
21 fumigation management plan, right?

22 A. I did not do any, but I can't say that
23 they didn't do them at the office.

24 Q. Okay. You think Sam Fears may have done
25 a fumigation management plan?



1 A. They could have, I don't know --

2 Q. Did you ever see one?

3 A. No.

4 Q. Did you ever talk to any of the local
5 authorities, such as the police and fire, that are
6 required to know about fumigations being done?

7 MR. FANNING: Objection, assumes facts
8 not in evidence.

9 A. Not to my knowledge.

10 BY MR. MACH:

11 Q. And under Paragraph 6 there, it says,
12 "Consult with company officials to develop an
13 appropriate monitoring plan that will confirm that
14 nearby workers and bystanders are not exposed to
15 levels above the allowed limits during the
16 application, fumigation and aeration." And did
17 you aerate those cars that you fumigated?

18 A. Yes.

19 Q. Okay. And as far as you know, did you
20 consult with any of the company officials to
21 develop an appropriate monitoring plan?

22 A. MARS knew I was aerating them; they knew
23 I was fumigating them. But as far as, you know,
24 developing a planning of action, no.

25 Q. And you didn't use a Drager on those



1 either; did you?

2 A. No.

3 Q. So you didn't do any monitoring when you
4 did the fumigation on the MARS property?

5 A. No.

6 Q. On Page 21 of Exhibit 2, it talks about
7 monitoring and safety. Do you see that?

8 A. Yes.

9 Q. And it says, quote -- under A it says
10 "Monitoring the phosphine concentrations must be
11 conducted in areas to prevent excessive exposure
12 and to determine where exposure may occur.
13 Document where monitoring will occur." You didn't
14 ever document where monitoring would occur,
15 because you didn't ever monitor, correct?

16 A. Yes.

17 Q. And then it says, Keep a log or manual of
18 monitoring records for each fumigation site. This
19 is under B on Page 21 of Exhibit 2. "This log
20 must, at a minimum, contain the timing, number of
21 readings taken and level of concentrations found
22 in each location." You didn't do that; did you?

23 MR. VANFLEET: Objection, form.

24 BY MR. MACH:

25 Q. Because you hadn't been trained to do



1 that; had you?

2 A. Correct.

3 Q. And then C, it says, "When monitoring
4 document, even if there is no phosphine present
5 above the safe levels." And you didn't ever do
6 that until after OSHA was there in July of 2012,
7 correct?

8 A. Yes.

9 Q. And at that time, you started putting
10 down if you'd cleared a rail car to zero parts per
11 million, sometime in, like, September, didn't you,
12 or August of 2012?

13 MR. FANNING: Objection, form.

14 A. Yes.

15 BY MR. MACH:

16 Q. And then under 2B it says, "All phosphine
17 concentrations readings must be documented." And
18 you didn't ever do that, correct?

19 A. Correct.

20 Q. On Page 26, at the very bottom it talks
21 about rail cars, container cars, truck, vans and
22 other transportation vehicles. Again, we're
23 talking about Exhibit 2. Do you see that?

24 A. Yeah, 2.

25 Q. And at the very last sentence it says:



1 "It is not legal to move trucks, trailers,
2 containers, vans over public roads or highways
3 until they've been aerated." Do you see that?

4 A. Where are you at?

5 Q. On Page 26 at the bottom.

6 A. Okay, got it. Yeah, I got it now.

7 Q. And you knew that; didn't ya, that trucks
8 and trailers under fumigation couldn't be moved
9 over the public roads?

10 A. They couldn't, yeah.

11 Q. Yeah, that -- that would be illegal,
12 correct?

13 A. Correct.

14 Q. Did you ever have to fumigate -- excuse
15 me. Did you ever have to aerate a truck that came
16 in at the MARS plant?

17 MR. VANFLEET: Objection, form.

18 A. I did not.

19 BY MR. MACH:

20 Q. Okay. Were you ever called in because a
21 truck was -- had phosphine, poison gas in it in
22 the trailer at the MARS plant?

23 A. Yes.

24 Q. Okay. And can you tell us about that
25 incident?



1 A. Basically just called out by one of the
2 -- Terri Alberts, which was a QA out there at
3 MARS, and she had her reading on it, it said it
4 was over gassed, and had to come out and take a
5 reading, and it was over-gassed.

6 Q. Okay. Do you know who brought that truck
7 into the plant?

8 A. Elnicki is what I got told.

9 Q. Okay. And do you know about when that
10 was?

11 A. No, I do not.

12 Q. You know it was Terri Alberts, though,
13 who called ya?

14 A. Yes.

15 Q. And then did you do an actual Drager tube
16 reading on that one?

17 A. Yes.

18 Q. Okay. And it was over .3 parts per
19 million, that truck?

20 A. Yes.

21 Q. And did -- did you smell that garlic
22 smell that time?

23 A. Yes.

24 Q. And that truck trailer, did they just
25 reject the truck then --



1 A. Yes --

2 Q. -- and send it out?

3 A. Had to go back.

4 Q. Okay.

5 A. Yeah.

6 Q. So then the Elnicki truck left and went
7 back while it was still under gas driving across
8 the road, right?

9 A. To my knowledge, yes.

10 Q. Now, this manual itself, the applicator's
11 manual, Exhibit 2, we're going through. On Page
12 27 it says, It must -- the manual must precede or
13 be with the rail car. Did you ever see a manual
14 come in with the rail car?

15 A. No.

16 Q. Did you ever get a manual that had been
17 sent before -- an applicator's manual that had
18 been sent before a rail car came in?

19 A. No.

20 Q. So you never received any applicator's
21 manuals with a rail car or about any of the rail
22 cars that you aerated; is that fair?

23 A. Yes.

24 Q. Well, the only way you had an
25 applicator's manual, did you have one in your



1 truck?

2 A. Yes. We had a -- labels, M-S-D-Ss in
3 their truck.

4 Q. And was the applicator's manual part of
5 that?

6 A. Yeah. That label M-S-D-S is an
7 applicator's manual, the same as.

8 Q. The only thing other than that I want to
9 talk to you about on this Exhibit 2 is the
10 disposal on Page 36, the disposal instructions.
11 Do you see that on Paragraph 28 of Exhibit 2,
12 disposal instructions?

13 A. Yes.

14 Q. And the first one is, quote, do not
15 contaminate water, food or feed or storage -- or
16 feed by storage or disposal. You see that?

17 A. Yes.

18 Q. Closed quote. And then it says,
19 "Unreacted or partially reacted Fumitoxin is
20 acutely hazardous." Do you agree with that?

21 A. Yes.

22 Q. Okay. And you'd take care of the
23 unreacted Fumitoxin or the unreacted Fumicel,
24 rather, and put it in your truck and carry it,
25 what, 50 miles home with you?



1 MR. VANFLEET: Objection, misstates his
2 testimony, assumes facts not in evidence.

3 BY MR. MACH:

4 Q. Did you do that?

5 A. I lived a mile from MARS when I worked
6 there.

7 Q. Okay. You didn't live at Monkey Island;
8 is that right?

9 A. No.

10 Q. Okay. So you would put it in your truck
11 and take it a mile home?

12 A. Oh, yeah. It was real quick.

13 Q. Okay. And so but you didn't dispose of
14 it onsite at MARS?

15 A. No.

16 Q. And then on Page 37, I guess it starts
17 maybe at the bottom of Page 36. But it talks
18 about the bluish or grayish white powder. Do you
19 recall seeing that from Fumitoxin?

20 A. Yes.

21 Q. And that that's a nonhazardous waste. Do
22 you see that?

23 A. Yes.

24 Q. And the green dust, it says, is what --
25 at the top of the next page, it talks about green



1 dust. Did you ever see green dust from Fumitoxin?

2 A. No.

3 Q. Did you ever see blue?

4 A. No.

5 MR. MACH: We've been going a little over
6 an hour. Why don't we take a quick break. We're
7 done with Exhibit 2.

8 THE VIDEOGRAPHER: It is 10:46 a.m.
9 We're going off the record.

10 (THEREUPON, a recess was taken.)

11 THE VIDEOGRAPHER: It is 10:58 a.m. We
12 are back on the record.

13 BY MR. MACH:

14 Q. Mr. Tyree, we've gone through Exhibit 2
15 now, and I just want to kinda sum up what we've
16 got, Exhibit 2. That was the Applicator's Manual
17 and, again, that was probably -- under your
18 understanding of the pesticide industry, it is
19 part of the label; is that right?

20 A. Yes.

21 Q. And that so you'd have to follow the
22 label and the information in Exhibit 2, or like
23 exhibits for other phosphine products, correct?

24 A. Yes.

25 Q. And we've gone through that, and you did



1 some of the things correctly, and it appeared that
2 you didn't do some of the things correctly in the
3 manual. And was that basically a training issue
4 with you; you'd never been trained on that?

5 MR. VANFLEET: Objection, form.

6 A. Yes.

7 BY MR. MACH:

8 Q. Had anyone at Presto-X do any annual
9 checkups on you or refresher courses on aeration
10 of rail cars?

11 A. No.

12 Q. Did -- did any of your management people
13 from Presto-X ever come out to the MARS site and
14 watch you aerate a rail car to see if you were
15 doing it correctly?

16 A. No.

17 Q. I think you told me one time you got some
18 pamphlets maybe that they handed you; is that
19 right?

20 A. Yes.

21 Q. And -- but beyond that, did you get any
22 training on -- hands-on training, other than from
23 Mr. Franklin who evidently taught you some things
24 that were not correct in the applicator's manual?

25 A. No.



1 Q. I don't know if I got that question out
2 very well. Did -- did you get any other training
3 about aerating rail cars, other than from Mr.
4 Franklin who taught you some incorrect ways to do
5 it?

6 A. Franklin is the only one that taught me
7 how to do rail cars, aeration.

8 Q. Mr. Ugolini?

9 A. Ugolini.

10 Q. Ugolini did not; is that correct?

11 A. Correct.

12 Q. And you didn't get rail car -- or any
13 fumigation training in your initial work; did
14 you --

15 A. No.

16 Q. -- for Presto-X? And you didn't get the
17 fumigation certification until August of 2008,
18 correct? You'd been working for, what, nearly
19 four years?

20 A. Yes.

21 Q. Before you passed the fumigation portion
22 of the Missouri Department of Agriculture
23 requirements; is that correct?

24 A. Yes.

25 Q. And that was all book work also, that was



1 no hands-on -- the Department of Agriculture, in
2 order to get your license, didn't go out and make
3 you fumigate and/or aerate a rail car?

4 A. No.

5 Q. Was that a very small portion, if covered
6 at all, in the fumigation training?

7 A. Yes.

8 Q. Do you remember any part of aeration in
9 the fumigation portion of the -- or aeration of
10 rail cars in the fumigation portion of the
11 Department of -- of Agriculture test --

12 A. No.

13 Q. -- to get your license?

14 MR. FANNING: Objection, form. Again, if
15 you could just wait a little bit after he finishes
16 his question, that allows us to object. I'd
17 appreciate it.

18 THE WITNESS: Okay.

19 BY MR. MACH:

20 Q. Would your superiors at Presto-X then
21 just have been Michael Ugolini and Sam Fears?

22 A. Heath Kern.

23 Q. And Heath Kern. Was he between those
24 two?

25 A. Yes.



1 Q. How long did Heath Kern serve as your
2 boss?

3 A. One year.

4 Q. Do you know what year that was?

5 A. No.

6 Q. Would it have been about 2010, in that
7 ballpark?

8 A. I don't recall.

9 Q. Do you know why Heath Kern left?

10 A. Well, I know why he came in he left,
11 but --

12 Q. Okay. Why was that?

13 A. He came from Schendel and wanted to
14 figure out something about Presto-X to take back
15 to Schendel, because that's where he went back to.

16 Q. Okay. So he -- he did a term of about a
17 year as a manager at Presto-X in the Springfield
18 office, and you believe it was to --

19 A. That's what he told me.

20 Q. Okay. So to learn about how Presto-X did
21 things so he could take that back to Schendel; is
22 that right?

23 A. (Nodded head.)

24 Q. That's what he told you?

25 A. Yes.



1 Q. And did anyone ever come and observe you
2 doing aerations from MARS?

3 A. No.

4 Q. Were you out in the open where they could
5 see you?

6 A. Yes.

7 Q. Did Frank Vasquez or any other MARS
8 employees see that you were on top of a rail car
9 without a respirator?

10 MR. SAPPINGTON: Objection, calls for
11 speculation, lacks foundation.

12 MR. VANFLEET: Join.

13 A. Yes.

14 BY MR. MACH:

15 Q. Could any of them ever have told -- seen
16 you up there without -- on top of a rail car
17 aerating a rail car without using a meter or
18 Drager?

19 MR. SAPPINGTON: Same objections.

20 A. Yes.

21 BY MR. MACH:

22 Q. And you weren't -- during the time you
23 aerated and cleared cars for MARS, you did not
24 record any Drager readings of levels of phosphine
25 gas from these rail cars, did anyone from MARS



1 ever come up to you and say, hey, you gotta be
2 writing this stuff down and reporting it to us
3 regarding the levels of phosphine in rail cars
4 that you were aerating?

5 MR. SAPPINGTON: Objection, assumes facts
6 not in evidence.

7 BY MR. MACH:

8 Q. Go ahead.

9 A. No.

10 Q. Was the only time you saw or talked to
11 the safety manager at MARS, Mr. Vasquez, the
12 opening day you went to MARS where you had to get
13 the safety -- see the safety video and learn about
14 the plant?

15 MR. FANNING: Objection, vague.

16 A. I talked to him, you know, occasionally,
17 you know, just 'cause I -- I talked to everybody
18 out there, so ...

19 BY MR. MACH:

20 Q. Did Mr. Vasquez ever indicate that you
21 were doing anything wrong in your aeration?

22 MR. FANNING: Objection, form.

23 MR. SAPPINGTON: Form and foundation.

24 A. No.

25 BY MR. MACH:



1 Q. Did anyone from MARS -- or do you know
2 who -- even know who the safety manager was at
3 MARS after Mr. Vasquez left in the summer of 2012?

4 A. No.

5 Q. You were never approached by anyone who
6 indicated that they were the new safety manager
7 for MARS?

8 A. No.

9 Q. Never talked to anyone from MARS who
10 claimed to be the safety manager?

11 A. No.

12 (THEREUPON, Tyree Deposition Exhibit No 3
13 was marked for identification.)

14 BY MR. MACH:

15 Q. Gonna mark what we have as Exhibit 3
16 here.

17 MR. MACH: That's not the whole package.

18 MR. SCHLOEGEL: That would be the whole
19 package. They're two separate. This is just the
20 termination stuff, and that's his file.

21 MR. MACH: Okay.

22 BY MR. MACH:

23 Q. Exhibit 3 consists of J.C. Ehrlich 265
24 through 352. And it's actually two pieces, one --
25 and it's -- I'll represent to you, it's basically



1 a personnel and training information that we got
2 from Presto-X regarding you.

3 A. Okay.

4 Q. Can you take a look at that?

5 A. Yeah.

6 Q. And the first page on there is --

7 MR. FANNING: Is this a copy, Scott?

8 MR. MACH: Yeah, that is.

9 MR. FANNING: He's in the first page, is
10 that --

11 MR. MACH: That's the first page.

12 BY MR. MACH:

13 Q. And the first page there of Exhibit 3,
14 and it's J.C. Ehrlich stamp Number 265. Do you
15 see that at the bottom?

16 A. Yeah.

17 Q. Okay. It says you're start date was
18 11/29 of '04. That's correct?

19 A. Yep.

20 Q. And termination date 10/16 of '12. Is
21 that correct?

22 A. Yep.

23 Q. So you worked there almost eight years?

24 A. Mmm-hum.

25 Q. And then if you turn the page over to



1 Page 267, there's a termination form. Do you see
2 that?

3 A. Yes.

4 Q. And that's for you, correct?

5 A. My name, yeah.

6 Q. And we're on Bates Stamp 2 -- J.C.E. 267
7 of Exhibit 3. And here it says, under three, it's
8 got your termination date, and then under three it
9 says you returned all the manuals, correct?

10 A. Yes.

11 Q. Do you know what those manuals were?

12 A. It was the labels and MSDSs at, you know,
13 every track has one.

14 Q. Okay. And did you have any specific
15 manuals that trained you for aerating rail cars?

16 A. Not to my knowledge.

17 Q. And did you ever go to any seminars that
18 taught you how to aerate rail cars?

19 A. No.

20 Q. Do you know what the NPCA Field Guide is?

21 A. National -- no.

22 Q. Did you return it anyway?

23 A. I'm sure I did.

24 Q. Okay. It's check marked that you
25 returned a NPCA Field Guide --



1 A. I didn't -- I didn't keep nothing that
2 wasn't mine.

3 Q. Okay. But the -- that NPCA Field Guide,
4 do you know what that was?

5 A. No.

6 Q. The Termite Control Guidelines, you
7 returned, the Testimonial Letter binder. Did you
8 have testimonial letters indicating that you'd
9 been doing a good job?

10 A. Oh, yeah.

11 Q. Did you win any awards while you were at
12 MARS -- or excuse me -- at Presto-X?

13 A. Yes.

14 Q. What type of awards did you win while you
15 were at Presto-X?

16 A. Tech of the year, safe driving awards,
17 sales awards, top sales.

18 Q. Did you actually get, like, plaques and
19 things for that?

20 A. Mmm-hum.

21 Q. Is that a yes?

22 A. Yes.

23 Q. And did you ever get any feedback from
24 MARS -- or excuse me -- from Presto-X that you
25 were doing anything improperly?



1 A. No.

2 Q. Did you get any warning about this
3 termination?

4 A. No.

5 Q. Did you ever get put on probation?

6 A. No.

7 Q. Did this termination come out of the blue
8 to you?

9 A. Yes.

10 Q. And tell me how it happened.

11 A. Got told I needed to come to Holiday Inn
12 Express in Joplin, Missouri, and showed up and
13 told me I was unemployed.

14 Q. And who told you that?

15 A. Sam and somebody from -- lawyer from
16 Presto-X.

17 Q. A lawyer from Presto-X?

18 A. Yep.

19 Q. And they met you at the Holiday Inn
20 Express in Joplin?

21 A. Yep.

22 Q. They didn't call you into the office even
23 in Springfield?

24 A. Nope.

25 Q. Here it says at the top, the things you



1 returned are between two and eight, I think -- or
2 excuse me -- between two and five. Did you ever
3 return your respirator?

4 A. Ain't got a respirator.

5 Q. Did you only get that respirator for one
6 day?

7 A. That's all I had it for, yes.

8 Q. So Sam Fears took the respirator back the
9 day after you did the clearing of the rail car for
10 OSHA at the MARS Pet Food plant?

11 A. I returned it or he picked it up. I
12 don't recall exactly.

13 Q. So then you didn't have a respirator even
14 available to you after that date of -- I think
15 it's July 31st of 2012?

16 MR. VANFLEET: Objection, misstates his
17 testimony.

18 A. Not in my truck.

19 BY MR. MACH:

20 Q. Do you know if -- where the respirator
21 was?

22 A. It would be in Springfield.

23 Q. At the bottom of that form on
24 termination, it says that you were terminated, the
25 box is checked for violation of company policy.



1 Do you know what policy you violated?

2 A. No.

3 Q. And then if you turn to the next page
4 it's -- we're on Exhibit 3, it's J.C.E. Bates
5 Number 268 at the bottom. It's the same form over
6 again. And then it's got, Terminated, it's got
7 two Xs in the -- one in the box and one next to
8 the box. And then it says -- on that one it says
9 -- it doesn't say poor performance, it says
10 violation of company policy, and then explanation
11 it says, "Employee terminated for violating
12 company policy regarding one, aeration, two --
13 excuse me -- aeration procedures, two,
14 documentation of completed work and, three,
15 generating customer invoices. And then it's BAG
16 10 -- is it 1612? Do you see that?

17 A. Mmm-hum.

18 Q. Is that a yes?

19 A. Yes.

20 Q. And were you told that day by Mr. Bruce
21 Gelting, the lawyer for Presto-X, that you were
22 terminated for these reasons?

23 A. No.

24 Q. What did he tell you?

25 A. I was terminated.



1 Q. That was all?

2 A. Yes.

3 Q. He didn't give you any reason?

4 A. No.

5 Q. Did you ask him?

6 A. No.

7 Q. Did you believe it was because of the
8 MARS situation?

9 A. Yes.

10 Q. When did you first learn that there was a
11 problem at MARS with the way -- or with phosphine
12 getting into the plant?

13 MR. FANNING: Objection, form, assumes
14 facts not in evidence.

15 MR. VANFLEET: Join.

16 MR. SAPPINGTON: Join. It's also
17 argumentative.

18 BY MR. MACH:

19 Q. You can go ahead and answer.

20 A. July, you know, probably July -- first
21 part of July where I had to go up there to
22 Springfield to my -- with Sam to talk about doing
23 the fumigation on the 31st of July for MARS.

24 Q. Okay. And what did Sam tell you at that
25 time?



1 A. Basically, you know, we're gonna go do
2 two rail cars and they're going to be at MARS and
3 OSHA's gonna be there and we'll take our Drager,
4 we'll take our respirator and we'll take all the
5 stuff we need and go down there and do it.

6 Q. Okay. And did you tell him at that time
7 you hadn't been using the Drager, hadn't been use
8 -- well, he knew you hadn't been using the
9 respirator, right, because he had it?

10 A. Mmm-hum, yes.

11 Q. And that meeting took place after they
12 knew -- Sam knew that OSHA was coming on the 31st
13 of July, 2012, correct?

14 A. Yes.

15 Q. And so Sam called you into a -- was it a
16 special meeting in Springfield?

17 A. Yes.

18 Q. So you drove back to Springfield, met
19 with Sam Fears. Where did you meet?

20 A. The office.

21 Q. And what did he tell you then, as best
22 you remember?

23 A. That we were going to have to fumigate
24 two rail cars on, you know, July 31st and MARS and
25 OSHA was gonna be there and, you know ...



1 Q. Did he tell you you had to do it right?

2 A. Yeah.

3 Q. And did he know that you had not been
4 doing it correctly?

5 A. I don't know.

6 Q. Did Sam Fears ever come down to -- to
7 Joplin to review you or see, watch how you --
8 observe how you cleared rail cars?

9 A. No.

10 Q. And was he your only boss at that time,
11 other than if you'd go higher up the chain out of
12 the Springfield office?

13 A. Yes.

14 Q. Did he tell you that the people at MARS
15 were complaining because they were getting
16 phosphine readings?

17 MR. FANNING: Objection, form.

18 A. I don't recall.

19 BY MR. MACH:

20 Q. Had you heard from any of the people at
21 MARS that they were getting high phosphine
22 readings?

23 A. Yes.

24 Q. Okay. Who had you heard that from?

25 A. I want to say Scott was his name, but I



1 don't --

2 Q. There's two Scotts that I know of --

3 A. Not Ed.

4 Q. -- Scott Gordon or Scott Whittington?

5 A. It's not Ed. I think Ed's -- is Ed
6 Whittington? Is that the Scott?

7 Q. Yeah. There's -- there's a couple --
8 yeah. It was Scott Gordon then?

9 A. Yes.

10 Q. Kind of a big guy?

11 A. No. He always wore a bandanna. I don't
12 know --

13 Q. Okay. And what did Scott Gordon tell
14 you?

15 A. He said, man, I'm getting sick out here.
16 He just -- his -- I don't know if it's the drugs,
17 man, or, you know, he's always, you know, pissed
18 off. I don't know.

19 Q. He was kind of a flippant guy?

20 A. Yes, very much so.

21 Q. And did he indicate he thought he was
22 getting sick from the phosphine; is that where you
23 got the --

24 A. I -- I -- yeah, I assumed that's why I
25 got that from him, so.



1 Q. And then did you observe the unloaders at
2 -- and also maybe the people in the mill room
3 wearing phosphine monitors before this time,
4 before this --

5 A. Yes.

6 Q. -- OSHA got there?

7 A. Yes.

8 Q. And when you observed them wearing
9 monitors, did you know they were monitoring for
10 phosphine?

11 A. Not necessarily, because when I talked to
12 'em, they said it could be for -- you know, it
13 could detect the gas from their forklifts and
14 other stuff, so I wasn't sure exactly what it was,
15 you know, for.

16 Q. It wasn't enough of a -- you didn't start
17 using your Drager because of that, when you saw
18 them start wearing meters?

19 A. No.

20 Q. You kept aerating the 15 minutes and move
21 it into the plant if they needed product?

22 A. Correct.

23 Q. Now, this is kind of chronologically
24 backwards, so I'm gonna flip to the back and start
25 at 352 on the -- on the page number on Exhibit 3.



1 If you could look back there. The first thing,
2 this would be when you started there. They did a
3 physical test on you, correct?

4 A. Correct.

5 Q. You had a physical exam?

6 A. Yeah.

7 Q. And that information's in there. And a
8 lot of that's blacked out for privacy purposes.
9 And then if you look at Page 339 of Exhibit 3,
10 that's your -- it's marked with Presto-X at the
11 top and it says, "For pest control certification
12 information." Do you see that?

13 A. I'll get there.

14 Q. Do you see that page?

15 A. Yes.

16 Q. And that basically says that, at the time
17 you started on 11/29 of '04, you didn't have any
18 license or training in pesticides, or use of
19 pesticides?

20 A. Correct.

21 Q. And if you look at Page 337, looks like
22 you probably got your license on January 4 of
23 2005? Does that look right? Your first license?

24 A. Where is the date at? Well, there's a
25 date up there, it looks like 1/4 of '05, and it



1 says --

2 A. Oh, yeah.

3 Q. -- Pesticide technician license renewal
4 notice, and it's got --

5 A. That's -- that's just a technician's
6 license, it's not a -- you don't have to take no
7 test for it.

8 Q. Okay. So you were just a technician then
9 at that time?

10 A. Yeah.

11 Q. Okay. You didn't have to take any of the
12 tests to prove that you knew about right of way or
13 general pesticides, they just gave you a -- 25
14 bucks and you get a license, huh?

15 A. Yeah. See, 'cause your date down here is
16 1/17, and this date's 1/4.

17 Q. Okay. In any event, you first got some
18 sort of technician's license; is that right?

19 A. Yeah.

20 Q. And that's page -- looks like 336 and 337
21 of Exhibit --

22 A. Yeah. This is --

23 Q. -- three?

24 A. -- Kansas license, I believe, over here.

25 THE REPORTER: A what? I'm sorry, a what



1 license?

2 THE WITNESS: Kansas. That's the Kansas
3 license.

4 BY MR. MACH:

5 Q. Did you get licensed in both Kansas and
6 Missouri?

7 A. I -- I -- they reciprocated. I didn't
8 ever take no test in Kansas.

9 Q. Okay. And then if you look at Page 335
10 of Exhibit 3, that's a letter from the Department
11 of Agriculture. And the Department of Agriculture
12 is the one -- the area of the state that governs
13 the licensing of pesticide users; is that right?

14 A. Yeah.

15 Q. Restricted-use pesticide people. And it
16 looks like at that time, which the report's dated
17 October 6th of 2006, you'd begun taking tests to
18 get certifications; is that right?

19 A. Correct.

20 Q. Certifications as pest -- and that -- at
21 that time, it said you had passed the general
22 structural pest control on October 5, 2006. Is
23 that right?

24 A. And the core.

25 Q. And the core, general standards of



1 competence. But you failed termite at that time.

2 Do you see that?

3 A. Yeah.

4 Q. But you would still get your license for
5 the other two, right? General instruction --

6 A. Yeah, you get a certification as long as
7 you had the general core.

8 Q. Okay. And then if you look at Page 321.
9 Page 321 is another exhibit from the Department of
10 Agriculture, a letter to you in care of Presto-X
11 in Springfield. And the date of that report is
12 May 14, 2008. Do you see that?

13 A. Yeah.

14 Q. And so you'd been at Presto-X little over
15 three years at that time; is that right?

16 A. Yes.

17 Q. And you would -- you would take these
18 qualifying tests from time to time; is that right?

19 A. Yes.

20 Q. And it shows that at that point, you
21 passed the general core standards; you failed
22 right of way pest control, you passed general
23 structural pest control, and you passed termite
24 control. And then it shows at that time you'd
25 failed fumigation pest control. Is that right?



1 A. What it looks like.

2 Q. And is that the time you were having to
3 -- took a lot of the fumigation tests to finally
4 pass 'em? You said you failed it eight times?

5 A. Pretty much, yeah.

6 Q. Okay.

7 A. They never did give us these, so I -- I
8 never did get these.

9 Q. Oh. That -- you weren't provided these,
10 even though they were addressed to you at Presto-
11 X?

12 A. Yeah. I never got these.

13 Q. So they just put these in your file; is
14 that right?

15 A. Yeah, they probably just put them in the
16 file.

17 Q. Okay. And then if you look over at 321
18 of Exhibit -- Page 321 of Exhibit 3, that's when
19 you finally passed fumigation. Nope, that's not
20 where you did it. I'm sorry. There should be a
21 letter in here when you passed. How about Page
22 314, let's look at Page 314.

23 A. Yeah.

24 Q. At that time -- so it would have been
25 October -- it says date of report October 3, 2008.



1 And you took the fumigation test again on October
2 2, and it looks like you passed it that time. Do
3 you see that?

4 A. Yeah.

5 Q. So at that time, you'd become certified
6 in -- in fumigation pest control for the first
7 time October 3, 2008, which was almost four years
8 after you started at Presto-X; is that right?

9 A. Correct.

10 Q. And by that time, you and Mr. Franklin,
11 or you alone were fumigate -- or excuse me -- were
12 aerating rail cars at the MARS plant; is that
13 right?

14 A. Yes.

15 Q. And if you look at Page 313 of Exhibit 3,
16 it's a letter dated November 4, 2008 from John
17 Getz. Do you know who John Getz is?

18 A. I think I met him once or twice.

19 Q. Okay. Did you have any regular contact
20 with John Getz?

21 A. No.

22 Q. And it says in that letter, "This letter
23 is to verify that Joey Tyree has experience as an
24 applicator using pesticide materials in Category
25 7, Fumigation Pest Control, from 11/29 of '04 to



1 the present under the direct supervision of Mike
2 Ugolini." And it gives his license number at
3 Presto-X, 1841 North Newton Avenue, Springfield,
4 Missouri 65803. Did you use pesticide materials
5 in Category 7c, Fumigation Pest Control, from
6 11/29/04 to the present?

