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January 29, 2007

VIA FACSIMILE AND FEDEX

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
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2007 JAN 31 PM 2:30
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Chevron Phillips Chemical Company, LP
TCEQ Docket No. 2006-1728-IWD

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced matter are the original and 11 copies of Requester Friends of the Earth's Reply. Thank you for your assistance.

Sincerely,

Carolyn Smith Pravlik
Counsel for Friends of the Earth

cc: Mailing List

IN THE MATTER OF THE APPLICATION OF) BEFORE THE TEXAS 2007 JAN 31 PM 2:30
CHEVRON PHILLIPS CHEMICAL COMPANY) COMMISSION ON
FOR A MAJOR AMENDMENT TO TPDES) ENVIRONMENTAL QUALITY)
PERMIT NO. WQ0000359000) CHIEF CLERKS OFFICE

REQUESTER FRIENDS OF THE EARTH'S REPLY

Friends of the Earth (FOE) files this reply to the responses of the Office of Public Interest Counsel (OPIC), the Executive Director, and Chevron Phillips Chemical Company LP (CPCC).

FOE is an environmental organization dedicated among other things to enforcing the requirements of the Clean Water Act, 33 U.S.C. 1251, *et seq.* To that end, FOE has filed numerous citizen suits under 33 U.S.C. 1365, on behalf of its members to enforce NPDES permits. *See, e.g., Friends of the Earth v. Laidlaw Environmental Services, Inc., (TOC), 528 U.S. 167 (2000); Friends of the Earth v. Chevron Chemical Co., E.D. Tex, Civ. Nos. 1:94CV434, 1:94CV580.* All too frequently during the course of an action to enforce an NPDES permit, the permittee seeks to have its permit relaxed in order to avoid having to comply. This is exactly what CPCC did here.

In 1994, FOE sued Chevron Chemical Company, the predecessor to Chevron Phillips Chemical Company, to enforce the total suspended solids (TSS) limitations in its permit and that lawsuit continues today. *Friends of the Earth v. Chevron Chemical Co., E.D. Tex., Civ. Nos. 1:94CV434, 1:94CV580.* Chevron admits, as was proven during the course of the litigation, that Chevron was unable to comply with its TSS limitation during storm events. Otherwise, it was generally able to comply with its TSS limitations.

The federal court found that Chevron informed both state and federal agencies that it had designed its upgraded wastewater treatment plant (WTP) to handle a 5-year, 24-hour storm event and that the upgraded WTP, as constructed in November 1994, was able to meet the 5-year, 24-hour

storm.^{1/} Findings of Fact and Conclusions of Law, p.14.^{2/} However, the Court found that, in fact, the upgraded WTP is improperly designed and is unable to meet the TSS limits during storms less significant than the 5-year, 24-hour storm. *Id.*, p. 16.

In August 2001, CPCC was granted a change in its TSS limitation. The limitation was changed from a load limit to a concentration limit. This change had the effect of relaxing the TSS limitation.

In September 2002, CPCC violated the new limitation during a storm event of 4.8 inches. It informed TCEQ that the violation was due to an accumulation of solids in the Cube Pond segment of its treatment facilities. Letter from CPCC to TCEQ, dated October 17, 2002.^{3/} CPCC explained that the solids were scoured out of the Cube Pond during the storm and caused an excessive amount of TSS in its discharge. CPCC later determined that the violation would be remedied by CPCC's instituting a regime of regular solids removal from the Cube Pond. However, based on this violation, CPCC sought another relaxation of its TSS limitations, which was granted for the daily maximum TSS limitation by the Executive Director.

After instituting its solids removal regime, CPCC sampled its discharge during a storm on June 19, 2006, that produced approximately 7.2 inches of rainfall. The resulting TSS measurement was only 45 mg/l of TSS. The significance of the rainfall is that it was almost equivalent to the 7.3 inches of rain produced by a 5-year, 24-hour storm event, the event for which CPCC represented to

^{1/}A 5-year, 24-hour storm in Orange, Texas, involves a rainfall of at least 7.3 inches. *See* Findings and Conclusions, p. 14.

^{2/}The federal court's Findings of Fact and Conclusions of Law were attached as Exhibit 1 to FOE's hearing request.

^{3/}This letter was attached to FOE's comments as Enclosure 2.

the Commission, EPA, and the federal district court that its treatment facilities were designed. Moreover, the resulting TSS was well below the more stringent TSS limitation of 127 mg/l that CPCC seeks to have relaxed.

Following notice of the Executive Director's decision to relax the TSS limitation, FOE filed a timely request for a hearing. FOE challenges the relaxation of CPCC's TSS limitation as an impermissible backsliding of the limitation in violation of 40 C.F.R. 122.44(l).

In each of their responses to FOE's request for a contested case hearing, OPIC, the Executive Director, and CPCC contend that FOE's request for a hearing should be denied, not because it lacks merit, but because FOE lacks standing to contest the violation of the regulations. They do so in spite of the fact that the federal district court found that FOE on behalf of its members had standing to enforce CPCC's permit. This is the typical diversion that agencies and permit holders utilize in order to deflect attention from their violation of the Clean Water Act when citizen's attempt to challenge the violation. As a result, backsliding and other violations of the Clean Water Act are routinely sanctioned or ignored because citizens do not have the resources to pursue cases that focus on procedural issues rather than on the unlawful conduct. Consequently, not only is the Clean Water Act violated and its long-overdue goal of zero-discharge further delayed, but the very important citizen participation requirement of the Clean Water Act is effectively nullified.

In addition to the materials previously provided regarding FOE's standing, FOE is providing the testimony provided by its members in the federal court case that underlies the court's findings with regard to FOE's standing and the summary of the testimony as presented in FOE's proposed findings of fact to the federal court. It is clear from all of these materials and those previously submitted that FOE's members are affected persons with an interest in the waterways affected by

CPCC's discharges. Their interest in the quality of the receiving waters may not be unique as to all other persons, but it is not an interest held by the general public. Furthermore, they have a strong, unique interest in protecting the relief that they stand to be awarded by the federal district court due to its finding that CPCC is liable for violating its permit. Obviously, the relief will be more significant the more stringent CPCC's TSS limitation is. When the federal district court has found that FOE and its members are adversely affected by CPCC's TSS discharge and have standing to enforce the TSS permit limitations due to their interests in the receiving waters affected by CPCC's TSS discharge, it would be illogical for this Commission to deny FOE the opportunity to challenge the Executive Director's decision to relax that very same TSS limitation.

The Executive Director's Response to Hearing Request (hereafter "ED Response") identified a number of issues that should be considered in the contested case in the event that a hearing was not denied on standing grounds. FOE agrees that these issues should be considered. On the other hand, the Executive Director identified a number of issue that should not be approved for a hearing. FOE responds with regard to each of these issues below using the issue number system utilized by the Executive Director. To the extent that an issue is a legal one, FOE urges the Commission to decide the issue in its favor for the reasons set forth in its comments, its request for a contest case hearing, and the discussion below.

Issue #3: "Whether the anti-backsliding exception can be used when an applicant's treatment facilities are inadequate"

40 C.F.R. 122.44(1) prohibits the issuance of an NPDES permit with an effluent limitation that is less stringent than the effluent limitation in the prior permit, except under very limited circumstances. Backsliding cannot be justified under 40 C.F.R. 122.44(1) where the applicant's

treatment facilities have been adjudged to be inadequate, as is the case here.

The Executive Director recommends that Issue 3 not be referred because it “raises a question of law or policy.” ED Response, Issue #3.

FOE agrees that Issue #3 is an issue of law or policy. However, FOE does not agree that the issue is inapplicable to this case as the Executive Director claims. The adequacy of treatment facilities is relevant to every request for relaxation of a permit limit under 40 C.F.R. 122.44(l). Otherwise, it would be impossible to assess whether any claimed “material and substantial alterations” to the facility justified a more lenient limitation when a properly designed and operated treatment facility may be able to satisfy the permit limitation regardless of the claimed “material and substantial alterations.”

Presumably, the Executive Director is relying on 40 C.F.R. 122.44(l)(2)(E) and 40 C.F.R. 122.62(a)(16), when he states without citation or rationale that the adequacy of treatment facilities is only an issue in one exception to backsliding that is not applicable here. *See* ED Response, Issue #3. These provisions do not support the Executive Director’s position. Instead, they merely provide, in different contexts, that, if there is no other basis for backsliding, backsliding is permissible if the permittee has installed and operated proper treatment facilities and is still unable to meet the imposed permit limitation. These provisions cannot be read to support the Executive Director’s claim that backsliding is permissible under the other exceptions regardless of the adequacy of the treatment facilities.

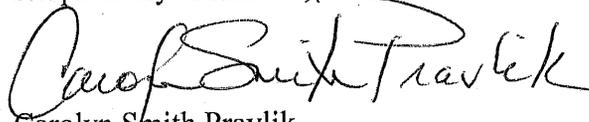
Both the Executive Director and CPCC acknowledge the need to examine the compliance history of the facility for purposes of determining whether backsliding is justified. ED, Response to Comment 1; CPCC Response, p. 11 (“An applicant must make a demonstration that it has a strong

effluent limitation for TSS.

Issue #8: "Whether the Applicant's treatment facilities are inadequate"

The Executive Director recommends that Issue #8 not be referred to SOAH because it "is not relevant and material to the Commission's decision on the application. TCEQ sets the permit limits and it is the responsibility of the Applicant to meet those limits." As explained above in reply to Issue #3, the adequacy of the applicant's treatment facilities is integral to the issue of whether backsliding is justified.

Respectfully submitted,



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Counsel for the Requester Friends of the Earth

January 29, 2007

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2007, the foregoing was filed by facsimile transmission with the Office of the Chief Clerk, that the original and eleven true and correct copies of the foregoing was deposited for two-day delivery with FedEx and that a copy of the foregoing was served on all persons on the attached mailing list via first-class, postage pre-paid mail.


Carolyn Smith Pravlik

CHIEF CLERKS OFFICE

2007 JAN 31 PM 2:30

TEXAS
COMMISSION
ON ENVIRONMENTAL
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FRIENDS OF THE EARTH, INC.,)
)
Plaintiff,)
)
)
CHEVRON CHEMICAL CO.,)
)
Defendant.)
_____)

Civil Action No. 1:94cv434
Civil Action No. 1:94cv580

**PLAINTIFF'S POST-TRIAL PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

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March 15, 2000

Bayou, into the Sabine River and [Sabine] Lake, and out into the Gulf of Mexico." Tr. 103-104. See also Pl. Ex. 96, pp. ix, 7, 11, 68, 71. Therefore, TSS in defendant's effluent may reach the Gulf of Mexico. Tr. 104. See Def. Ex. H, pp. 11, 18, 19 (TSS from defendant's facility reaches Round Bunch Gully and Cow Bayou).

35. While Dr. Tischler claims that the amount of increase in TSS in the receiving waters from defendant's permit violations from July 1990 to January 1994 is unmeasurable (Def. Ex. H, p. 25), he nonetheless admits that defendant's discharge increases the amount of TSS in the receiving waters (Tr. 552. See also Def. Ex. H, pp. 21, 24, 25; Tr. 493 (defendant's discharge increases concentration of TSS in West Bunch Gully and Cow Bayou)).²⁷

36. This Court took judicial notice that Sabine Lake is turbid. Tr. 473. Defendant's expert, Dr. Tischler, admitted that defendant's discharged wastewater is also turbid. Tr. 493.

37. Plaintiff expects defendant to argue that its discharge cannot have caused plaintiff's injuries because of the distance from defendant's plant to Sabine Lake where plaintiff's members recreate. Defendant does not contest the fact that all of its discharge flows into Sabine Lake (Defendant Chevron Chemical Co.'s Proposed Findings of Fact and Conclusions of Law, January 4, 1996, p. 4, No. 13, citing Def. Ex. K (hereafter "Def. Pretrial F&C")) and admits that its discharge point is approximately four miles from where the Sabine River flows into Sabine Lake (ibid.). Dr. Tischler testified that it is only approximately eight miles from defendant's discharge point to the area on Sabine Lake south of Bridge City where Delaine Sweat has walked alongside and fished in Sabine Lake. Tr. 61-67, 71, 74, 461-462, 465-466. He further testified that tidal action causes the water in Sabine Lake to mix. Tr. 467-468. Dr. Tischler testified that water from the Sabine River reaches the area where Ms. Sweat recreates. Tr. 461, 466-468, 558.

²⁷Some of the TSS in defendant's discharge floats on or near the top of the water. Pl. Ex. 46, pp. 3, 14-15. TSS on or near the surface of the water is more likely to be visible to users of the waterway than TSS that sinks to the bottom. Plaintiff's members were concerned with the esthetic effect of the pollution on their walking, boating, fishing and other uses of the receiving waters. See Findings 44-47.

pursuits such as boating and fishing will be adequately protected by suspended solids criteria developed for protection of fish and other aquatic life.

See also Def. Ex. H, p. 15; Tr. 102.

41. Defendant's witnesses testified that defendant's discharge of TSS includes a significant amount of fine particles of polyethylene, which is a plastic. Tr. 100-102. See also Def. Ex. H, p. 12. Dr. Bell similarly testified that defendant's discharge of TSS is composed of polyethylene, dirt and some biological solids. Tr. 101-102. Polyethylene is an inert plastic compound that can remain in the receiving waters indefinitely. Tr. 414-415. a) EPA has found that pH is an important factor in the chemical and biological systems of waterways. Pl. Ex. 128, p. 1 of pH section ('86 QCW); Pl. Ex. 129, p. 337 ('76 QCW). See also Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc., 800 F. Supp. 1, 6 (D. Del. 1992), affirmed in part, reversed in part on other grounds, 2 F.3d 493 (3d Cir. 1993). Levels of pH outside of the neutral range are harmful to living organisms. Pl. Ex. 127. A change in pH can cause dissolved compounds to dissociate (i.e., break into simpler components) or can cause dissociated compounds to recombine, either of which can heighten the toxicity of many compounds. Pl. Ex. 128, p. 1 of pH section ('86 QCW); Pl. Ex. 129, p. 337 ('76 QCW).

Plaintiff's Members

42. Delaine Sweat, Sister Opal Fruge, Margaret Green and Rodney Crowl are members of plaintiff. Tr. 46, 60, 72, 76, 81-82, 86, 88, 94-95; Pl. Ex. 95.

43. Delaine Sweat lives in Groves, Texas, approximately five to ten minutes by car from Sabine Lake.^{3/} Tr. 59-60. Ms. Sweat drives along Sabine Lake every day to and from work. Tr.

^{3/}Ms. Sweat became a member of plaintiff when a friend paid her membership dues. Tr. 72. The parties stipulated that FOE's President has expressly approved that "a person could become a member [of FOE] by having a donation made in the name of that person." Stipulation Regarding Plaintiffs' Testimony, Tr. 1. A gift membership is also permitted under FOE's by-laws. FOE's bylaws contain only one restriction on the designation of members, i.e., that membership is not transferrable or assignable. Pl. Ex. 93, Art. III, section 6. Payment of one's membership dues by another person is not an assignment or transfer of membership and therefore is permissible.

60. Her office is immediately adjacent to the Lake. Tr. 61. Ms. Sweat frequently goes walking along Sabine Lake. Tr. 61-62. The water in Sabine Lake where Ms. Sweat walks is brown and cloudy. Tr. 62. Ms. Sweat's enjoyment of walking alongside Sabine Lake is diminished by the cloudiness and lack of cleanliness of the water and she would walk there more often if the water were cleaner. Tr. 62-63. Ms. Sweat and her young children would use the area of the Lake close to her house if it were cleaner. Tr. 65-66. Ms. Sweat used to fish, ride in boats and generally recreate in Sabine Lake many years ago but she has stopped these activities because "[t]he water's not clean. * * * It's cloudy. * * * You can see a deposit. Sometimes it's real black, like oil, and sometimes it's white, like maybe paint or something. It's just not clean. You know, you know that that's not clean water." Tr. 64. Ms. Sweat used to fish in Sabine Lake and would do so again if it were cleaner. Tr. 66-67. Ms. Sweat used to eat fish caught in the Lake but will not do so now because of the appearance of the water. Tr. 64, 67. The presence of plastic particles in the water affects her willingness to eat fish caught in the Lake. Tr. 67-68.

44. Margaret Green lives in Beaumont, Texas, approximately 30 to 45 miles from Sabine Lake. Tr. 82. Ms. Green has a boat in Galveston and was getting a boat on the Sabine River as soon as it could be delivered. Tr. 82-83. She boats and fishes on Sabine Lake and plans to do so again. Tr. 83-84. However, because the water is not clear, and therefore it is not possible to see far into the water to see fish, this affects her enjoyment of fishing. Tr. 84. The fact that the water is not very clear in the Lake also leads Ms. Green to release the fish she catches rather than to eat them. Tr. 84, 85. If the water were clearer, she would eat the fish. Tr. 85. The presence of plastic particles in the water affects her willingness to eat fish caught in the Lake and her enjoyment of the Lake generally. Tr. 85-86.

45. Sister Opal Fruge lives in Beaumont, Texas, approximately 25 miles from Sabine Lake. Tr. 46-47. Sr. Fruge drives immediately next to Sabine Lake two or three times a year and expects to do so in the future. Tr. 47. The water in the Lake where Sr. Fruge drives appears murky and cloudy and not as clean as it appeared in the past. Tr. 47-49. Sr. Fruge used to fish in

and boat on Sabine Lake, but no longer does so because of the appearance and condition of the water make this recreation no longer enjoyable. Tr. 49. Sr. Fruge would fish in and boat on the Lake again if the water were clearer. Tr. 49-50. Sr. Fruge is fearful of eating fish caught in Sabine Lake because of her concern as to the pollution in those waters. Tr. 49, 50. Sr. Fruge would be less concerned about eating fish from the Lake if the water in the Lake were less murky. Tr. 50. The presence of plastic particles in the water affects her willingness to eat fish caught in the Lake. Tr. 51.

46. Rodney Crowl lives in Houston, Texas, approximately 50 miles from the Gulf of Mexico. Tr. 78. Mr. Crowl has been to Sabine Lake or River several times to eat seafood and hopes to return but he is concerned about seafood that comes from there because of the quality of the waters and does not want to eat seafood that comes from polluted waters. Tr. 76-77. Mr. Crowl frequently goes to the Gulf of Mexico near Galveston to swim and fish in and walk along the beach. Tr. 78. The water in that part of the Gulf is murky, brown-colored and unclear. Tr. 79. If the waters were clearer, he would go to the beach more often. Ibid. The presence of plastic particles in the water affects his willingness to eat fish caught in the Lake and River and Gulf of Mexico. Tr. 78.

LIKELIHOOD OF ONGOING VIOLATIONS AS OF JULY 18, 1994

Orange Plant

47. Defendant's Orange plant is divided into two production areas, the LDPE and HDPE areas. Pl. Ex. 65, pp. 3-6; Tr. 105.

48. In September 1991, defendant completed a project that increased the production of its Orange plant by approximately 35%. Pl. Ex. 9, p. 51. That expansion project was called the C-Loop project. Id., p. 50. The project was a major expansion of the HDPE production area. Ibid. In conjunction with the C-Loop expansion project, defendant installed a rice gate, which serves to retain stormwater in a part of the HDPE area. Pl. Ex. 61, p. 17. See Pl. Ex. 63, p. 11.

49. There are three major drainage areas within the plant. Tr. 105; Pl. Ex. 65, p. 3. The

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

* * * * *

FRIENDS OF THE EARTH ><
VS. >< NO. 1:94-CV-434
CHEVRON CHEMICAL COMPANY ><
BEAUMONT, TEXAS
JANUARY 17, 1996

* * * * *

BENCH TRIAL - DAY ONE
BEFORE THE HONORABLE RICHARD A. SCHELL
JUDGE PRESIDING

* * * * *

A P P E A R A N C E S

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MR. THOMAS DEEL

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BEAUMONT, TX. 77701

PROCEEDINGS REPORTED IN SHORTHAND AND TRANSCRIBED BY NOTEREADING.

1 CALLED AS A WITNESS BY THE PLAINTIFF, AFTER BEING DULY SWORN,
2 TESTIFIED AS FOLLOWMR. SMITH:

3 DIRECT EXAMINATION

4 BY MR. WAGNER:

5 Q SISTER OPAL, WOULD YOU STATE YOUR FULL NAME FOR THE
6 RECORD, PLEASE?

7 A SISTER OPAL FRUGE.

8 Q AND WHAT IS YOUR OCCUPATION?

9 A I'M A LITURGIST AT ST. ANNE'S CHURCH HERE IN BEAUMONT.

10 Q ARE YOU A MEMBER OF FRIENDS OF THE EARTH?

11 A I GUESS I JOINED TWO OR THREE YEARS AGO.

12 MR. SMITH: YOUR HONOR, EXCUSE ME. I OBJECT TO THE
13 RESPONSE BEING BASED ON HEARSAY AND NOT WITHIN THE COMPETENCY
14 OF THIS WITNESS.

15 THE COURT: OVERRULED.

16 (TO THE WITNESS) I'M SORRY. YOU JOINED WHEN?

17 THE WITNESS: TWO OR THREE YEARS AGO. I DON'T
18 RECALL EXACTLY WHEN.

19 THE COURT: ALL RIGHT.

20 MR. WAGNER:

21 Q SISTER OPAL, WHERE DO YOU LIVE?

22 A I LIVE HERE IN BEAUMONT ON DOWLEN STREET.

23 Q HOW LONG HAVE YOU LIVED IN BEAUMONT?

24 A JUST ABOUT FOURTEEN YEARS RECENTLY, BUT I AM ORIGINALLY
25 FROM HERE.

1 Q HOW FAR DO YOU LIVE FROM SABINE LAKE?

2 A I WOULD JUDGE TWENTY TO TWENTY-FIVE MILES. I'M NOT SURE
3 OF THE DISTANCE.

4 Q DO YOU EVER DRIVE NEAR SABINE LAKE?

5 A YES, I DO.

6 Q WHERE DO YOU DRIVE NEAR SABINE LAKE?

7 A WELL, I'VE GONE TO PLEASURE ISLAND IN PORT ARTHUR; I'VE
8 CROSSED OVER TO ORANGE SEVERAL TIMES. I'VE BEEN TO SABINE
9 PASS. THE ENTIRE VICINITY, I GUESS.

10 Q HOW FREQUENTLY DO YOU DRIVE NEAR SABINE LAKE?

11 A NOT AS FREQUENTLY AS I ONCE DID. I'D SAY TWO OR THREE
12 TIMES A YEAR NOW.

13 Q WHEN WAS THE LAST TIME YOU DROVE NEAR SABINE LAKE?

14 A THIS WEEK.

15 Q ARE YOU LIKELY TO DRIVE THERE AGAIN?

16 A PROBABLY SO, TO ENJOY THE BEACHES IN THAT AREA.

17 Q HOW FAR ARE YOU FROM THE LAKE WHEN YOU DRIVE NEAR SABINE
18 LAKE?

19 A WELL, WHEN I'M AT PLEASURE ISLAND I'M RIGHT AT THE LAKE.
20 IF I GO TO THE EDGE OF SABINE PASS AREA, WHERE YOU CAN DRIVE,
21 IT'S, AGAIN, ADJACENT TO IT.