7 MR. FANNING: Objection, form.

8 BY MR. MACH:

9 Q. Is that true?

10 A. Not to my knowledge. I didn't use
11 fumigation material.

12 Q. Okay. Do you have any idea why Mr. Getz
13 would have written that letter to the State of
14 Missouri, Department of Agriculture?

15 A. No. Have no idea.

16 Q. There's -- Page 311 of Exhibit 3 is a
17 Notice of Recertification from the Missouri
18 Department of Ag dated 1/8 of '10?

19 A. Yes.

20 Q. And it says, Type of license held now:
21 Commercial applicator and pesticide technician.
22 So did you hold two certifications at that time?
23 Do you know? I guess it just says commercial
24 applicator; doesn't it?

25 A. Yeah.



1 Q. I'm sorry, that's the only box that's
2 marked. Then if you look at Page 309 of Exhibit
3 3, it says that you're a certified commercial
4 applicator license, right?

5 A. Yes.

6 Q. And that that license, at least at that
7 time -- it doesn't have a date on it, but it said
8 it runs until 2/28 of '13. Did your license --
9 was it good for three years?

10 A. Yes. Every three years you gotta
11 recertify.

12 Q. Okay. Do you have any idea why the other
13 license -- licensing documents wouldn't be in your
14 file here that they provided us?

15 A. No.

16 Q. Then if you flip back a Page to 310, it
17 starts to get into the continuing education that
18 you had. Do you see that? That's a letter from
19 Purdue University. Did you ever attend Purdue
20 University?

21 A. No.

22 Q. It says, "Congratulations! You have
23 successfully completed Purdue Food Plant Pest
24 Management 6th Edition. Your certificate of
25 completion is enclosed." And it's directed to



1 you, Joey Tyree, at the Springfield address of
2 Presto-X. Did you ever get this letter?

3 A. Yeah, I think I got this letter.

4 Q. And it's dated February 10, 2009. And it
5 says you got good grades. You got 98, 99.5, 98.9,
6 overall superior rating on -- from the Purdue Food
7 Plant Pest Management 6th Edition. Do you
8 remember what that training was; how you took that
9 training?

10 A. Just your -- you got booklets at home and
11 you did all your tests at your house. And I did
12 my final exam at my house, so ...

13 Q. Okay. Did -- was there any proctoring of
14 the exam or anything, or you just got to fill it
15 out yourself?

16 A. Fill it out myself.

17 Q. And you sent it in and you got good
18 grades, it looks like, on that.

19 A. Obviously.

20 Q. Do you know what the -- the content was
21 of the Purdue Food Plant Pest Management?

22 A. I've got 'em at home probably, but I
23 don't -- you know, it was just over food plant
24 management, basically, you know, servicing
25 accounts.



1 Q. And was the MARS plant a food plant?

2 A. Yeah, they're a food plant.

3 Q. Okay. And did the Purdue Food Plant Pest
4 Management 6th Edition teach you anything about
5 proper aeration of rail cars?

6 A. Not to my knowledge.

7 Q. Did -- did you talk to anyone ever at
8 Purdue University, any professor, or was it all
9 correspondence?

10 A. It was all -- it was at my house. I took
11 all this at my house. I didn't have to talk to
12 anybody.

13 Q. Okay. And did you get any additional
14 training on this Purdue Food Plant Pest Management
15 6th Edition from Mr. Fears or anyone at Presto-X?

16 A. No.

17 Q. If you turn now to Page 307, there's a
18 certificate AIB International. Do you know what
19 that is?

20 A. That's the American Institute of Baking.
21 It's a auditing firm.

22 Q. Okay. And that's in Manhattan, Kansas.
23 Do you see that?

24 A. Yeah.

25 Q. And they've got Joey Tyree, and it says



1 you have completed all the requirements prescribed
2 by the faculty of this educational institution and
3 has been granted this certificate of completion
4 for the course of food processing
5 sanitation/hygiene on March 12th of 2007. Do you
6 see that?

7 A. Yes.

8 Q. Do you remember anything about that
9 course?

10 A. No, I don't.

11 Q. Did you get to talk to any professor or
12 management people at the American Institute of
13 Baking?

14 A. No.

15 Q. Was that again just a correspondence
16 course?

17 A. Yeah, I believe so.

18 Q. And did you fill out information and send
19 it back into AIB?

20 A. I don't think I sent it back in. I
21 think, you know, my superiors did.

22 Q. Okay. It was something you gave to Mr.
23 Ugolini -- Ugolini?

24 A. Yep.

25 Q. And then did he -- is he the one that



1 sent it in, as far as you know?

2 A. As far as I know he did. I -- I -- I
3 know I didn't send it in to AIB.

4 Q. Was there anything in the AIB training
5 that dealt with aeration of rail cars that you
6 remember?

7 A. Not to my knowledge.

8 Q. Did you ever get any continuing education
9 on rail car aeration training?

10 A. No.

11 Q. Or did you ever attend the Rentokil North
12 American Pest Control University?

13 A. No.

14 Q. Did you ever know about that?

15 A. I've heard it. I mean, I knew they
16 bought us out, but as far as hearing about -- what
17 do you mean hearing about 'em?

18 Q. The North American Pest Control
19 University, do you know anything about that?

20 A. No.

21 Q. Did you know that -- who is Robert Long?

22 A. He's somebody who works at Presto-X.

23 Q. He did the same type of job as you,
24 right?

25 A. Yeah.



1 Q. And he did the aeration at MARS after you
2 got terminated, correct?

3 A. Correct.

4 Q. Did you know that on November 16th of
5 2012, that would have been just a couple weeks
6 after you got --

7 A. It would be a month.

8 Q. -- it would be a month after you got
9 fired -- that Robert Long was certified as
10 successfully completing the course, Rail Car
11 Aeration Standard Operating Procedure quiz and
12 given a certificate by the Rentokil North American
13 University?

14 A. No, I don't talk to Corkey.

15 Q. Okay. You don't talk to Corkey Long, so
16 you didn't know about that?

17 A. No.

18 Q. Were you ever told that you could attend
19 the Rail Car Aeration Standard Operating Procedure
20 quiz --

21 MR. VANFLEET: Objection --

22 BY MR. MACH:

23 Q. -- or take it?

24 MR. VANFLEET: -- assumes facts not in
25 evidence.



1 BY MR. MACH:

2 Q. Did you know it was offered?

3 MR. VANFLEET: Same objection.

4 A. No.

5 BY MR. MACH:

6 Q. Did -- before you were fired or anytime
7 near the time you were fired, were you offered the
8 opportunity to go get trained at the Rail Car
9 Standard Operating Procedure quiz at the Rentokil
10 North American Pest Control University?

11 A. No.

12 Q. Did you know that Rentokil had a
13 university that they taught people various things
14 about the job?

15 A. No.

16 Q. Did -- you never then were offered the
17 class which Mr. Long successfully completed
18 titled, "Service Protocol MARS PetCare," from the
19 Rentokil North American Pest Control University;
20 did you?

21 A. No.

22 Q. And you weren't even aware of that.
23 Getting back to your letters or certificates in
24 your file, if you look at Page 306, it's another
25 Purdue University. It's called The Center for



1 Urban and Industrial Pest Management. They
2 recognize Joey Tyree as satisfactorily completing
3 the plant -- Food Plant Pest Management 6th
4 Edition. I guess that's just a certificate that
5 goes with the previous letter; is that right?

6 A. What it looks like.

7 Q. And then if you flip over to 303, that
8 looks like it's another copy of the same thing; is
9 that right? Or is that a different year? Oh, no,
10 that's 5/4 of 2006, you did the Pest Management
11 Technology 6th Edition also from Purdue
12 University; is that right?

13 A. Yeah.

14 Q. So you did that twice, it looks like?

15 A. It was a couple of times.

16 Q. Okay. And then if you look at 302.
17 That's a certificate and, again, we're still in
18 Exhibit 3, Certificate of Training. Joey Tyree
19 has successfully completed the GMP training on
20 January 1, 2010. What is the GMP training?

21 A. Good Manufacturing Practices.

22 Q. What is it?

23 A. Good Manufacturing Practices.

24 Q. Okay. And where was that given?

25 A. We probably got a deal at the office



1 where they just -- they go -- they have a video
2 that we have to go watch, and he would probably
3 put it on there.

4 Q. Was there anything about aerating rail
5 cars in the GMP training that you recall in 2010?

6 A. Not to my knowledge.

7 Q. The next one, certificate of training is
8 on Page 301 of Exhibit 3. It's called Certificate
9 of Training for IPM Food Plant Initial Training,
10 date December -- or excuse me -- February 28th,
11 2010. Do you remember -- what's IPM Food Plant
12 Initial Training?

13 A. Integrated Pest Management.

14 Q. And what is that?

15 A. Just basically working on your practices,
16 you know, doing -- finding solutions, better to
17 use pesticides, not using pesticides versus using
18 pesticides.

19 Q. Was there anything -- any training in
20 that about aerating rail cars?

21 A. Not to my knowledge.

22 Q. The next one is Exhibit 3 -- or Page 300
23 of Exhibit 3. It's titled QualityPro, The Mark of
24 Excellence in Pest Management. Presenting this
25 certificate of excellence to Joey Tyree in



1 acknowledgment of your continuing efforts toward
2 professional excellence in the pest management
3 industry by meeting the QualityPro Requirements
4 and achieving the mark of excellence in pest
5 management. And then there's an official
6 signature that I can't read underneath that. What
7 was QualityPro that you'd done so well with?

8 A. I don't -- I have no idea.

9 Q. Okay. You don't know what QualityPro is
10 as an organization even?

11 A. No.

12 Q. Did you take any tests to get this
13 certificate from QualityPro?

14 A. I can't recall.

15 Q. Then the next one in Exhibit 3 is 299.
16 And that is the Driving Dynamics Interactive
17 Advanced Driving School. And it's got a car on
18 the top of it. Presents this Certificate of
19 Achievement to Joey Tyree from web-based drive
20 training course.

21 A. That's --

22 Q. The One Second Advantage TM. Do you know
23 what that is?

24 A. Must have been something online.

25 Q. Okay.



1 A. To my knowledge.

2 Q. Do you know why you took a driving
3 dynamics course?

4 A. No.

5 Q. So you took a driving dynamics course,
6 but you never took a course in how to do your job
7 aerating rail cars; would that be fair?

8 MR. FANNING: Objection.

9 MR. VANFLEET: Objection, argumentative.

10 A. Yes.

11 BY MR. MACH:

12 Q. The next is 298, is just your -- Page 298
13 of Exhibit 3 is just a Notice of Recertification
14 as a commercial applicator. Is that correct?

15 A. Correct.

16 Q. And then it looks like -- would these be
17 all the certificates that you got, or did you also
18 get some hardware awards from Presto-X?

19 A. Yeah, I got a lot of awards, a lot of
20 plaques.

21 Q. What would they be like --

22 THE REPORTER: Can you -- I'm sorry. Can
23 you repeat that last part?

24 THE WITNESS: I got a lot of plaques at
25 home.



1 BY MR. MACH:

2 Q. And I don't see anything -- oh, yeah. I
3 wanted to ask you about 296. Do you see that? On
4 Exhibit 3.

5 A. Yeah.

6 Q. It's says Presto-X Company Course Request
7 Form. And it says, Fill out this side only for
8 courses from the approved list of correspondence
9 courses. Fill out both sides of courses which are
10 being submitted for approval in the educational
11 assistance program." Did you get to choose
12 whatever courses you took in continuing ed, or did
13 they tell you what to take?

14 A. They told me what to take.

15 Q. And on this particular page -- and it
16 looks like we're back in November of 2004 -- we're
17 on Page 296, it marks the Purdue Pest Control
18 Technology, is the course name. Do you remember
19 that?

20 A. No, I don't recall that, but I'm sure I
21 did it.

22 Q. And do you see the -- and it looks like
23 11/29 of '04. That would have been right after
24 you started. It's your signature?

25 A. Yeah.



1 Q. And above it it says, Does associate have
2 6th Edition textbook, and it's marked no, and then
3 your signature and date line. And then can you
4 recognize the manager's signature there?

5 A. It's Michael Ugolini.

6 Q. Okay. And it's dated the same day 11/29
7 of '04, right?

8 A. Correct.

9 Q. And so that's back to basically when you
10 were starting; is that correct?

11 A. Yes.

12 Q. That's all right. Now I want to talk to
13 you about Exhibit 3.

14 (THEREUPON, Tyree Deposition Exhibit No 4
15 was marked for identification.)

16 BY MR. MACH:

17 Q. Hand you what's been marked as Exhibit 4.

18 A. Okay.

19 Q. And ask you if you can identify that?

20 A. This is a fumigation under -- cars under
21 fumigation at the plant.

22 Q. Okay. And that was for MARS, Rail Cars
23 Under Fumigation. Do you recognize that?

24 A. Yes.

25 Q. Let me ask you this. Did you do aeration



1 of any rail cars at anyplace other than MARS while
2 you worked at Presto-X?

3 A. No.

4 Q. Okay. So work you did at some of those
5 other places was other pesticide work, it wasn't
6 aeration of rail cars?

7 A. Correct.

8 Q. Now, Exhibit 4 you say that -- where was
9 this kept at the MARS plant?

10 A. Usually inside the little -- you know,
11 inside the rail bay, and then there's a little
12 room in there and they have it against the wall.

13 Q. Okay. And on this Exhibit 4, it says,
14 ingredient, and it either says corn or meat,
15 because those were the -- only types of cars that
16 came into the plant under fumigation generally,
17 correct?

18 A. Yes.

19 Q. And then it says, Date Cleared. Would
20 you write any of this information on the actual
21 form in the MARS office?

22 A. No.

23 Q. Okay. Who would write that information?
24 If you know.

25 A. I -- I don't know.



1 Q. Okay. And then it says, Cleared by
2 Presto-X Signature. And looking at Exhibit 4, and
3 that's the first page of Exhibit 4, it says,
4 Cleared by Presto-X. Is that your signature on
5 the right-hand column about -- for the first, oh,
6 about two-thirds of the --

7 A. Till 7/18 here?

8 Q. Yeah, till 7/18?

9 A. Yes.

10 Q. Okay. That's your signature. So you
11 would have cleared the rail cars. And this is in
12 early July. So you would have gone up on the rail
13 car, opened it up for 15 minutes or so, gone into
14 the office and said it's clear and signed off. Is
15 that how that worked?

16 A. Yes.

17 Q. And who would -- who would physically
18 have this, or was it posted somewhere?

19 A. It was just -- they would sit out there.
20 It was hanging on the wall, it was.

21 Q. So it looks like on 7 -- I guess it's 14,
22 it's real hard to read, 7/14 of '12. There might
23 have been a couple of rail cars that you actually
24 cleared that day; is that right?

25 A. Yeah.



1 Q. Looks like maybe three?

2 A. No, more than that. It's --

3 Q. Maybe that's --

4 A. Looks like -- looks like five.

5 Q. Okay. And, again, it's hard to read.

6 But you agree that's your signature, and you
7 basically did that during the course of your work
8 for MARS; is that right?

9 A. Correct.

10 Q. And then -- and all of these that you
11 signed off as cleared, you never actually measured
12 a phosphine level on those; had you?

13 A. Correct.

14 Q. And then if you flip to page -- it's
15 marked as MOJ149 on the right. And I think that's
16 Joplin, Missouri. And I think that's a -- a MARS
17 -- actual MARS document --

18 A. Okay.

19 Q. -- again. It's got the same line. It's
20 cleared by Presto-X, and your signature's on it.
21 And then it looks like in October, October 2nd,
22 you started adding something. What did you add?

23 A. They wanted the placards, whether they
24 had placards or not wrote on there.

25 Q. Who wanted placards?



1 A. MARS told me and Sam both, both of them,
2 MARS and Presto.

3 Q. Okay. At that time you weren't logging
4 in any meter readings on this particular document,
5 even though you had started to use a meter,
6 correct?

7 A. Yeah, it's on there. That's what that
8 zero parts per million is.

9 Q. Where does it say that; I'm missing it?

10 A. OPPN, right there where I signed my name.

11 Q. Oh, okay. And would you write that or
12 would the --

13 A. Yeah.

14 Q. Okay.

15 A. Yeah.

16 Q. And when did you start writing the zero
17 parts per million?

18 A. I don't know when. We'd have to go back
19 and look on this. 8/8 added.

20 Q. Okay. So that was all after -- after
21 OSHA had come, correct?

22 A. Yes.

23 Q. So after OSHA came, you started recording
24 the -- and that would have been July 31st of 2012,
25 correct?



1 A. Yes.

2 Q. You started recording meter readings for
3 the level of phosphine in the rail cars when you
4 cleared them?

5 A. Yes.

6 Q. And then you also started, it looks like
7 in October, adding additional information about
8 the number of placards on the rail cars?

9 A. Correct.

10 Q. And if you look just at October 2nd and
11 maybe 3rd, it looks like there were at least four
12 rail cars that came into MARS with only one
13 placard that were fumigated and under gas,
14 correct?

15 A. Correct.

16 Q. And was -- and you told us sometimes when
17 the placards were on, you still couldn't read the
18 information on the placards, correct?

19 A. Couldn't always read them, no.

20 Q. And then the last rail car that you would
21 have aerated would have been on October 13, 2012;
22 does that look right?

23 A. Correct.

24 Q. And it looks like you used a different
25 pen. Was there any reason for doing it that day



1 differently?

2 A. Probably just -- probably just what was
3 there.

4 Q. Okay. And after that, it was up to --

5 A. I --

6 Q. Mr. Long actually took over, correct?

7 A. Yeah.

8 Q. So anything later would have been Mr.
9 Long's?

10 A. Correct.

11 Q. Back in -- first -- when OSHA first came,
12 how were you afterwards, in August, how were you
13 measuring the -- monitoring the phosphine?

14 A. With a Drager, with a Drager tube.

15 Q. And did you do that with all of the rail
16 cars or not?

17 A. It -- it varied really, to be honest with
18 ya.

19 Q. Yeah. You did some and you didn't do
20 some, correct?

21 A. Correct.

22 Q. Okay. But you'd always log in zero parts
23 per million?

24 A. Correct.

25 Q. So just so I've got it right, after OSHA



1 came, you -- which was July 31st, 2012, they
2 visited the plant -- well, let me ask you this.
3 Can you tell us about the visit by OSHA, what --
4 was it a -- did you just get a call and say, hey,
5 we've got a couple of rail cars coming in, can you
6 come in and aerate them like you usually do, or
7 was there something special about that day?

8 A. It was special. I mean, they -- I don't
9 know why they got, you know, my visit from Sam
10 earlier in the month about two rail cars on 31st
11 we got to fumigate it this time and --

12 Q. Was he specific that there would only be
13 two rail cars --

14 A. Yes.

15 Q. -- on the 31st of July? Okay. And go
16 ahead, what else did you learn and then -- from
17 Sam about the -- the OSHA visit coming up?

18 A. Just basically, you know, want do
19 everything correctly and follow all the protocols
20 and, you know -- that's when I asked him about,
21 you know, what's different than what I was doing
22 before.

23 Q. And what did he say?

24 A. He didn't have any -- he -- he really
25 didn't say nothing to me at all about it.



1 Q. And then did you -- did you use your
2 harness before that time ever?

3 A. I'd used it off and on, you know. I
4 didn't ever -- like I said, there wasn't no rhyme
5 or reason, I mean.

6 Q. You felt safe walking across the top of
7 the car --

8 A. Yeah.

9 Q. -- just because of your agility --

10 A. Yeah.

11 Q. -- is that fair?

12 A. Yeah. It didn't bother me.

13 Q. And did he tell you to make sure to bring
14 your harness that day?

15 A. Yes.

16 A. I think that's actually when he gave me a
17 harness to keep in my truck.

18 Q. Okay. So he gave you a harness and he
19 gave you a respirator. You already had Drager
20 tubes; is that right?

21 A. No. He gave me all those, too.

22 Q. Oh, he gave you the Drager tubes to use,
23 what, for the OSHA?

24 A. Yeah

25 Q. Is that a yes?



1 A. Yes.

2 Q. Do you know why he did that?

3 A. No.

4 Q. Did you have Drager tubes in your truck?

5 A. No.

6 Q. So you didn't even have Drager tubes in
7 your -- in your truck, your Presto-X truck until
8 OSHA came in 2000 -- in July 31st of 2012; is that
9 right?

10 A. Correct.

11 Q. So you had no monitoring devices
12 available to you in your truck, your Presto-X
13 truck during 2006, '7, '8, '9, '10, 2011 when you
14 were doing monitoring and aeration of rail cars at
15 MARS?

16 A. No.

17 Q. And tell us how the 31st of July played
18 out. How did you happen to know what time to go
19 to the MARS plant?

20 A. Sam knew. I mean, Sam was there, so he
21 just -- I don't remember the exact time, when it
22 was, but he knew when to be there, and that -- we
23 showed up there and did 'em and ...

24 Q. So was that the first time Sam had ever
25 seen you aerate -- Sam Fears had ever seen you



1 aerate a rail car?

2 A. Yes.

3 Q. And can -- on Exhibit 1, can you put in
4 red up there where the rail cars were? And just
5 write railroad, RR, as to where the rail cars were
6 that you cleared that day.

7 A. I mean, I can't -- I don't know for --
8 you know perfect, but I'll give you a -- a close.

9 Q. And put OSHA underneath it. Okay. And
10 you've marked then approximately where the --

11 A. Yeah.

12 Q. -- the rail cars -- and they were two
13 hopper cars, correct?

14 A. Yeah. I don't know if -- exact on that,
15 but ...

16 Q. Do you remember if they had placards?

17 A. I think they did. I think all -- I think
18 all four had placards.

19 Q. Do you know where they'd come from?

20 A. No.

21 Q. Were they placed there for you like
22 normal, when you'd go to aerate a rail car at
23 MARS?

24 A. Yeah.

25 Q. And who else was present that day?



1 You've said you and Sam Fears were present. Who
2 else was present?

3 A. OSHA was.

4 Q. Now, when you say OSHA, was there more
5 than one person?

6 A. Yeah. I think there was two, maybe
7 three.

8 Q. And where did they -- did you have any
9 conversation with them?

10 A. I didn't.

11 Q. Okay. Did -- do you know if Sam did?

12 A. He probably did, I imagine. I didn't.

13 Q. You had no conversation with anyone from
14 OSHA, but you knew they were there. How did you
15 know they were from OSHA?

16 A. How did I know? Because they had, like,
17 white stuff on, white little suits, and they were
18 the only ones out there with white suits on.

19 Q. Okay. And you knew OSHA was supposed to
20 be there that day?

21 A. Mmm-hum.

22 Q. Is that a yes?

23 A. Yes.

24 Q. And so you went and cleared the two real
25 cars. How did you do it that day?



1 A. With a Drager tube and a line and ran it
2 down the side and took the meter reading and ...

3 Q. And when you say you ran it down the
4 side, you -- you can't actually stick the Drager
5 tube in the -- the -- above the product; can you?

6 A. Right. You --

7 Q. Because it's glass?

8 A. Right.

9 Q. And they don't want any glass breakage,
10 obviously, in the product that's going to be made
11 into dog food, correct?

12 A. Correct.

13 Q. So tell us how you drew that line. You
14 put the line where?

15 A. Put the line inside the -- the tank
16 itself, the hopper or whatever you call it --

17 Q. Okay.

18 A. -- then you run the line, the tubing and
19 run it wherever. You run it down the side or on
20 top of the rail, I mean, it don't matter where you
21 run it, as long as you're running it.

22 Q. Do you remember where you were when you
23 did pull the -- pump the air in the Drager?

24 A. I don't.

25 Q. Okay. You don't -- you weren't on the



1 ground?

2 A. I don't recall.

3 Q. You just don't recall. You could be on
4 the ground, could have been up on top of a rail
5 car?

6 A. (Nodded head.)

7 Q. Is that right?

8 A. Yes.

9 Q. And did you do more than one reading?

10 A. I think we just did one, because it was
11 zero parts per million --

12 Q. Okay.

13 A. -- to my knowledge.

14 Q. And did you do it in more than one of the
15 hatches up top?

16 A. Yes.

17 Q. Okay. You did each hatch?

18 A. No. I think we did it in a couple of
19 them just to make sure.

20 Q. Okay. And there was no -- no reading on
21 the Drager tube on these two -- was it right after
22 you opened them up that you did a Drager reading?

23 A. No, we waited a little bit.

24 Q. About how long?

25 A. About 10, 15 minutes, I mean, normal



1 time. And the reading, there wasn't no reading
2 though.

3 Q. Okay. And so then did you take the
4 placards off?

5 A. Once I was done with it, yeah.

6 Q. Did you record these like -- 'cause I
7 haven't seen any documentation of these
8 particular --

9 A. I thought we did, but I -- you know --
10 you know, I don't -- I'm pretty sure we did, but I
11 don't know where the documents are.

12 Q. Okay. And did -- do you know if you --
13 we couldn't find that date, this rail car under
14 fumigation. Do you know if there -- if you filled
15 out that form that day? Did you initial it and
16 sign it and put zero parts per million?

17 A. I don't recall. Yeah, I don't see it
18 under here.

19 Q. Because it stops at 7/20, the rail cars
20 under fumigation sheets that we have. And then it
21 starts again at 8/8, all of 2012.

22 A. Yeah.

23 Q. Do you see that? And I don't know the
24 reason for that.

25 A. I don't either. Strange. Seem like I



1 had them there -- I mean, on here. It looks like
2 they're every day, you know. 7/13, 7/16, 17, 18,
3 19, 20.

4 **Q. And it's all 2012, and you're referring**
5 **to Exhibit 4; is that right?**

6 A. Yes. And there ain't nothing till 8/8.

7 MR. MACH: It's about noon. Do you want
8 to take a break?

9 THE WITNESS: Don't matter to me.

10 MR. MACH: Take -- take a break and --
11 want to start again at 12:30, does that work with
12 everybody? Or do you want an hour?

13 MR. CLITHERO: Is there someplace we
14 could walk and grab a sandwich --

15 MR. MACH: Yeah, there's a Subway right
16 up the street a --

17 THE VIDEOGRAPHER: Go off the record real
18 quick. Sorry, do you want this on the record?

19 MR. MACH: No, no.

20 THE VIDEOGRAPHER: It's 11:54 a.m. We're
21 going off the record.

22 (THEREUPON, a recess was taken.)

23 THE VIDEOGRAPHER: It is 12:45 p.m. We
24 are back on the record.

25 BY MR. MACH:



1 Q. Right before we broke for lunch we were
2 talking about Exhibits 2 and 3 just briefly. Two
3 was the -- the applicator's manual. And you don't
4 -- you can look at it if you want. I just --
5 they're -- two and three tie together. Three is
6 your personnel file, basically. And there was a
7 part that I looked at and, actually Page 10, and
8 this is 2B, which is the Degesch Fumi-Cel, which
9 you said you actually used --

10 A. Mmm-hum.

11 Q. -- applicator's manual. It says on Page
12 10, Paragraph 12, it's regarding authorized
13 training for receipt of in transit vehicles under
14 fumigation. And it talks about a training person.
15 And then it says, When training has been completed
16 and the employee demonstrates safety knowledge
17 proficiency, the training date must be logged and
18 maintained in the employee's safety training
19 record for a minimum of three years. Refresher
20 training must be done on an annual basis. And
21 then it says, This training must cover the
22 following items found in the manual. How to
23 aerate the vehicle and verify that it contains no
24 more than three parts per million phosphate. I
25 didn't see that in Exhibit 3, your personnel



1 manual. Are you aware of any other log that was
2 kept at Presto-X regard your training?

3 A. No.

4 Q. That may be a better question for Mr.
5 Fears, but I just wondered if you knew about that,
6 'cause I did not see that documented anywhere in
7 Exhibit 3, in your training manual. And that's
8 all I've got on Exhibits 3 and 4. Now, Justin
9 Jackson was an employee of MARS; is that correct?

10 A. Yes.

11 Q. Did you deal with him; was he the person
12 that called you often to tell you that there were
13 rail cars that needed to be aerated?

14 A. Yes.

15 Q. And would he tell you if there was some
16 urgency about it, that they needed it cleared so
17 they could get product into the plant?

18 A. Yes.

19 Q. What would he tell you in that regard?

20 A. At the time, he would just say, hey, you
21 know, we're kind of in a rush for this; we're
22 gonna run out of product if you don't get here and
23 get this aired out.

24 Q. Okay. And then did -- is that the times
25 that you might find a rail car in the rail bay



1 already?

2 MR. FANNING: Objection, form.

3 A. At times there could be, at times, you
4 know, it can be out --

5 BY MR. MACH:

6 Q. Okay.

7 A. -- open the rail, too.

8 (THEREUPON, Tyree Deposition Exhibit No 6
9 was marked for identification.)

10 BY MR. MACH:

11 Q. Okay. Now, Exhibit 6 is JCE Bates 62
12 through -- a bunch -- 62 through --

13 A. 145?

14 Q. -- 145. Yeah.

15 MR. MACH: And I've got these here if
16 anybody wants them to look. Here are these if you
17 want a copy of them.

18 MR. VANFLEET: Exhibit 6, you said?

19 MR. MACH: Yeah. It's Exhibit 6. Trying
20 to get all these papers out of my hands into
21 yours.

22 BY MR. MACH:

23 Q. And these, again, are I think basically
24 the documentation and the billing information that
25 was done when you would aerate rail cars or do



1 some other service for MARS; is that right?

2 A. Correct.

3 Q. And then it actually contains some of
4 Corkey Long's work after you were gone from MARS
5 in front of this exhibit, Exhibit 6; is that
6 right?

7 A. Correct.

8 Q. And since it's in reverse chronological
9 order, I'm going to ask you to turn kinda to the
10 back of that information. And, again, this --
11 these documents were produced by Presto-X to us.
12 And if you go back to 130 -- oh, let's start at
13 139. Do you see that --

14 A. Yes.

15 Q. -- near the back? And I just want to
16 know, what this -- this document was. And I can
17 kinda work through it with ya and you can tell me
18 what it was and how you filled it out.