22 Q WHAT DOES THE WATER IN SABINE LAKE LOOK LIKE WHERE YOU
23 DRIVE?

24 A WELL, IT'S SOMEWHAT CLOUDY, MURKY. THE WATER'S NEVER
25 BEEN CRYSTAL CLEAR, OUR WATER IS NOT THAT WAY HERE, BUT IT'S

1 NOT AS CLEAN AS IT HAS APPEARED IN THE PAST.

2 Q HAVE YOU EVER ENGAGED IN ANY RECREATIONAL ACTIVITIES IN,
3 ON OR AROUND SABINE LAKE?

4 A YES, I'VE FISHED, I'VE BOATED, QUITE FREQUENTLY IN THE
5 PAST, BUT NOT RECENTLY.

6 Q WHERE ON SABINE LAKE HAVE YOU FISHED AND BOATED?

7 A OFF SABINE PASS BY WHAT WE CALL THE RAINBOW BRIDGE,
8 WHICH CROSSES OVER NEAR ORANGE, AND AT PLEASURE ISLAND.

9 Q HOW LONG HAVE YOU BEEN FISHING AND BOATING ON SABINE
10 LAKE?

11 A WELL, SINCE I WAS A CHILD, PROBABLY. THAT'S BEEN A LONG
12 TIME AGO.

13 Q WHEN WAS THE LAST TIME YOU FISHED ON SABINE LAKE?

14 A I HAVEN'T FISHED THERE FOR AT LEAST FIVE-YEARS.

15 Q WHEN WAS THE LAST TIME YOU BOATED ON SABINE LAKE?

16 A APPROXIMATELY THE SAME TIME -- LENGTH OF TIME.

17 Q WHAT DID THE WATER LOOK LIKE WHERE YOU USED TO FISH AND
18 BOAT?

19 A YOU MEAN IN THE PAST?

20 Q YES.

21 A WELL, IT'S BEEN A SANDY-TYPE WATER, USUALLY, BUT JUST
22 SANDY. SOMETIMES IT WAS CLEARER THAN OTHERS AND YOU COULD SEE
23 THE SAND, OR THE BOTTOM OF IT, AND OTHER TIMES, WHEN IT
24 STORMS, WHEN THE CHURNING OCCURS, IT WAS A LITTLE CLOUDIER --
25 NOT CLOUDY, BUT SANDY.

1 Q WHAT DID THE WATER LOOK LIKE THE LAST TIME YOU FISHED ON
2 SABINE LAKE?

3 A WELL, I WOULD SAY MORE THAN SANDY, PROBABLY CLOUDY AND
4 MURKY, FLOATING DEBRIS A LOT OF TIMES, SOMETIMES OIL SLICKS.

5 Q COULD YOU SEE INTO THE WATER?

6 A NO, NOT VERY FAR.

7 Q DID THE APPEARANCE OF THE WATER AFFECT YOUR FISHING AND
8 BOATING ON SABINE LAKE?

9 A YES, IT HAS.

10 Q IN WHAT WAY?

11 A WELL, I NO LONGER FIND IT ENJOYABLE. I'M QUITE FEARFUL
12 OF EATING ANYTHING THAT WOULD BE CAUGHT IN THE LAKE. JUST
13 GENERALLY, IT'S NOT REALLY AN ENVIRONMENT THAT I ENJOY ANY
14 LONGER.

15 Q WHY DO YOU NO LONGER ENJOY IT?

16 A BECAUSE OF THE CONDITION OF THE WATER.

17 Q DOES THE APPEARANCE OF THE WATER AFFECT YOUR ENJOYMENT
18 OF FISHING AND BOATING ON SABINE LAKE?

19 A YES, IT DOES.

20 Q IN WHAT WAY?

21 A WELL, IT HAS THE APPEARANCE OF NOT BEING CLEAN AND,
22 THEREFORE, NOT HEALTHY. I PREFER TO BE NEAR WATER THAT'S A
23 LITTLE CLEANER.

24 Q IF THE WATER IN SABINE LAKE WERE LESS MURKY, WOULD YOU
25 ENJOY FISHING AND BOATING THERE MORE?

1 A I THINK I WOULD, YES.

2 Q WOULD YOU BE LIKELY TO GO BACK AND FISH AND BOAT AGAIN?

3 A I WOULD.

4 Q DO YOU EAT FISH AND SEAFOOD FROM SABINE LAKE?

5 A I EAT VERY LITTLE FISH AND SEAFOOD NOW. USUALLY I
6 INQUIRE WHERE THE FISH HAS COME FROM IF I'M GOING TO PURCHASE
7 IT. I VERY SELDOM EAT IT IN RESTAURANTS.

8 Q ARE YOU CONCERNED ABOUT EATING FISH AND SEAFOOD FROM
9 SABINE LAKE?

10 A YES, I AM.

11 Q AND WHY ARE YOU CONCERNED?

12 A WELL, AGAIN, BECAUSE OF THE APPEARANCE OF THE WATER, AND
13 I SUPPOSE ALSO BECAUSE OF MY KNOWLEDGE OF THE INDUSTRY THAT'S
14 ALONG THE RIVERS THAT FEED INTO SABINE LAKE.

15 Q IF THE WATER IN SABINE LAKE LESS MURKY WOULD YOU BE LESS
16 CONCERNED ABOUT EATING THE FISH OR SEAFOOD THAT COMES FROM
17 SABINE LAKE?

18 A I THINK I WOULD BE.

19 Q DOES IT AFFECT YOUR FEELINGS ABOUT FISHING IN SABINE
20 LAKE IF THERE ARE PLASTIC PARTICLES SUSPENDED IN THE WATER?

21 MR. SMITH: OBJECTION, LEADING.

22 THE COURT: OVERRULED.

23 THE WITNESS:

24 A IF THERE ARE?

25 Q YES.

1 A WELL, YES, IT WOULD.

2 Q IN WHAT WAY?

3 A WELL, I THINK THAT, IN MY MIND, AT LEAST, WOULD GIVE THE
4 APPEARANCE OF BEING LESS CLEAN. IT DOESN'T BELONG THERE, TO
5 BEGIN WITH, AND I THINK THAT WOULD BE A WARNING TO ME THAT I
6 WOULDN'T WANT ANYTHING THAT WOULD COME OUT OF IT.

7 Q WOULD IT AFFECT YOUR FEELINGS ABOUT EATING FISH OR
8 SEAFOOD FROM SABINE LAKE IF THERE WERE PLASTIC PARTICLES
9 SUSPENDED IN THE WATER?

10 A YES, IT WOULD.

11 Q IN WHAT WAY?

12 A WELL, IN THE SAME WAY. AGAIN, THAT WOULD MEAN THE WATER
13 WAS LESS CLEAN THAN I WOULD LIKE FOR IT TO BE AND, THEREFORE,
14 WHATEVER WOULD COME FROM IT WOULD BE NOT HEALTHY, OR LESS
15 HEALTHY.

16 MR. WAGNER: THANK YOU.

17 CROSS EXAMINATION

18 BY MR. SMITH:

19 Q SISTER OPAL, ISN'T IT TRUE THAT YOU NO LONGER DRIVE ON A
20 ROAD FROM WHICH YOU CAN SEE SABINE LAKE?

21 A AS A HABIT, YOU MEAN?

22 Q ISN'T IT TRUE THAT YOU NO LONGER DRIVE ON A ROAD FROM
23 WHICH YOU CAN SEE SABINE LAKE?

24 A NO, IT ISN'T.

25 Q DO YOU RECALL GIVING A DEPOSITION IN THIS CASE?

1 A I DO.

2 Q DO YOU RECALL BEING UNDER OATH?

3 A I DO.

4 Q DO YOU RECALL THAT I TOLD YOU THAT THIS WAS VERY
5 IMPORTANT PROCEEDING AND THAT IT WAS IMPORTANT TO TELL THE
6 TRUTH?

7 A I DO.

8 MR. SMITH: YOUR HONOR, MAY I APPROACH THE WITNESS?

9 THE COURT: YES.

10 MR. SMITH:

11 Q I'M SHOWING YOU A COPY OF YOUR DEPOSITION TRANSCRIPT IN
12 THE DEPOSITION THAT YOU GAVE IN THIS CASE, AND I WANT TO ASK
13 YOU IF I'M READING CORRECTLY THE TRANSCRIPT.

14 QUESTION: "DO YOU DRIVE ON A ROAD FROM WHICH YOU
15 BELIEVE YOU CAN SEE SABINE LAKE OCCASIONALLY?"

16 ANSWER: "NOT ANY LONGER, NO."

17 DID I READ THAT CORRECTLY?

18 A YOU DID.

19 Q SISTER OPAL, DO YOU BELIEVE THAT YOU JOINED THE FRIENDS
20 OF THE EARTH SOMETIME IN DECEMBER OF 1994?

21 A YES, I DO.

22 MR. SMITH: YOUR HONOR, MAY I APPROACH THE WITNESS?

23 THE COURT: YES.

24 MR. SMITH:

25 Q SISTER OPAL, I'M SHOWING YOU WHAT'S BEEN ADMITTED AS

1 PLAINTIFF'S EXHIBIT 93, AND I'M SHOWING YOU PAGE 4 OF EXHIBIT
2 93, ARTICLE 3, SECTION 1, WHICH SAYS: "THE DESIGNATION OF
3 MEMBERS AND THE QUALIFICATIONS AND RIGHTS OF MEMBERS SHALL BE
4 AS ESTABLISHED FROM TIME TO TIME BY THE BOARD OF DIRECTORS."

5 DID I READ THAT CORRECTLY?

6 A YES.

7 Q HAVE YOU EVER SEEN ANY DESIGNATION OF THE QUALIFICATIONS
8 OF MEMBERS BY THE BOARD OF DIRECTORS OF FRIENDS OF THE EARTH?

9 A NOT THAT I RECOLLECT, NO.

10 Q HAVE YOU EVER SEEN ANY DOCUMENT THAT SETS OUT WHAT ARE
11 THE QUALIFICATIONS FOR PERSONS TO BE MEMBERS OF FRIENDS OF THE
12 EARTH?

13 A QUITE HONESTLY, I REALLY DON'T RECALL. IT'S BEEN A
14 WHILE AND I DON'T RECALL.

15 Q I'M SHOWING YOU A COPY OF AN AFFIDAVIT THAT YOU EXECUTED
16 IN THIS CASE, "AFFIDAVIT OF OPAL FRUGE." DO YOU RECALL
17 EXECUTING THIS AFFIDAVIT?

18 A YES, I DO.

19 Q DO YOU RECALL THAT --

20 THE COURT: IS THAT AN EXHIBIT?

21 MR. SMITH: NO, YOUR HONOR, IT'S NOT. IT HAS BEEN
22 ON FILE WITH THE COURT, THOUGH.

23 MR. SMITH:

24 Q DO YOU RECALL SAYING THAT YOU DECLARE UNDER PENALTY OF
25 PERJURY THAT THE FOREGOING WAS TRUE AND CORRECT AS OF OCTOBER

1 3, 1994?

2 A YES.

3 Q AND DO YOU RECALL STATING IN THIS AFFIDAVIT, IN
4 PARAGRAPH 1, "I AM A MEMBER OF THE FRIENDS OF THE EARTH"?

5 A YES, I DO.

6 Q YOU WILL AGREE WITH ME THAT OCTOBER 3, 1994 IS SEVERAL
7 WEEKS PRIOR TO THE MIDDLE OF DECEMBER, 1994.

8 A YES, WHEN I TOLD YOU, I SAID I THOUGHT I HAD JOINED IN
9 DECEMBER. I REALLY DON'T RECALL THE EXACT DATE.

10 Q WELL, DO YOU RECALL TESTIFYING IN YOUR DEPOSITION THAT
11 IT WAS ABOUT DECEMBER OF '95 WHEN YOU JOINED THE FRIENDS OF
12 THE EARTH?

13 A ABOUT, YES.

14 THE COURT: DECEMBER OF '95?

15 MR. SMITH: EXCUSE ME. DECEMBER OF '94, YOUR HONOR.
16 PASS THE WITNESS.

17 THE COURT: MR. WAGNER, ANY FOLLOW UP?

18 MR. WAGNER: JUST A FEW, YOUR HONOR.

19 REDIRECT EXAMINATION

20 BY MR. WAGNER:

21 Q SISTER OPAL, WHEN YOU SIGNED THE AFFIDAVIT THAT MR.
22 SMITH SHOWED YOU RECENTLY, HAD YOU SENT A CHECK TO FRIENDS OF
23 THE EARTH?