19 A. Basically it was a pest control service
20 and they had rail cars there while I was there to
21 air out.

22 Q. Okay. So this was a day that you did
23 both pest control services for MARS and aeration
24 of rail cars; is that right?

25 A. Correct.



1 Q. And this date is -- what is it -- October
2 14th of '09; is that what it says?

3 A. Yeah.

4 Q. And would all of these invoice/service
5 reports, would those all be dated?

6 A. Yeah, they should be, 'cause these are
7 all done by the handheld.

8 Q. Okay. When you say the handheld, did you
9 have a little computer that you used?

10 A. Yeah, a PDA.

11 Q. Okay. And then there's an order number
12 at the top, and then the work date. And we've
13 kind of covered that. And this is a Presto-X
14 document, right?

15 A. Yes.

16 Q. And it's localized to the Springfield
17 office it says here. Is that the address for
18 the --

19 A. Yeah.

20 Q. -- Springfield office?

21 A. 2006 West Vista, yep.

22 Q. And then it's got time in and time out.
23 And we talked a little bit about that earlier.
24 But that would be the time that you would get to
25 the MARS plant and the time you would leave the



1 MARS plant; is that right?

2 A. Yes.

3 Q. And you would log that in?

4 A. Yes.

5 Q. Every -- look likes every time you'd log
6 your time in and time out?

7 A. Yes.

8 Q. And was that to just document that you
9 were there for that length of time and did work
10 during that timeframe?

11 A. Basically just time, you know, time they
12 knew I was there.

13 Q. Okay. And then right below that -- again
14 we're on Page 139 of Exhibit 6 -- it's -- it says,
15 Customer signature. And that one is Ed
16 Whittington?

17 A. Yes.

18 Q. And then technician signature, is that
19 your signature?

20 A. Yes.

21 Q. And then it says, it's printed Joey Tyree
22 with your Missouri license number. Is that right?

23 A. Yes.

24 Q. And then on that, it says -- below that
25 it says, Service Description. Do you see that?



1 It's kinda hard to read. It's in the black area
2 on the darkened line there.

3 A. No.

4 Q. It's up here at the top. Maybe you can't
5 even read it --

6 A. Conditions and observations.

7 Q. Okay. Yeah, it says -- well, it says,
8 Purchase Order Terms Service and Description --

9 A. Okay. Got that, yeah.

10 Q. Do you see that?

11 A. Service, Description, yeah.

12 Q. Okay. And it says, Air out rail cars?

13 A. Yes.

14 Q. Is that right?

15 A. Yes.

16 Q. And it says, Quantity One?

17 A. Yes.

18 Q. And then, Amount 720?

19 A. Yes.

20 Q. What would that amount be for? Would
21 that be for everything that was done?

22 A. Yeah, everything done for the day.

23 Q. Okay.

24 A. 'Cause they usually have one -- they only
25 wanted one billing cycle, is what I was told, you



1 know.

2 Q. Okay. And so on this one, on that date,
3 you fumigated a rail car?

4 A. I don't know if fumigated or air it out.

5 Q. Excuse me -- I misspoke. Aerated a -- a
6 rail car, correct?

7 A. Correct.

8 Q. All right. And that was 10/14 of '09.
9 And then down at the bottom, there's conditions
10 and -- that describes what you did. And in those
11 -- you indicated to the customer, I guess, that
12 there was some issues that could cause more pest
13 problems. Is that right?

14 A. Where?

15 Q. Under Conditions and Observations on that
16 same page, 139?

17 A. Those are created, you know -- I mean,
18 you knew it was created on April 25th. This was
19 on 10/14. So, I mean, conditions at a dog food
20 plant are always -- they're, you know -- they're
21 gonna have deficiencies and stuff, so you've got
22 to report it.

23 Q. Okay. And when you say deficiencies, are
24 you talking about things that might attract pests
25 or --



1 A. Yeah.

2 Q. -- problems with the facility itself,
3 holes in the wall and that kinda stuff?

4 A. Yeah. I mean, problems that -- that
5 could -- could have pests enter the building.

6 Q. Okay. And so some of these are spillage
7 of dog food and siftings, and it looks like on
8 4/25/09 you noted that, and you -- action required
9 was clean up spilled materials as soon as
10 possible. And then again on 4/25 you've got that
11 same deal again.

12 A. One is the rooftop and one is the
13 building perimeter.

14 Q. Okay. So there were problems with
15 spillage of dog food and siftings in both those
16 areas at that time?

17 A. Yeah.

18 Q. And then you go back and you evidently
19 were there at the building perimeter on 3/9 of
20 '08. So that was a year before?

21 A. Yes.

22 Q. Is that right?

23 A. Yep.

24 Q. And it says -- noted that there was
25 sparrows nesting in exposed roof areas, in boiler



1 bag, warehouse and biscuit ingredient; is that
2 right?

3 A. Correct.

4 Q. And then another time you were there, 7/6
5 of '09, Finished product bins, head house, is
6 where you looked and there was spillage of food
7 residue or standing water, heavy debris
8 accumulating in the area?

9 A. Correct.

10 Q. And the action was -- for MARS was to
11 resolve issues that draws pests to this location.
12 Is that right?

13 A. Correct.

14 Q. Did MARS have trouble in a rodent
15 infestation problem also that you worked on?

16 A. They never had a major rodent problem. I
17 mean, you know, it's a dog food plant, so yeah,
18 they get rodents from time to time.

19 Q. Would they get mice in there that you'd
20 catch?

21 A. From time to time, yeah.

22 Q. Okay. Now, if we move to the next page,
23 138. That is a service report for 10/16 of '10.
24 Do you see that?

25 A. Yes.



1 Q. Now, this one just has area comments.

2 And I guess it's maybe the second page.

3 A. Yeah. That's Rick's --

4 Q. Yeah. That's the second page. And it
5 says, Air out rail cars under gas, all fumigants
6 pulled and cars cleared to zero parts per million.
7 Do you see that?

8 A. Yeah.

9 Q. And that is something that you didn't
10 start doing until after OSHA came, correct?

11 A. Correct.

12 Q. Okay. But this -- so this was not your
13 work that was done, you didn't clear the rail cars
14 on that October 16 of 2010; is that right?

15 A. Correct.

16 Q. And that looks like it was about a year
17 after the -- the report that -- from the last time
18 that you aired out a rail car. Do you know if you
19 rail -- aired out any rail cars in that whole year
20 period?

21 A. Probably not.

22 Q. Okay.

23 A. It was -- it was -- like I said, there
24 was times we didn't, so ...

25 Q. Okay. And Rich Hahn (verbatim), who is



1 that?

2 A. Rick Hahn?

3 Q. Rick Hahn.

4 A. Worker.

5 Q. Okay. He was a coworker?

6 A. (Nodded head.)

7 Q. Did you work with him?

8 A. Yes.

9 Q. Okay. Do you know if he carried a Drager
10 and made actual measurements when he would aerate
11 cars?

12 A. No, I -- I don't know.

13 Q. Don't know, okay. He never gave you any
14 training; is that correct?

15 A. No.

16 Q. Okay. And then the front page of this on
17 October 16th of '10, his -- his time in and time
18 out says 11:19 to 11:23. So he was only there
19 four minutes. Does that sound right?

20 A. No. But that's what it says.

21 Q. Did you try to be -- and I know this
22 isn't your deal, but if you were there, in four
23 minutes you couldn't air out and use a Drager two
24 rail cars; could you?

25 A. No. Couldn't do one rail car that quick.



1 THE REPORTER: I'm sorry, I didn't catch
2 that.

3 THE WITNESS: Couldn't do one rail car
4 that quick.

5 BY MR. MACH:

6 Q. And then there weren't any documents
7 provided by Presto-X, I don't think, until --
8 what's the -- next Bates stamp is 136, and it
9 looks like that was August 20 of '11.

10 A. Yeah.

11 Q. So we're skipping another year there
12 before we have any documentation. But I've got a
13 document from 4/23/11. And I need to mark that.

14 MR. MACH: Do you have anymore stickers?

15 THE REPORTER: There's -- right -- right
16 up in front here is the -- a whole stack of them.

17 MR. MACH: Thank you.

18 BY MR. MACH:

19 Q. So that is gonna be 6.

20 (THEREUPON, Tyree Deposition Exhibit
21 No 6B was marked for identification.)

22 BY MR. MACH:

23 Q. Gonna hand you what's been marked as
24 Exhibit 6B. It's not part of the documents
25 produced by Presto-X, but it's -- it's also --



1 it's called an Integrated Pest Management Detailed
2 Service Report New. Do see that up at the top of
3 Exhibit 6B?

4 A. Yes.

5 Q. And do you know what that is?

6 A. That's a Report of Service.

7 Q. Okay. It looks -- it looked similar to
8 what the information is on the other documents.
9 Do you know if this was computer generated?

10 A. I would assume it is.

11 Q. Okay. And it talks about, it says,
12 Client, Rentokil National Accounts, 4521
13 Leavenworth Street, Omaha, Nebraska. Do you know
14 what that means?

15 A. That's where our -- that's where Presto-X
16 corporate is.

17 Q. Okay. And then Exhibit 6B has your name
18 on it; is that right, and your signature?

19 A. Yes.

20 Q. And the service date is 4/23/11.

21 A. Yep.

22 Q. And you see it's for the MARS PetCare
23 National account, looks like 1983 South Stateline
24 Road, Joplin, Missouri. So that's the Joplin MARS
25 Pet Food plant, right?



1 A. Yes.

2 Q. And the service description is
3 fumigation. Do you see that?

4 A. Yep.

5 Q. And so you did a fumigation there at that
6 time. Do you remember that?

7 A. No, I don't at all.

8 Q. Okay. Would there be any indication that
9 you didn't do the fumigation -- you wouldn't
10 prepare this and make this document if -- if you
11 didn't do the work; would you?

12 A. No.

13 Q. Okay. And it says you used magnesium
14 phosphide. Do you see that active ingredient?

15 A. Yeah.

16 Q. What's it mean, 16,000 each?

17 A. Sixteen each, 16.0 --

18 Q. Okay. And then what's 896?

19 A. I don't know what that represents.

20 Q. Okay.

21 A. I have no idea.

22 Q. And you put down the weather and the
23 wind. Was there any fumigation management plan
24 done for this fumigation that you're aware of?

25 A. Not that I'm aware of.



1 Q. Okay. And then on that same day, it says
2 on -- or that you used the Fumi-Cel strips. Do
3 you see that on the second page?

4 A. Yep.

5 Q. And that you also fumigated two rail
6 cars. And you put the rail car numbers down.

7 A. Yeah.

8 Q. And you wouldn't have done any aeration
9 records at that time, it doesn't look like. Is
10 that right?

11 A. Correct.

12 Q. So you would have just opened up these
13 two cars for about 15 minutes and then been done.
14 Is that right?

15 A. That would be the protocol, yes.

16 MR. MACH: Here's another copy, if
17 anybody wants it.

18 BY MR. MACH:

19 Q. And then also on that date, you noticed
20 -- noted on the front on open deficiencies and
21 observations, it says, Holes in wall. Action:
22 Plugged, seal holes as necessary.

23 A. Yes.

24 Q. And then do you know why you would have
25 done that?



1 A. It was probably when that was created. I
2 mean, looks like it was created on 9/21 of 2010.
3 So it was probably just an open deficiency from
4 me.

5 Q. Okay. What's an open deficiency?

6 A. When it's ongoing, it's been there and
7 not been resolved. So it just stays on the list.

8 Q. And doing a fumigation without a
9 fumigation management plan would be in violation
10 of the applicator manual that we saw earlier
11 today, correct?

12 A. Yes.

13 MR. VANFLEET: Objection, foundation.

14 BY MR. MACH:

15 Q. Moving back to Exhibit 6, if we look now
16 at Page 136. Do you see that?

17 A. Yeah.

18 Q. Now, that's a different-looking document.
19 Can you tell us what that is? It's got Rentokil
20 Ehrlich and Presto-X at the top, Corporate
21 Accounts Division. And then what -- how would
22 this document be generated?

23 A. I guess probably just a different
24 document we had at that time.

25 Q. Okay. And it's handwritten rather than



1 computer generated, is probably the big
2 difference, right?

3 A. Yeah, correct.

4 Q. Is this done in your handwriting?

5 A. Yes.

6 Q. And you sign off as a technician at the
7 bottom there?

8 A. Yes.

9 Q. And can you tell the client signature; is
10 that Gil Boyer?

11 A. Yeah.

12 Q. Okay.

13 A. Gil Boyer.

14 Q. And he was a -- a MARS --

15 A. MARS employee.

16 Q. -- employee. Do you know what Gil Boyer
17 did for MARS?

18 A. I don't really know his title. I mean,
19 he was, you know, somebody I talked to quite a
20 lot.

21 Q. Okay. And on this particular day -- and
22 we're talking about August 20 of 2011 now, and
23 that's -- it says -- and this looks like the next
24 time that you would have done fumigation or done
25 aeration work. Is that --



1 A. Yeah.

2 Q. -- sound right, at MARS? And it gives
3 MARS as the service location and then the date.
4 And then it's got time in and time out. It says
5 -- can you tell us what the time in and time out
6 is there?

7 A. 3:17 to 8.

8 Q. Would that be in the afternoon into the
9 evening?

10 A. It would be p.m., I'm sure.

11 Q. Okay. Then it's got your Missouri
12 license there, and then it's got, under service
13 amount, it's \$6,195. Do you see that?

14 A. Yes.

15 Q. And then special instructions. Do you
16 see that? It says, Fumigate Two Trailers. Did
17 you fumigate two trailers then?

18 A. Yes. Probably -- more than likely, yes.
19 It's what's on there, so.

20 Q. Okay. So you fumigated two trailers.
21 Would that be a situation where a trailer came
22 into MARS and it was buggy and they wanted the
23 trailer fumigated?

24 A. Yes.

25 Q. Okay. When I say buggy, it had bugs in



1 it that they wanted to get rid of; is that right?

2 A. Yes.

3 Q. So evidently they took in two trailers of
4 -- we don't know what the product is, if it was
5 corn or wheat or meat and bone. Did meat and bone
6 ever come in truck; do you know?

7 A. I don't know.

8 Q. Anyway, there were two trailers that you
9 put down that you fumigated that day. And, again,
10 you didn't do any fumigation management plan for
11 those two trailers; did you?

12 A. No.

13 Q. And then it says, Aerate six rail cars.
14 Do you see that?

15 A. Yes.

16 Q. Would you have aerated those six rail
17 cars all that one day, or would that be --

18 A. Yeah, because I was fogging the plant.

19 Q. Okay. And that is -- that was my next
20 question. What's the next item there under --

21 A. Fogging.

22 Q. And what's it called?

23 A. I call it ULV.

24 Q. Okay. And that's fogging?

25 A. Yes.



1 Q. So you use some kind of fogging pesticide
2 inside the plant?

3 A. Yes.

4 Q. So the aerating six rail cars that you
5 did, you wouldn't have Dragered them; you wouldn't
6 have done any monitoring on them; you just would
7 have opened them up and released them to go in the
8 plant, correct?

9 A. Yeah. The plant was not -- wasn't open
10 on that day.

11 Q. Oh, okay.

12 A. Because they can't be open while I'm
13 fogging.

14 Q. Okay. And then, is that usually a
15 weekend then?

16 A. Yeah. It varies. I mean, usually a
17 weekend.

18 Q. Is that why you fumigated the two
19 trailers that day, too, do you think --

20 A. Yeah.

21 Q. -- because the plant was closed?

22 A. Closed down.

23 Q. How long would you have to -- how would
24 you fumigate a trailer?

25 A. You just climb up there and put your



1 Fumi-Cells and hang 'em on the ledge, and you hang
2 'em by the -- the little flap things they got
3 inside. Take them down there and put eight of 'em
4 in the rail car and ...

5 Q. I'm talking about trailers.

6 A. Right.

7 Q. How would you -- how would you have
8 fumigated the trailers?

9 A. Oh, trailers? You just walk -- you walk
10 in there and you set them either on the side of
11 the deal or up on top of a pallet and let it get
12 through there, through the -- it just works its
13 way through all the product.

14 Q. Okay.

15 A. It's all by cubic foot, so ...

16 Q. And you -- you wouldn't have put that you
17 fumigated two trailers if you didn't fumigate two
18 trailers --

19 A. I'm pretty sure I fumigated two trailers.

20 Q. Okay. And charged MARS for it?

21 A. Yes.

22 Q. Okay. And if we look at Page 135 of
23 Exhibit 6, that's the next item we have from
24 Presto-X in their documents. And that's dated
25 September 10 of 2011. Do you see that?



1 A. Yep.

2 Q. And you just say, Special instructions.

3 ULV and aerate -- aeration of?

4 A. Air out --

5 Q. Air out?

6 A. -- the rail cars.

7 Q. Air out rail cars. Okay. And on that

8 date you charge, what, 59 --

9 A. \$5935.

10 Q. \$593.35. Okay. And that is your

11 signature on that one; is that right?

12 A. Mine and Eric's, yep.

13 Q. Okay. And Rick would have been Rick

14 Hahn?

15 A. Yep.

16 Q. And do you know if you and him or you and

17 him together aerated that?

18 A. Probably together, I imagine. We did a

19 lot of our stuff together.

20 Q. And then it says, See -- something.

21 A. See report.

22 Q. Okay. And what does, See Report, mean?

23 A. 'Cause everything's done with a handheld,

24 so the reports.

25 Q. Okay. So there should be a handheld that



1 matches this?

2 A. Yes. Yeah.

3 Q. All right. Well, I don't see a handheld
4 document for that one. But there should be, in
5 any event. Anytime you generate a report like
6 Page 135, which is a Rentokil, Ehrlich, Presto-X
7 document for corporate accounts. It's handwritten
8 there. If you say, See report, there should be a
9 computer-generated report with it, too; is that
10 right?

11 A. Correct.

12 Q. Okay.

13 A. 'Cause that's just an invoice report's
14 all that is.

15 Q. And then the next page is 134. And
16 that's aeration of rail cars. And on this one,
17 you just say, Aeration of rail cars 41 from
18 January, something, 2012 to July 14, 2012. Do you
19 see that?

20 A. First to July 14.

21 Q. January 1st, 2012?

22 A. Yeah.

23 Q. So during the first half basically of
24 2012, you aerated 41 rail cars for MARS; is that
25 right?



1 A. That would be correct.

2 Q. And during that time, you would have
3 released them into the plant without doing any
4 monitoring?

5 A. Correct.

6 Q. And there's no documentation of any --
7 any kind on the individual cars; is there?

8 A. No.

9 Q. Was this -- did MARS say anything to you
10 when you gave them this bill basically for 41
11 cars? Did they say, gosh, you're doing this wrong
12 or we want you to document this better, or did
13 they just pay it and go on?

14 MR. SAPPINGTON: Object to form.

15 A. I assume they paid it and went on.

16 BY MR. MACH:

17 Q. Okay. And that's -- the client signature
18 on that, that would be MARS, Brad Otter?

19 A. Yeah.

20 Q. Do you see that?

21 A. Yep.

22 Q. Know what Brad Otter's job was at MARS?

23 A. I do not.

24 Q. He was the sanitation manager? Would he
25 be your contact person generally, as to who you'd



1 turn forms into at MARS?

2 A. Yes.

3 Q. Okay. And -- 'cause I see his name
4 coming up repeatedly. Did Brad Otter ever make
5 any complaints to you like this -- this isn't
6 proper, you're not documenting things right, or we
7 need you to monitor the phosphine levels or
8 anything like that in any of this timeframe?

9 MR. SAPPINGTON: Object to form.

10 MR. FANNING: Object to form. Assumes
11 facts not in evidence.

12 BY MR. MACH:

13 Q. You can go ahead and answer.

14 A. No.

15 Q. Did Frank Vasquez ever talk to you about
16 the fact that you weren't documenting any
17 monitoring -- of aerated cars?

18 MR. SAPPINGTON: Object to form, calls
19 for speculation, lacks foundation, assumes facts
20 not in evidence. Join.

21 BY MR. MACH:

22 Q. You can go ahead and answer.

23 A. No.

24 Q. And Frank would have been the safety
25 manager during this time during the spring of



1 2012, correct, Frank Vasquez?

2 A. Yes.

3 Q. Then -- that was 7/21/2012. And then we
4 know that OSHA came on 7/29, 2012 -- or 7/31 --

5 A. 7/31, yeah.

6 Q. 7/31, 2012; is that right?

7 A. Yes.

8 Q. I don't see any documentation, either
9 computer-generated or hand-generated from that day
10 that OSHA was there. Do you?

11 A. Mmm-mmm.

12 Q. Is that a no?

13 A. No.

14 Q. The next document from J.C. Ehrlich, the
15 Presto-X document production is 1/33, and that's
16 dated 8/18 of 12. Do you see that?

17 A. Yes.

18 Q. And that's for MARS PetCare. It says --
19 so the service location is correct. And that's
20 just a ULV; is that right?

21 A. Yeah. Fogging.

22 Q. So you fogged on that day. There's
23 nothing about rail cars that day?

24 A. Correct.

25 Q. And then if you look at, I believe it's



1 132. Now, I don't know which document this goes
2 with. Can you tell, where it says, General
3 Comments, three gallons suspend 1.5-pounds
4 Maxforce Fly Bait, 40 gallons Cardio Vap, 50
5 gallons blah, blah, blah? Do you see that?

6 A. I would say with the timeframe, I would
7 have to go with this -- that one there.

8 Q. Okay. And then it says release two rail
9 cars today, zero parts per million. Do you see
10 that?

11 A. Yeah.

12 Q. Now, that's the first time I see you ever
13 noting the --

14 A. On a report?

15 Q. On a report the -- that a rail car was
16 related -- released to any amount of phosphine?

17 A. Correct.

18 Q. Is that correct?

19 A. Correct.

20 Q. And that would have been in August.

21 A. Yes.

22 Q. Now, between August and -- OSHA's there
23 July 31st of 2012 at the plant doing their
24 examination, and then you continued to aerate rail
25 cars. Did you change your process any after that?



1 Did you -- well, we know you didn't start carrying
2 the mask and we know that you didn't necessarily
3 use a harness. Did you change the process, or did
4 you continue to just estimate, or did you use a
5 Drager every time, or how did you do it after OSHA
6 was there?

7 A. I used the Drager sometimes, sometimes I
8 didn't, just based on previous training methods.

9 Q. So even after OSHA was there and Sam
10 Fears told you to use the -- use the Drager tube
11 when OSHA was there, you were confident enough in
12 your training and the way that you had been doing
13 it for seven or eight years that you felt you
14 could open a rail car, not test it with a Drager
15 tube and still release it into the MARS plant
16 where the workers would use the corn or meat and
17 bone; is that fair?

18 MR. VANFLEET: Objection, leading,
19 argumentative.

20 A. Yes.

21 BY MR. MACH:

22 Q. The next page, 131 of Exhibit 6, that's
23 your signature. And that -- that would have been
24 the fogging that you did that day; is that right?

25 A. Yes.



1 Q. And then Brad Otter was the customer
2 signer, and that's August 18, 2012?

3 A. Yes.

4 Q. And then on August 25th, 2012, there's a
5 handwritten, and I think this is by you. It says
6 technician --

7 A. Yes.

8 Q. -- is that your signature?

9 A. Yeah.

10 Q. So Page 130 of Exhibit 6 is an August
11 25th, 2012 document where you marked aeration of
12 rail cars. And it's just says, Aeration of rail
13 cars 33 at \$100 each. So was that just since the
14 last major one when you'd done 41 that you --

15 A. Since the 21st of July.

16 Q. Okay. So since the 21st of July, you had
17 aerated 33 rail cars for MARS, and you put them
18 down, but they wouldn't necessarily be -- we've
19 only seen one day the two cars were documented to
20 be monitored or to zero parts per million --

21 A. Yes.

22 Q. -- would that be right? Did MARS make
23 any complaint to you at that time that you're not
24 documenting or that -- was Frank -- I mean, maybe
25 Frank Vasquez had been fired by then. Was there a



1 new safety manager that you ever met at MARS after
2 OSHA was there?

3 MR. SAPPINGTON: Object to form.

4 MR. FANNING: Assumes facts not in
5 evidence, misstates the record. What's the --
6 what's the document you got in your hands?

7 MR. MACH: 130. 130 of Exhibit 6.

8 THE REPORTER: Who was the first object?

9 MR. SAPPINGTON: Object to form.

10 BY MR. MACH:

11 Q. Did you --

12 MR. MACH: Are you ready? I'm sorry,
13 Christy.

14 THE REPORTER: (Nodded head.)

15 BY MR. MACH:

16 Q. Did you know Eric Bacher?

17 A. Yes.

18 Q. Okay. Did you know he'd been appointed
19 the new safety manager at MARS after Mr. Vasquez
20 had been terminated?

21 A. No.

22 Q. Did he ever talk to you about the fact
23 that they needed better documentation or you
24 weren't aerating the rail cars right or they were
25 having trouble with phosphine or the meters were



1 going off in the plant?

2 A. No.

3 Q. By this time, by August of 2012, did you
4 have any indication from MARS that anything was
5 wrong or going wrong in the plant with the
6 phosphine, other than the fact that OSHA had been
7 there?

8 MR. FANNING: Objection, assumes facts
9 not in evidence.

10 MR. SAPPINGTON: It's argumentative.

11 BY MR. MACH:

12 Q. Had you learned from any of the workers
13 that their phosphine monitors were going off in
14 the plant?

15 A. Yes.

16 Q. How did you learn that?

17 A. We'd just talk. I mean, I'd go by and
18 they'd say, hey, my -- my detector is going off,
19 you know, and just kind of like a -- not a big
20 deal, you know, just kinda -- that's how we
21 talked.

22 Q. Okay. That -- that August 18th document
23 then, you'd gone basically seven years without
24 documenting anything that's zero parts per million
25 before that, correct?



1 A. Correct.

2 Q. Now, if we look just through some of
3 these other documents, you would have been
4 continuing to work at MARS -- if you look at
5 document -- let's move on to 129. That's a
6 Service Report. Is that what that's called?

7 A. It's a one-time service project, air out
8 of rail cars.

9 Q. Okay. And what is -- what is on that
10 one? That one is, rail cars, aerate three rail
11 cars, all corn cars to zero parts per million, and
12 then you give the numbers. Is that right?

13 A. Yes.

14 Q. And that is your signature?

15 A. Yes.

16 Q. And then the customer's signature, do you
17 know whose that is on that --

18 A. It's anytime, 'cause there wasn't nobody
19 there to sign at the time I was there.

20 Q. Okay. So that's anytime.

21 A. Yeah.

22 Q. And would you sign anytime; is that how
23 you'd sign off on it?

24 A. Yeah. If anybody -- if nobody was there,
25 I'd just put anytime on there --



1 Q. Okay.

2 A. -- to sign off.

3 Q. And look at Page 127 of Exhibit 6. It
4 says, Inspect glue boards. What is that?

5 A. Well, it says right there, Inspection
6 done, no visible pests to be observed. Thanks.
7 Probably just monitors and insect glue boards that
8 you'd see out just about anywhere really.

9 Q. Okay. And then you aerated five rail
10 cars, three on 9/6/12 and then three on -- three
11 today, which would have been the 7th?

12 A. July 7th.

13 Q. So -- so you did -- basically you
14 combined two days and five cars into that one?

15 A. Yeah.

16 Q. Okay.

17 A. Yeah.

18 Q. And you note your time in and time out on
19 all of these?

20 A. Yeah.

21 Q. Some of them you were at the plant. Like
22 that day, you were at the plant, looks like a
23 couple of hours?

24 A. Yeah.

25 Q. Okay. Then if you look at 126, again,



1 that is a -- what is that?

2 A. Aerate -- that's a one-time service where
3 I air out two rail cars to zero parts per million
4 and listed 'em and --

5 Q. Okay.

6 A. -- times.

7 Q. And your time in was 3:31 and your time
8 out was 4:16. So you aerated --

9 A. Forty-five minutes.

10 Q. Two -- two rail cars to zero in 45
11 minutes; is that right?

12 A. Yeah, that's correct.

13 Q. And then the next one, that's the same
14 type of form. The date is -- is that --

15 A. Yeah. Zero parts per million, same.

16 Q. And you were in the plant 41 minutes for
17 two cars that time. Is that right?

18 A. Yeah.

19 Q. And then you left at 1:24. You aired out
20 three rail cars, and you were there from 2:30 to
21 3:19. So that's, what, 49 minutes?

22 A. Yeah.

23 Q. And aired out three rail cars. And then
24 Page 123, that's another computer-generated form
25 for September 18, 2012.



1 A. Yeah.

2 Q. You were there 52 minutes and aired out
3 one car, meat and bone to zero. Is that right?

4 A. Correct.

5 Q. And is there any way to know if you were
6 using a Drager tube on these or not? 'Cause this
7 is a time you told me sometimes you used one,
8 sometimes you didn't.

9 A. That is -- I couldn't give a definite
10 answer on that.

11 Q. You told us earlier that you didn't carry
12 Drager tubes in your Presto-X truck on a regular
13 basis; is that right?

14 A. Correct.

15 Q. Where would you get the Drager tubes
16 after OSHA was there on July 31st of 2012? Would
17 you have to go to Springfield to get Drager tubes?

18 A. Correct.

19 Q. So if you didn't drive to Springfield,
20 you didn't have a Drager tube?

21 A. Correct.

22 Q. How often would you go to Springfield?

23 A. Anytime I needed one, I guess. I mean
24 just -- yeah.

25 Q. I mean, would you make -- just get one



1 when you would go --

2 A. No. I would get a box usually, usually
3 10 to a box.

4 Q. And are there different -- did the Drager
5 tubes measure different levels of phosphine?

6 A. Yes.

7 Q. Okay. There's some that only go up to
8 point -- or, yeah, 1.0, and there's some that go
9 higher; is that --

10 A. Yeah, some of them go 50, I think, parts
11 per million.

12 Q. Do you remember which ones you used?

13 A. I'm pretty sure it was a .03 parts per
14 million.

15 Q. What does that mean?

16 A. Three parts her million --

17 Q. So they measured only to three parts per
18 million?

19 A. Pretty sure.

20 Q. Do you remember how you were trained to
21 use those Drager tubes, or was that something you
22 just learned on your own?

23 A. Kind of -- I mean, I watched. But it's
24 not nothing I got -- you know, hey, this is how
25 you do it. You just go do it after I observed



1 myself.

2 Q. Okay. And did you do any -- did Presto-X
3 ever give you any training in how to use a Drager
4 tube?

5 A. No.

6 Q. Sam Fears didn't ever train you in how to
7 use a Drager tube?

8 A. No.

9 Q. And then you -- Mr. --

10 A. Ugolini?

11 Q. -- Ugolini, he never trained you?

12 A. No.

13 Q. And how about the other guy? I can't
14 remember his name.

15 A. Heath Kern.

16 Q. Heath Kern, did he ever train you in how
17 to use a Drager tube?

18 A. No.

19 Q. Did you ever take any course on how to
20 use a drug Drager tube?

21 A. No.

22 Q. Did Presto-X ever provide you any
23 training on how to use a Drager tube?

24 A. No, not to my knowledge.

25 Q. And 124, it looks like you were -- or did



1 we talk about that already?

2 A. We already talked about that one.

3 Q. Okay. And then 123, you were in 52
4 minutes, it looks, like cleared one in the -- one
5 meat and bone to zero, it says?

6 A. Yeah.

7 Q. And, again, Brad Otter is signing all
8 these on behalf of MARS; is that correct?

9 A. Correct.

10 Q. Then there's a -- an invoice, it looks
11 like, number one -- Page 120.

12 A. Correct.

13 Q. And that's -- again, you aerated 22 rail
14 cars it says, and charged Presto-X for 20 -- or
15 charged MARS for 22 aerations. Is that right?

16 A. Correct.

17 Q. And then it says, See report. Would
18 there be a report that said -- that talked about
19 those 22, or would it be just a total of all the
20 reports --

21 A. Total of all that --

22 Q. -- that you'd have to go back through?

23 A. Total of all the reports.

24 Q. Okay. Was there any way to tell which of
25 those 22 cars you used a Drager tube to clear and



1 which you just opened up for 15 minutes or so and
2 got into the plant?

3 A. No.

4 Q. How long -- how much longer would it take
5 to use the Drager tube to make a reading than if
6 you just opened them up and aired them?

7 A. Not very much.

8 Q. Okay. Would you -- 'cause you'd have to
9 use a Drager in each compartment of each --

10 A. They're all open.

11 Q. Oh, okay.

12 A. When you get inside the hopper, the whole
13 top part's just completely open from side to side,
14 they're not --

15 Q. So you'd only do one Drager reading?

16 A. I'd do one or two, or I might go down to
17 one end and then the other end just to make sure
18 you get it.

19 Q. And then at Page 119 of Exhibit 6, it
20 looks like you did one car and you were in and out
21 in a half hour. Is that right?

22 A. Yeah.

23 Q. One meat and bone to zero. And then
24 1/18, it says aeration of one trailer. Do you
25 know what the -- do you see that one?



1 A. Yeah. It's probably a rail car, 'cause
2 it looks like it matches the --

3 Q. Okay. That's what I was going to ask,
4 was it --

5 A. -- matches the --

6 Q. Was it a different type of rail car?

7 A. Probably just a rail car, no. 'Cause
8 it's CGEX. No, they're usually all rail cars.

9 Q. Right. But don't you say trailer?

10 A. Yeah.

11 Q. Okay. Is there a reason you used the
12 term trailer rather than rail car on that one --

13 A. No. No, just -- probably just in a
14 hurry.

15 Q. Were you getting pressure from MARS to
16 get the rail cars aerated and into the plant so
17 they had product at that time?

18 MR. FANNING: Objection to form.

19 A. A lot of times.

20 BY MR. MACH:

21 Q. And was that pressure coming from Justin
22 Jackson generally?

23 MR. FANNING: Same objection.

24 BY MR. MACH:

25 Q. Or was it coming from somebody else?



1 A. Justin's the one that called me.

2 Q. Do you -- did he ever tell you if you
3 were -- if he was getting pressure to get product
4 into the --

5 MR. FANNING: Objection, hearsay --

6 BY MR. MACH:

7 Q. -- plant quickly?

8 MR. FANNING: Objection, hearsay.

9 A. Yes.

10 BY MR. MACH:

11 Q. And did he tell you who he was getting
12 pressure from?

13 MR. FANNING: Same objection.

14 BY MR. MACH:

15 Q. Was it his bosses?

16 MR. FANNING: Same objection.

17 A. Yes.

18 BY MR. MACH:

19 Q. Did he tell you that on more than one
20 occasion?

21 MR. FANNING: Same objection.

22 A. Yes.

23 BY MR. MACH:

24 Q. Can you use your own terms and tell us
25 what he would tell you?



1 A. You know, it just -- if we don't get
2 here, the product's gonna -- they're gonna run out
3 of product to keep the line going, basically is
4 what I would get.

5 **Q. So he'd want you to get over fast and
6 clear the rail car quickly; is that right?**

7 A. Yes.

8 **Q. At about this time in late September or
9 October, were you aware of Scott Gordon opening up
10 a rail car and aerating it?**

11 MR. FANNING: Objection, form, assumes
12 facts not in evidence, misstates the record.

13 A. Yes.

14 BY MR. MACH:

15 **Q. How'd you find out about that?**

16 A. Somebody at the plant had told me.

17 **Q. Do you know anything more other than that
18 piece of it?**

19 A. Not really.

20 **Q. Do you know if at the plant they were
21 needing product and couldn't get you in quick
22 enough?**

23 MR. FANNING: Objection, form, assumes
24 facts not in evidence, argumentative, misstates
25 the record.



1 MR. VANFLEET: Join.

2 MR. FANNING: Subject to that, you can
3 answer.

4 A. Yes.

5 BY MR. MACH:

6 Q. Did -- were you called or anything over
7 the phone and asked if you could approve that, for
8 him opening up and aerating a car?

9 MR. FANNING: Objection, form, assumes
10 facts not in evidence, misstates the record.

11 BY MR. MACH:

12 Q. You can go ahead and answer.

13 A. Not to my knowledge.

14 Q. Then if we go down to 11 -- or 111,
15 excuse me, on Exhibit 6. Looks like you did four
16 rail cars and aerated them in 39 minutes from 6:17
17 to 6:56 p.m. that day. Is that right?

18 A. Correct.

19 Q. Would that have been -- that's a little
20 less than 10 minutes each. Would you have had
21 time to climb up and Drager tube all -- all of
22 those in that time or not?

23 A. I -- you know, I don't know.

24 Q. And for that, MARS paid \$400 then for
25 that 39 minutes that you were up there; is that



1 right?

2 A. Yeah. Had to pay per car, so ...

3 Q. And then we get into October with Page
4 103 of these of Exhibit 6. By that time, by the
5 first part of October, 103, you did five cars it
6 looks like, and you were in for an hour and 27
7 minutes in the plant?

8 A. Correct.

9 Q. Had you gotten any indication from
10 anybody at MARS that you were not performing your
11 aeration properly?

12 MR. FANNING: Objection, form.

13 A. No.

14 BY MR. MACH:

15 Q. At that time, around the first of -- or
16 this is actually the 5th of October, 2012, had you
17 gotten any indication from anybody at Presto-X
18 that you weren't doing your job properly, you
19 weren't documenting properly, or you weren't doing
20 your aeration properly at MARS?

21 MR. FANNING: Objection, form.

22 A. No.

23 BY MR. MACH:

24 Q. Were there people at Presto-X that were
25 put on -- you know what progressive discipline is?



1 Where you might get a warning, then you get points
2 or so many -- were you aware of people at Presto-X
3 that, before any discipline or firing, were put on
4 probation or given disciplinary points or anything
5 like that?

6 A. No.

7 Q. And that certainly didn't happen with
8 you; did it?

9 A. No.

10 Q. And on -- on that date, on October 5th,
11 you did five rail cars. Looks like you were on
12 the plant an hour and 27 minutes. Does that look
13 correct?

14 A. Correct, yeah.

15 Q. And then if you look at 106, looks like
16 you were there for an hour and five minutes and
17 aerated three rail cars on October 5th. Is that
18 right?

19 A. Yeah.

20 Q. Then if you turn over to 100, do you see
21 the document on 100 of Exhibit 6, Page 100?

22 A. Yes.

23 Q. And in -- that has handwriting on it, but
24 that's not your handwriting; is it?

25 A. No.



1 Q. And it says, Client signature. And
2 that's not Brad Otter's signature; is it?

3 A. No.

4 Q. And the technician, it says Joey Tyree,
5 but that's not your signature either; is it?

6 A. No.

7 Q. And that's for clearing or aeration, two
8 rail cars, it says. Do you see that?

9 A. Yeah.

10 Q. Do you have any idea whose handwriting
11 that is?

12 A. No. It's not mine, though.

13 Q. It kind of looks like a lady's
14 handwriting to me. I don't know if that's right.
15 It's kinda flowery handwriting. Was there any
16 female that was working with you at that time that
17 would have filled this out?

18 A. No.

19 Q. Was there a secretary or administrative
20 assistant or anything that was a female in the
21 Springfield office?

22 A. Yeah. We have a Shirlen Bloor over
23 there, the administrative assistant.

24 Q. You have no idea, though, who filled out
25 this Rentokil report that's on Page 100 of the



1 **Exhibit 6?**

2 A. I have no idea.

3 Q. Then we're getting down to the end of
4 your term with Presto-X. You did a goodwill visit
5 to MARS, it looks like, on -- if you look at Pages
6 98 and 99, on October 10th of 2012?

7 A. Yeah. That's when it was changing
8 programs, I believe, it looks like, with the
9 PestNetOnline versus the other one.

10 Q. And then if you look at 97, it looks like
11 a -- maybe a new form?

12 A. Yeah. I don't know what that is. You
13 know, it was a -- it was old log reports we used
14 to have a long time ago.

15 Q. Okay. And this -- this would have been
16 when Robert Long was taking over; is that right?

17 A. Yeah, the 16th.

18 Q. Okay. October 16th you were gone, and
19 then Robert Corkey Long took over; is that right,
20 doing the aeration at MARS?

21 A. Correct.

22 (THEREUPON, Tyree Deposition Exhibit No 7
23 was marked for identification.)

24 BY MR. MACH:

25 Q. I'll hand you what's been marked Exhibit



1 7 and ask you if you can identify that?

2 A. The Service Procedure for Fumigation and
3 Aeration.

4 Q. Yeah. Have you ever seen --

5 THE REPORTER: Can you repeat that? I'm
6 sorry.

7 THE WITNESS: Service Procedure for
8 RailCar Fumigation Aeration.

9 BY MR. MACH:

10 Q. Have you ever seen that document before?

11 A. No.

12 Q. I'll represent to you that it was
13 produced by Presto-X. And it's Pages 146 to 149
14 of the Presto-X documents. And it says -- and
15 you're sure you've never seen this document
16 before?

17 A. Positive.

18 Q. Says the purpose of rail car fumigation
19 is -- let me do this first. It's effective date
20 was 11/1 of '08. And that would have been after
21 you'd passed the fumigation part of the
22 accreditation with the State of Missouri
23 Department of Ag, correct?

24 A. Yes.

25 Q. And it's revised on 12/29 of '11. You



1 would have still been working during that time
2 aerating rail cars?

3 A. Yes.

4 Q. And it says, The purpose of rail car
5 fumigation is either eliminate an existing pest
6 problem or to ensure that a pest problem does not
7 exist in a fumigated commodity. Do you see that?

8 A. Yes.

9 Q. It says, Many times, rail car fumigations
10 are done while the rail car is in transit.
11 Because of this, additional safety precautions
12 must be initiated to advise the receiver of the
13 fumigated rail car they will be receiving. Do you
14 see that?

15 A. Yes.

16 Q. And you knew that, correct, at the time?

17 A. Yes.

18 Q. And then, Also, a -- An FMP fumigation
19 management plan must be completed and keep on
20 file. You knew that, right?

21 A. Yes.

22 Q. Did you ever see a fumigation management
23 plan come down with a rail car?

24 A. No.

25 Q. Maybe you've told me this already, but



1 you didn't ever -- you weren't provided one
2 either, from anyone; is that right? You never --
3 you'd never seen a completed fumigation management
4 plan; is that correct?

5 A. Yes.

6 Q. Then it talks about the operational
7 procedures for fumigation. It says, Under A
8 phosphine. Phosphine gas is produced by exposing
9 either aluminum phosphide or magnesium phosphide
10 to air and moisture, humidity. You knew that,
11 didn't you, already?

12 A. Yes.

13 Q. And it says, Ask the client what item,
14 product or commodity is to be fumigated and target
15 pest. Remember that spent residues, including
16 spent bags cannot come into contact with a food
17 product. Do you see that?

18 A. Yes.

19 Q. And you knew that already from just your
20 on-the-job training?

21 A. Yes.

22 Q. And then it says, If the commodity is
23 listed, check the label for appropriate rate
24 exposure time. Remember that with phosphine
25 fumigants, temperature plays an important role in



1 the exposure time. Also, when checking
2 temperatures, remember that the temperature on the
3 dosage chart is the temperature inside the rail
4 car and not the air temperature. Did you know
5 that already?

6 A. Yes.

7 Q. And then it says, Calculate the cubic
8 footage of the rail car to be fumigated. And
9 you've told us already that you knew about that --
10 those types of calculations, correct?

11 A. Yes.

12 Q. And it says, After calculating the amount
13 of fumigant -- and it says fumigant. Is it -- is
14 there something different -- is there a fumigant
15 and a fumigate?

16 A. Fumigate is -- I guess just term,
17 fumigant is the product.

18 Q. Okay. And then it describes how to do
19 the calculation. And then application of the
20 fumigant. It says, Place blue flags on the
21 railroad rails before starting the fumigation to
22 prevent railroad from moving cars in the area
23 where you are working. You didn't place any blue
24 flags; did you, when you fumigated rail cars at
25 MARS?



1 A. No.

2 Q. Did you know about this procedure?

3 A. No.

4 Q. If you would have been given this service
5 procedure, would you have followed it putting the
6 blue flags out that they tell you to do?

7 A. Yes.

8 MR. VANFLEET: Objection, calls for
9 speculation.

10 BY MR. MACH:

11 Q. And then it says, Before sending to the
12 top of the rail car, put your safety -- put on
13 your safety harness. You've told us that
14 occasionally you used safety harness, or that at
15 least Mr. Fears provided you a safety harness
16 shortly before the OSHA inspection on August 31st
17 of 2012. Did you regularly use a safety harness?

18 A. No.

19 Q. If you knew it was a procedure that
20 Presto-X wanted you to do, would you have done it?

21 A. Yes.

22 Q. If you turn over to the next page of this
23 document, it talks about once you reach the top of
24 the rail car, and all of the -- about before
25 closing and securing. It talks about closing and



1 securing the hatches, look at the gaskets and that
2 type of information. Do you see that?

3 A. Yes.

4 Q. And then talks about filling out warning
5 placards near the bottom of that page.

6 A. Yes.

7 Q. And then let's just skip over. On Page
8 148 it talks about aeration both round and slot
9 top rail cars. Do you see that?

10 A. Yes.

11 Q. It says, "After the required exposure
12 period, open the hatches and remove any poly
13 coverings, the openings, to initiate the aeration
14 of the car. You knew that and did that --

15 A. Correct.

16 Q. -- correct? The spent fumigants should
17 be beneath the hatches with the warning placards.
18 You've said sometimes the placards were on and
19 sometimes they weren't; is that right?

20 A. Correct.

21 Q. Says, Remove the spent bags from the
22 hatches and place into wire cages or other
23 appropriate disposal container. Did you do that,
24 or did you just put it in your vehicle?

25 A. No. I'd take mine home with me. I put



1 it in a pail that had a lid on it.

2 Q. Then it says, After approximately 30 to
3 45 minutes using a Drager pump and tube or an
4 approved electronic detection device, check the
5 gas concentration in the rail car. Do you see
6 that?

7 A. Yes.

8 Q. You'd never been trained on that,
9 correct?

10 A. Correct.

11 Q. And you used the 15 minutes rather than
12 the 30 to 45 minutes, as in the Presto-X
13 documents, right?

14 A. Yes.

15 Q. It says, The rail car must be aerated
16 below 0.3 parts per million before movement is
17 allowed. And you really didn't know, because you
18 weren't using a Drager tube, what any level was;
19 did you?

20 A. Correct.

21 Q. It said, Be sure to remove all warning
22 signs, sealing materials before releasing the rail
23 car. And you knew to do that?

24 A. Correct.

25 Q. Then the next one on the top of Page 149,



1 it says, During the aeration -- "During the
2 aeration process, deactivate the spent fumigant
3 onsite per the label directions. (See below end).
4 Respiratory protection is required during wet
5 deactivation or partially spent material and
6 should be onsite for wet deactivation of spent
7 residue." One, you didn't generally deactivate
8 onsite; did you?

9 A. No.

10 Q. Would you have done so if you knew that
11 was a -- if you'd been trained by Presto-X to do
12 that?

13 MR. VANFLEET: Objection, calls for
14 speculation.

15 A. Yes.

16 BY MR. MACH:

17 Q. And did you use the wet deactivation
18 method?

19 A. Yes.

20 Q. And did you use respiratory protection
21 because it was required during wet deactivation?

22 A. No.

23 Q. Presto-X did not train you in that regard
24 either, even though they had this service
25 procedure for rail car fumigation and aeration;



1 did they?

2 A. No.

3 Q. Then under E, deactivation procedure.

4 The first bullet point is, "Because partially
5 spent aluminum phosphide can pose a flash hazard,
6 therefore, unaired material cannot be transported
7 from the site until properly deactivated." Do you
8 see that?

9 A. Yeah.

10 Q. But you put it in the truck and took it
11 away from the site, despite this service procedure
12 from Presto-X; is that right?

13 A. Yes.

14 Q. How long did you -- how long did you
15 store any of the deactivated material; do you
16 remember?

17 A. No, I don't. I just I would have taken
18 out, take it to the house and put it out -- I
19 mean, it was away -- away and just let it sit
20 there for, you know, sometimes a week, sometimes
21 -- just depend on whatever time I got over there
22 to it. I worked a lot of hours, so ...

23 Q. And then the bottom line on this says,
24 Note: If a client has a specific requirement for
25 clearing equipment, this equipment will be used in



1 lieu of glass Drager tubes. Do you see that?

2 A. Yes.

3 Q. Did MARS ever indicate to you that they
4 had different clearing equipment that they wanted
5 you to use?

6 A. No.

7 Q. You knew that MARS had the electronic
8 devices that it was at least giving to its own
9 people; is that correct?

10 A. Yes.

11 Q. But they -- nobody from MARS, no safety
12 manager from MARS ever said, we want you to use
13 the electronic devices to check for the phosphine
14 levels in the rail cars; did they?

15 A. No.

16 (THEREUPON, Tyree Deposition Exhibit No 8
17 was marked for identification.)

18 BY MR. MACH:

19 Q. Hand you what's been marked as Exhibit 8.
20 There's actually more pages to that.

21 A. Oh, okay.

22 Q. And it's called Standard Operating
23 Procedure for Rail Car Aeration. And, again,
24 that's a document that was produced by Presto-X.
25 Have you ever seen that document?



1 A. No.

2 MR. VANFLEET: Do you have copies of
3 that, Scott?

4 MR. MACH: Yeah.

5 BY MR. MACH:

6 Q. And this Standard Operating Procedure for
7 Rail Cars, Exhibit 8, it says Procedure Number 22.
8 Did you ever see a book, or were you trained in a
9 book of operate -- standard operating procedures?

10 A. Not to my knowledge.

11 Q. So you wouldn't know what procedure 21 or
12 23 or any other procedure would be; is that
13 correct?

14 A. Correct.

15 Q. And, again, you didn't have to sign off
16 on standard operating procedures, that you'd been
17 trained on them; is that your recollection or not?

18 A. That would be correct.

19 Q. This Exhibit 8, if you look at scope of
20 operations, it covers, "When rail cars are
21 fumigated, there are a number of factors which
22 influence the aeration process, including the time
23 in transit, condition of the rail car, temperature
24 of the commodity and outside weather condition.
25 The fumigant formulation will also determine if



1 there is something to remove from the rail car at
2 the start of the aeration process. (Packaged
3 materials.) And that's what you're talking --
4 you've told us about removing cardboard with the
5 phosphine product on it; is that right?

6 A. Yes.

7 Q. And then it finishes, Each of these
8 factors also plays a key role in the length of
9 time needed to clear the rail car below required
10 0.3 parts per million level for phosphine. And as
11 far as you knew, the agreement between Presto-X
12 and MARS was that you would clear the rail car
13 down to .3 parts per million; is that right, the
14 safe level?

15 A. Correct.

16 Q. And then it says, Rail car placarding.
17 And we've talked about that. Technician safety
18 precautions and GMPs. Do you know what GMPs are?

19 A. Good manufacturing practices.

20 Q. And it says, "During aeration,
21 respiratory protection is required if exposure to
22 phosphine gas exceeds .3 parts per million." And,
23 again, this is a Presto-X document now. And you
24 didn't -- you didn't use respiratory protection
25 because it wasn't provided to you, right?



1 A. Correct.

2 Q. And then you also didn't do gas readings
3 for the phosphine to determine if you were at .3
4 to whether you'd need a respirator or not?

5 A. Correct.

6 Q. And then it talks about in -- what gas
7 mask you can use. And you said you were fit
8 tested. Was there an annual review of your fit
9 testing or not?

10 A. I don't recall if there was.

11 Q. But you didn't have a respirator
12 available to you every day anyway, when you went
13 to work for Presto-X; did you?

14 A. No.

15 Q. And then the second page of this standard
16 operating procedure talks about rail car clearing
17 process. And it says, "When opening a hatch, cut
18 and collect seals and dispose of properly. Do not
19 leave any seals on top of the rail car." You did
20 that, right?

21 A. Yeah, I just left 'em up there.

22 Q. Oh, you did leave the seals up there?

23 A. Yes.

24 Q. Okay. And then you just didn't know of
25 that procedure from -- you weren't taught to take



1 the seals and dispose of them?

2 A. No.

3 Q. And then it says, Open all hatches that
4 are marked with placards and remove the spent
5 fumigation packaging material if present, and then
6 packaged material should be collected and removed
7 for proper deactivation and disposal. Remove and
8 dispose of any plastic used to seal hatches. And
9 that's what we're talking about over here this,
10 like, Saran Wrap kind of stuff, is that --

11 A. Yeah.

12 Q. -- what they use to seal the hatches?

13 A. Basic poly. Four -- usually two, 2 to 4
14 x poly, seems like what was on there.

15 Q. And then you've told us that you
16 generally used 15 minutes of aeration, but here
17 the -- a Presto-X standard operating procedure for
18 rail car aeration says, Upon opening hatches,
19 leave them open 30 to 45 minutes before checking
20 for gas concentration level. It says, This
21 timeframe allows for off gassing to occur and
22 ensures the majority of the gas is released
23 without the technician on top of the car. Do you
24 see that?

25 A. Yeah.



1 Q. Would you ever stand on top of the car
2 for that 15 minutes?

3 A. At times I would, yeah. If I had four or
4 five, you know, I'd just stay up there and close
5 it back.

6 Q. Okay. And so and then the next bullet
7 point says, "All open hatches are required to have
8 a bonnet or weather shield. Did you ever use a
9 bonnet or weather shield?

10 A. No.

11 Q. Do you know what a bonnet or weather
12 shield is?

13 A. No.

14 Q. And it says it's to keep contamination
15 from occurring during the -- the aeration process.
16 Did MARS -- anyone from MARS ever make any
17 complaints to you that you weren't using a bonnet
18 or weather shield when you aerated the rail cars?

19 MR. FANNING: Objection, assumes facts
20 not in evidence, misstates the evidence.

21 MR. VANFLEET: Join.

22 BY MR. MACH:

23 Q. You can go ahead and answer.

24 A. No.

25 Q. And then it says, The technician onsite



1 determines the feasibility of staying onsite
2 during the aeration process or returning later to
3 check gas concentrations -- gas concentration
4 levels. And then it says, Temperature, humidity,
5 wind speed all affect the time required for proper
6 aeration. Would you agree with that?

7 A. Yes.

8 Q. Now, down at the bottom, the last bullet
9 point, Page 52 of the -- of the Presto-X document
10 marked as Exhibit 8 says, "Rail cars can be
11 checked for gas concentration levels as air
12 percolates through the commodity. Depending on
13 the amount of air movement through the rail car,
14 it may take several hours to clear the commodity
15 to below the required 0.3 parts per million." You
16 did not know that; did you?

17 A. No.

18 Q. And in the eight years that you worked
19 for Presto-X, you didn't ever know that fact; did
20 you?

21 A. No.

22 Q. Even though it was in their standard
23 operating procedure for rail car aeration; is that
24 correct?

25 A. Correct.



1 Q. And then on the next page, Page 53, it
2 says, Rail car release, down at the bottom. It
3 says -- do you see that?

4 A. Yeah.

5 Q. After concentrations and fumigants are
6 below .3 parts per million, remove all hatch
7 covers. Secure all hatch covers with new plastic
8 seals and record all seal numbers. Remove all
9 placards from rail car hatches and ladders.
10 Contact the customer and release the cars. Did
11 you put new plastic seals on the hatches?

12 A. No.

13 Q. Were you provided with new plastic seals
14 from Presto-X to put on the hatches?

15 A. No.

16 Q. And then the next document within this is
17 the RailCar Aeration Standard Operating Procedure.
18 And it's just the -- it's a year older. It's the
19 one for 2011, I think --

20 A. Okay.

21 Q. -- and I wanted to ask you about that.
22 And it's nearly identical. I didn't find any
23 differences. But you're welcome to read through
24 it. But it was the -- in effect, the standard
25 operating procedure for rail car aeration for the



1 year before. It was, I think, 2011. But you
2 would have been clearing rail cars during that
3 time period, too, from October 12th, 2011; is
4 that --

5 A. Correct.

6 MR. MACH: That's all we need from that
7 document. Been going a little over another hour.
8 You want to take five, everybody? You probably
9 need five.

10 THE VIDEOGRAPHER: It is 1:55 p.m. We're
11 going off the record.

12 (THEREUPON, a recess was taken;
13 WHEREUPON, Tyree Deposition Exhibit No 9 was
14 marked for identification.)

15 THE VIDEOGRAPHER: It is 2:03 p.m. We
16 are back on the record.

17 BY MR. MACH:

18 Q. All right, Mr. Tyree. I've put before
19 you Exhibit Number 9. Do you see that?

20 A. Yes.

21 Q. And does that show -- or what does that
22 show, tell me? Do you recognize this --

23 A. That's a -- that would be the west end of
24 the rail.

25 Q. Okay. And that would be -- and there is



1 a rail car on the siding, just outside of the rail
2 bay; is that right?

3 A. Correct.

4 Q. Could you just point to where that is on
5 the Exhibit 1?

6 A. Right there somewhere.

7 Q. Okay. And does this photo fairly and
8 accurately represent just basically how it would
9 look if there was a rail car that you might be
10 ready to fumigate or that might be ready to be
11 processed at the MARS plant?

12 (THEREUPON, Tyree Deposition Exhibit
13 No 10 was marked for identification.)

14 BY MR. MACH:

15 A. Yes.

16 Q. Then Exhibit 10, can you tell us what
17 that photograph is?

18 A. That would be the east end of the
19 biscuit.

20 Q. Okay. So you're looking to the west?

21 A. Yes.

22 Q. Looking towards Stateline. And that
23 plant sits just almost on Stateline; is that
24 right, on the Missouri side?

25 A. Pretty much, yeah.



1 Q. Okay. And the biscuit end of the plant,
2 you indicated that occasionally you would park
3 down at that end?

4 A. Yeah.

5 Q. And was that because the rail car might
6 be down toward that end?

7 A. Yeah.

8 Q. Okay. And does that fairly and
9 accurately represent the view from the -- from the
10 west -- or from the east looking west down the
11 rail at the MARS plant in Joplin, Missouri?

12 A. Yes.

13 Q. I hand you now what's been marked as
14 Exhibit 13.

15 (THEREUPON, Tyree Deposition Exhibit
16 No 13 was marked for identification.)

17 BY MR. MACH:

18 Q. And it is a document produced by MARS.
19 And it's called, Clearing Fumigated Trucks and
20 Railcars. Do you see that?

21 A. Yes.

22 Q. Were you ever provided a copy of that
23 from anyone at MARS?

24 MR. FANNING: Do you have a copy?

25 MR. MACH: Yeah, yeah. See where they



1 are.

2 A. No.

3 THE REPORTER: Do you need this on the
4 record? This --

5 MR. MACH: No. Yeah, let's go off the
6 video. It's 2:06 and we're off the record.

7 (THEREUPON, an off-the-record discussion
8 was held.)

9 THE VIDEOGRAPHER: It is 2:08 p.m., we
10 are back on the record.

11 BY MR. MACH:

12 Q. I've handed you Exhibit 13. And it's --
13 I'll represent to you it's produced by MARS. Is
14 there -- MARS Exhibit Number -- Pages 816 through
15 819. And it's titled, Clearing Fumigated Trucks
16 and Railcars. Do you see that?

17 A. Yes.

18 Q. And the issue date is 11/4/2010. Do you
19 see that?

20 A. Yes.

21 Q. And document owner, it's called Quality.
22 Did you ever -- did anybody at MARS ever give you
23 this Clearing Fumigated Truck and Railcars
24 procedure?

25 A. No.



1 MR. FANNING: Objection, form.

2 BY MR. MACH:

3 Q. And it says, Purpose: To ensure employee
4 safety and evaluating and clearing fumigant from
5 rail cars and trucks. Do you see that?

6 A. Yes.

7 Q. And the scope, it says, "This procedure
8 applies to all manufacturing sites." Do you see
9 that?

10 A. Yes.

11 Q. And was the Joplin MARS Pet Food plant,
12 did they manufacture there?

13 A. Yes.

14 Q. And then it talks about responsibility.
15 It says, "The fumigator is responsible for
16 labeling fumigated carriers with placards." Do
17 you see that?

18 A. Yes.

19 Q. You've indicated sometimes there were
20 issues with the placards. Sometimes rail cars
21 under gas would come in without placards or with
22 less than all the placards required. Is that
23 right?

24 A. Correct.

25 Q. It says, "Plant manager is responsible



1 for ensuring that the plant is compliant to all
2 federal, state and local regulations." Did the
3 plant manager ever -- from MARS ever talk to you
4 at all about whether or not you were complying
5 with the federal law regarding aeration of rail
6 cars?