24 A I'M SURE THAT I HAD. I REALLY DON'T RECALL. I'D HAVE
25 TO LOOK BACK AT THE CALENDAR. I CAN'T RECALL THAT WITHOUT

1 SOMETHING TO REFER TO.

2 Q DO YOU RECALL DURING YOUR DEPOSITION MR. SMITH SHOWING
3 YOU A PRINTOUT OF RECORDS FROM FRIENDS OF THE EARTH?

4 A NO, I DON'T. A PRINTOUT OF WHAT TYPE?

5 MR. WAGNER: MAY I APPROACH THE WITNESS, YOUR HONOR?

6 THE COURT: YES.

7 MR. WAGNER:

8 Q I'M SHOWING YOU WHAT WAS MARKED "FRUGE EXHIBIT 1" OF
9 YOUR DEPOSITION. DO YOU REMEMBER BEING SHOWN THAT?

10 A THIS PAGE HERE?

11 Q YES.

12 A I REALLY DON'T RECALL BEING SHOWN IT. I'M NOT SAYING HE
13 DIDN'T, BUT I DON'T RECALL IT.

14 MR. WAGNER: THANK YOU. I HAVE NOTHING FURTHER.

15 RECROSS EXAMINATION

16 BY MR. SMITH:

17 Q SISTER FRUGE, THAT EXHIBIT THAT YOU WERE JUST SHOWN DOES
18 INDICATE A PAYMENT RECEIVED BY FRIENDS OF THE EARTH FROM YOU
19 APPROXIMATELY DECEMBER 20, 1994; CORRECT?

20 MR. WAGNER: I OBJECT, YOUR HONOR. THE EXHIBIT DOES
21 NOT INDICATE WHEN THE PAYMENT WAS RECEIVED.

22 THE COURT: WHAT'S THE EXHIBIT NUMBER, AGAIN?

23 MR. WAGNER: IT'S EXHIBIT 1 TO THE FRUGE DEPOSITION.
24 I DON'T BELIEVE IT'S AN EXHIBIT IN THIS CASE.

25 THE COURT: ALL RIGHT. AND WHAT WAS YOUR QUESTION

1 AGAIN, MR. SMITH?

2 MR. SMITH: EXHIBIT 1 INDICATES THE DATE OF DECEMBER
3 20, 1994.

4 MR. WAGNER: YOUR HONOR, EXCUSE ME. IT IS PART OF
5 EXHIBIT 95, PLAINTIFF'S EXHIBIT 95.

6 THE COURT: YOU'RE ASKING THIS WITNESS IF SHE KNOWS
7 IF THAT'S THE CORRECT DATE?

8 MR. SMITH: I CAN REPHRASE THE QUESTION, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. SMITH:

11 Q SISTER FRUGE, ISN'T IT TRUE THAT IT WAS YOUR
12 UNDERSTANDING THAT YOU JOINED SOMETIME APPROXIMATELY A WEEK OR
13 TWO BEFORE DECEMBER 20TH, 1994?

14 A I REALLY CAN NOT PINPOINT THE DATE THAT CLOSELY.

15 Q WOULD IT BE FAIR TO SAY THAT AT YOUR DEPOSITION YOU HAD
16 THOSE DOCUMENTS IN FRONT OF YOU AND YOU WERE ABLE TO LOOK THEM
17 OVER IN ORDER TO MAKE A BETTER ASSESSMENT; IS THAT FAIR TO
18 SAY?

19 A ARE YOU REFERRING TO THE DOCUMENT HE JUST SHOWED ME?

20 Q YES, MA'AM.

21 A I THINK I'VE ALREADY STATED I REALLY DON'T RECALL SEEING
22 THEM, AND THAT'S THE ONLY WAY I CAN ANSWER THAT QUESTION.

23 MR. SMITH: YOUR HONOR, MAY I APPROACH THE WITNESS?

24 THE COURT: YES.

25 MR. SMITH:

1 Q SISTER OPAL, I'M SHOWING YOU PAGE 5 OF YOUR DEPOSITION
2 TRANSCRIPT, AND STARTING ON LINE 19 I'M READING: "MS. FRUGE,
3 I'M SHOWING YOU WHAT HAS BEEN MARKED AS 'FRUGE EXHIBIT 1'
4 WHICH IS A DOCUMENT THAT'S BEEN GIVEN TO ME FROM COUNSEL ON
5 BEHALF OF THE FRIENDS OF THE EARTH WHICH INDICATES A PAYMENT
6 RECEIVED, I BELIEVE, IN YOUR NAME ON OR ABOUT DECEMBER 20TH,
7 1994. WOULD IT BE YOUR UNDERSTANDING THAT SOMETIME
8 APPROXIMATELY A WEEK OR TWO BEFORE THEN THAT YOU WOULD HAVE
9 JOINED THE FRIENDS OF THE EARTH?"

10 AND YOU ANSWER, ON LINE 4 OF THAT DEPOSITION TRANSCRIPT
11 IS, "YES, THAT'S CORRECT."

12 DID I READ THAT CORRECTLY?

13 A YES, YOU DID.

14 THE COURT: WHERE IS THE REFERENCE TO THIS DATE IN
15 PLAINTIFF'S EXHIBIT 95?

16 MR. WAGNER: YOUR HONOR, IT SHOULD BE ON THE BACK OF
17 THE FOURTH PAGE -- BACK OF THE SECOND PAGE -- I'M SORRY, PAGE
18 4.

19 THE COURT: OH, ALL RIGHT. THE BACK OF THE SECOND
20 PAGE REFERS TO MARGARET GREEN. OH, I SEE, OPAL FRUGE. ALL
21 RIGHT.

22 AND WHAT IS THIS DOCUMENT? WHERE DID IT COME FROM?

23 MR. WAGNER: THIS IS THE RECORD FROM FRIENDS OF THE
24 EARTH OF THE ENTRY OF MEMBERSHIP PAYMENTS MADE TO FRIENDS OF
25 THE EARTH.

1 THE COURT: OKAY. THANK YOU.

2 MR. SMITH: PASS THE WITNESS, YOUR HONOR.

3 THE COURT: MR. WAGNER?

4 REDIRECT EXAMINATION

5 BY MR. WAGNER:

6 Q SISTER OPAL, DO YOU HAVE ANY KNOWLEDGE OF WHEN FRIENDS
7 OF THE EARTH ENTERED YOUR PAYMENT TO THEM?

8 A I'M SORRY, BUT I REALLY DON'T HAVE THE DATES IN MIND.

9 MR. WAGNER: THANK YOU. I HAVE NOTHING FURTHER,
10 YOUR HONOR.

11 MR. SMITH: NOTHING FURTHER, YOUR HONOR.

12 MR. WAGNER: NOTHING FURTHER.

13 THE COURT: IS THIS WITNESS EXCUSED?

14 MR. WAGNER: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT. NOW, ON YOUR STANDING
16 WITNESSES, DO YOU INTEND TO RECALL THEM AT SOME TIME, OR MAY
17 THEY REMAIN IN THE COURTROOM?

18 MR. WAGNER: THEY MAY REMAIN. WE DO NOT INTEND TO
19 RECALL THEM, NO.

20 THE COURT: WHAT'S YOUR POSITION, MR. SMITH?

21 MR. SMITH: THAT'S FINE, YOUR HONOR.

22 THE COURT: ALL RIGHT. SISTER OPAL FRUGE, YOU'RE
23 FREE TO EITHER GO OR REMAIN IN THE COURTROOM, WHICHEVER YOU
24 LIKE.

25 THE WITNESS: THANK YOU, YOUR HONOR.

1 THE COURT: WHO IS YOUR NEXT WITNESS?

2 MR. WAGNER: WE CALL DELAINE SWEAT.

3 DELAINE SWEAT,

4 CALLED AS A WITNESS BY THE PLAINTIFF, AFTER BEING DULY SWORN,

5 TESTIFIED AS FOLLOWMR. SMITH:

6 DIRECT EXAMINATION

7 BY MR. WAGNER:

8 Q WOULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

9 A DELAINE SWEAT.

10 Q DURING YOUR DEPOSITION IN THIS CASE, MS. SWEAT, WERE YOU

11 REFERRED TO AS "JANE DOE"?

12 A YES, SIR, I WAS.

13 MR. WAGNER: YOUR HONOR, I WOULD NOTE THAT IN

14 NUMEROUS DOCUMENTS IN THIS CASE, INCLUDING OUR PROPOSED

15 FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT THERE ARE

16 REFERENCES TO "JANE DOE". MS. SWEAT PREVIOUSLY EXPRESSED

17 CONCERNED ABOUT DISCLOSING HER IDENTITY AND SHE'S NOW DECIDED

18 TO DO SO. SO, THE REFERENCES TO "JANE DOE" REFER TO DELAINE

19 SWEAT.

20 THE COURT: OKAY. THANK YOU.

21 MR. WAGNER:

22 Q MS. SWEAT, WHERE DO YOU LIVE?

23 A IN GROVES.

24 Q WHERE IN GROVES?

25 A ON 32ND STREET.

1 Q HOW LONG HAVE YOU LIVED IN GROVES?

2 A FIFTEEN YEARS.

3 Q ARE YOU A MEMBER OF FRIENDS OF THE EARTH?

4 A YES, I AM.

5 MR. SMITH: OBJECTION, YOUR HONOR. WOULD IT BE
6 APPROPRIATE FOR ME TO HAVE A RUNNING OBJECTION ON THIS?

7 THE COURT: YES. I'M GOING TO OVERRULE THOSE
8 OBJECTIONS. I'LL LET THE WITNESSES TESTIFY ABOUT THEIR
9 OPINION AS TO WHETHER OR NOT THEY'RE A MEMBER.

10 MR. SMITH: YES, YOUR HONOR. THANK YOU.

11 THE COURT: I'M SORRY. WHAT WAS YOUR ANSWER, MA'AM?

12 THE WITNESS:

13 A WHAT WAS THE QUESTION?

14 Q ARE YOU A MEMBER OF FRIENDS OF THE EARTH?

15 A YES, SIR.

16 Q HOW LONG HAVE YOU BEEN A MEMBER OF FRIENDS OF THE EARTH?

17 A I'M NOT SURE, MAYBE FIVE-YEARS.

18 Q HOW FAR FROM SABINE LAKE DO YOU LIVE?

19 A FAIRLY CLOSE, FIVE TO TEN MINUTES BY CAR.

20 Q HOW OFTEN DO YOU SEE SABINE LAKE?

21 A WHERE I WORK I DRIVE ALONG THE SABINE EVERY DAY TO AND
22 FROM WORK.

23 Q DO YOU WORK NEAR SABINE LAKE?

24 A YES, I DO.

25 Q HOW FAR?

1 A I WORK ON THE TIP OF SABINE PASS AND WHERE MY OFFICE IS
2 LOCATED THERE IS ONLY A CONCRETE PARKING LOT BETWEEN ME AND
3 THE LAKE, OR THE RIVER, WHICHEVER, THE SABINE.

4 Q DO YOU REFER TO IT THERE AS THE SABINE RIVER?

5 A JUST THE SABINE.

6 Q IS THAT THE PLACE WHERE SABINE LAKE FLOWS INTO THE GULF
7 OF MEXICO?

8 A YES, VERY CLOSE TO THE TIP, THE LAST BIT OF LAND BEFORE
9 YOU WOULD BE INTO THE GULF OF MEXICO.

10 Q DO YOU EVER WALK TO THE SABINE FROM WORK?

11 A YES, I DO.

12 Q HOW OFTEN DO YOU DO THAT?

13 A I DID YESTERDAY. I'M OUT -- I HAVE LONG HOURS AND IF I
14 SMOKE A CIGARETTE -- YOU CAN'T SMOKE INSIDE THE BUILDING
15 ANYMORE -- YOU GET A BREAK AND I'M RIGHT OUT THERE.

16 Q DO YOU EVER GO NEAR ANY OTHER PARTS OF SABINE LAKE?

17 A YES, SIR.

18 Q WHAT PARTS?

19 A WELL, PLEASURE ISLAND IS FAIRLY CLOSE TO MY HOUSE, THE
20 PORT ARTHUR SEAWALL IS EVEN CLOSER THAN TO GET TO PLEASURE
21 ISLAND. ALSO, I'M REAL CLOSE TO THE ORANGE BRIDGE, TO BRIDGE
22 CITY. I COULD WALK TO THERE. AND SO THE WATER THAT'S AROUND
23 THERE SOUTH OF BRIDGE CITY IS OPEN LAND. THERE'S A LOT OF
24 PLACES IN THERE YOU CAN GET TO.

25 Q HOW OFTEN DO YOU WALK ALONGSIDE SABINE LAKE AT PLEASURE

1 ISLAND?

2 A NOT AS OFTEN HERE LATELY, I'VE BEEN REALLY BUSY, BUT
3 WHEN I WAS PREGNANT I WOULD GO OUT THERE FOR EXERCISE AND WALK
4 ON THE SEAWALL.