7 A. Mmm-mmm.

8 MR. VANFLEET: Objection, form.

9 BY MR. MACH:

10 Q. And, in fact, you didn't comply; is that
11 correct?

12 A. Correct.

13 THE REPORTER: Who -- who made that last
14 objection?

15 MR. VANFLEET: I thought so, but I just
16 wanted to be sure.

17 BY MR. MACH:

18 Q. And then it talks about procedure. At
19 the bottom detection equipment. It talks about
20 each plant shall maintain two Micro Pac Plus Ph3
21 gas detection alarm units to be used for detecting
22 fumigant concentration. And you were never
23 supplied a Pac 2 by MARS; were you?

24 A. No.

25 Q. And then it talks about the next page



1 which would be Page 817 of the MARS produced
2 document. Is talks about the threshold limit
3 value for phosphine is 0.3. Do you see that?

4 A. Yes.

5 Q. And then the MARS policy that was in
6 effect back in 2010 regarding evaluating rail cars
7 under fumigation says, "When rail cars are under
8 fumigation, the fumigator is required to placard
9 the car and notify the receiver." And that was
10 generally done; is that right?

11 A. Yeah.

12 Q. And then when a rail car is received
13 under fumigation, it shall be evaluated using the
14 approved meter, even if the clear date on the
15 placard has passed. Do you see that?

16 A. Yes.

17 Q. That was not done; was it?

18 A. Correct.

19 Q. And it says, if the level exceeds the
20 limit of the listed fumigant noted on the placard,
21 the vehicle will need to be cleared. Do you see
22 that?

23 A. Yes.

24 Q. And it says, Clearing of fumigated rail
25 car is airing out the fumigant to an acceptable



1 level by a trained person. This is described in,
2 "Clearing rail cars under fumigation." Do you see
3 that?

4 A. Yes.

5 Q. And then down there on the training
6 section it says, "Mandatory training of MPC
7 Associates." And I assume that's MARS PetCare
8 associates. "That sample and/or unload rail cars
9 shall be completed on an annual basis. The
10 training shall be documented and added to the
11 safety training file. Training is required
12 whether a PCO or MPC personnel is used to clear
13 rail cars." Do you see that?

14 A. Yes.

15 Q. Were you a -- were you a PCO, a pest
16 control operator?

17 A. Yes.

18 Q. And that's what -- do you know if that
19 was ever done; did you ever see -- did you ever
20 get training on an annual basis on aeration?

21 MR. FANNING: Objection, misstates the
22 record, assumes facts not in evidence, assumes
23 facts not in evidence.

24 MR. SAPPINGTON: Join.

25 BY MR. MACH:



1 Q. You can go ahead and answer.

2 A. No.

3 Q. You didn't receive any training and it
4 certainly wasn't documented; was it?

5 A. Correct.

6 MR. FANNING: You can note the objection
7 to that one, too.

8 BY MR. MACH:

9 Q. And then it says, The training topics
10 should be, one, clearing rail cars. And that was
11 something you did for MARS; is that right?

12 A. Correct.

13 Q. It says then, Proper use of detection
14 equipment. That was something you did for MARS;
15 isn't that correct?

16 MR. VANFLEET: Object to the form.

17 MR. FANNING: Object, assumes facts not
18 in evidence, based upon his testimony.

19 A. Correct.

20 BY MR. MACH:

21 Q. And then it also says you should be
22 trained on who to contact. Do you that?

23 MR. SAPPINGTON: Object to form.

24 MR. FANNING: Assumes facts not in
25 evidence, misstates the record.



1 A. Correct.

2 BY MR. MACH:

3 Q. Did you know who to contact at MARS
4 concerning training or aeration of rail cars?

5 MR. SAPPINGTON: Object to form.

6 MR. FANNING: Same objection.

7 A. No.

8 BY MR. MACH:

9 Q. The next section is Trucks Under
10 Fumigation. It says, "It is against the law for
11 trucks to transport commodities under fumigation
12 without warning placards." Do you see that?

13 A. Yes.

14 Q. But that happened at the MARS plant;
15 isn't that correct?

16 MR. FANNING: Objection, form. MARS
17 didn't do it.

18 MR. MACH: Right. Let me --

19 BY MR. MACH:

20 Q. That's a bad question. He's exactly
21 right. Did you have to check trucks at the MARS
22 plant because they had come into the plant because
23 they had been fumigated and were traveling over
24 the public roads?

25 A. Yes.



1 Q. And did you know that was against the
2 law?

3 A. Yes.

4 Q. And did you tell the folks at MARS that
5 that was against the law, or did they know that
6 already, too?

7 A. I had to tell them --

8 MR. SAPPINGTON: Object to form, calls
9 for speculation -- calls for speculation about
10 what they knew.

11 BY MR. MACH:

12 Q. You told -- you told them?

13 A. Yes.

14 Q. And you've told us, you know one Elnicki
15 truck in particular came in under gas. Is that
16 right?

17 A. Yes.

18 Q. And you actually used your Drager on it
19 and checked it and it was -- do you remember what
20 the reading was?

21 A. I don't recall.

22 Q. Did you record that reading anywhere?

23 A. No.

24 Q. Are you sure it was over .3?

25 A. Yes.



1 Q. Parts per million. And do you recall who
2 brought in other -- any other trucks that were
3 under gas?

4 A. No.

5 Q. Did that -- or did you ever go to the --
6 to get through the truck bay?

7 A. Yeah, from time to time.

8 Q. And would you smell the phosphine, any
9 garlicky smell in the truck bay whenever you went
10 through it?

11 MR. FANNING: Objection, form.

12 A. Yes.

13 BY MR. MACH:

14 Q. And was that a dusty area, the truck bay?

15 A. Extremely.

16 Q. When you say extremely, were you ever in
17 there when a truck was dumping out its product
18 into -- the grates?

19 A. Yes.

20 Q. And was that a very narrow room?

21 A. Yes.

22 Q. And it had a roof; is that right?

23 A. Yes.

24 Q. And would the dust just completely fill
25 that room, the truck bay, if it was unloading a



1 load of grain?

2 MR. FANNING: Objection, form.

3 MR. VANFLEET: Join.

4 A. Yes.

5 BY MR. MACH:

6 Q. Just so we know what we've been talking
7 about, I want to hand you Exhibit 18.

8 (THEREUPON, Tyree Deposition Exhibit
9 No 18 was marked for identification.)

10 BY MR. MACH:

11 Q. And does that show the -- the truck bay
12 at the MARS plant?

13 A. Yes.

14 Q. And is that the area you just described
15 as being very dusty if a truck was unloading?

16 MR. VANFLEET: Objection, form.

17 A. Yes.

18 BY MR. MACH:

19 Q. And is it enclosed on the top and all the
20 sides?

21 A. Yes.

22 Q. And is that area were you see on Exhibit
23 18, would that whole area fill with dust if a
24 truck was unloading?

25 MR. FANNING: Objection, form.



1 A. I don't believe the whole area fills with
2 dust, but the biggest part of it does.

3 BY MR. MACH:

4 **Q. Going back to Exhibit 13 -- well, I think**
5 **that's all I need to ask you about Exhibit 13.**
6 **Exhibit 15 --**

7 MR. MACH: I found them.

8 (THEREUPON, Tyree Deposition Exhibit
9 No 15 was marked for identification.)

10 MR. MACH: You stole them.

11 MR. SCHLOEGEL: I stole them.

12 BY MR. MACH:

13 **Q. Hand you what's been marked as Exhibit**
14 **15. Did you ever see a notice like that on any**
15 **rail car at MARS?**

16 A. No.

17 **Q. It's dated 8/10. I'll represent it was**
18 **8/10 of 2012. But it says, Hold for management**
19 **gas meter reading out of spec. Do you remember**
20 **having to go check on a rail car, go back and re-**
21 **aerate a rail car at MARS --**

22 MR. FANNING: Objection --

23 BY MR. MACH:

24 **Q. -- in August of 2012?**

25 MR. FANNING: I'm going to object to the



1 form. Suggests facts not in evidence. I don't
2 see the year on here. And other than that,
3 subject to that, you can answer.

4 MR. VANFLEET: I'll join.

5 A. I don't recall.

6 BY MR. MACH:

7 Q. Okay. You don't recall just one way or
8 the other?

9 A. (Shook head.)

10 (THEREUPON, Tyree Deposition Exhibit
11 No 19 was marked for identification.)

12 BY MR. MACH:

13 Q. Hand you what's been marked as Exhibit
14 19, ask you if you can identify what that is in
15 Exhibit 19?

16 A. Looks like a Pac 7000.

17 THE REPORTER: Can you repeat that?

18 THE WITNESS: Pac 7000.

19 BY MR. MACH:

20 Q. Okay. And that's a phosphine meter; is
21 that right?

22 A. Yes.

23 Q. And the reading on that is 2.61. That
24 would be over the legal limit; wouldn't it, if
25 you --



1 MR. VANFLEET: Objection.

2 BY MR. MACH:

3 Q. If --

4 MR. VANFLEET: Sorry.

5 BY MR. MACH:

6 Q. If you -- if you had that on a reading
7 for your -- of phosphine?

8 MR. VANFLEET: Objection, foundation.

9 MR. FANNING: Objection, form,
10 foundation, all sorts of other things.

11 BY MR. MACH:

12 Q. You can go ahead and answer.

13 A. Yes.

14 Q. And 2.61 would be a very dangerous level
15 of phosphine; is that right?

16 MR. VANFLEET: Same objection.

17 MR. FANNING: Join.

18 MR. SAPPINGTON: Calls for speculation,
19 lacks foundation, assumes improper hypothetical.

20 BY MR. MACH:

21 Q. You can go ahead and answer.

22 A. Yes.

23 Q. We talked about -- talked about
24 placarding earlier.

25 (THEREUPON, Tyree Deposition Exhibit



1 No 20 was marked for identification.)

2 BY MR. MACH:

3 Q. And, generally, were the placards in --
4 that indicated that there was phosphine, would
5 they be in plastic to help preserve them?

6 A. Correct.

7 Q. On this Exhibit 20, do you know anything
8 about these placards; was that a car that you did,
9 or do you have any idea where those placards came
10 from?

11 MR. VANFLEET: Objection, foundation.

12 A. I don't recall. But, I mean, I'm sure I
13 did some like these, though.

14 BY MR. MACH:

15 Q. That was my question. When you placard,
16 if you were doing it onsite at MARS, would you
17 placard and just use duct tape to put the placards
18 on?

19 A. No.

20 Q. Would you put them in plastic?

21 A. Yes.

22 Q. Did -- did these -- and I'm just asking
23 for my own education here. Did these come in --
24 did rail cars come in sometimes with the placards
25 looking like what they are on Exhibit 20?



1 A. Yes.

2 Q. They wouldn't be in plastic and that --
3 is how they'd wear out and you couldn't read where
4 they were from and when they were fumigated?

5 MR. SAPPINGTON: Object to form.

6 MR. VANFLEET: Join.

7 BY MR. MACH:

8 Q. You can go ahead and answer.

9 A. Correct.

10 (THEREUPON, Tyree Deposition Exhibit
11 No 22 was marked for identification.)

12 BY MR. MACH:

13 Q. I'll have you -- hand you.

14 MR. MACH: Better make another.

15 BY MR. MACH:

16 Q. I'll hand you what has been marked as
17 Exhibit 21 (verbatim) and ask you if you can
18 identify what that is?

19 A. No clue. I've never seen it.

20 Q. Okay. I just wondered if you had ever --
21 yeah, ever seen anything like that, or did you
22 ever receive a document that looked like that?

23 A. No.

24 Q. It's dated 7/27 of '12. That was a time
25 about when OSHA came to the MARS Pet Food plant in



1 Joplin to do -- to inspect the way you aerated
2 rail cars. Is that right?

3 A. Yes.

4 (THEREUPON, Tyree Deposition Exhibit
5 No 23 was marked for identification.)

6 BY MR. MACH:

7 Q. Let me hand you what's been marked as
8 Exhibit 23 and ask you if you can identify it. Is
9 that the type of plastic and packaging, and then
10 placards, would you need to throw those down off
11 the top of the rail car and then pick 'em up and
12 take 'em to your house --

13 A. Yes.

14 Q. -- is that part of the stuff that you did
15 with that?

16 A. Yes.

17 Q. Okay. And does that look like the
18 information -- or the packaging, the sealing
19 material on that and the placards that would be on
20 a rail car that you would take and dispose of
21 after -- along with the spent fumigants?

22 A. Yes.

23 Q. Would you put -- the placards and this
24 plastic, would that go in the trash, or would that
25 go home with you also?



1 A. The plastic and the placards are
2 harmless, so I would put them in the trash there
3 at the facility.

4 Q. Okay.

5 (THEREUPON, Tyree Deposition Exhibit
6 No 25 was marked for identification.)

7 BY MR. MACH:

8 Q. Hand you what's been marked as Exhibit
9 25. Were you ever in the mill room at MARS?

10 A. Yes.

11 Q. And there's an air conditioner in the
12 mill room. Do you recall that?

13 A. Yes.

14 Q. And is that a photograph of the air
15 conditioner in the mill room, as best you know?

16 A. Best of my knowledge, yes.

17 Q. And it drew air in from the rail bay, the
18 back of that went right out into the rail bay; is
19 that correct?

20 MR. FANNING: Objection, form.

21 A. I can't recall that.

22 BY MR. MACH:

23 Q. Okay. Did the back wall of the mill room
24 face out to the rail bay?

25 A. Yes.



1 Q. And the air conditioning unit was on the
2 back wall, is that right, of the mill room?

3 A. Yes.

4 Q. When you were in the MARS plant, was your
5 time in the MARS plant generally just quickly to
6 go in and initial that -- whatever that --

7 A. The report?

8 Q. -- fumigation report?

9 A. Yeah.

10 Q. Okay. So you didn't -- did you ever go
11 into the plant and see a document that had
12 portable gas meter readings on it --

13 A. Not --

14 Q. -- did you ever see those?

15 A. Not to my knowledge.

16 (THEREUPON, Tyree Deposition Exhibit
17 No 27 was marked for identification.)

18 BY MR. MACH:

19 Q. I just need to know what Exhibit 27 is.
20 Hand you what's been marked as Exhibit 27.

21 A. It's a product used on the facility, as
22 far as just regular pest control.

23 Q. Okay. And that was a MARS document,
24 correct?

25 A. Yeah.



1 Q. It says, MARS Incorporated on the top.
2 And it says, Pesticide Usage Log. Is that right?

3 A. Yes.

4 Q. Now, my question is, you would go in and
5 obviously initial and fill -- would you fill out
6 this whole log?

7 A. Yes.

8 Q. Okay. So that's all your handwriting on
9 Exhibit 27; is that right?

10 A. That's correct.

11 Q. And then your initials are on the far
12 right?

13 A. Yes.

14 Q. And you're listed as the name of the
15 certified applicator; is that right?

16 A. Correct.

17 Q. And your certification number is on
18 there. So this Pesticide Usage Log, where was
19 that kept?

20 A. Should have been in the log book.

21 Q. And where was the log book?

22 A. In the QA lab.

23 Q. Okay. So it was in the lab. And then
24 the question I have now, was there any log like
25 this provided for you by MARS to put gas meter



1 readings, if you did a gas meter on a -- reading
2 on an aeration? Was --

3 A. No.

4 Q. -- there anything in a log book like
5 that?

6 MR. FANNING: Just a second. Assumes
7 facts not in evidence, irrelevant, objection.

8 A. No.

9 BY MR. MACH:

10 Q. And there was no log book where you would
11 log in whether or not there was -- or where you'd
12 log in a level of phosphine if you did readings;
13 is that right?

14 A. Correct.

15 MR. MACH: Why don't we take five.

16 THE VIDEOGRAPHER: It is 2:28 p.m. We
17 are going off the record.

18 (THEREUPON, a recess was taken.)

19 THE VIDEOGRAPHER: It is 2:34 p.m. We
20 are back on the record.

21 MR. MACH: Mr. Tyree, that's all the
22 questions I've got for you right now. Some of the
23 other lawyers may ask you some questions.

24 THE WITNESS: Okay.

25 MR. CLITHERO: At this point, on behalf



1 of Roth, we have no questions of the witness.

2 MS. HALL: I have a couple of questions
3 for you.

4 CROSS-EXAMINATION

5 BY MS. HALL:

6 Q. Mr. Tyree, my name is Lesley Hall and I'm
7 here on behalf of Elnicki. Just to kind of
8 refresh, you say -- you have heard of Elnicki,
9 Inc. before?

10 A. Yes.

11 Q. Have you ever seen them on site at the
12 MARS plant?

13 A. Yes.

14 Q. You've seen their tractor trailer on
15 site?

16 A. Yes.

17 Q. How many times do you recall them being
18 on site?

19 A. I couldn't give you an exact number.

20 Q. Okay. One, two?

21 A. Nah. I'm -- I'm sure it was more than
22 that, 'cause I was out there three or four days a
23 week, so ...

24 Q. Okay. Do you recall the first time
25 you've seen one of their trucks -- tractor



1 trailers on site?

2 A. No.

3 Q. Can you describe for me the color of the
4 tractor trailers?

5 A. No.

6 Q. Do you recall if any logos that was --
7 were on the tractor trailers?

8 A. Yeah. They had Elnicki on 'em.

9 Q. Have you ever spoken with any of the
10 drivers?

11 A. No.

12 Q. Have you ever spoken with any of the --
13 Elnicki's employees, any other employees?

14 A. No.

15 Q. Have you ever known of anyone who works
16 for them?

17 A. No.

18 Q. I'm going to draw your attention back to
19 -- you suggested earlier that there was a -- one
20 of the Elnicki's tractor trailers had pulled up
21 and they were tested and they were over their
22 limits in terms of the fumigant?

23 A. Yes.

24 Q. And you claimed that they were turned
25 away?



1 A. Yes.

2 Q. How did you know that the truck was over
3 its limit in fumigants?

4 A. 'Cause that's what I got called out
5 there. I wasn't on site. I got called out there
6 because one of their workers had went out there
7 with their Pac 7000 and their meter went off. So
8 they called me, and I had to come out and check it
9 with the Drager tube, and it was hot, so we
10 rejected the load and sent it back.

11 Q. Okay. And do you know what happened to
12 it once it got sent back?

13 A. No. I don't know what happened to the
14 load once it got sent back, I just -- I was there
15 when the truck was actually leaving, you know, the
16 yard.

17 Q. And you said you used your own meter?

18 A. Yes.

19 MS. HALL: I have no further questions.

20 CROSS-EXAMINATION

21 BY MR. SAPPINGTON:

22 Q. Mr. Tyree, what do you do currently for
23 employment, if anything?

24 A. I'm unemployed.

25 Q. When did you get fired from Presto-X?



1 A. October 16th, 2012.

2 Q. Have you worked since then?

3 A. Yes.

4 Q. Where have you worked since being fired
5 from Presto-X --

6 A. I work --

7 Q. -- in 2012?

8 A. I worked for Schendel Pest Control as a
9 salesman. And then I worked also at Easy
10 Wireless, which is a cell phone company.

11 Q. What did you do for Schendel?

12 A. Sales, I was a salesman.

13 Q. Sell what?

14 A. Pest control.

15 Q. Did you have any training to do that?

16 A. Through -- through Schendel or through
17 Presto-X?

18 Q. Schendel.

19 A. Yes.

20 Q. What training did you go through to sell
21 pest control for Schendel?

22 A. Just their proper procedures and
23 training. I mean, they take you out in the field
24 and they work with you and you go from door to
25 door, or you get in the phone book and look up



1 numbers and call people.

2 Q. So you received training on procedures
3 and policies of Schendel?

4 A. Yes.

5 Q. You talked earlier with Mr. Mach about
6 previous jobs that you had. Refrigerations --
7 refrigeration?

8 A. Yeah. Harper's Refrigeration.

9 Q. What did you do for that?

10 A. Just their -- I was their parts guy.

11 Q. Did you receive any training in that job?

12 A. No.

13 Q. You said you did sales. What did you
14 sell before joining Presto-X?

15 A. What did I -- I didn't -- I didn't sell
16 nothing before Presto-X. I worked at Standard
17 Transportation.

18 Q. Maybe I misunderstood you. What else did
19 you do besides refrigeration before you joined
20 Presto-X?

21 A. Locke Heating and Cooling. It was just a
22 -- I'm sure you guys have heard of that. It's
23 just a refrigeration company. Kind of went back
24 from Harper's to there.

25 Q. Is that the company we just talked about,



1 about refrigeration where you received no
2 training?

3 A. Yes.

4 Q. Okay. Did you also say you operated a
5 forklift?

6 A. Yes.

7 Q. Who did you operate a forklift for?

8 A. Standard Transportation.

9 Q. Did you receive any training from
10 Standard Transportation?

11 A. Yes.

12 Q. What type of training did you receive
13 from Standard Transportation?

14 A. Through a book, I had to read a book and
15 answer questions. And they did an on -- on-hand
16 training, basically, right there with me. Showed
17 me how to do the levers and -- it was just a
18 manual -- or a automatic, so it was just front --
19 forward, neutral and reverse, then up and down,
20 side to side. So it wasn't real difficult.

21 Q. Did you have to have any sort of license
22 or certification to operate a forklift?

23 A. Not at that facility, I did not.

24 Q. What other types of jobs have you done
25 besides refrigeration and forklift?



1 A. That's pretty much it.

2 Q. What year did you graduate high school?

3 A. '96.

4 Q. So for about eight years after graduating
5 high school, you did these miscellaneous jobs; is
6 that right?

7 A. Yeah, just -- I didn't never work
8 anywhere very long.

9 Q. Is it your testimony that you received no
10 training from Presto-X, other than on-the-job
11 training?

12 A. That is correct.

13 Q. Never provided any documentation
14 whatsoever?

15 A. To my knowledge.

16 Q. Never provided any policies and
17 procedures whatsoever?

18 A. To my knowledge, we did not.

19 Q. Did that strike you as unusual, to be
20 employed by a company and not being provided any
21 policies or procedures whatsoever?

22 A. Me? I never worked for a company like
23 that, no.

24 Q. You understood -- did you understand when
25 you started working for Presto-X, that you would



1 be dealing with restricted or regulated materials?

2 A. At pesticides, not the restricted part.

3 Q. Okay. You understood when you started
4 working for Presto-X that you'd be dealing with
5 pesticides?

6 A. Yes.

7 Q. Did you understand that those could be
8 hazardous if, for instance, ingested?

9 A. Yes.

10 Q. Did it strike you as odd that you weren't
11 provided any documentation whatsoever about
12 pesticide materials?

13 A. Not really.

14 Q. It certainly didn't concern you though, I
15 take it?

16 A. No.

17 Q. And you didn't ask anyone at Presto-X
18 ever, hey, why am I not going any policies and
19 procedures about these dangerous materials?

20 A. No.

21 MR. SCHLOEGEL: Objection. I think it
22 misstates the testimony. He did testify he had
23 some in the truck.

24 BY MR. SAPPINGTON:

25 Q. Okay. Well, let's go with that then.



1 **What materials did you have in the truck?**

2 A. Labels and MSDSs. I mean, that's really
3 all we had.

4 **Q. What are MSDS's?**

5 A. Material Safety Data Sheets.

6 **Q. And tell the jury what a MSDS tells you.**

7 A. Tells you the toxicity and tells you all
8 the levels of the pesticide and how you can use it
9 and ...

10 **Q. Did you read the MSDSs?**

11 A. I did some of 'em, yes.

12 **Q. Not all of them?**

13 A. Correct.

14 **Q. Is there a particular reason why you
15 chose not to read some of the MSDSs that you were
16 provided?**

17 A. No.

18 **Q. Did you understand that the MSDSs
19 provided you important information, including
20 safety information, about the materials you were
21 dealing with?**

22 A. I guess I didn't.

23 **Q. Okay. Did you ever ask anyone any
24 questions whatsoever at any point in time ever at
25 Presto-X about the MSDSs?**



1 A. No.

2 Q. Can you tell me if you ever read an MSDS
3 about phosphine or phosphine gas or any material
4 containing phosphine or phosphine gas?

5 A. I probably have, yes, but to record, you
6 know --

7 Q. Well, and I appreciate you saying you
8 probably have. Can you tell me for certain that
9 you have?

10 A. Yes, I have.

11 Q. Were you aware that there are levels of
12 phosphine which are -- I'll just use, for lack of
13 a better term, acceptable?

14 A. Yes.

15 Q. So you understood there was some sort of
16 system by which phosphine gas is measured?

17 A. Yes.

18 Q. And you understood that from reading the
19 MSDS?

20 A. Yes.

21 Q. So you understood it's important for you
22 to know what levels of phosphine gas are safe or
23 not?

24 A. Yes.

25 Q. And you knew that before you ever worked



1 at the MARS plant for Presto-X, right?

2 A. No.

3 Q. Okay. Never occurred to you before you
4 stepped onto the MARS facility for Presto-X, that
5 it's important for you in your job to know about
6 what levels of phosphine you were dealing with?

7 A. No, 'cause I just doing it the way I was
8 trained.

9 Q. Okay. Well, all right. Did it strike --
10 I take it you're telling me that whoever trained
11 you never told you that it's important for you to
12 know what levels of phosphine you're dealing with?

13 A. Correct.

14 Q. And that didn't strike you as odd?

15 A. No, I just -- I didn't think about it.

16 Q. And then you talk about on-the-job
17 training. That was from the Michael Franklin,
18 right?

19 A. Yes.

20 Q. You were shown Exhibit 21, the placard?

21 A. Yes.

22 Q. Do you still have that in front of you?

23 A. Yeah, I still got it right here
24 somewhere. Yeah.

25 Q. Is there a skull and crossbone on there?



1 A. Yes.

2 Q. What -- tell the jury what the skull and
3 crossbone means.

4 A. Means dangerous chemicals.

5 Q. Did you need some training from Presto-X
6 to tell you that skull and crossbone means that
7 it's dangerous?

8 A. Not when it says it on it, so ...

9 Q. That's common sense to you?

10 A. Yes.

11 Q. Was it common sense that there was some
12 level at which that would then be dangerous?

13 A. I'd say no.

14 Q. And is that then why you never bothered
15 to carry a measuring device?

16 A. Correct.

17 Q. I take it you never ever felt that you
18 were in any personal danger from working around
19 these materials; is that right?

20 A. Correct.

21 Q. And, therefore, you never even considered
22 that anyone else would be in any danger, true?

23 A. Correct.

24 Q. Have you had any health problems from
25 working around these materials?



1 A. Not to my knowledge. I went to doctors
2 and they said I don't, so ...

3 Q. You never ingested any of these
4 materials; did you?

5 A. No.

6 Q. How often would you -- let's say in a
7 week, a week's time during your period working for
8 Presto-X, how many rail cars or other vehicles
9 would you aerate on average?

10 A. I would say, you know, up to 2012, maybe
11 two or three a year. And then 2012, you know, it
12 was -- there was several. So, I mean, it's hard
13 for me to dictate exactly how many I would do.

14 Q. Two or three vehicles or rail cars per
15 week in 2012. Is that, did I understand you or
16 misunderstand you?

17 A. I would say one -- I'd say two rail cars
18 a week maybe, in 2012. But up till then, maybe
19 three or maybe four, the most. There wasn't very
20 many.

21 Q. Do you know when Mr. Vasquez left
22 employment with MARS?

23 A. I do not.

24 Q. Do you know if it was before or after you
25 were fired from Presto-X?



1 A. I don't.

2 Q. While you were working for Presto-X, did
3 you know whether or not Mr. Vasquez had been --
4 left employment with MARS?

5 A. No.

6 Q. How did you find out that he left
7 employment with MARS?

8 A. Through the people there at MARS, told me
9 he was no longer with them.

10 Q. Who?

11 A. Either Brad or -- I don't know, I can't
12 recall which one.

13 Q. Regardless of which one it was, was there
14 just one particular conversation where you found
15 that out?

16 A. No. I'm sure other people had told me,
17 but I can't recall the conversation.

18 Q. Give me any details you recall about any
19 of those conversations about Mr. Vasquez leaving
20 employment with MARS.

21 A. They just said that he's not working here
22 no more. There was no definition of why he got
23 fired or why he got let go or whatever.

24 Q. Do you even know if he was fired versus
25 quit?



1 A. I don't know if he was fired, let go,
2 quit. Just only one there.

3 Q. So you have no information whatsoever
4 that would tell you that he was let go for any job
5 deficiency, true?

6 A. True.

7 Q. Or anything related to the allegations in
8 this lawsuit?

9 A. True.

10 Q. You had a conversation with Mr. Mach at
11 some point in time? This is the gentlemen --

12 MR. MACH: It's Mach. That's probably
13 what --

14 MR. SAPPINGTON: I apologize.

15 BY MR. MACH:

16 Q. Mr. Mach?

17 A. Yeah.

18 Q. One such conversation, I understand?

19 A. Yeah. I've only -- I've only met him
20 once.

21 Q. And where -- where did you meet him?

22 A. You'd ask me that. I can't recall where
23 I was. You'd have to ask him.

24 Q. Well, it wasn't here; was it?

25 A. No.



1 Q. You're from Monkee Island you said?

2 A. Yep.

3 Q. How far a drive is that from here to
4 there, or vice versa?

5 A. Probably 260 miles.

6 Q. Did you come to your deposition today
7 from Monkee Island --

8 A. Monkee Island, yes.

9 Q. How long did that take you?

10 A. Left at five and got here about nine, so
11 I'd say -- well, 9:15. So I'd say about four and
12 a half hours, four.

13 Q. Did Mr. Mach meet you in or near Monkey
14 Island?

15 A. No.

16 Q. Did you travel somewhere to meet him?

17 A. I don't recall.

18 Q. What did you discuss with Mr. Mach?

19 A. I don't recall.

20 Q. You don't -- can't remember anything at
21 all that you discussed with him?

22 A. No, I don't.

23 Q. How long ago was that?

24 A. I'm not even sure on that.

25 Q. Did he provide you any documents during



1 that meeting?