5 Q HOW LONG AGO WAS THAT?

6 A I HAVE A TWO YEAR OLD.

7 Q AND HOW FREQUENTLY WOULD YOU WALK THEN?

8 A I TRIED TO GET OUT THERE EVERY AFTERNOON, SO THREE TIMES
9 A WEEK, MAYBE, OR, YOU KNOW. I WASN'T A REAL GOOD PREGNANT
10 PERSON. I TRIED TO GET A LOT OF EXERCISE AND THAT WAS THE
11 PRETTIEST PLACE CLOSEST TO MY HOUSE.

12 Q WHEN WAS THE LAST TIME YOU WALKED THERE?

13 A LAST SUMMER I WAS THERE.

14 Q WHEN YOU WALK ALONGSIDE SABINE LAKE ON PLEASURE ISLAND,
15 HOW FAR ARE YOU FROM THE WATER?

16 A THERE ARE PLACES THAT YOU COULD WALK RIGHT UP TO THE
17 WATER, PUT YOUR IN IT, WHEN YOU'RE WALKING AND TRYING TO GET
18 EXERCISE YOU'RE MAYBE TEN FEET FROM THE EDGE OF THE WATER.

19 Q WHAT DID THE WATER LOOK LIKE THERE?

20 A IT'S BROWN AND CLOUDY.

21 Q CAN YOU SEE INTO THE WATER?

22 A NOT VERY FAR.

23 Q DOES THE CLOUDINESS IN THE WATER IN SABINE LAKE AFFECT
24 YOUR WALKS THERE?

25 A YES, IT DOES.

1 Q IN WHAT WAY?

2 A I WOULD ENJOY IT MORE IF IT WAS CLEANER. IT MAKES ME
3 CONCERNED THAT, IT NOT BEING CLEAR AND APPEARING TO BE CLOUDY,
4 MAKES ME WONDER IF IT'S CLEAN.

5 Q WOULD YOU WALK THERE MORE IF THE WATER WERE CLEARER?

6 A I FEEL LIKE I WOULD.

7 Q WHAT ACTIVITIES HAVE YOU ENGAGED IN ON SABINE LAKE,
8 SOUTH OF BRIDGE CITY?

9 A FISHING, BOAT RIDING MANY YEARS AGO. I HAVEN'T BEEN
10 LATELY, BUT ALL THAT WATER AREA IN THERE IS WHAT PEOPLE DO FOR
11 HIKING, GO OUT TAKE YOUR KIDS, AND THEY FISH IN THOSE AREAS.

12 Q WHEN WAS THE LAST TIME YOU WERE AT SABINE LAKE IN THAT
13 AREA?

14 A SOUTH OF BRIDGE CITY?

15 Q YES.

16 A THE LAST TIME WAS A FEW WEEKS AGO, RIGHT AFTER I HAD
17 TALKED WITH Y'ALL.

18 Q AND BEFORE THAT, WHEN WAS THE LAST TIME?

19 A NOT FOR SEVERAL YEARS. I'D BEEN OUT THERE MAYBE ONCE OR
20 TWICE SIX MONTHS TO A YEAR SINCE IT'S SO CLOSE TO THE HOUSE,
21 BUT I DON'T GO TO THOSE AREAS AND STAY -- I RIDE IN THOSE
22 AREAS BUT I DON'T GET OUT AND SPENDING TIME RIGHT IN THERE
23 ANYMORE.

24 Q WHY HAD IT BEEN SEVERAL YEARS SINCE YOU HAD BEEN THERE?

25 A BECAUSE IT'S ALL CHANGED, IT'S NOT AS PRETTY AS IT USED

1 TO BE. THE WATER'S NOT CLEAN.

2 Q IN WHAT WAS IS THE WATER NOT CLEAN?

3 A IT'S CLOUDY. THE LAND AROUND THE WATER, YOU CAN SEE A
4 DEPOSIT. SOMETIMES IT'S REAL BLACK, LIKE OIL, AND SOMETIMES
5 IT'S WHITE, LIKE MAYBE PAINT OR SOMETHING. IT'S JUST NOT
6 CLEAN. YOU KNOW, YOU KNOW THAT THAT'S NOT CLEAN WATER.

7 Q DOES THE WATER IN THERE LOOK DIFFERENT THAN IT USED TO
8 WHEN YOU WENT THERE WHEN YOU WERE YOUNGER?

9 A YES.

10 Q IN WHAT WAY?

11 A WELL, WE DIDN'T HAVE THE SAME -- THE LAND WAS USED. YOU
12 KNOW, WHEN I WAS YOUNGER, IT WAS CLEANER. PEOPLE WERE FISHING
13 ALL UP AND DOWN THAT AREA, AND NOW THERE ARE FISHERMEN THERE,
14 BUT I WOULDN'T WANT TO EAT THE FISH OUT OF THAT WATER.

15 THE COURT: NOW, WHEN YOU REFER TO "THOSE AREAS,"
16 TELL ME AGAIN WHAT AREA YOU'RE TALKING ABOUT.

17 THE WITNESS: SOUTH OF BRIDGE OF CITY. SOUTH, GOING
18 OVER THE ORANGE BRIDGE, THE WATER SOUTH OF THERE WITH BRIDGE
19 CITY.

20 THE COURT: AND IS THAT ALONG THE SABINE RIVER OR
21 THE NECHES RIVER?

22 THE WITNESS: I'M NOT REALLY SURE. I THOUGHT THE
23 NECHES RIVER WAS FURTHER UP TOWARDS PORT NECHES. IF YOU GO
24 OVER THE ORANGE BRIDGE, THERE ARE SOME ROADS THAT YOU CAN TAKE
25 TO THE SOUTH THAT YOU CAN GO RIGHT UP TO WHERE THERE'S, YOU

1 KNOW, ALL LITTLE ROADS IN THERE. HOUSES ARE BUILT IN THERE
2 AND BOAT DOCKS, AND STUFF.

3 I KNOW THAT SOME OF IT, FOR SURE, IS THE SABINE
4 LAKE, BECAUSE I'VE BEEN BACK SINCE THIS QUESTIONING AND MADE
5 SURE THAT I KNEW WHERE THE SABINE LAKE WAS. WHERE THE NECHES
6 RIVER ACTUALLY TURNS INTO THE SABINE LAKE, I DON'T KNOW.

7 THE COURT: DOES EITHER SIDE HAVE IN THEIR EXHIBITS
8 A MAP?

9 MR. SMITH: YES, I DO, EXHIBIT "L", YOUR HONOR.

10 THE COURT: WERE YOU GOING TO CROSS EXAMINE HER ON
11 THAT?

12 MR. SMITH: I WAS, YOUR HONOR.

13 THE COURT: OKAY. WELL, THAT'S FINE. I'LL WAIT FOR
14 THAT, THEN.

15 MR. WAGNER:

16 Q YOU SAID YOU WENT BACK TO THAT AREA SOUTH OF BRIDGE
17 RECENTLY, DID YOU LOOK AT THE WATER THERE?

18 A YES, I DID.

19 Q HOW DID IT APPEAR?

20 A DEFINITELY DIRTY LOOKING, THE LAND CLOSE TO THE WATER,
21 AS IF IT HAD SOMETHING ON THE TOP OF THE WATER.

22 Q IF THE WATER THERE WERE CLEARER, WOULD YOU BE MORE
23 LIKELY TO GO BACK THERE AGAIN?

24 A YES. THAT'S MUCH CLOSER TO MY HOUSE. TO HAVE TO DRIVE
25 TO SABINE PASS IS A THIRTY MINUTE DRIVE. TO GET IN THE CAR

1 AND GO TO THE BRIDGE, I COULD WALK TO THE BRIDGE. SO, TO GO
2 OVER INTO BRIDGE CITY IS FIVE MINUTES, TEN MINUTES, AND I HAVE
3 A TWO YEAR OLD, I SPEND A LOT OF TIME -- I HAVE THREE SONS AND
4 WE RAISE THEM OUTSIDE. I HAD EVERY INTENTION TO DO THE SAME
5 WITH THIS BOY AND, YOU KNOW, THE AREA, THERE'S NOT AS MANY
6 CHOICES AS I HAD WHEN I WAS A KID THAT YOU CAN GO TO.

7 Q HAVE YOU FISHED IN THE SABINE LAKE NEAR BRIDGE CITY?

8 A I HAVE, YEARS AGO.

9 Q IF THE WATER THERE WERE CLEARER WOULD YOU DO SO AGAIN?

10 A YES, I WOULD.

11 Q HAVE YOU FISHED IN ANY OTHER PARTS OF SABINE LAKE?

12 A I'VE FISHED OFF OF PLEASURE ISLAND.

13 Q WHEN WAS THE LAST TIME YOU DID THAT?

14 A MAYBE A COUPLE OF YEARS AGO.

15 Q DID THE CLOUDINESS OF THE WATER THERE AFFECT YOUR
16 FISHING?

17 A NO, I DON'T THINK THAT -- WHEN I WAS OUT THERE A COUPLE
18 OF YEARS AGO IT WASN'T THAT I NOTICED IT THEN. KNOWING NOW
19 THAT THAT'S -- HAS INDUSTRY RUNNING OFF OF IT, I DON'T LIKE TO
20 FISH OUT IN THAT AREA, I PREFER TO HAVE SOMETHING MUCH FURTHER
21 OUT.

22 Q DO YOU INTEND TO FISH IN SABINE LAKE OFF OF PLEASURE
23 ISLAND AGAIN?

24 A NOT AT THIS TIME WITH THE WATER LIKE IT IS, NO.

25 Q IF THE WATER WERE CLEARER AND LESS CLOUDY IN THAT AREA,

1 WOULD YOU FISH THERE AGAIN?

2 A YES, I WOULD.

3 Q WHEN YOU USED TO FISH IN SABINE LAKE SOUTH OF BRIDGE
4 CITY, DID YOU EVER EAT THE FISH THAT YOU CAUGHT?

5 A YEARS AGO, YES.

6 Q WOULD YOU EAT FISH CAUGHT THERE NOW?

7 A NO, ABSOLUTELY NOT.

8 Q WHY NOT?

9 A BECAUSE I DON'T BELIEVE THAT THAT'S GOOD FOR MY HEALTH.

10 Q DOES THE APPEARANCE OF THE WATER IN THAT AREA AFFECT
11 YOUR WILLINGNESS TO EAT FISH CAUGHT FROM THERE?

12 A YES.

13 Q IN WHAT WAY?

14 A IT CONCERNS ME THAT THE WATER MIGHT NOT BE CLEAN. THE
15 WAY IT LOOKS IT MAKES ME WONDER IF THAT'S HEALTHY.

16 Q IF THE WATER WERE LESS MURKY THERE WOULD YOU BE LESS
17 CONCERNED ABOUT EATING FISH FROM THAT AREA?

18 A YES.

19 Q WOULD IT AFFECT YOUR FEELINGS ABOUT FISHING IN SABINE
20 LAKE IF THERE ARE PLASTIC PARTICLES SUSPENDED IN THE WATER
21 THERE?

22 A ABSOLUTELY.

23 Q IN WHAT WAY?

24 A THAT CONCERNS ME GREATLY. I'M SURE THAT THAT CAN'T BE
25 GOOD FOR YOU.

1 Q AND HOW ARE THE PLASTIC PARTICLES NOT GOOD FOR YOU?

2 A WELL, I WOULD NOT KNOWINGLY INGEST ANYTHING LIKE THAT.

3 Q THANK YOU.

4 THE COURT: OKAY. MR. SMITH?

5 MR. SMITH: YOUR HONOR, MAY I APPROACH THE WITNESS?

6 THE COURT: YES.

7 CROSS EXAMINATION

8 BY MR. SMITH:

9 Q I'M GOING TO BE REFERRING TO DEFENDANT'S EXHIBIT "L".

10 MS. SWEAT, FIRST OF ALL, I'D LIKE FOR YOU TO SHOW ME --

11 IT'S NOT VERY CLEAR --

12 MS. PRAVLIK: IT'S NOT IN COLOR.

13 THE COURT: YOUR HONOR, I HAVE ONE WITH A COLORED
14 MAP. MAY I GIVE THAT TO OPPOSING COUNSEL, PLEASE?

15 THE COURT: HE MAY NEED TO STAND BESIDE YOU, THOUGH,
16 BECAUSE SHE'S NOT GOING TO BE ABLE TO SEE WHERE THE WITNESS IS
17 POINTING.

18 MR. SMITH:

19 Q FIRST OF ALL, ON EXHIBIT "L" DO YOU SEE WHERE THE LARGE
20 REFERENCE TO THE CITY OF PORT ARTHUR IS ON THIS MAP? DO YOU
21 SEE THAT?

22 A YES.

23 Q AND THIS STRIP OF LAND THAT GOES THROUGH THE "T" OF PORT
24 ARTHUR ON EXHIBIT "L", THAT'S PLEASURE ISLAND; CORRECT?

25 A I BELIEVE SO.

1 Q THERE'S A HIGHWAY ON THE SOUTHERN AREA, SHOWS 87, ON THE
2 NORTHERN, SHOWS 73, GENERALLY BETWEEN PORT ARTHUR AND BRIDGE
3 CITY. DO YOU SEE THAT?

4 A YES, SIR.

5 Q IT GOES OVER A BODY OF WATER THAT'S REFERRED TO AS THE
6 NECHES RIVER. THAT'S THE RAINBOW BRIDGE THAT WE TALKED ABOUT?

7 A YES, SIR.

8 Q DO YOU ALSO SOMETIMES REFER TO THAT AS THE ORANGE
9 BRIDGE?

10 A YES, SIR.

11 Q THE AREA THAT YOU WOULD GET TO BY COMING DOWN OFF OF THE
12 RAINBOW BRIDGE, AND IN THE AREA, GENERALLY, AROUND WHERE THE
13 NECHES RIVER FLOWS INTO SABINE LAKE, THERE'S A REFERENCE TO A
14 STUTZ ISLAND. DO YOU SEE THAT REFERENCE TO STUTZ ISLAND,
15 THERE, MA'AM.

16 A IS THAT THE FIRST --

17 Q YES, THE FIRST OF THESE TWO ISLANDS.

18 A YES.

19 Q THAT'S THE OTHER AREA THAT YOU TALK ABOUT RECREATING
20 THERE WITH YOUR FAMILY; IS THAT CORRECT?

21 A I DON'T KNOW WHERE STUTZ ISLAND IS EXCEPT ON YOUR MAP.

22 Q BUT WHEN YOU TALK ABOUT THAT AREA SOUTH OF BRIDGE CITY,
23 IS THIS GENERALLY THE AREA YOU'RE TALKING ABOUT?

24 A WELL, I DON'T KNOW, FROM LOOKING AT YOUR MAP, IF THIS IS
25 -- YOU KNOW, HOW BIG AN AREA IS THIS? IS THIS JUST RIGHT OVER

1 THE BRIDGE AND THESE ARE SOME OF THE ROADS THAT I TAKE THAT
2 ARE IN THIS AREA? YOU KNOW, I'M NOT FAMILIAR WITH THE NAMES
3 OF THESE WATERWAYS AND I CAN'T TELL -- I CAN TELL THAT THIS IS
4 THE NECHES RIVER THAT RUNS THROUGH HERE, BUT I CAN'T TELL YOU
5 FROM YOUR MAP WHERE I GO INTO THIS AREA.

6 IF THIS IS THE CITY OF BRIDGE CITY, THEN I'M GETTING
7 INTO THIS AREA OVER HERE. THERE ARE ROADS IN HERE THAT ARE
8 DEFINITELY NOT RIGHT HERE AT THE BRIDGE. IF THIS IS WHERE THE
9 RESIDENTIAL AREA OF BRIDGE CITY STARTS, BECAUSE YOU'RE GOING
10 ALL IN THROUGH HERE. THERE ARE ROADS THAT GET YOU TO THESE
11 WATERWAYS.

12 Q THERE IS A REFERENCE TO A ROAD THAT APPEARS TO GO ALMOST
13 DUE SOUTH FROM BRIDGE CITY AND INTO THIS WATER AREA; IS THAT
14 CORRECT?

15 A I SEE A ROAD, I CAN'T SEE A NAME OF IT.

16 Q IS IT FAIR TO SAY THAT YOU'RE JUST NOT ABLE TO TELL US
17 ON THIS MAP EXACTLY WHERE YOU GO? IS THAT FAIR TO SAY/

18 A CAN YOU SHOW ME WHERE --

19 Q JUST ANSWER MY QUESTION.

20 A WELL, YOUR QUESTION IS ASKING ME IF I DON'T KNOW WHERE I
21 GO.

22 Q NO, MY QUESTION IS CAN YOU, USING THIS MAP, TELL US
23 WHERE AROUND THE RAINBOW BRIDGE YOU GO ANY MORE SPECIFICALLY
24 THAN JUST SHOWING US THE NECHES AND THE RAINBOW BRIDGE ITSELF?
25 ARE YOU ABLE TO DO THAT?

1 A WITH THIS MAP, NO.

2 Q ALL RIGHT. BUT YOU DO RECALL THAT YOU GO TO AN AREA
3 THAT YOU REFER TO AS SOUTH OF BRIDGE CITY; CORRECT?

4 A YES, SIR.

5 Q I'M SORRY, ONE MORE THING.

6 SABINE PASS IS THIS AREA SHOW ON THE MAP, THERE'S A
7 REFERENCE TO SABINE PASS NEXT TO HIGHWAY 3322; CORRECT?

8 A OKAY.

9 Q AND YOUR OFFICE IS LOCATED IN THAT AREA?

10 A I WOULD THINK RIGHT IN HERE, REAL CLOSE TO THE TIP.

11 THE COURT: LET'S SEE, MA'AM. WHERE, AGAIN?

12 THE WITNESS: RIGHT IN HERE AT THE VERY LAST DIP.

13 THE COURT: ALL RIGHT.

14 THE WITNESS:

15 A CAN YOU SHOW ME WHERE -- SEE, I CAN SEE PLEASURE ISLAND
16 LOOKING OUT MY DESK AT PLEASURE ISLAND. SO, OKAY, THIS IS THE
17 ISLAND THERE, MY OFFICE IS RIGHT IN HERE. (INDICATING ON
18 MAP.)

19 Q OKAY. MS. SWEAT, IT'S TRUE THAT YOU'VE NEVER OWNED A
20 BOAT?

21 A MYSELF, NO, SIR.

22 Q AND YOU HAVE NOT OWNED A FISHING LICENSE IN THE LAST
23 THIRTEEN YEARS, APPROXIMATELY?

24 A NO, SIR.

25 Q IS IT TRUE --

1 A I DO NOT HAVE A FISHING LICENSE. THAT IS TRUE.

2 Q AND YOU'VE NOT HAD ONE FOR APPROXIMATELY THE LAST
3 THIRTEEN YEARS.

4 A THAT IS TRUE.

5 Q AND ISN'T IT TRUE THAT YOU DID NOT REALLY JOIN THE
6 FRIENDS OF THE EARTH.

7 A THE FRIENDS OF THE EARTH MEMBERSHIP WAS A GIFT FROM A
8 FRIEND OF MINE.

9 Q SO, TO ANSWER MY QUESTION, ISN'T IT TRUE THAT YOU DID
10 NOT REALLY JOIN THE FRIENDS OF THE EARTH?

11 THE COURT: WELL, HER POSITION IS SHE'S A MEMBER,
12 SOMEONE ELSE PAID HER DUES, IS WHAT I'M HEARING.

13 THE WITNESS: YES, SIR, IT WAS A GIFT.

14 MR. SMITH: SHE STATED IN HER DEPOSITION, QUOTE, "I
15 DID NOT REALLY JOIN FRIENDS OF THE EARTH," YOUR HONOR.

16 THE WITNESS:

17 A IT WAS A SURPRISE GIFT. IT WAS A PRESENT. I DID NOT
18 KNOW THAT I WAS GOING TO GET THIS PRESENT.

19 THE COURT: DID YOU FILL OUT ANYTHING TO JOIN?

20 THE WITNESS: NO, SIR, HE DID THAT FOR ME. IT WAS A
21 GIFT.

22 THE COURT: OKAY. AND WHO DID THAT FOR YOU?

23 THE WITNESS: A CO-WORKER.

24 THE COURT: ALL RIGHT.

25 MR. SMITH: THAT'S ALL I HAVE.

1 THE COURT: OKAY. MR. WAGNER?

2 REDIRECT EXAMINATION

3 BY MR. WAGNER:

4 Q I'D JUST LIKE TO CLARIFY FOR THE RECORD A COUPLE OF
5 THINGS ABOUT THE ISSUE OF THIS MAP.

6 MS. SWEAT, WHERE YOU WORK IN SABINE PASS, YOU SAID THAT
7 YOU LOOK OUT ACROSS THE WATER TO THE SOUTHERN TIP OF PLEASURE
8 ISLAND?

9 A WELL, THAT MAP MAKES ME WONDER, BECAUSE I DON'T SEE THE
10 LAND CONTINUE, BUT THERE'S A LIGHTHOUSE, AND POSSIBLY YOU
11 CAN'T GET TO THAT OTHER SIDE. I'VE NEVER GONE BY CAR RIGHT
12 ACROSS FROM WHERE MY OFFICE IS, BUT YET, THERE'S LAND, AND I
13 BELIEVE IT'S RIGHT THERE WHERE I POINTED, BECAUSE I'M A
14 HELICOPTER DISPATCHER AND WHEN I SEND A HELICOPTER OFFSHORE,
15 THEY ARE RIGHT THERE BY THE JETTIES. I'VE FLOWN OVER ALL OF
16 THAT, AND WHEN YOU TAKE OFF AND GO, YOU HAVE ONE OR TWO
17 MINUTES AND YOU'RE OFF OF THE LAND THERE INTO THE GULF.

18 Q DOES SABINE PASS HAVE A -- DOES THE CITY OR TOWN OF
19 SABINE PASS HAVE SORT OF A CENTER, A DOWNTOWN AREA?

20 A VERY SMALL.

21 Q WHERE YOU WORK IS IT TOWARD THE GULF FROM THAT AREA OR
22 IS IT AWAY FROM THE GULF?

23 A YOU CAN'T GET ANY FURTHER TO THE GULF. IT'S AWAY FROM
24 THE CENTER OF DOWNTOWN.

25 Q THANK YOU.

1 Q I'M SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT 93, PAGE
2 4, ARTICLE 3, SECTION 1. IT SAYS, "THE DESIGNATION OF MEMBERS
3 AND THE QUALIFICATIONS AND RIGHTS OF MEMBERS SHALL BE --"

4 MR. WAGNER: YOUR HONOR, I OBJECT. SHE'S NOT
5 QUALIFIED TO INTERPRET THE BYLAWS OF FRIENDS OF THE EARTH.

6 THE COURT: LET ME HEAR WHAT YOUR QUESTION IS. I'LL
7 OVERRULE YOUR OBJECTION.

8 MR. SMITH:

9 Q FIRST OF ALL, I'M JUST ASKING YOU, AM I READING
10 CORRECTLY, "THE DESIGNATION OF MEMBERS AND THE QUALIFICATIONS
11 AND RIGHTS OF MEMBERS SHALL BE AS ESTABLISHED FROM TIME TO
12 TIME BY THE BOARD OF DIRECTORS."

13 A THAT'S WHAT IT SAYS.

14 Q NOW, HAVE YOU EVER SEEN ANY DOCUMENT THAT SETS OUT WHAT
15 THOSE QUALIFICATIONS ARE AS SET BY THE BOARD OF DIRECTORS OF
16 THE FRIENDS OF THE EARTH?

17 A NO, SIR.

18 Q IT'S TRUE THAT YOU'VE NEVER SEEN A DOCUMENT THAT SAYS
19 PERSONS CAN BECOME MEMBERS THROUGH GIFTS; THAT'S CORRECT,
20 ISN'T IT?