2 A. No.

3 Q. Did you look at any documents during that
4 meeting?

5 A. No.

6 Q. Did you provide him any documents during
7 that meeting?

8 A. No.

9 Q. Were you aware that this lawsuit was
10 filed before you had that meeting with Mr. Mach?

11 A. Yes.

12 Q. How did you become aware that this
13 lawsuit was filed before your meeting with Mr.
14 Mach?

15 A. Through people at work. Sam Fears told
16 me that there was one going on, so that's how I
17 knew something was happening.

18 Q. Was that before or after you were fired?

19 A. That was right after.

20 Q. And are you friends with Mr. Fears?

21 A. Yeah, we were. But, you know, he had to
22 keep his distance because of I guess what's going
23 on, so -- I don't have no problem with Mr. Fears.

24 Q. Have you seen him on a personal level
25 since being fired?



1 A. No.

2 Q. Have you spoken with him about the
3 lawsuit?

4 A. No.

5 Q. And just let me clarify. That was my
6 fault. Have you spoken with him about the lawsuit
7 since you were fired?

8 A. No.

9 Q. Anyone else from whom you learned that
10 there was the -- the existence of this lawsuit,
11 other than Mr. Fears?

12 A. No.

13 Q. Did you understand that Mr. Mach
14 represents Plaintiffs that have filed this
15 lawsuit?

16 A. No.

17 Q. Do you know who the Plaintiffs in the
18 lawsuit are?

19 A. No.

20 Q. Do you know Mr. Lonnie Boyd?

21 A. Yes.

22 Q. How do you know Mr. Boyd?

23 A. Worked at MARS.

24 Q. Are you friends with Mr. Boyd?

25 A. No.



1 Q. Have you seen Mr. Boyd outside the
2 context of working at MARS?

3 A. No.

4 Q. Spoken with him outside the context of
5 working at MARS?

6 A. No.

7 Q. Have you spoken with him since you were
8 fired from Presto-X?

9 A. No.

10 Q. What did Mr. Boyd do at MARS, to your
11 knowledge, as far as what you were able to see or
12 learn?

13 A. I have no idea.

14 Q. What is it that brought you into contact
15 with him at MARS then?

16 A. 'Cause I was working out there. You
17 know, I worked through the mill room, so I assume
18 that's where he worked at.

19 Q. But why is it that you would see him?
20 Was there anything in particular that brought you
21 into contact with him?

22 A. I seen him -- seen all the workers out
23 there. I mean, I traveled that whole plant for
24 years and years and years.

25 Q. Do you recognize -- would you recognize



1 Mr. Boyd if you saw him?

2 A. Yeah.

3 Q. Okay. You understand he's in the room
4 today?

5 A. Yes.

6 Q. Can you point to him?

7 A. (Indicating.)

8 Q. Did you ever speak with Mr. Boyd at MARS?

9 A. No, I didn't. I mean, like I said, I
10 didn't see him that much. I may have spoke to him
11 one time out there. But I see him, just like I
12 see all the other ones.

13 Q. So in terms of any substantive
14 conversation with Mr. Boyd, in your entire life,
15 you can recall one time?

16 A. Yes.

17 Q. What was that substantive conversation
18 that you had with Mr. Boyd that one time?

19 A. I don't recall.

20 Q. Can't recall anything about it
21 whatsoever?

22 A. No.

23 Q. Did Mr. Boyd ever complain to you about
24 health problems or alleged health problems from
25 working at MARS?



1 A. No.

2 Q. Do you have any understanding or
3 appreciation that he's making a claim that he has
4 health problems from working at MARS?

5 A. Yeah.

6 Q. Okay. How do you have that
7 understanding?

8 A. I mean, feel like he's been, you know,
9 got ingested some chemicals and he's hurt by it.

10 Q. And how do you know? That is what I'm
11 asking.

12 A. I don't know. I'm just saying, why
13 there's a lawsuit here.

14 Q. Well, how do you know that, that that's
15 part of the lawsuit, is what I'm asking you?

16 A. I don't. I'm just saying --

17 MR. SCHLOEGEL: He didn't say he did.
18 You're the one that asked it that way.

19 MR. SAPPINGTON: He's the one that just
20 said ingested materials. I'm wanting to know how
21 he knows that, unless he's just making it up.

22 A. I don't. I'm just using my common sense
23 to say that's why it's happening. I don't have no
24 idea.

25 BY MR. SAPPINGTON:



1 Q. Do you know Bill Anderson?

2 A. No. I know of him.

3 Q. Would you recognize Mr. Anderson if you
4 saw him?

5 A. I believe so.

6 Q. Ever had any conversations with Mr.
7 Anderson?

8 A. No.

9 Q. Do you have an understanding of what he
10 may be claiming in this lawsuit?

11 A. No.

12 Q. Do you know Carol Clark?

13 A. Name sounds familiar, but no, I don't --
14 don't know her personally, no.

15 Q. Would you recognize her?

16 A. Not sure. Been awhile.

17 Q. Recall any conversations with her
18 whatsoever?

19 A. No.

20 Q. Have any understanding of what she's
21 claiming in this case?

22 A. No.

23 Q. Mark, and I don't know if it's Cravener
24 or Cravener?

25 A. No.



1 Q. Scott Gordon I think you've testified
2 about?

3 A. Yeah. I mean, I know of him, I've talked
4 to him a few times and -- hot head, so, you know.

5 Q. Why do you say he's a hot head?

6 A. Because he's babbled off to me before at
7 work --

8 Q. He's --

9 A. -- out at MARS.

10 Q. -- mouthed off? I just didn't hear you.

11 A. Mouthed off at work.

12 Q. Mouthed off about what?

13 A. Just -- just him. I don't know. I mean,
14 he runs his mouth out there, and that's what he
15 did to me, so ...

16 Q. About what?

17 A. Nothing in particular, just likes to run
18 his mouth.

19 Q. Do you know what Mr. Gordon did or does
20 at MARS?

21 A. Have no idea.

22 Q. Was there anything in particular that
23 brought you into contact with Mr. Gordon at MARS?

24 A. No, other than just running my traps and
25 my bait stations out there.



1 Q. Would you have any interaction with him
2 in a professional capacity at MARS?

3 A. No.

4 Q. Other than him being a hot head and
5 running his mouth, did you have any conversations
6 with him about your work while you were at MARS?

7 A. No.

8 Q. Or his work at MARS?

9 A. No.

10 Q. Did you ever see Mr. Gordon access any
11 rail cars while you were at the MARS facility?

12 A. No.

13 Q. How about Mr. Boyd?

14 A. No.

15 Q. Mr. Anderson?

16 A. No.

17 Q. Ms. Clark?

18 A. No.

19 Q. Mr. Cravener?

20 A. No.

21 Q. Tracy Milton, do you know Tracy Milton?

22 A. Know of, don't know him personally.

23 Q. Ever spoken with him, to your knowledge?

24 A. No.

25 Q. Ever see Mr. Milton access a rail car at



1 the MARS facility?

2 A. No.

3 Q. Is there anything in your training that
4 you ever received from Presto-X that would have
5 told you one way or another about whether MARS
6 employees should be accessing a rail car at any
7 point in time while you were there doing work?

8 A. No.

9 Q. As far as you were concerned, would it be
10 perfectly fine for a MARS employee to access a
11 rail car while you were aerating it at MARS?

12 A. No.

13 Q. Okay. So you at least knew then that
14 MARS employee shouldn't be accessing a rail car
15 while you were aerating?

16 A. Yes.

17 Q. And if you received no training from
18 Presto-X about that, how did you know that?

19 A. Just -- I'm a pest control guy, so pest
20 guy covers that.

21 Q. What covers that?

22 A. Pest control guy covers that.

23 Q. You mean that's part of the pest control
24 guy's responsibility, is that what you're --

25 A. Yes.



1 Q. Okay. And that's fine, but I'm asking
2 you how do you know that that's part of the pest
3 control guy's responsibility?

4 A. Because MARS tells me -- told me that,
5 that I need to -- that I got to do the rail car,
6 not them.

7 Q. So you understood it was your
8 responsibility Presto -- as an employee at Presto-
9 X to take care of aerating the rail cars?

10 A. Correct.

11 Q. You understood that MARS was relying on
12 you to aerate those cars?

13 A. Yes.

14 Q. And to do it properly?

15 A. Yes.

16 Q. Scott Whittington?

17 A. Know of him.

18 Q. Would you recognize Mr. Whittington?

19 A. Probably. Seen him a lot more than I did
20 the others.

21 Q. Is there a reasoning for that?

22 A. No. Just he was in the QA lab the most,
23 so that's where I seen him the most.

24 Q. Nothing from your job required you to
25 have interaction Mr. Whittington?



1 A. No.

2 Q. Any substantive conversations with Mr.
3 Whittington that you recall?

4 A. No.

5 Q. Ever see Mr. Whittington accessing a rail
6 car at MARS while you were on the premises?

7 A. No.

8 Q. Buddy Zimmerman?

9 A. No.

10 Q. Don't know him?

11 A. Know of him, just from out there, but no,
12 I don't know him.

13 Q. Ever see him accessing a rail car?

14 A. No.

15 Q. Any substantive conversations with Mr.
16 Zimmerman that you know of?

17 A. No.

18 Q. Do you know about any of these people
19 that we've just talked about -- and I can list off
20 the list of names again if you want me to. But do
21 you know of any of them having any health problems
22 or claimed health problems?

23 A. No.

24 Q. So if I represented to you today that
25 they're all claiming that they have health



1 problems from working at MARS, that would be news
2 to you?

3 A. Yes.

4 Q. So if you received no training other than
5 on-the-job training -- I want to focus on that for
6 a minute -- through your on-the-job training, were
7 you told that there are specific steps that you
8 need to follow to aerate a rail car in your
9 capacity as an employee for Presto-X?

10 A. No.

11 Q. Are there steps that you're to follow in
12 order to aerate -- aerate a rail car?

13 A. Now I know, yes.

14 Q. How do you know that now?

15 A. By reading documents and stuff.

16 Q. For the first time today?

17 A. No. Just over -- when I got fired and
18 everything else through Schendel and just started
19 developing and reading, learning how to do it.

20 Q. Did you -- do you aerate vehicles for
21 Schendel?

22 A. No. All I did was sell, salesman.

23 Q. So since you've been fired, though, your
24 testimony is you've learned the proper steps to
25 aerate a car?



1 A. Yes.

2 Q. And how did you learn how to properly
3 aerate a car since being fired from Presto-X?

4 A. Reading labels.

5 Q. What labels?

6 A. The fumigation labels.

7 Q. And in what capacity, or how is it coming
8 to be that you're reading labels since being fired
9 from Presto-X?

10 A. Because it was part of the reason why
11 they let me go, failure to follow procedures. So
12 I figure it was best for me to learn and read.

13 Q. And how did you come about seeing these
14 labels?

15 A. You can look 'em up online; you can look
16 'em up anywhere.

17 Q. So since being fired from Presto-X,
18 you've gone and done research on your own about
19 how to properly aerate rail cars?

20 A. Correct.

21 Q. And how many times have you done that?

22 A. Probably just a couple, you know, enough
23 just to refresh my memory and ...

24 Q. And where did you go to find out the
25 proper steps to aerate a car since you've been



1 **fired for -- from Presto-X?**

2 A. Degesch.

3 **Q. Say that again.**

4 A. Degesch. The label MSDS for Fumi-Cel.

5 **Q. So what is it about being fired that**
6 **caused you to go do that research?**

7 A. Just my own personal, you know, knowing.
8 I don't like being fired, I mean, nobody does, so
9 got to figure out why, you know.

10 **Q. I thought you told us earlier, though,**
11 **that you didn't even -- you weren't ever given a**
12 **reason why you were fired?**

13 A. I wasn't.

14 **Q. Then what caused you about being fired to**
15 **go learn how to properly aerate a rail car?**

16 A. 'Cause I wanted to do it again. I mean,
17 I want to get back in that line of business, the
18 business I like.

19 **Q. When did you first learn what a Drager**
20 **tube is after you were hired by Presto-X?**

21 A. In the summer of 2012.

22 **Q. Is that the same year you were hired?**

23 MR. MACH: I think he said 2012.

24 A. '12.

25 BY MR. SAPPINGTON:



1 Q. Oh, okay. Thank you.

2 A. Yes.

3 Q. That's the first time -- how did you
4 learn what a Drager tube is?

5 A. That's how I learned. They told me that
6 we was gonna have to go out there and do it at
7 MARS.

8 Q. And that's in the context of the upcoming
9 OSHA inspection?

10 A. Yes.

11 Q. So that's the first time you ever knew
12 what a Drager tube was?

13 A. Yes.

14 Q. Is that the first time you'd ever seen
15 one?

16 A. Yeah.

17 Q. Was there any other method of monitoring
18 or measuring phosphine levels, that you're aware
19 of, before learning what a -- a Drager tube was?

20 A. No.

21 Q. So that -- the Drager tube in 2012 was
22 the first time you ever learned there was anything
23 that allowed you to measure levels of phosphine?

24 A. Correct.

25 Q. And it never occurred to you that there



1 would be such a thing, because it never occurred
2 to you that understanding what levels of phosphine
3 were dangerous was something you needed to know in
4 your capacity as an employee at Presto-X, right?

5 A. Correct.

6 Q. Now, did you ever see any MARS employees
7 with these electronic measuring devices before
8 2012?

9 A. Not to my knowledge.

10 Q. So I take it from that -- and correct me
11 if I'm wrong -- the first time you ever saw a MARS
12 employee with a measuring device was in 2012 as
13 well?

14 A. To my knowledge.

15 Q. And would that have been before or after
16 your meeting where you were told about the OSHA
17 inspection with Mr. Fears?

18 A. I don't recall.

19 Q. Did you ever ask anyone at MARS, hey,
20 what are those things you're carrying around here?

21 A. No.

22 Q. Ever ask them why they were carrying them
23 around?

24 A. No.

25 Q. Did you have an appreciation that that



1 was a device to measure phosphine levels?

2 A. Not really.

3 Q. And how long -- as of 2012, how long had
4 you been working at the MARS facility for Presto-
5 X?

6 A. What's that again?

7 Q. How many years had you been at the MARS
8 plant doing any work as of 2012?

9 A. I'd say probably since '06, somewhere
10 around there.

11 Q. Okay. So at least six years, can we
12 agree on that?

13 A. Yeah, yes.

14 Q. So you're there working for six years,
15 and you don't see people carrying around these
16 monitors, and then they're suddenly carrying
17 around monitors?

18 A. Yes.

19 Q. And you didn't ask anyone why that was?

20 A. No.

21 Q. Did that strike you as odd that they
22 started carrying these monitors?

23 A. No. I mean, I really didn't.

24 Q. Just didn't give any thought to it at
25 all?



1 A. No, I was just doing my job.

2 Q. Well, does part of your job include
3 understanding how to measure phosphine?

4 A. What's that?

5 Q. Does part of your job for Presto-X
6 require that you understand how to measure
7 phosphine?

8 A. If I was given the procedure, yes, but I
9 wasn't, so ...

10 Q. You only know that now --

11 A. Right.

12 Q. -- is what you're telling us?

13 A. Correct.

14 Q. You didn't understand that at any point
15 in time when you were working for Presto-X?

16 A. No. Or I did it -- did it that way.

17 Q. What's the purpose of aerating a car?

18 A. So you can clear it so it can be tested.

19 Q. Tested for what?

20 A. Like they probe them to check for bugs or
21 if the ingredients are done right or ...

22 Q. Did you ever see anyone from MARS ever do
23 any testing on a car that had been fumigated?

24 A. Aerated but not fumigated.

25 Q. And what sort of testing did you see a



1 **MARS employee doing on an aerated rail car?**

2 A. They would just carry a bucket, and then
3 they have this little gray bucket and they'd have
4 something that they would stick down in there to
5 sample it. I don't recall what it was, though.

6 **Q. Do you know what they were sampling?**

7 A. No.

8 **Q. Who did you see do that?**

9 A. Multiple people. I mean ...

10 **Q. What -- give me a timeframe here, if you**
11 **can recall, in terms of the earliest you saw**
12 **anyone doing that.**

13 A. I would say 2012. But that date and time
14 and all that, I don't -- I can't recall.

15 **Q. And how did you -- how did you come about**
16 **to see someone from MARS using that bucket and**
17 **sticking something down into an aerated rail car?**

18 A. 'Cause I was out doing service.

19 **Q. Was it on a car that you had already**
20 **aerated?**

21 A. No.

22 **Q. It was on one that you had not yet**
23 **aerated --**

24 A. Right.

25 **Q. -- but that had been fumigated?**



1 A. That hadn't been fumigated, yes.

2 Q. Did you understand that, in a situation
3 where there's a car that's been fumigated that
4 hasn't been aerated by you, that no one should be
5 accessing that car besides you?

6 MR. MACH: I think he said he hadn't
7 been --

8 A. Hadn't.

9 MR. MACH: -- been fumigated, is what he
10 said.

11 A. Yeah.

12 BY MR. SAPPINGTON:

13 Q. I apologize. Okay. All right. So is --
14 okay. It was not fumigated, therefore, it didn't
15 need to be aerated?

16 A. Correct.

17 Q. I misunderstood. I apologize. So going
18 back then to the steps that you've learned to
19 properly aerate a car since you've been fired from
20 Presto-X. What are those steps?

21 A. That you gotta get 'em down to 0.3 parts
22 per million in order to clear any rail car. So, I
23 mean ...

24 Q. And I appreciate that. I want to talk
25 about the steps, though, not just the end result



1 of getting it down below .3. So I'm asking what
2 are the steps to get to that result?

3 A. You climb up on the rail car and put the
4 -- the poly tube down inside the rail car, drop
5 the line down, get the Drager, squeeze the tube,
6 you get -- that's how you get your reading.

7 Q. Now, how does that differ from what you
8 were trained to do for Presto-X?

9 A. What I was trained do is just pull the
10 placard, wait 15 minutes -- or pull the fumigants
11 out of there, take it all down, wait about 15
12 minutes, then it's good to go.

13 Q. What did you understand was happening in
14 that 15 minutes that you were waiting?

15 A. It was just airing out.

16 Q. Did you have an understanding that these
17 rail cars were being trucked, shipped to the MARS
18 facility from somewhere else?

19 A. No.

20 Q. Did you have an understanding that the
21 rail cars that you were aerating had been
22 fumigated?

23 A. Yes.

24 Q. Did you have an understanding as to when
25 those were fumigated?



1 A. Sometimes, because it said the date on
2 there, but sometimes it didn't.

3 Q. And your understanding about when a
4 particular rail car would have been fumigated
5 would come from a placard?

6 A. Yes.

7 Q. Did you understand who was doing the
8 fumigating?

9 A. Sometimes you could see it on there and
10 sometimes you could not.

11 Q. Do you know who was -- any of the
12 companies that were doing fumigation?

13 A. No.

14 Q. For MARS at any point in time?

15 A. No.

16 Q. Do you know if Presto-X did fumigation
17 for rail cars that ended up at the MARS Joplin
18 facility?

19 A. I can't recall. I'm sure they did, but I
20 -- I can't recall.

21 Q. So as to how long a car had been
22 fumigated before you got there to do aeration, you
23 never knew at any point in time, fair?

24 A. Correct.

25 Q. As far as you know, a car could have been



1 fumigated for a week before you got there?

2 A. Could have been.

3 Q. If I'm mistaken in this, please tell me.

4 Did you say earlier that you never did any rail
5 car aeration for anyone other than MARS while you
6 were at Presto-X?

7 A. Correct. As far as aeration on a rail
8 car; that's correct.

9 Q. Did you do aeration of any other vehicles
10 besides rail cars for anyone else besides MARS
11 while you were at Presto-X?

12 A. No, not -- no, not aerations I didn't.

13 Q. So do I take it from that the only
14 aeration that you ever did while you were an
15 employee for Presto-X was at MARS?

16 A. Well, fumigate and aerate is -- I mean,
17 are you talking about -- like I fumigated the
18 stuff and then aerated it.

19 Q. And I'm talking about any type of
20 aeration of any vehicle.

21 A. Yes.

22 Q. So you did that for companies other than
23 MARS while you were at Presto-X?

24 A. I only did -- I only fumigated cars, like
25 on rails over at -- it's over there by Butterball.



1 There's a company that I did it for. It was a
2 rail car. They just went out, but we did not get
3 'em back to aerate 'em.

4 Q. So you fumigated cars -- or vehicles for
5 other companies besides MARS?

6 A. Yes.

7 Q. But you never aerated --

8 A. Yes.

9 Q. -- true?

10 A. True.

11 Q. Have you spoken -- have you ever spoken
12 with Frank Vasquez?

13 A. Yes.

14 Q. Is that while you were still employed by
15 Presto-X?

16 A. Yes.

17 Q. On how many occasions have you spoken
18 with Frank Vasquez?

19 A. One -- only once, that I can recall.

20 Q. And do you recall when that was, if not
21 specifically, at least just generally?

22 A. No.

23 Q. Was it before you were fired, I take it?

24 A. Yes.

25 Q. Are you able to say whether it was before



1 or after January of 2012?

2 A. I would say it would be before.

3 Q. Okay. Do you recall any part of that
4 conversation?

5 A. No.

6 Q. Do you recall even generally what that
7 conversation was about?

8 A. No.

9 Q. Do you recall whether it was about any
10 business or whether it was just pleasantries, idle
11 conversation?

12 A. It was about working there, you know, or
13 -- you know, 'cause he was a safety guy. That's
14 when I first started, that's what I'm talking
15 about. I don't know how long ago; I don't know
16 exactly the date, I just know that we had talked
17 and told me a little bit about the plant, and that
18 was pretty much all I ever talked to him. I
19 didn't talk to him anymore.

20 Q. And certainly you haven't talked with him
21 since you were fired from Presto-X?

22 A. No.

23 Q. You understood that Frank Vasquez was the
24 safety coordinator for MARS?

25 A. Yes.



1 Q. You were shown a copy of -- I think it's
2 Exhibit 13. I'm gonna find it here. It's the
3 MARS Operating Procedure. You can pull that out?

4 A. Yes.

5 Q. Is it 13?

6 A. Yeah, it is 13.

7 Q. There's a reference in there to the plant
8 manager.

9 A. Yes.

10 Q. Specifically under -- on the first page
11 of Exhibit 13, it's Bates stamped Page 816 under
12 the heading, Responsibility. Do you see that?

13 A. Yes.

14 Q. It says, Plant managers are responsible
15 for ensuring that the plant is compliant to all
16 federal, state and/or local regulations. And I
17 believe you talked about that with Mr. Mach. Do
18 you remember that?

19 A. Yes.

20 Q. Do you recall, or did you know who the
21 plant manager was at MARS, the facility in Joplin?

22 A. No, I don't. I mean, they switched
23 hands, I know that. But I never seen the plant
24 manager.

25 Q. On the second page of this Exhibit 13,



1 Bates stamped Page 817, there's a section,
2 Clearing Railcars under fumigation?

3 A. Yes.

4 Q. I don't think that you talked about this
5 with Mr. Mach, so I want to address that. The
6 first section under there says, The plant manager
7 will be responsible for compliance to all state
8 regulations for clearing rail cars under
9 fumigation. Did you see that?

10 A. Yes.

11 Q. Did I read that correctly?

12 A. Yes.

13 Q. Had you -- I just can't recall. Had you
14 ever seen this policy before today?

15 A. No.

16 Q. Do you recall if your one conversation
17 with Frank Vasquez had anything to do with the
18 procedure for aerating rail cars at the MARS
19 facility?

20 A. No.

21 Q. That was a bad question on my part. I
22 asked do you recall. Did it have anything to do
23 with aerating rail cars at the MARS facility, to
24 your knowledge?

25 A. No.



1 Q. Okay. Is there anything that you know of
2 that tells you that Frank had any responsibility
3 for making sure that you properly aerated rail
4 cars at the MARS facility?

5 A. No.

6 Q. We were talking about the steps for
7 properly aerating a car. Do you now know that a
8 proper step in getting on top of rail car is to
9 wear a harness?

10 A. Yes.

11 Q. And I know you talked about that with Mr.
12 Mach and, I don't want to reiterate what you've
13 already testified to, but I just want to be clear
14 in my mind. When did you learn that you were
15 supposed to wear a harness if you're getting on
16 top of a rail car?

17 A. In the summer of 2012.

18 Q. And was that through that same meeting
19 with Mr. Fears about the upcoming OSHA inspection?

20 A. Yes.

21 Q. Did -- is it Mr. Franklin that trained
22 you?

23 A. Yes.

24 Q. Did he ever -- did you ever see him wear
25 a harness?



1 A. No.

2 Q. Is he the only one that you ever saw
3 aerate a car for Presto-X?

4 A. Yes.

5 Q. You were asked some questions about the
6 -- I think single time that a tractor trailer came
7 onto the MARS facility and had gas, that you were
8 aware of. There was only one time that you're
9 aware of, right?

10 A. Yes.

11 Q. And that load never even made it onto the
12 MARS plant, right, because it was rejected?

13 A. It made it to the -- their parking lot
14 where they -- yeah.

15 Q. Fair point. Finish. I didn't mean to
16 cut you off. Finish.

17 A. Their parking lot where they set their
18 trailers at, but they did not make it to the plant
19 itself.

20 Q. And that's what I meant. Okay. Now, did
21 you personally make Frank Vasquez aware that there
22 was a truck that had come onto the parking lot,
23 but not yet made it to the facility that had been
24 rejected?

25 A. No.



1 Q. Do you have any information whatsoever
2 that tells you that Frank Vasquez was made aware
3 of that at the time it happened?

4 A. No.

5 Q. The -- I don't know if you said it was a
6 binder or whatever that you had in your truck?

7 A. Mmm-hum.

8 Q. Was it a binder?

9 A. Yeah.

10 Q. You said MSDSs were in it, right?

11 A. Yes.

12 Q. What else was in it?

13 A. Labels.

14 Q. Anything else besides MSDSs and labels?

15 A. No.

16 Q. Did you -- did it have any sort of label
17 on the front?

18 A. No.

19 Q. Like, did it say handbook or ...

20 A. No.

21 Q. How would you refer to that?

22 A. As a label and MSDS.

23 Q. How would you call that document, a
24 binder, what would you call it?

25 A. I just called it binder, yeah.



1 Q. Okay. Now, how were you paid by Presto-
2 X?

3 A. Commission plus salary.

4 Q. And what was your salary?

5 A. It was \$2,000.

6 Q. And what was your commission?

7 A. Varied. Never knew. No way to tell.

8 Q. Did it depend on something in particular?
9 Like was it --

10 A. Just --

11 Q. -- per rail car or ...

12 A. No. I mean, you got paid off of -- you
13 got so much of your ticket, whether it was 26
14 percent to 30 percent. You got paid that ticket
15 price minus, you know, you know ...

16 Q. So it was based on the price of a ticket?

17 A. Yeah.

18 Q. So to the extent you received then on-
19 the-job training, that was from other employees or
20 an employee of press Presto-X, right?

21 A. Correct.

22 Q. Now, the -- you testified about talking
23 with Frank that one time. And that was, as I
24 understand it, a general introduction to the MARS
25 plant?



1 A. Correct.

2 Q. Did you talk with anyone else at MARS
3 about sort of getting acclimated to the facility
4 and working there besides Frank?

5 A. No.

6 Q. Besides -- strike that. With respect to
7 aeration, did that ever require you to go into the
8 facility?

9 A. The aerations?

10 Q. Yes.

11 A. No.

12 Q. All your aeration work at all times was
13 done outside the facility?

14 A. Correct.

15 Q. You were asked about -- you said you took
16 -- I think you said spent cells or spent
17 materials --

18 A. Yes.

19 Q. -- to your home?

20 A. Yes.

21 Q. Would you have been under Presto's
22 policies and procedures, would you have been
23 allowed to throw those away at MARS?

24 A. No.

25 Q. Okay. And that's something you knew?



1 A. Yeah. They told me that I just had to
2 take them home and deactivate them. Presto-X did.

3 Q. And from that, you knew that you weren't
4 to dispose of them at MARS?

5 A. Right.

6 Q. You were shown Exhibit 6B. It looks like
7 this.

8 A. Yes.

9 Q. Under the service description on this
10 document, it says fumigation.

11 A. Yes.

12 Q. Would there be times that you would do
13 fumigation at the MARS facility for Presto-X but
14 not do aeration?

15 A. What do you mean by that?

16 Q. Well, this says fumigation and not
17 aeration.

18 A. Yeah. We'd fumigate it and then we'd
19 probably come back a couple days later and aerated
20 it.

21 Q. Okay. But for this particular service
22 call that's referenced here, if it just says
23 fumigation, that means you just did fumigation,
24 right?

25 A. Yes.



1 Q. If you did aeration either instead of
2 fumigation or in addition to fumigation, that
3 would have been noted here, right?

4 A. Yes.

5 Q. So this visit that's documented in
6 Exhibit 6B, unless I just missed it, I don't see
7 anywhere that you did any aeration here. Is that
8 accurate?

9 A. That would be accurate.

10 Q. And did I understand you to say when you
11 did fogging, ULV is that what it is --

12 A. ULV, yes.

13 Q. -- the plant had to be -- the plant
14 couldn't be operating while you were doing that;
15 is that right?

16 A. Yes.

17 Q. So anytime you did ULV, the plant would
18 not be operating?

19 A. That is correct.

20 Q. Okay. You said you got a lot of awards
21 for working for Presto-X?

22 A. Yes.

23 Q. Did you feel like those awards were
24 deserved?

25 A. Yeah.



1 Q. You said you've learned about the proper
2 steps for aeration since leaving Presto-X?

3 A. Yes.

4 Q. Did you ever receive any awards for
5 aeration work or related to any work that you did
6 aerating rail cars at MARS?

7 A. No.

8 Q. You were asked a lot of questions about
9 whether or not you documented various things. We
10 say some examples on logs where you began
11 documenting placard counts, like how many placards
12 were on a rail car?

13 A. Yes.

14 Q. Before you started doing that, were you
15 aware of one way or another whether that's
16 something that you needed to document?

17 A. No.

18 Q. So the first time you started document --
19 documenting the number of placards on a rail car
20 was the first time that you thought -- you knew
21 that you were supposed to be doing that?

22 A. Yes.

23 Q. Would that be the same with doing the
24 readings?

25 A. Yes.



1 Q. You talked about your licensing and
2 certification. Did you hold multiple licenses for
3 purposes of doing your work at Presto-X?