21 A NO, SIR, I HAVE NOT EVER SEEN A DOCUMENT LIKE THAT.

22 MR. SMITH: PASS THE WITNESS.

23 MR. WAGNER: I HAVE NOTHING FURTHER, YOUR HONOR.

24 THE COURT: IS THIS WITNESS EXCUSED?

25 MR. WAGNER: YES, YOUR HONOR.

1 THE COURT: BY THE DEFENSE?

2 MR. SMITH: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT. MS. SWEAT, YOU'RE FREE TO GO
4 OR REMAIN IN THE COURTROOM, WHATEVER YOU LIKE.

5 THE WITNESS: THANK YOU.

6 THE COURT: WHO IS YOUR NEXT WITNESS?

7 MR. WAGNER: RODNEY CROWL, YOUR HONOR.

8 RODNEY CROWL,
9 CALLED AS A WITNESS BY THE PLAINTIFF, AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS: MR. SMITH:

11 DIRECT EXAMINATION

12 BY MR. WAGNER:

13 Q WOULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

14 A ROD CROWL, C-R-O-W-L.

15 Q WHAT IS YOUR OCCUPATION?

16 A I'M A COLLEGE ADMINISTRATOR.

17 Q ARE YOU A MEMBER OF FRIENDS OF THE EARTH?

18 A YES, I AM.

19 Q WHEN DID YOU BECOME A MEMBER?

20 A SEVERAL YEARS AGO. I'M NOT SURE, LESS THAN FIVE,
21 PROBABLY.

22 Q HAVE YOU EVER BEEN NEAR SABINE LAKE OR THE SABINE RIVER?

23 A YES, I HAVE.

24 Q WHEN DID YOU GO THERE?

25 A I'VE BEEN THERE SEVERAL TIMES IN THE LAST TEN YEARS OR

1 SO. I GUESS THE MOST RECENT WAS MAYBE EIGHT YEARS AGO,
2 APPROXIMATELY. I'M GUESSING ON THAT.

3 Q AND WHY DID YOU GO THERE?

4 A I WENT THERE TO EAT SEAFOOD AT A RESTAURANT CALLED
5 SARTIN'S, S-A-R-T-I-N-S, I BELIEVE IT IS.

6 Q DO YOU INTEND TO GO THERE AGAIN?

7 A I HOPE TO SOMETIME.

8 Q ARE YOU CONCERNED ABOUT THE QUALITY OF THE WATER IN
9 SABINE LAKE, THE SABINE RIVER OR THE GULF OF MEXICO NEAR
10 SABINE PASS?

11 A YES.

12 Q WHY ARE YOU CONCERNED?

13 A BECAUSE ANY SEAFOOD THAT COMES OUT OF THAT WATER, IF I
14 CONSUME IT, I WOULD BE AFRAID OF THE EFFECT IT MIGHT HAVE ON
15 ME.

16 Q AND WHAT EFFECT ARE YOU CONCERNED ABOUT?

17 A TASTE, TOXICITY, ANY KIND OF PROBLEMS IT MIGHT CAUSE ME
18 HEALTH-WISE.

19 Q IF THE SEAFOOD ITSELF WERE DISEASED, WOULD THAT CONCERN
20 YOU?

21 A YES.

22 Q DOES THE QUALITY OF THE WATER IN SABINE LAKE, THE SABINE
23 RIVER OR THE GULF OF MEXICO NEAR SABINE PASS AFFECT YOUR
24 DECISION TO GO TO SABINE PASS TO EAT SEAFOOD IN THE FUTURE?

25 A FOR PURPOSES OF EATING LOCAL SEAFOOD, YES.

1 Q IN WHAT WAY DOES IT AFFECT --

2 A WELL, OBVIOUSLY, I WOULDN'T WANT TO EAT SEAFOOD THAT WAS
3 FROM POLLUTED WATERS OR MIGHT HAVE ANY KIND OF PROBLEMS,
4 CARCINOGENS, OR METALS, OR ANYTHING LIKE THAT.

5 Q WOULD IT AFFECT YOUR FEELINGS ABOUT EATING FISH IN
6 SABINE PASS IF THERE WERE PLASTIC SEDIMENTS IN THE WATER IN
7 SABINE LAKE AND SABINE RIVER OR THE GULF OF MEXICO NEAR SABINE
8 PASS?

9 A YES.

10 Q IN WHAT WAY?

11 A WELL, IF IT WAS DELETERIOUS TO THE ORGANISM I INGESTED I
12 WOULD ASSUME IT WOULD BE BAD FOR ME.

13 Q DO YOU EVER GO TO THE BEACH?

14 A GO TO THE BEACH? YES.

15 Q WHERE?

16 A WELL, SINCE I LIVE IN HOUSTON, MOST OF THE TIME I GO TO
17 THE BEACHES ALONG THE GALVESTON AREA.

18 Q AND WHAT DO YOU DO THERE?

19 A WALK ALONG THE BEACH, SWIM, FISH, CRAB, THAT KIND OF
20 THING.

21 Q WHAT DOES THE WATER LOOK LIKE THERE?

22 THE COURT: ARE YOU TALKING ABOUT GALVESTON, NOW?

23 THE WITNESS: I'M TALKING ABOUT WHERE I GO TO.

24 THE COURT: ALL RIGHT.

25 THE WITNESS:

1 A IT'S GENERALLY MURKY, BROWN COLORED, NOT CLEAR.

2 Q DOES THE APPEARANCE OF THE WATER AFFECT YOU?

3 A WELL, IT MAKES ME LESS LIKELY TO GO THERE BECAUSE I'M
4 NOT REALLY A BIG BEACH PERSON BECAUSE OF THE FACT THAT THE
5 WATER IS NOT CLEAN LOOKING AND IT'S STICKY, AND SO ON.

6 Q IF THE WATER IN THE AREAS WHERE YOU GO TO THE BEACH WERE
7 CLEARER, WOULD YOU BE MORE LIKELY TO GO THERE MORE OFTEN?

8 A SURE.

9 MR. WAGNER: I PASS THE WITNESS.

10 CROSS EXAMINATION

11 BY MR. SMITH:

12 Q MR. CROWL, YOU DO NOT OWN A BOAT; CORRECT?

13 A I DON'T OWN A BOAT, NO.

14 Q YOU HAVE FISHED AT THE BOLIVAR PENINSULA; CORRECT?

15 A I'VE FISHED IN THAT GENERAL AREA AND OTHER AREAS ON THE
16 COAST.

17 Q IS IT FAIR TO SAY THAT THE CLOSEST PLACE YOU'VE EVER
18 FISHED TO SABINE PASS IS THE BOLIVAR PENINSULA?

19 A AS FAR AS SALT WATER?

20 Q YES.

21 A PROBABLY.

22 Q AND SABINE PASS IS ABOUT FIFTY MILES FROM THE BOLIVAR
23 PENINSULA, APPROXIMATELY; CORRECT?

24 A I WOULD SAY.

25 Q TO THE EXTENT YOU EVER LIMIT YOUR FISH CATCHES, THE

1 LIMIT IS BASED ON YOUR SKILL, ISN'T IT?

2 A WELL, A LOT OF TIMES. I GUESS I'M MORE LIMITED BY MY
3 LACK OF SKILL THAN ANYTHING ELSE.

4 Q AND YOU AGREE THAT WATER IN THIS PART OF THE COUNTRY
5 NATURALLY WILL GET CLOUDY AND DARKER IN RAIN EVENTS.

6 A THAT'S TRUE.

7 Q YOU DO EAT LOTS OF FISH; IN FACT, YOU'RE INCREASING YOUR
8 FISH CONSUMPTION; ISN'T THAT FAIR?

9 A OVER THE LAST PROBABLY TEN OR FIFTEEN YEARS.

10 Q AND YOU CANNOT RECALL A TIME WHERE YOU CHOSE NOT TO FISH
11 BECAUSE OF POLLUTION.

12 A I DON'T GO ENOUGH, IN ALL HONESTY, SINCE I'VE BECOME AN
13 ADULT TO HAVE ANY LIMITATION ON LOCATIONS, REALLY.

14 Q YOU CANNOT, IN YOUR MIND, LINK ANY COMPLAINT YOU HAVE
15 ABOUT GALVESTON BAY, FOR EXAMPLE, TO CHEVRON; CORRECT?

16 A I DON'T KNOW ANY CONNECTION ONE WAY OR THE OTHER.

17 Q THE CHEVRON FACILITY THAT MAY OR MAY NOT BE INVOLVED IN
18 THIS CASE, YOU DON'T KNOW WHERE IT IS, OR ANYTHING, DO YOU?

19 A WELL, MY UNDERSTANDING IS THAT IT'S IN THE SABINE AREA,
20 BUT I'M NOT COMPETENT TO SAY EXACTLY WHERE IT IS.

21 Q AND, IN FACT, YOU HAVE NO OPINION REGARDING THE WATER
22 QUALITY IN SABINE LAKE OR SABINE RIVER; CORRECT?

23 A NOT AS FAR AS PERSONAL TESTING, OR ANYTHING.

24 Q RIGHT, YOU DON'T HAVE ANY OPINION AT ALL.

25 A I DON'T HAVE KNOWLEDGE OF IT.

1 Q AND YOU DON'T HAVE AN OPINION REGARDING THE WATER
2 QUALITY OF THE SABINE LAKE OR THE SABINE RIVER; IS THAT RIGHT?

3 A I DON'T HAVE AN OPINION.

4 MR. SMITH: PASS THE WITNESS, YOUR HONOR.

5 MR. WAGNER: I HAVE NOTHING FURTHER, YOUR HONOR.

6 THE COURT: IS THIS WITNESS EXCUSED?

7 MR. WAGNER: YES, YOUR HONOR.

8 THE COURT: BY THE DEFENDANT, MR. SMITH?

9 MR. SMITH: YES, YOUR HONOR.

10 THE COURT: MR. CROWL, YOU CAN EITHER LEAVE OR YOU
11 CAN STAY IN THE COURTROOM, WHICHEVER YOU'D LIKE TO DO.

12 MR. WAGNER, WHO IS YOUR NEXT WITNESS?

13 MR. WAGNER: MARGARET GREEN, YOUR HONOR.

14 MARGARET GREEN,

15 CALLED AS A WITNESS BY THE PLAINTIFF, AFTER BEING DULY SWORN,
16 TESTIFIED AS FOLLOMR. SMITH:

17 DIRECT EXAMINATION

18 BY MR. WAGNER:

19 Q MS. GREEN, WOULD YOU STATE YOUR NAME FOR THE RECORD,
20 PLEASE?

21 A MARGARET GREEN.

22 Q WHAT IS YOUR OCCUPATION?

23 A I'M A HOUSEWIFE.

24 Q ARE YOU A MEMBER OF FRIENDS OF THE EARTH?

25 A YES, I AM.

1 Q WHEN DID YOU BECOME A MEMBER OF FRIENDS OF THE EARTH?

2 A IN 1994.

3 Q WHERE DO YOU LIVE, MS. GREEN?

4 A IN BEAUMONT, TEXAS, ON GLADYS.

5 Q HOW LONG HAVE YOU LIVED THERE?

6 A I'VE LIVED IN BEAUMONT ALL MY LIFE. I'M A NATIVE OF
7 BEAUMONT.

8 Q HOW FAR FROM SABINE LAKE DO YOU LIVE?

9 A APPROXIMATELY -- BEAUMONT'S THIRTY TO FORTY-FIVE MILES,
10 SOMEWHERE IN THAT AREA.

11 Q HAVE YOU ENGAGED IN ANY RECREATIONAL ACTIVITIES ON OR
12 NEAR SABINE LAKE?

13 A YES, I HAVE.

14 Q WHAT ACTIVITIES?

15 A FISHING.

16 Q DO YOU OWN A BOAT?

17 A YES, I DO.

18 Q WHERE DO YOU KEEP IT?

19 A WE HAVE ONE BOAT IN GALVESTON AND WE HAVE A BOAT STALL
20 ON THE SABINE RIVER AND A BOAT THAT WE SHARE WITH OUR SON.

21 Q DO YOU KEEP A BOAT OF YOUR OWN IN A BOAT STALL AT THE
22 SABINE RIVER?

23 A NOT AT THIS TIME.

24 Q DO YOU INTEND TO DO SO?

25 A YES, WE DO.

1 Q HOW SOON DO YOU INTEND TO DO THAT?

2 A WELL, JUST AS SOON AS THE BOAT GETS DELIVERED.

3 Q WHERE ON SABINE LAKE DO YOU KEEP YOUR BOAT, OR DO YOU
4 HAVE A STALL?

5 A IT'S EITHER AT THE PORT ARTHUR YACHT CLUB OR THE
6 PLEASURE ISLAND MARINA, I'M NOT SURE JUST EXACTLY THE
7 DESIGNATION, BUT IT'S A MARINA ON PLEASURE ISLAND.