4 A. Yes.

5 Q. Can you just list those off? Unless it's
6 -- I mean, if there's a ton, I don't want to --

7 A. No. It's just 6, 7A, 7B and 7C, which is
8 right of way, general termite and fumigation.

9 Q. For purposes of the fumigation license,
10 what did you have to do to get that license?

11 A. Just take a 50-question test.

12 Q. And how did you get the information; how
13 did you learn the information to take that test?

14 A. I just went and took it.

15 Q. Is that licensing test on fumigation, is
16 that the one that you failed seven or eight times,
17 or is that something different?

18 A. Yes.

19 Q. It is that one?

20 A. Yes.

21 Q. And so did you ever read any materials to
22 prepare for that test?

23 A. No.

24 Q. Now, did you get some sort of
25 certification as well, different than licensing,



1 for working for Presto-X?

2 A. No.

3 Q. Okay. So all of these tests that you
4 discussed with Mr. Mach, that was all for purposes
5 of licensing?

6 A. Yes.

7 MR. SAPPINGTON: That's all the questions
8 I have.

9 CROSS-EXAMINATION

10 BY MR. VANFLEET:

11 Q. Mr. Tyree, my name is Ryan VanFleet. I'm
12 counsel for Presto-X. I want to talk about the
13 binder that you had in your Presto-X truck.

14 A. Okay.

15 Q. Who assembled that binder?

16 A. I don't have a clue.

17 Q. Did you -- you never added any documents
18 to it?

19 A. No.

20 Q. Ever took any documents out of it?

21 A. We took some labels and MSDSs from time
22 to time, we'd take 'em in and out and ...

23 Q. You say we. Who is we?

24 A. Like everybody would at the meeting.

25 That's what we'd do, we'd take out certain label,



1 put another in the back in there.

2 Q. Okay. Let's talk about the meetings that
3 you had. How often would you have meetings at the
4 Presto-X office in Springfield?

5 A. Every 30 days.

6 Q. What did you discuss at those meetings?

7 A. A lot of times just numbers, you know,
8 we'd just go over, you know, what we've done,
9 production value, sales, just miscellaneous items.

10 Q. Sales?

11 A. Yeah.

12 Q. Did you ever go over any procedures?

13 A. Not that I recall.

14 Q. Is it fair to say that there could have
15 been discussions about procedures and you just
16 don't remember?

17 A. It's fair to say that.

18 Q. You had a meeting at the Springfield
19 Presto-X office once a month for your entire
20 tenure with Presto-X; is that fair?

21 A. Yeah, except during when we had our
22 annual conference, you know, we didn't have a
23 meeting those months, so --

24 Q. Okay. So once a year you wouldn't have
25 those monthly meetings?



1 A. Yeah.

2 Q. During those meetings, do you recall ever
3 receiving any kind of standard or procedure or any
4 similar document?

5 A. I don't recall.

6 Q. Do you recall ever being told that a new
7 procedure had been released by the company and
8 that you needed to put it in your binder?

9 A. No.

10 Q. No recollection of that at all?

11 A. No.

12 Q. Okay. Is it fair to say that that could
13 have happened and you just don't remember?

14 A. Yes.

15 Q. When did you first receive the binder
16 that you kept in your truck?

17 A. I didn't receive it. Like I say, it was
18 in my truck already, so ...

19 Q. Who had the truck before you did?

20 A. I don't have any idea, I really don't.

21 Q. Mike Franklin didn't have it before you?

22 A. No. He was still working there when I
23 was there. Yeah.

24 Q. At the end of your employment with
25 Presto-X, did you return that binder?



1 A. If it was in the truck.

2 Q. It just stayed in the truck?

3 A. Yeah. If it was in the truck, I did.

4 Q. You testified that following your
5 termination, you researched the proper procedure
6 for aerating a rail car, correct?

7 A. Correct.

8 Q. And I believe that you testified that the
9 way that you did that is that you looked up the
10 MSDSs?

11 A. Yeah. Labels and MSDSs on Fumi-Cel
12 strips.

13 Q. Okay. And by labels, are you referring
14 to the applicator manuals?

15 A. Yes.

16 Q. Okay. And those would be like the
17 applicator manuals that Mr. Mach questioned you on
18 earlier this morning?

19 A. Yes.

20 Q. Okay. And those you had access to in
21 your truck, correct?

22 A. I -- I -- not to my -- I probably did,
23 but I can't answer that for sure.

24 Q. Okay. Sir, did you not testify earlier
25 on several occasions that you had MSDSs and labels



1 in your truck --

2 A. I did have labels and MSDSs in the truck.

3 Q. Okay. And I believe you testified,
4 before fumigating, using those products, you would
5 review those applicator manuals before doing so,
6 correct?

7 A. Yes.

8 Q. Is there any reason that you could not
9 have reviewed those labels and MSDSs regarding
10 procedures for aeration during your employment
11 with Presto-X?

12 A. I just did it the way Michael told me to
13 do it, so I didn't, you know, look into doing it
14 differently.

15 Q. Did Mr. Franklin teach you how to
16 fumigate?

17 A. He taught me -- yeah, he taught me how to
18 do everything.

19 Q. Did he review the labels and MSDSs before
20 fumigations?

21 A. Not all the time, no.

22 Q. Okay. But you elected to do that once
23 you started fumigating, correct?

24 A. Yes.

25 Q. You also reviewed earlier with Mr. Mach a



1 number of certifications for training that you
2 received with Presto-X --

3 A. Yes.

4 Q. -- do you remember that? Okay. For
5 example, you would receive a certification for
6 completion of a course on -- I don't remember what
7 all they were. But you received certifications
8 for course work, correct?

9 A. Mmm-hum.

10 Q. Is that a yes?

11 A. Yes.

12 Q. Okay. In conjunction with the training
13 you received, which led to those certifications,
14 did you receive any written documentation?

15 A. Not to my knowledge.

16 Q. So what were you receiving training on?

17 A. I guess it's my job.

18 Q. I understand that. But surely there was
19 written documentation that you were reviewing as
20 part of that course work, correct?

21 A. You mean like the -- the stuff I took?

22 Q. Let's back up. Can I have the documents
23 that have been marked?

24 A. Yep.

25 MR. VANFLEET: You can have those back,



1 because I don't want them to get lost.

2 BY MR. VANFLEET:

3 Q. Okay. Sir, I'd like to hand you what was
4 previously marked as Exhibit Number 3 and draw
5 your attention to this page that I've marked that
6 says Certificate of Training.

7 A. Okay.

8 Q. You can take that. What does that
9 Certificate of Training say that it was for?

10 A. IPM Food Plant Initial Training.

11 Q. And I believe you testified that you
12 recall receiving that certification; is that
13 right?

14 A. Yes.

15 Q. Okay. And in conjunction with receiving
16 that certificate, you reviewed course work for it,
17 correct?

18 A. Yeah. I assume we got some literature on
19 it, and that's how come we got the completion
20 here, is because we looked over some books.

21 Q. Okay. So when you testified that you
22 didn't receive any written materials for training,
23 that's not true; is it?

24 A. Well, I mean, training and training is
25 different. I mean, I'm saying, like, I probably



1 received something to get this training. But do I
2 -- did I get training on everything, did I get --
3 no, I don't think I did.

4 Q. Okay. You've also testified that it's
5 possible that you received certain standards and
6 procedures during those monthly meetings and you
7 just don't remember --

8 A. Correct.

9 Q. -- is that right?

10 A. Correct.

11 Q. Isn't it fair to say that rail car
12 aeration procedures could have been one of those
13 policies and procedures that you would have
14 received but don't recall receiving?

15 A. Could have been.

16 Q. I want to talk about your conversation
17 with Sam Fears regarding the upcoming OSHA
18 inspection. Okay?

19 A. Okay.

20 Q. And I believe that you stated that this
21 took place within a week before the inspection --

22 THE REPORTER: I -- I -- I missed
23 something. You were talking over each other.

24 THE WITNESS: Okay.

25 MR. VANFLEET: Can we just start up?



1 THE REPORTER: I want to talk about your
2 conversation with Sam Fears regarding the upcoming
3 OSHA inspection. Okay? Okay.

4 MR. VANFLEET: We'll just start over.

5 A. Okay.

6 BY MR. VANFLEET:

7 Q. The inspection with OSHA occurred on July
8 31, 2012, correct?

9 A. Correct.

10 Q. Okay. And you believe that the
11 conversation you had with Sam Fears about that
12 inspection took place within a week before that,
13 correct?

14 A. Correct.

15 Q. Okay. I want to talk about the
16 conversation.

17 A. Okay.

18 Q. Was that by phone or was it in person?

19 A. It was in person.

20 Q. Okay. Did it take place at the
21 Springfield plant?

22 A. Yes.

23 Q. Do you remember where inside the office
24 you were?

25 A. No, I don't.



1 Q. Were you already at the office for some
2 reason, or had Sam called you to come to the
3 office?

4 A. I'm pretty sure I got called up there.

5 Q. Okay.

6 A. I can't recall exactly, but I'm pretty
7 sure I was.

8 Q. And at that point, Sam indicated to you
9 that OSHA was going to be doing an inspection; is
10 that right?

11 A. Yes.

12 Q. Okay. Can you tell me what he said?

13 A. He just basically said hey, we need to
14 get prepared for this inspection from OSHA, and
15 that we need to, you know, have all our stuff
16 there and we need -- you need to pick this up, and
17 I'll bring this down on that date, so ...

18 Q. Okay. You need to pick what up?

19 A. Either -- I don't remember at the time
20 the exact words, so I don't want to sit there and
21 say if I do. But it -- either the respirator or
22 the Drager tubes or the line or, you know, all the
23 above, I mean ...

24 Q. But you believe that he specifically
25 referenced those items --



1 A. Yes.

2 Q. -- during that conversation?

3 A. He did.

4 Q. Okay. And what was your response to him?

5 A. I said okay.

6 Q. And that was it?

7 A. Yeah.

8 Q. Okay. Nothing else about that
9 conversation that you can remember?

10 A. No.

11 Q. Okay. Did you speak with him again
12 before the OSHA inspection on July 31st?

13 A. When he came down.

14 Q. When he came down where?

15 A. Come down to the plant on the 31st.

16 Q. Okay. You met at the plant for the
17 inspection --

18 A. Yeah, we met at the plant, yeah.

19 Q. Okay. I'm sorry. Just be sure to let me
20 finish --

21 A. Okay.

22 Q. -- that way she can get us both down.
23 What do you recall about any conversations you had
24 with Mr. Fears right before the inspection on July
25 31st?



1 A. Nothing in particular. I mean ...

2 Q. Okay. Previously I think you testified
3 that you had indicated to Sam that you weren't
4 following procedure during that meeting. Is that
5 correct?

6 A. Not to my knowledge.

7 Q. Okay. Did you say anything about the
8 procedure you were using for aerating rail cars
9 during that meeting with Mr. Fears prior to the
10 inspection?

11 A. Not to my knowledge.

12 Q. Okay. So if you testified to that
13 earlier, that would not be correct?

14 A. What do you mean by that?

15 Q. Okay. My recollection -- and I could be
16 way off -- my recollection is that you testified
17 that you indicated to Mr. Fears that you were not
18 necessarily following procedure in aerating rail
19 cars during that meeting before the OSHA
20 inspection. Is it your testimony that that is not
21 correct?

22 A. To my knowledge, that's not correct.

23 Q. Okay. At some point, did you indicate to
24 Mr. Fears that you were not following procedure?

25 A. Yeah, I did at some point, because what



1 had took place from -- I said I ain't doing this
2 before, you know, I wasn't -- we never used the
3 mask; we never used the respirator, nothing before
4 so ...

5 Q. Okay. Do you recall when that was?

6 A. No.

7 Q. Would it have been before or after the
8 OSHA inspection?

9 A. I can't recall. I mean, we're talking
10 about two and half years ago. I -- my brain's not
11 -- I'm not gonna sit here and -- I don't -- you
12 know, I don't know.

13 Q. Okay. When OSHA was there to inspect
14 your procedure, you went through the process,
15 correct?

16 A. Yes.

17 Q. All right. And you used the Drager tube,
18 correct?

19 A. Yes.

20 Q. And you were able to follow the
21 procedure, correct?

22 A. Yes.

23 Q. How did you know what procedure to
24 follow?

25 A. I didn't. I just got told by Sam what



1 procedure to follow.

2 Q. When did you get told by Sam?

3 A. Like that morning of the deal.

4 Q. Okay. I just asked you about any
5 conversations you had with Mr. Fears before that
6 inspection, and you said it was about nothing in
7 particular.

8 A. Well, I mean, it was nothing particular.
9 But I'm just saying, like when we was at the
10 office, that's why I got called in the office was,
11 hey, let's talk about this OSHA deal; we need to
12 have a respirator; we need to have our tubes and
13 everything. It's the same conversation we had.

14 Q. Okay. And so I understand that you
15 testified that he indicated you need to have a
16 respirator and a harness, correct?

17 A. Yes.

18 Q. Okay. Explain to me then what else he
19 told you about the process for aerating rail
20 cars --

21 A. That's all he told me.

22 Q. -- in that meeting? That's all he told
23 you?

24 A. Mmm-hum.

25 Q. Okay. Did he show you how to use a



1 **Drager tube?**

2 A. Yeah.

3 **Q. How did he do that?**

4 A. He showed me whenever we got up there and
5 did it, whenever I got up there and did it.

6 **Q. So he showed you how to use a Drager tube
7 in front of OSHA?**

8 A. OSHA -- OSHA wasn't -- really didn't even
9 see me hardly. They were on the back side of this
10 fence. Everybody's -- I'll show you. OSHA is
11 over here. I'm way up here. I mean, they're not
12 -- I mean they're, like right here. They can't --
13 they don't even see me hardly.

14 **Q. So is it your testimony that Mr. Fears
15 was on top of the rail car with you?**

16 A. No. He was on the bottom with me.

17 **Q. On the bottom?**

18 A. I had -- I had to get up there and open
19 them and then get down on the bottom to test it.

20 **Q. Okay. And so he was with you. And what
21 did he do?**

22 A. We just, you know, clipped off the little
23 thing and you stick in the tube and you press --
24 squeeze the little thing that reads the Drager.

25 **Q. Okay. And during that time, did you know**



1 how to use did Drager tube?

2 A. No.

3 Q. And prior to the inspection, did you
4 think about figuring out how to use that Drager
5 tube?

6 A. No.

7 Q. Didn't cross your mind?

8 A. No.

9 Q. Did you know that a Drager tube would
10 need to be used?

11 A. Yeah, 'cause he told me.

12 Q. Okay. When you were on top of the rail
13 car, you had to put the Drager pump tubing down
14 into the rail car, correct?

15 A. Yes.

16 Q. Okay. How did you know how to do that?

17 A. That's what he told me.

18 Q. I want to talk about the truck or the
19 tractor trailer that had been delivered to MARS.
20 You testified that you had to use a Drager tube to
21 test?

22 A. Yes.

23 Q. Okay. When did that occur?

24 A. I don't know.

25 Q. Okay. Was it before or after the OSHA



1 inspection?

2 A. I can't recall.

3 Q. Okay.

4 A. I don't have any idea.

5 Q. Okay. I mean, can you narrow it down to
6 a year?

7 A. Man, I'm telling you, my memory in the
8 last year has went downhill. I'm not gonna lie to
9 ya.

10 Q. Okay. Is there a particular reason?

11 A. I don't know. I'm just, you know ...

12 Q. But you've noticed in the last year that
13 your memory has been --

14 A. Yeah. I remember certain things, I don't
15 remember certain thing.

16 Q. And that's a new thing that's occurred in
17 the last year?

18 A. Yeah.

19 Q. Okay. Have you spoken with a doctor
20 about that issue?

21 A. Yeah. But they can't find nothing wrong
22 with me, so ...

23 Q. Okay. Have they performed tests --

24 A. Yeah.

25 Q. -- to see what's wrong?



1 A. They've done a couple of tests on me, but
2 nothing they can figure out.

3 Q. Okay. Is this affecting your short-term
4 memory and your long-term memory, or one or the
5 other?

6 A. Probably both.

7 Q. Okay. And have you been diagnosed with
8 anything?

9 A. No.

10 Q. Okay. Are you continuing to seek
11 treatment to try to figure out what's wrong?

12 A. I've tried, you know, but you get -- you
13 gotta have the funds to do it, so ...

14 Q. Can you tell me what doctors you've seen
15 for that?

16 A. Yeah. Doctor -- doctor in Baxter
17 Springs, Kansas. He sat there at the -- I don't
18 remember the name of it. But it's a clinic right
19 there in Baxter by Wal-Mart.

20 Q. And, I'm sorry, what -- Doctor, what was
21 his name?

22 A. I don't know his name. You'll have to
23 call and get it. I don't know.

24 Q. Is there a name for the medical facility?

25 A. It's Baxter Medical Clinic, I believe.



1 You'll find it if you look it up in Baxter
2 Springs. I don't remember the name.

3 Q. Have you seen anybody else?

4 A. No, no.

5 Q. Okay. In any event, because of this
6 condition that you've had for the last year, it's
7 fair to say that your memory is not what it used
8 to be?

9 A. Correct.

10 Q. And, in fact, you would say that your
11 memory is not reliable?

12 A. No, it's probably not.

13 Q. Okay.

14 A. I just remember bits and pieces of stuff.
15 I don't remember everything.

16 Q. Previously you testified about the truck
17 bay where tractor trailers would offload their
18 commodity, correct?

19 A. Yeah.

20 Q. Why would you have been in there in the
21 truck bay?

22 A. 'Cause I got the traps I service in
23 there.

24 Q. Okay. Would you be servicing traps while
25 commodity is being unloaded?



1 A. Yes.

2 Q. During the conversation that you had with
3 Sam Fears prior to the OSHA inspection, did he ask
4 you if you were following proper procedure?

5 A. I don't recall.

6 Q. Okay. Do you recall if you told him that
7 you weren't following proper procedure?

8 A. I do not recall.

9 Q. During that meeting, did you have an
10 understanding that you probably weren't following
11 proper procedure?

12 A. I did, because it was what we were going
13 to do versus what we weren't doing in the past.

14 Q. Explain that.

15 A. I mean, told me how to use the respirator
16 and Drager tubes and Drager lines and all that,
17 whenever -- we've never done it before.

18 Q. Okay. Prior to the time of this OSHA
19 inspection, was there ever documentation where you
20 would have to write down zero parts per million or
21 .3 parts per million?

22 A. No.

23 Q. You never recorded that the rail car was
24 clear with that kind of a reading?

25 A. No.



1 Q. And, again, prior to -- prior to the OSHA
2 inspection, you have reviewed through these
3 applicator manuals, correct?

4 A. Yes.

5 Q. Okay. For Phostoxin or Fumi-Cel, one of
6 the phosphate products?

7 A. Fumi-Cel primarily.

8 Q. Fumi-Cel?

9 A. Yeah.

10 Q. Okay. And in reviewing through that
11 applicator manual, had you ever seen -- well,
12 strike that. In reviewing through that applicator
13 manual, there were references to levels of
14 phosphate, correct?

15 A. Correct.

16 Q. Like .3 parts per million, one parts per
17 million, correct?

18 A. Correct.

19 Q. Okay. But at no point in seeing those
20 levels did you think that there was a way to
21 measure it?

22 A. No, because I just did aeration the exact
23 same way I always did. I mean, that's the way I
24 got trained to do it and that's just the way I did
25 it.



1 Q. Okay. You talked about the meeting in
2 which you were terminated from your employment
3 with Presto-X, correct?

4 A. Yes.

5 Q. And I believe that you indicated that you
6 weren't told why you were being terminated; is
7 that fair?

8 A. Yes.

9 Q. Okay. And so what -- and I apologize if
10 you testified to this earlier, but I don't recall
11 what it was. What was told to you?

12 A. I just got told I'm terminated.

13 Q. Okay. And that's it?

14 A. Yeah.

15 Q. How long did this meeting last?

16 A. Not very long.

17 Q. Okay. Did anybody else in that room say
18 anything?

19 A. Sam Fears wasn't in a room, he was
20 outside.

21 Q. Okay. Did you ask any questions?

22 A. No.

23 Q. Did you wonder why you were being
24 terminated?

25 A. In my own mind I did, but, you know.



1 Q. Why didn't you ask?

2 A. I didn't feel the need, I guess. I mean,
3 just -- told you're getting fired, so obviously
4 they know why they fired me.

5 Q. Isn't it fair that you knew why you were
6 being terminated?

7 A. I can't say I knew exactly, I can say,
8 you know, I knew it was because -- it was probably
9 because of the MARS deal. I didn't know it was
10 because of it but --

11 Q. Okay.

12 A. -- I thought it was.

13 Q. And did you have an understanding of
14 anything you had done wrong?

15 A. I mean, at that time, I mean, you know,
16 the procedure had changed on me. Like I was doing
17 one procedure then I changed to another one, so
18 yeah, I kinda thought, well, I wasn't doing it
19 right the whole time.

20 Q. Okay. And did you indicate at all during
21 that meeting that, hey, I was just doing it like I
22 was trained?

23 A. I told them that, yeah.

24 Q. Okay. But I thought earlier you said you
25 didn't say anything?



1 A. You're talking about two different
2 meetings. We had two meetings. We had a meeting
3 before -- the meeting before, and then we had a
4 meeting when they let me go.

5 Q. Okay. And I'm talking about the meeting
6 where you were terminated.

7 A. Yeah. You mean where they just let me
8 go, that was it.

9 Q. Okay. And you didn't say anything to
10 them?

11 A. No. I just said I'm going to get my
12 stuff out of my truck.

13 Q. Okay.

14 A. That was it.

15 MR. VANFLEET: I don't have any further
16 questions right now. Let's take a couple of
17 minutes. Let's get you some water.

18 THE VIDEOGRAPHER: It is 3:48 p.m. We
19 are going off the record.

20 (THEREUPON, a recess was taken.)

21 THE VIDEOGRAPHER: It is 3:58 p.m. We
22 are back on the record.

23 CROSS-EXAMINATION

24 BY MR. FANNING:

25 Q. Mr. Tyree, my name is Pat Fanning. I



1 represent MARS PetCare, one of the Defendants in
2 this lawsuit. And I appreciate your time today,
3 and I hope not to take too much of it, but you
4 never know where these things go.

5 A. Right.

6 Q. You were briefly -- or actually we've
7 talked quite a bit about an applicator's manual
8 for Fumi-Cel. Which I think is Exhibit 2B.

9 A. Yes.

10 Q. This is -- this is something you looked
11 at before you would do fumigation; is that right?

12 A. Yes.

13 Q. And you would have read this thing before
14 you ever fumigated any facility; is that right?

15 A. Yes.

16 Q. And the binder that was in your truck,
17 would this be in that binder, if you know?

18 A. I don't know for sure --

19 Q. Okay.

20 A. -- if it is.

21 Q. And maybe -- maybe I can backtrack a
22 little bit. If you -- if you received -- if you
23 got some Fumi-Cel and you were gonna -- going to
24 apply it, would it come in some type of box or
25 container?



1 A. A lot of times it would -- it would come
2 in a container, but we wouldn't get the container,
3 we'd just get the actual individual packets.

4 Q. Okay. Would this applicator's manual be
5 folded up?

6 A. Not with those packets, it would not be.

7 Q. All right. So how would you get this?

8 A. I'd have to ask for it.

9 Q. All right. But it's something you would
10 ask for if --

11 A. Yes.

12 Q. -- you went to fumigate?

13 A. Yes.

14 Q. Now, we talked about fumigation and we
15 talked about aeration. I want to talk a little
16 bit about a different kind of fumigation. As a
17 pest control operator, would you fumigate
18 buildings from time to time?

19 A. I never did personally. As a group, you
20 know, we did.

21 Q. Okay. And did you ever go out as a group
22 and fumigate the MARS facility?

23 A. Yes.

24 Q. And going back to let's say July 4th
25 weekend, 2011. I don't know if you remember that



1 weekend or --

2 A. No.

3 Q. -- but do you remember fumigating MARS
4 one time under a -- under a July 4th weekend?

5 A. Yeah, I can recall doing it, but the date
6 I wouldn't know for sure.

7 Q. Okay. But that's something that would
8 happen from time to time when the plant was
9 closed, right?

10 A. Yes.

11 Q. And would you do that for other
12 customers, too?

13 A. Not very many. We -- you know, MARS was
14 mainly the building we fumigated.

15 Q. Okay. Would you -- would you -- you
16 know, from my world, I remember, you know, growing
17 up there used to be bug bombs, you put 'em in your
18 house and you leave your house for a certain
19 number of hours, because whatever was in your
20 house, you did not want to be around.

21 A. Right.

22 Q. Do you do that quite a bit as a pest
23 control operator?

24 A. No -- no, 'cause we don't do -- we do
25 mostly commercial.



1 Q. Okay.

2 A. So we didn't have residential houses we'd
3 go do that on.

4 Q. But were there times when you'd go into a
5 commercial space and do something like that?

6 A. Similar, yes.

7 Q. And whenever you did that, would you try
8 to read your applicator's manual for whatever it
9 is you were going to put in that facility?

10 A. Yes.

11 Q. And is Fumi-Cel something you would ever
12 use when fumigating a facility?

13 A. Usually not. Usually it was
14 methylbromide or, you know, Eco 2 or something
15 like that.

16 Q. And methylbromide, is that pretty nasty
17 stuff?

18 A. That's what they say. Never been exposed
19 to it that I know of.

20 Q. But when you go in and do some
21 methylbromide, would you -- would you wear a
22 respirator when you did that?

23 A. I never did it personally. Like, we had
24 -- would have a group of people and there would be
25 people designated to go do that.



1 Q. Did you ever do any job at Presto-X where
2 you'd wear a respirator, other than that day that
3 you were out doing the OSHA work?

4 A. Fogging, when we do our ULV fogging.

5 Q. All right. And how often would you do
6 fogging?

7 A. Sometimes just once a month, and
8 sometimes it was every, you know, other month.

9 Q. And every time you went and did fogging,
10 would you go to Springfield and get the respirator
11 or would you carry it?

12 A. Yes. We'd get the respirator and we'd
13 have all the chemical -- get all the chemical from
14 up there. Or there's sometimes, you know, it got
15 shipped to Fed Ex. Sometimes we had a storage
16 shed we'd put it in. It just -- it really
17 depended on the ...

18 Q. And did you have a storage shed in
19 Joplin?

20 A. Yes.

21 Q. And would there sometimes be a respirator
22 in that storage shed?

23 A. Sometimes, but not all the time.

24 Q. Do you know if there were any Drager
25 tubes ever in that -- that storage shed?



1 A. There might have been, I don't know. I
2 don't recall.

3 Q. Had you ever used a Drager tube at any
4 point in your life before July 30th or 31st, 2012?

5 A. No.

6 Q. And had you, after that time, after that
7 OSHA visit, did you start using a Drager tube
8 every time?

9 A. Yeah, off and on, yes.

10 Q. Okay. And we went through this, but just
11 real quick. Let's go to Exhibit 4. And we looked
12 at this. This was the rail cars under fumigation
13 log. And this is a MARS document?

14 A. Yes.

15 Q. And if you go to the second page of this
16 -- of this Exhibit 4. The first day on here, it
17 looks at the very top, it says, Date cleared
18 8/8/12?

19 A. Yes.

20 Q. Now, is that 8/8/12 on the date clear --
21 on the date clear column, is that your
22 handwriting, too?

23 A. Where are you talking about?

24 Q. Up here at the very top. Is that just --
25 just 8/8/12?



1 A. Yes.

2 Q. Did you write that?

3 A. Yes.

4 Q. Okay. And next to that you've got, I'm
5 gonna say zero parts per million, am I right?

6 A. Yes.

7 Q. And then you've got what looks to be your
8 signature?

9 A. Yes.

10 Q. And that's the first day that anything
11 was cleared, it looks like, after that second OSHA
12 visit?

13 A. Yes.

14 Q. After the OSHA visit where you did the --
15 where you did the aeration. Right here. And do
16 you remember how many positive readings you got
17 after that?

18 A. It was not a whole lot. I mean, it was
19 very few that was positive, the positive readings.

20 Q. I see -- I see a couple here in -- well,
21 that's after you left.

22 A. Yeah. Yeah, there's a couple down there.
23 Yeah, something.

24 Q. And at this point in time, starting on
25 August 8th, are you using -- you're using the



1 Drager Pac 7000?

2 A. I'm just using the Drager tube. I don't
3 think I got Pac 7000 until like September.

4 Q. So you were doing a Drager tube on every
5 single one of these loads then?

6 A. Yes.

7 Q. All right. And then you got a Drager Pac
8 at some point maybe in September? And so for
9 about the last month you were there, you -- you
10 would have been using the -- the meter --

11 A. The Pac 7000, yeah.

12 Q. And you didn't get a single positive
13 reading?

14 A. I might have got, you know, a little bit
15 a one, once or twice, but nothing, you know --
16 nothing to -- that jumped out at me, you know, way
17 over the charts.

18 Q. Okay. And you know the difference
19 between a short-term exposure limit and a time
20 weighted average?

21 A. No.

22 Q. Then I won't bother you with that line of
23 questioning. We'll cut through it. All right.
24 And then the next document I want to talk to you
25 about a little bit is --



1 MR. FANNING: I'm going to save the air
2 conditioner for another witness, Mr. Mach.

3 BY MR. FANNING:

4 Q. There is an orange label. It said hold
5 on a -- on I think a rail car. I gotta find it.
6 Here it is. It's Exhibit Number -- it's either 15
7 or 18.

8 MR. SAPPINGTON: Fifteen.

9 BY MR. FANNING:

10 Q. Fifteen.

11 A. It's this one?

12 Q. Yeah, this one.

13 A. That one?

14 Q. Now, Mr. Mach indicated it was August
15 10th of 2012. It doesn't say the year on here, so
16 I'm not certain. But assuming it is 2012, you
17 testified you had never seen this label, right?
18 Is that --

19 A. Yeah, yes.

20 Q. Okay. If you go back into Exhibit Number
21 4, it looks like -- and if we assume August 10th
22 is the date this was held, looks like on August
23 12th there's some entries on this thing. And it
24 says -- if you look down Page 2, and that's
25 MOJ0000148. About five lines down, the fifth --



1 fifth line 8/12/12, rechecked zero parts per
2 million. And there's actually two things there
3 that were rechecked, and on that, it's signed by
4 Corkey Long.

5 A. Yeah.

6 Q. Do you see that?

7 A. Yep.

8 Q. Do you -- do you ever talk with Mr. Long
9 about anything he needed to go out and recheck on
10 a particular day?

11 A. No.

12 Q. Now, you mentioned Terri Alberts came out
13 and contacted you 'cause they'd gotten a truck?

14 A. She had called me --

15 Q. Okay.

16 A. Yeah.

17 Q. Did she have your cell phone number or --

18 A. Yeah. Well, it was displayed in the QA
19 lab and everywhere. That way they can get ahold
20 of me, everybody could if they needed me.

21 Q. And did you know Terri before that?

22 A. Not -- I mean, I knew her 'cause I seen
23 her, you know, whenever going through the plant,
24 going in the QA lab I seen her, but not like
25 personally, no.



1 Q. But Terri called you on -- on a day -- do
2 you know if it was before or after that OSHA
3 visit?

4 A. I wish I could remember, but I don't.

5 Q. All right.

6 A. I really don't.

7 Q. And you don't remember what the reading
8 was, right?

9 A. No. I just know it was definitely high.

10 Q. What do you think of Scott Gordon?

11 A. I don't have a problem with him
12 personally. But he's -- he's Scott -- he's Scott
13 Gordon. Everybody, you know, knows him out there
14 for sure.

15 Q. And --

16 A. Makes that known.

17 Q. He was -- was he a guy that you would
18 talk to from time to time?

19 A. Yeah, yeah. I mean, not very often but,
20 you know, when I go through that plant, I'd --

21 Q. And would he -- would he -- I don't want
22 to use a word. Would he give you crap for --

23 A. Yeah.

24 Q. What kind of crap would he give ya?

25 A. He's always, there's the bug or just



1 notice something smart aleck or, you know, just --
2 just Scott --

3 Q. And -- and that's just how he dealt with
4 you every day or every time you saw him?

5 A. Every time I saw him.

6 Q. And, by the way, you would go out there
7 any time of day or night, right?

8 A. I mean, I was there midnight sometimes
9 there, yeah, all the time.

10 Q. If you were called to aerate a rail car,
11 you'd go out at some point and do it, right?

12 A. Yeah.

13 Q. And that could be 2 a.m.?

14 A. It could be, because I live -- I lived a
15 mile from there so, I mean, it was -- you know,
16 and they knew that, they figured it out so they
17 said, hey, we need ya out here, you know, we know
18 it's late but. So I'd go out there and do it.

19 Q. But in the middle of the night, would
20 Justin be the guy to call you, or would you get
21 somebody else?

22 A. It'd be various. I mean, Justin might
23 call me at, like, five or six o'clock at night,
24 and then I might not get out there till ten or
25 eleven. But he generally, he was the main source



1 of who contacted me all the time.

2 Q. Did Scott ever give you a call?

3 A. I don't remember Scott calling me ever.

4 Scott -- which one?

5 Q. Gordon.

6 A. No, Scott Gordon never called me.

7 Q. What about Whittington?

8 A. Yeah, he did.

9 Q. And you were given a list of names of
10 people. Do you know Corey Burk?

11 A. I know the names, but I -- man, I don't
12 recall visiting with them, any of 'em very much.

13 Q. How about Reuben Farnsworth.

14 A. Seems like he was a short guy.

15 Q. Okay.

16 A. Kind of colored maybe.

17 Q. But you didn't -- you don't remember
18 talking to him?

19 A. Hum-mmm. I just remember the name,
20 'cause I, you know -- quiet way to go through the
21 building and do my traps and stuff, I'd, you know
22 ...

23 Q. When Scott told you that he was -- he was
24 getting sick, was that -- do you know if that's
25 before or after the OSHA visit?



1 A. I don't recall, but I think it was before
2 really. I really do, but I don't know.

3 Q. Did Scott tell you he called OSHA?

4 A. Hum-mmm.

5 Q. Is that a no?

6 A. No.

7 Q. I'm sorry, we just gotta --

8 A. Yeah.

9 Q. -- do that for her.

10 A. No.

11 Q. And did -- you said Scott said -- you
12 said might be the drugs he was using. Was Scott a
13 drug addict --

14 A. That's what --

15 MR. MACH: Just so we're clear, you're
16 talking about Scott Whittington or Scott Gordon?

17 MR. FANNING: Gordon. Scott Gordon.

18 MR. MACH: Because he didn't ever call
19 Scott Gordon. Scott Gordon never called him, he
20 testified.

21 MR. FANNING: No, no. I'm talking about
22 when they're making their walk and they're
23 visiting with each other. He talked about earlier
24 today.

25 A. There's people throughout the plant said



1 he -- you know, he did stuff, you know. Just -- I
2 can't recall the workers. But walk through the
3 plant and they say don't worry about that drug
4 addict out there.

5 BY MR. FANNING:

6 Q. They're talking about Scott Gordon?

7 A. Yeah.

8 Q. Did Scott -- did Scott Gordon ever --
9 ever admit to you that he was doing the wrong kind
10 of drugs?

11 A. No.

12 Q. What kind of drugs did people say Scott
13 was doing --

14 A. They didn't even -- they didn't say
15 anything, didn't give me no drugs. They said,
16 don't worry about that drug addict out there. And
17 we'd just walk through the plant and just, you
18 know -- cause I taught -- you know, when you're
19 doing pest control, that whole plant has got traps
20 everywhere. So, you know, you're visiting every
21 single apartment. So somebody's gonna say
22 something to ya as you're walking through.

23 Q. Did Scott ever talk to you about getting
24 suspended 'cause he had opened up a rail car under
25 -- that had not been cleared?



1 A. He had told me that he -- yeah, he got
2 suspended for, like, three days or something.

3 Q. And Scott told you that?

4 A. Scott told me that, yeah.

5 Q. Did you ask him why he did that?

6 A. No. No, I never did.

7 Q. Were you the one who came out after he
8 had opened the rail car?

9 A. Seems like I was, but I don't recall.

10 Q. Do you remember having any conversation
11 with anybody else at MARS about that rail car?

12 A. No.

13 Q. Did Scott ever tell you he actually
14 opened two rail cars?

15 A. No. He just said that one that he got
16 suspended for.

17 Q. Now, you're the guy who was up on these
18 rail cars?

19 A. Yes.

20 Q. Pretty much all of them that would have
21 been coming under gas, right?

22 A. Yes.

23 Q. And for a period of time, several years;
24 is that right?

25 A. Yes.



1 Q. And we went through procedures and
2 everything else. When you opened up those rail
3 cars, did you get overcome with a scent of
4 phosphine gas?

5 A. No.

6 Q. What did you -- did you experience bad
7 odors when you opened up the rail cars?

8 A. No.

9 Q. Did it seem normal to you?

10 A. Yeah.

11 Q. Okay. Now, if you would have come across
12 one that would have had a strong odor, would you
13 have cleared that rail car?

14 A. I'd probably open it and let it air out,
15 just because I was following the way I -- you
16 know, we always did it, how Franklin showed me.

17 Q. Now, when you fumigated a rail car -- and
18 you fumigated a few rail cars over the years; is
19 that right?

20 A. Yes.

21 Q. And when you fumigated a rail car, would
22 you put placards on it?

23 A. Yes.

24 Q. And would you identify on the placard
25 when you had fumigated it?



1 A. Yes.

2 Q. And you -- and yours were in plastic, not
3 like that one we saw, right?

4 A. Correct.

5 Q. How long would you let that rail car sit?

6 A. Depends on the temperature. You have to
7 go off of temperature. And the hotter it is, of
8 course, the less amount of days it's gotta sit.
9 So sit till like 72 -- 72 degrees, it can, three
10 days, you know. Forty-eight to 72 hours and, you
11 know, pull it and let it sit and, you know, like I
12 would the other ones.

13 Q. And you got that information from the
14 applicator manual; is that right?

15 A. Yes.

16 Q. And if -- after you let that car sit for
17 some period of time, depending on the temperature,
18 would you be the one to go out and open it and
19 clear it?

20 A. A lot of times I would, but then a lot of
21 times -- like all them other guys would, too, Rick
22 and Rob. And we all kinda -- where we was at --
23 we had four people in Joplin, so they might -- one
24 of 'em might swing out there 'cause I can't get to
25 it or, you know ...



1 Q. All right. Now, I want to talk about
2 that map a little bit.

3 A. Okay.

4 Q. Mr. Mach asked you earlier about where
5 you would -- where you would actually go and clear
6 rail cars and you would -- you have X'd five spots
7 there and you numbered them one through five in
8 red?

9 A. Yes.

10 Q. And I think we talked about the fact that
11 MARS actually had a little tug that --

12 A. Yeah, a little --

13 Q. -- that moved cars?

14 A. Yes.

15 Q. Scott Gordon the guy who did that?

16 A. I don't know who moved 'em.

17 Q. I mean, did you ever see anybody do it?

18 A. Not really, I never -- I never paid
19 attention if they did.

20 Q. Okay. But you basically were at the
21 mercy of what the MARS associate had done with the
22 car when you were asked to clear it, right?

23 A. Yeah.

24 Q. And so if he left it way out to the --
25 way out to the west, you were going to have to



1 deal with it if he put it all the way east of that
2 track?

3 A. They could have put it down there.

4 Q. Did they ever do that?

5 A. Yeah, they did sometimes, yeah.

6 Q. And so you just were at the mercy of
7 wherever they left the car when you were clearing
8 it?

9 A. Yes.

10 Q. Before 2012, were cars coming in under
11 gas that had corn in 'em?

12 A. No.

13 Q. So was it just the bone and -- the bone
14 and meal?

15 A. Meat and bone.

16 Q. Meat and bone. I just mispronounced it.
17 Just the meat and bone cars would come in under
18 gas; is that right?

19 A. Yes.

20 Q. And then in 2012, something changed and
21 corn started coming in; is that right?

22 A. Yeah.

23 Q. And corn was a lot more cars; is that
24 right?

25 A. Yeah.



1 Q. Now, you remember how much Presto-X would
2 charge per car to aerate?

3 A. A hundred bucks.

4 Q. And how much of that would you get?

5 A. I'd get \$26 or -- no, I was up to 30
6 percent by the end, so 30 percent of -- 30 buck.

7 Q. So out of \$100, you'd get 30 bucks?

8 A. Yeah.

9 Q. And for every car you cleared, you'd get
10 \$30 each car?

11 A. Yes.

12 Q. So you liked getting those calls, right?

13 A. Oh, yeah, mmm-hum, yeah.

14 Q. And did -- we had an issue about the
15 bills and how long and --

16 A. Yes.

17 Q. You were burning yourself by not sending
18 those bills out --

19 A. Yes.

20 Q. -- quickly, right?

21 A. Yes. Well, yeah, 'cause I wasn't getting
22 paid for 'em for six months, you know, and I'd do,
23 you know, a bunch of 'em, so ...

24 Q. So Presto-X isn't giving you a check
25 until they get the check; is that right?



1 A. That's correct.

2 Q. And were these things that were talked
3 about in the monthly meetings?

4 A. The rail cars?

5 Q. No, the billing.

6 A. No.

7 Q. Nobody -- did anybody ever get on your
8 case for the fact these bills --

9 A. Nobody ever said anything about billing
10 ever, until I -- started happening, then they --
11 then they became a billing issue. Why I was doing
12 them every time, so -- they never had before.

13 Q. Now, did you ever read -- did you ever
14 read what was on the placards?

15 A. Yeah.

16 Q. And based on that and based upon probably
17 the applicator manual, you understood that
18 phosphate gas is nasty if it's not -- if it's not
19 cleared, right?

20 A. Yes.

21 Q. And you knew that without any training or
22 anything else, other than reading, right?

23 A. Yeah.

24 Q. You mentioned something about when you
25 first started going to the plant. You said there



1 was a strike at the plant. Was that -- was that a
2 union shop under Doane?

3 A. Yeah, I think it was, but I'm not 100
4 percent positive. I think it was a union there
5 before.

6 Q. Did MARS -- when MARS took over, do you
7 know, did they change it from union to -- to non-
8 union?

9 A. I -- I think they did, but I don't --
10 yeah, I don't know for sure.

11 Q. Did MARS associates ever gripe to you
12 about their jobs when you talked to them?

13 A. Occasionally they'd say something to me,
14 you know, about working a lot of hours, you know,
15 and stuff. But nothing like, you know -- nothing
16 real in depth or nothing.

17 Q. Going into 2000 -- let's focus just on
18 the summer of 2012. Did anybody ever tell you
19 that they were fed up or they were sick of MARS
20 management?

21 A. Yes.

22 Q. Who told you that?

23 A. A lot of 'em. I don't know -- don't
24 recall the names of them saying. But there was
25 quite a few that told me they were tired of it and



1 want something to change.

2 Q. Did Scott Gordon tell you that?

3 A. Yes.

4 Q. Did you ever talk to Lonnie Boyd in the
5 summer of 2012?

6 A. No.

7 Q. Do you even know if he was in the
8 facility in the summer of 2012 when all this was
9 going on?

10 A. No.

11 Q. And they said they wanted something to
12 change. Did you ever get from them what -- what
13 they were fed up about?

14 A. No.

15 Q. Just real quick. You were asked about
16 whether you talked to Lonnie Boyd, and I want to
17 show you something, 'cause I got this and I
18 thought I got it maybe from Mr. Boyd or his
19 attorneys. I'm just going to mark this as an
20 exhibit.

21 MR. FANNING: What number are we on?

22 MR. MACH: Can use that one.

23 MR. FANNING: Yeah.

24 MR. MACH: If you want to use 14, you can
25 use 14.



1 (THEREUPON, Tyree Deposition Exhibit
2 No 14 was marked for identification.)

3 BY MR. FANNING:

4 Q. Showing what is marked as Exhibit 14.
5 Just in case we have two 14s, I'll tell you this
6 is a three-page document with the number three on
7 top of it. It's a handwritten document. And I'm
8 just gonna tell ya -- I assume you -- have you
9 ever seen this?

10 A. No.

11 Q. All right. Well, I don't know who's
12 handwriting it is, but it -- it appears to be
13 somebody writing down a conversation that you had
14 with Lonnie Boyd. And the conversation, I will
15 tell you, it looks like happened after you lost
16 your job at Presto-X. And I can tell you if you
17 want -- you just take a look and read it. And I'm
18 going to ask ya after you read it if this is a
19 conversation you might remember.

20 A. No.

21 Q. You don't remember this at all?

22 A. No, I don't.

23 Q. All right. Do you remember having any
24 conversation with Lonnie Boyd where he told you
25 that you were poisoning him and yourself?



1 A. No.

2 Q. Do you ever remember having a
3 conversation with Lonnie Boyd where you told him
4 that you were fired in a shitty way?

5 A. No.

6 Q. All right. Well, recognizing you don't
7 remember any of this, I won't bother you too much
8 with this, but I guess I'll ask you the question.
9 Do you think you were poisoning Lonnie Boyd?

10 A. No.

11 Q. As we sit here today -- and I know we've
12 gone through whether Drager tubes were used and
13 whether you properly wrote down zero parts per
14 million or whatever -- do you think there was
15 anything unsafe in those rail cars when you --
16 when you cleared 'em?

17 A. No.

18 MR. SCHLOEGEL: Objection, lacks
19 foundation.

20 A. No.

21 BY MR. FANNING:

22 Q. You know, and certainly a smell test
23 would tell you that you didn't smell phosphine,
24 right?

25 A. Correct.



1 Q. I'm going through my notes. I think

2 I'm --

3 A. Okay.

4 Q. -- I'm about done. I appreciate your

5 time. I have one final area, very short. You

6 were asked questions about the Purdue University

7 Food Plant Pest Management 6th Edition?

8 A. Yes.

9 Q. Did you read that textbook?

10 A. I read it, yeah, but it was early in my

11 career.

12 Q. All right. You got 99 on the test

13 though?

14 A. Yeah.

15 Q. All right.

16 MR. FANNING: That's all I have. Thank

17 you very much, sir.

18 THE WITNESS: You're welcome.

19 MR. MACH: Has everybody got their shot

20 at it if they want? I've got just a couple.

21 REDIRECT-EXAMINATION

22 BY MR. MACH:

23 Q. Do you know phosphine gas is odorless?

24 MR. VANFLEET: Objection, foundation.

25 BY MR. MACH:



1 Q. Well, it says right in the applicator's
2 manual phosphine gas is odorless and that you
3 can't depend on the smell. Did you know that?

4 A. No.

5 Q. Isn't that true?

6 A. I did not know that.

7 Q. You didn't know phosphine -- you were
8 using this -- you're reading these -- these
9 documents, these applicator's manual and you
10 didn't know that phosphine gas is odorless and
11 it's -- the smell only happens because of a
12 contaminant in there?

13 MR. VANFLEET: Same objection.

14 A. I thought the only thing that was --

15 THE WITNESS: Go ahead.

16 MR. VANFLEET: Go ahead.

17 BY MR. MACH:

18 Q. You can go ahead and answer.

19 A. The only thing I thought that was
20 odorless was methylbromide.

21 Q. Okay. So you didn't know phosphine gas
22 was odorless?

23 MR. VANFLEET: Same objection.

24 MR. MACH:

25 A. And it can kill ya; can't it?



1 MR. VANFLEET: Same objection.

2 BY MR. MACH:

3 Q. Phosphine gas?

4 A. Yes.

5 Q. And if it's odorless and it can kill 'ya,
6 you darn well better monitor for it; hadn't ya?

7 A. Yes.

8 Q. But you didn't monitor for six years; did
9 ya?

10 A. Correct.

11 Q. Talking about a meeting -- you were
12 talking about a meeting, I think with Mr.
13 Sappington, about getting terminated. There were
14 actually two meetings; weren't there?

15 A. Yes.

16 Q. And the second meeting was the one that
17 was very short in the parking lot?

18 A. Yes.

19 Q. Out at the Holiday Inn Express. That was
20 the express firing, we'll call it. They just said
21 you get -- you're fired, give me your stuff. Is
22 that fair?

23 A. Yes.

24 Q. Okay. So after the -- before the express
25 firing, you had a meeting. And where was that



1 meeting?

2 A. I think it was a Holiday Inn, too --

3 Q. Okay. And you knew you were in trouble
4 at that time, right?

5 A. I -- yeah, I had a suspicion, but I
6 wasn't for sure, because they didn't say I was
7 fired. I figured if they was calling me in there,
8 you know.

9 Q. And what happened at the first meeting at
10 the Holiday Inn?

11 A. Basically telling me that they're -- they
12 got a lawsuit going on at, you know, MARS and
13 that, you know, I don't know -- we don't know
14 anything about your status or anything like that
15 right now, basically what they told me.

16 Q. But they --

17 A. My recollection. I can't --

18 Q. But who -- who was at that meeting?

19 A. It was a lawyer and Sam.

20 Q. Okay. Is the lawyer here in the room
21 today?

22 A. I don't recall.

23 Q. But it was a lawyer for Presto-X?

24 A. Rentokil.

25 Q. It was Rentokil lawyer, huh? So it was



1 the big guy?

2 A. He's a Rentokil lawyer.

3 Q. Okay. And Sam Fears. And they met with
4 you and said there's a lawsuit, there may be
5 something come down because of the phosphine at
6 the plant; MARS plant. Is that all -- is that
7 fair?

8 A. Basically that's it.

9 Q. Now, you were asked a little bit about
10 your memory earlier. Have you testified today
11 truthfully?

12 A. To my knowledge, yes.

13 Q. And the things you've been able to
14 remember, you've testified to?

15 A. Yes.

16 Q. And like you were asked about when Terri
17 Alberts called you out to look at an Elnicki
18 truck --

19 A. Yes.

20 Q. -- do you remember that? You don't
21 remember when that was?

22 A. No.

23 Q. Are you sure that happened?

24 A. Yes.

25 Q. Okay. You have a specific memory of



1 going out and checking, and it was -- the
2 phosphine monitor she had was way over?

3 A. Well, she told me. I didn't look at
4 hers --

5 Q. Okay.

6 A. So she had called me and said, hey --

7 Q. And then if -- if it was before that --
8 the OSHA meeting --

9 A. Yeah.

10 Q. -- which was July 31st of 2012, and you
11 used a Drager tube then?

12 A. Yeah.

13 Q. You actually used a Drager tube prior
14 to --

15 A. Yes.

16 Q. -- when OSHA came in. Is that right?

17 A. Yes.

18 Q. How many pumps does it take to do a -- an
19 -- a Drager tube for -- if you're testing for
20 phosphine?

21 A. Ten is what I've always been told.

22 Q. Okay. Does it vary on which type of
23 Drager tube you're using?

24 A. I don't believe so.

25 Q. Okay. And then you were asked earlier



1 about -- oh, some things about how phosphine --
2 what affects the phosphine in a rail car. What
3 are those factors that affect?

4 A. I don't -- I'm not sure.

5 Q. Well, you're not sure of what factors
6 would affect how long until the phosphine was all
7 gone from a rail car?

8 A. The -- are you talking about temperature?

9 Q. Yeah.

10 A. The temperature --

11 Q. Temperature might be one.

12 A. -- temperature does, sure.

13 Q. What else?

14 A. The weather conditions.

15 Q. Like humidity?

16 A. Yeah.

17 Q. What else?

18 A. Pretty much only thing that I know of.

19 Q. Okay.

20 A. That affects it.

21 Q. How about the density of the product,
22 would that affect it, if it was in the dense
23 product?

24 A. It could.

25 Q. You were asked about rail car aeration



1 procedures you may have received --

2 A. Yes.

3 Q. -- from Presto-X. You remember that?

4 A. Yes, I was asked about 'em.

5 Q. Those that you -- or if you did receive
6 any, you don't remember 'em; is that right?

7 A. That's correct.

8 Q. And if you did receive them, were you sat
9 down and taught those procedures as -- as what to
10 do?

11 A. No.

12 Q. And were you -- did your supervisors ever
13 visit the site out in Joplin at the MARS Pet Food
14 plant to make sure that these procedures were
15 being implemented?

16 A. No.

17 Q. Did you ever get tests on those
18 procedures?

19 A. No.

20 Q. Have you seen any documents today that
21 you have signed off indicating that you really
22 received any of those procedures?

23 A. No.

24 Q. Is there anything Presto-X did that you
25 can recall that would prove that you knew and



1 understood those aeration procedures?

2 A. No.

3 Q. Now, you were asked a bunch of questions
4 about why you didn't read or didn't learn or
5 didn't follow procedures like you knew better or
6 that you chose not to do something. The truth is,
7 you thought you were doing it right, correct?

8 A. Yes.

9 Q. And -- oh, I just wanted to cover. The
10 termination, you learned that you may have been in
11 trouble at that meeting before you were actually
12 terminated --

13 A. Yeah.

14 Q. -- even before the MARS? And let me ask
15 you this. Did you know P.J. Yuen?

16 A. I know of him.

17 Q. And did you meet him at a bar after you'd
18 been fired?

19 A. Yeah.

20 Q. Do you recall having a conversation with
21 him that you got fired because you'd made a bunch
22 of guys sick at the MARS plant?

23 A. I don't recall the conversation with him.

24 Q. Okay.

25 A. At all.



1 Q. Is it possible that you had that
2 conversation with him?

3 A. It's possible.

4 Q. You don't know anything about Lonnie
5 Boyd's health or what doctors he's been to?

6 A. I don't know nothing about Lonnie Boyd.

7 Q. Yeah. You were asked if you thought you
8 had poisoned Lonnie Boyd. And you don't know
9 anything about his health or whether you did or
10 didn't poison Lonnie Boyd; do you?

11 A. No.

12 Q. Lonnie Boyd, you didn't know before the
13 lawsuit was filed, because he generally worked at
14 night and, although you'd be called out sometimes
15 at night, generally you were called out during the
16 day to aerate cars; isn't that right?

17 A. Correct.

18 Q. Oh, on Scott Gordon, you never talked to
19 him about his drug use; did you?

20 A. No.

21 Q. Anything that you heard about him is
22 rumor?

23 A. Yeah. Yes.

24 Q. It's all hearsay?

25 A. It's all hearsay. Who knows if -- who



1 knows if he is or not.

2 Q. Oh. Yeah. You were shown Exhibit 14 and
3 -- or excuse me.

4 MR. MACH: Is it 14?

5 MR. FANNING: Yeah, 14.

6 BY MR. MACH:

7 Q. Fourteen by Mr. Fanning. And you don't
8 deny that you had a conversation with Lonnie Boyd,
9 you just don't recall it. Is that right?

10 A. I don't recall it at all.

11 Q. Okay.

12 MR. MACH: And I think that's all the
13 questions I've got.

14 MR. VANFLEET: Nothing from us.

15 RECROSS-EXAMINATION

16 BY MR. SAPPINGTON:

17 Q. You said that you received a subpoena in
18 the mail from Mr. Mach or someone at his firm; is
19 that right?

20 A. Yes, I received a subpoena.

21 Q. Did you come to this deposition
22 voluntarily, or did you come because you received
23 that subpoena?

24 A. I come because I received the subpoena.

25 Q. Did you receive any compensation from Mr.



1 Mach or his firm?

2 A. No.

3 Q. Were you advised one way or another
4 whether you had a right to have an attorney
5 present today?

6 A. No.

7 Q. You do not have an attorney present
8 today, correct?

9 A. Correct.

10 Q. Do you have any sort of agreement with or
11 have you ever attained the Popham Law Firm?

12 A. No.

13 MR. SAPPINGTON: Thank you.

14 MR. VANFLEET: I don't have anything.

15 RECROSS-EXAMINATION

16 BY MR. FANNING:

17 Q. Possibly get caught in this difference of
18 opinion as to whether phosphine gas has an odor.
19 But based upon what you knew before, did you
20 understand phosphine gas had an odor?

21 A. Has an odor, yes.

22 Q. And you described it as smelling like
23 garlic, right?

24 A. Yeah, that's what it smells like to me.

25 Q. In fact, Mr. Mach asked you about the



1 odor in the truck bay; didn't he?

2 A. Yes.

3 Q. Now, switching gears. One thing I want
4 to focus on is you had a -- an opportunity with
5 the placards, at least if it didn't get rubbed out
6 by weather or something else you had an
7 opportunity to see when a rail car was fumigated,
8 right?

9 A. Yes.

10 Q. Typically were the rail cars fumigated
11 more than one week before you were aerating them?

12 A. No. About three.

13 Q. About three weeks?

14 A. Two to three weeks they would get
15 fumigated then and you guys would get 'em -- or
16 MARS would get 'em on site.

17 Q. So when you would look at the dates,
18 usually it would be two to three weeks?

19 A. Yes, when I could see them.

20 Q. All right. But the ones you could see,
21 you normally see about two or three weeks from
22 fumigation until the date that you were there
23 aerating them, right?

24 A. Correct.

25 MR. FANNING: Thank you very much, Mr.



1 Tyree. I appreciate your time.

2 MR. SAPPINGTON: Let's take a -- let's
3 take a break. If you have questions --

4 MR. MACH: Yeah.

5 MR. SAPPINGTON: -- and let's take a
6 break before we close the record.

7 MR. MACH: Okay. I've got just a couple
8 of questions. Do you want to take a break now
9 or --

10 MR. SAPPINGTON: I don't care. I don't
11 want to interrupt you --

12 MR. MACH: No.

13 MR. SAPPINGTON: -- if you're ready to
14 go.

15 REDIRECT-EXAMINATION

16 BY MR. MACH:

17 Q. You know, you -- you indicated with
18 **Exhibit 2, this is a Fumitoxin applicator's**
19 **manual. If you turn to Page 4, it talks about the**
20 **garlic odor and the fact that the phosphine is**
21 **odorless. Let's just -- let's see what the manual**
22 **itself says. It says, up there in the third line**
23 **from the top, do you see that? There's a sentence**
24 **that starts, If a garlic odor is detected, refer**
25 **to the industrial hygiene monitoring instructions**



1 found in section 15.6 of this manual for
2 appropriate monitoring procedures. Pure phosphine
3 gas is odorless; the garlic odor is due to a
4 contaminant. Since the odor of phosphine may not
5 be detected under some circumstances, the absence
6 of a garlic odor does not mean that dangerous
7 levels of phosphine gas are not present. Observe
8 proper reentry procedures specified under Section
9 15.4 in this labeling to prevent overexposure. Do
10 you see that?

11 A. Yes.

12 Q. And you didn't know that; did ya?

13 A. No.

14 MR. FANNING: That's all we have.

15 RECROSS-EXAMINATION

16 BY MR. FANNING:

17 Q. Other than the fact you read the
18 applicator's manual, right?

19 A. Yes.

20 Q. And obviously you're not here as a
21 chemist to determine whether this particular
22 company puts a contaminant in that causes an odor
23 to be created, correct?

24 A. Correct.

25 MR. FANNING: Thank you. Let's take a



1 break.

2 THE VIDEOGRAPHER: It's 4:36 p.m. We are
3 going off the record.

4 (THEREUPON, a recess was taken.)

5 THE VIDEOGRAPHER: It is 4:39 p.m. We're
6 back on the record.

7 MR. MACH: You have not gone through this
8 procedure before, but you have the right to read
9 and sign the deposition, you have the right to
10 have the court reporter bring it out to you. She
11 is a talented court reporter, but you have that
12 right to read and sign it, or you can what's
13 called waive presentment from it. And you can --
14 if you do that, then she doesn't need to bring a
15 copy out to you.

16 THE WITNESS: I don't need a copy.

17 MR. MACH: Okay.

18 THE WITNESS: Yeah.

19 MR. MACH: So you'll waive signature?

20 THE WITNESS: I'll waive, yeah.

21 MR. MACH: That's all we've got.

22 THE VIDEOGRAPHER: It's 4:39 p.m. We're
23 going off the record. This concludes the
24 deposition.

25 (THEREUPON, council agreed to remark



1 Tyree Deposition No 21, Aspinwall Cooperative
2 Company Document, as Tyree Deposition No 22;
3 WHEREUPON, the deposition concluded at 4:39 p.m.)

4 .

5 (WAIVED)

6 JOEY TYREE

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CERTIFICATE

OF

REPORTER

STATE OF MISSOURI

I, Christina Yates, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Missouri, and authorized to take depositions, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 17th day of March, 2015.



Christina Yates

C.C.R. No. 1111