8 Q DO YOU KNOW IF IT'S THE ONLY MARINA ON PLEASURE ISLAND?

9 A I BELIEVE IT IS THE ONLY ONE.

10 Q WHEN WAS THE LAST TIME YOU WENT BOATING ON SABINE LAKE?

11 A IN THE FALL OF '95.

12 Q AND DID YOU FISH THEN?

13 A YES, I DID.

14 Q WHERE ON SABINE LAKE DID YOU FISH?

15 A WELL, WE BEGAN FISHING RIGHT OUTSIDE OF THE YACHT BASIN
16 AND THEN JUST FOLLOWED THE BIRDS ACROSS THE LAKE. WE WENT
17 ACROSS THE LAKE.

18 Q DID YOU GO ALL THE WAY ACROSS THE LAKE?

19 A PRETTY WELL, YEAH.

20 Q DID YOU GO TO LOUISIANA?

21 A RIGHT.

22 Q AND DID YOU FISH ALL ALONG AS YOU CROSSED THE LAKE?

23 A YES, WE DID, EVERY TIME WE WOULD SEE BIRDS OR ANY KIND
24 OF FISHING ACTION, WE'D STOP AND FISH IN THAT AREA.

25 Q DO YOU PLAN TO BOAT AND FISH ON SABINE LAKE AGAIN?

1 A YES, WE DO.

2 Q WHEN YOU WERE FISHING ON SABINE LAKE, WHAT DID THE WATER
3 LOOK LIKE?

4 A YOU COULD NOT SEE DOWN INTO THE WATER.

5 Q WHAT MADE YOU NOTICE THAT YOU COULD NOT SEE INTO THE
6 WATER?

7 A WELL, WHEN YOU CAST A PLUG, IF IT'S A COLORED PLUG, IF
8 THE WATER'S VERY CLEAR, YOU CAN SEE IT, AND YOU CAN SEE IT AS
9 YOU RETRIEVE IT. I COULDN'T SEE IT ONCE IT HIT THE WATER.
10 ALSO, WHEN YOU CAUGHT THE FISH, YOU COULDN'T TELL WHAT THE
11 FISH WAS. I COULD NOT TELL WHAT THE FISH WAS UNTIL IT WAS TO
12 THE SURFACE OF THE WATER.

13 Q DOES THE FACT THAT YOU CAN'T SEE VERY FAR INTO THE WATER
14 IN SABINE LAKE AFFECT YOUR FISHING ON SABINE LAKE?

15 A IT DOESN'T AFFECT WHETHER I GO FISHING OR NOT, IT DOES
16 AFFECT MY USE OF THE FISH I CATCH AND MY ENJOYMENT OF THE
17 RECREATIONAL ASPECT OF FISHING.

18 Q IN WHAT WAY DOES IT AFFECT YOUR ENJOYMENT OF THE
19 RECREATIONAL ASPECT OF FISHING?

20 A WELL, FISHING IS A WONDERFUL SPORT AND IF YOU CAN SEE
21 THE FISH, YOU KNOW, AND ATTEMPT TO CAST TO THE FISH, AND TO
22 JUST ENGAGE IN THE ENDEAVOR INSTEAD OF JUST CASTING WHERE YOU
23 CAN'T SEE ANYTHING AND HOPE THERE'S SOMETHING UNDER THERE.
24 THAT'S THE ENJOYMENT.

25 Q WOULD YOU ENJOY FISHING IN SABINE LAKE MORE IF THE WATER

1 WERE CLEARER?

2 A OH, YEAH.

3 Q HAVE YOU CAUGHT FISH IN SABINE LAKE?

4 A YES.

5 Q DO YOU EAT THE FISH YOU CATCH IN SABINE LAKE?

6 A WE RELEASE THE FISH.

7 Q AND WHY DO YOU NOT EAT THEM?

8 A I'M NOT CONVINCED THAT IT'S SAFE TO EAT THE FISH IN
9 SABINE LAKE.

10 Q DOES THE FACT THAT YOU CAN'T SEE VERY FAR INTO THE WATER
11 AFFECT YOUR CONCERN ABOUT THE SAFETY OF EATING FISH IN THE
12 LAKE?

13 A WELL, IN THAT THE CLARITY OF THE WATER APPARENTLY IS
14 AFFECTED BY DISCHARGES FROM ALL THE INDUSTRY IN THAT AREA,
15 YES.

16 Q IF THE WATER IN SABINE LAKE WERE CLEARER, WOULD YOU BE
17 MORE LIKELY TO EAT THE FISH THAT YOU CATCH THERE?

18 A OH, DEFINITELY, YES.

19 Q WOULD IT AFFECT YOUR FEELINGS ABOUT FISHING IN SABINE
20 LAKE IF THERE WERE PLASTIC PARTICLES IN THE WATER THERE?

21 A WOULD YOU REPEAT THE QUESTION?

22 Q WOULD IT AFFECT YOUR FEELINGS ABOUT FISHING IN SABINE
23 LAKE IF THERE WERE PLASTIC PARTICLES IN THE WATER THERE?

24 A NOT ONLY ABOUT FISHING, BUT JUST ABOUT SABINE LAKE,
25 TOTALLY, YES.

1 Q IN WHAT WAY WOULD IT AFFECT YOUR FEELINGS ABOUT SABINE
2 LAKE?

3 A I HAVE A LOT OF REVERENCE FOR THE NATURAL ORDER OF THINGS
4 AND IF IT IS BEING POLLUTED BY PLASTICS, THAT WOULD BE VERY
5 DISTURBING.

6 Q AND WOULD IT ALSO AFFECT YOUR FISHING IN SABINE LAKE IF
7 THERE WERE PLASTIC PARTICLES IN THE WATER?

8 A IN THAT I CATCH AND RELEASE I WOULD PROBABLY CONTINUE TO
9 FISH. I WOULD DEFINITELY URGE ANYONE I KNOW NOT TO EAT THE
10 FISH.

11 Q THANK YOU.

12 THE COURT: MR. SMITH?

13 CROSS EXAMINATION

14 BY MR. SMITH:

15 Q MS. GREEN, YOUR UNDERSTANDING IS THAT YOU JOINED THE
16 FRIENDS OF THE EARTH ON OR ABOUT DECEMBER 20, 1994; ISN'T THAT
17 CORRECT?

18 A THE -- I WOULD PROBABLY SAY -- WELL, IT DEPENDS ON HOW
19 YOU DEFINE "JOIN." IF YOU MEAN ACTUAL MAILING A CHECK AND THE
20 CHECK BEING RECEIVED BY THEM, THAT'S PROBABLY ACCURATE, BUT AS
21 FAR AS MY INTENTION TO JOIN, THAT OCCURRED AT THE TIME THAT I
22 GAVE THE DEPOSITION.

23 Q I BELIEVE YOU MAY HAVE MISSPOKE. DO YOU THINK IT WAS
24 MAYBE THE DATE OF YOUR AFFIDAVIT?

25 A WHATEVER THE TERM IS, YES. THAT'S GOOD.

1 Q LET ME JUST MAKE SURE THAT YOU DON'T HAVE A
2 MISUNDERSTANDING. YOU HAVE SIGNED YOUR NAME TO A THREE-PAGE
3 DOCUMENT AT ONE TIME; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND YOU ALSO PARTICIPATED IN A PROCEEDING AT YOUR
6 HUSBAND'S LAW OFFICE WHERE I ASKED YOU SOME QUESTIONS.

7 A THAT'S CORRECT.

8 Q OKAY. FOR THE PURPOSES OF WHAT WE'RE TALKING ABOUT
9 HERE, LET'S JUST CALL YOUR SIGNING THIS DOCUMENT EXECUTING AN
10 AFFIDAVIT.

11 A THANK YOU.

12 Q AND THE PROCEEDING WHERE I ASKED YOU QUESTIONS AT YOUR
13 HUSBAND'S OFFICE, WE'LL CALL THAT A DEPOSITION; OKAY?

14 A YES, SIR.

15 Q IS THAT FAIR?

16 A YES, SIR.

17 Q SO, IN YOUR MIND, THE FIRST THING THAT YOU DID TO JOIN
18 THE FRIENDS OF THE EARTH WAS WHEN YOU EXECUTED THIS AFFIDAVIT;
19 CORRECT?

20 A WELL, WHEN I MADE THE DECLARATION THAT I WANTED TO JOIN
21 FRIENDS OF THE EARTH.

22 MR. SMITH: MAY I APPROACH THE WITNESS, YOUR HONOR?

23 THE COURT: YES. WHAT'S THE DATE ON THAT AFFIDAVIT?

24 MR. SMITH: THAT'S WHAT I'M GETTING TO, YOUR HONOR.

25 MR. SMITH:

1 Q THE DATE ON THIS AFFIDAVIT IS 16 OCTOBER, 1994; CORRECT?

2 A THAT'S CORRECT.

3 MR. WAGNER: YOUR HONOR, I THINK WE CAN PROBABLY
4 CLEAR THIS UP PRETTY QUICKLY. IF YOU'LL LOOK AT PLAINTIFF'S
5 EXHIBIT 95, ON THE FRONT OF THE SECOND PAGE THERE'S A
6 MEMBERSHIP FORM AND IT SAYS, CHECK DATED SEPTEMBER 15TH, '94.

7 THE COURT: OKAY. I SEE THAT.

8 MR. SMITH:

9 Q ISN'T IT TRUE, MRS. GREEN, THAT THE ONLY INDUSTRIAL
10 PLANT THAT IN YOUR MIND YOU CAN ASSOCIATE AS A PROBLEM AT
11 SABINE LAKE IS WHAT YOU CALL THE PORT ARTHUR REFINERY?

12 A NO, THAT'S NOT TRUE.

13 Q DO YOU RECALL GIVING A DEPOSITION IN THIS CASE?

14 A YES, I DID GIVE A DEPOSITION.

15 Q AGAIN, THAT WAS WHERE WE WERE IN YOUR HUSBAND'S LAW
16 OFFICE --

17 A CORRECT.

18 Q -- AND I ASKED YOU SOME QUESTIONS.

19 A YES, YOU DID.

20 Q YOU UNDERSTOOD YOU WERE UNDER OATH.

21 A THAT'S CORRECT.

22 Q AND YOU UNDERSTAND WHAT ALL THAT MEANS; CORRECT?

23 A I CERTAINLY DO.

24 MR. SMITH: YOUR HONOR, MAY I APPROACH THE WITNESS?

25 THE COURT: YES.

1 MR. SMITH:

2 Q I'D LIKE TO SHOW YOU PAGE 9 OF YOUR DEPOSITION
3 TRANSCRIPT, ON LINE 9. TELL ME IF I'M READING THIS CORRECTLY.

4 A OKAY.

5 Q QUESTION: "DO YOU HAVE AN UNDERSTANDING OF WHICH
6 INDUSTRIAL PLANTS IN YOUR MIND ARE IN ANY WAY CAUSING PROBLEMS
7 TO SABINE LAKE?"

8 ANSWER: "I KNOW OF ONE PLANT."

9 QUESTION: "WHICH PLANT DO YOU KNOW OF?"

10 ANSWER: "CHEVRON IN PORT ARTHUR."

11 QUESTION: "ANY OTHERS THAT YOU KNOW OF?"

12 ANSWER: "NO."

13 A UH-HUH.

14 Q DID I READ THAT CORRECTLY?

15 A YOU READ IT CORRECTLY. I DID NOT INTERPRET THAT THE WAY
16 THAT YOU'RE INTERPRETING IT.

17 Q I'D LIKE TO SHOW YOU WHAT'S BEEN ADMITTED INTO EVIDENCE
18 AS EXHIBIT "L", WHICH IS A MAP OF THE AREA. DO YOU SEE THE
19 REFERENCE TO HIGHWAY 82 SOUTHEAST OF PORT ARTHUR? DO YOU SEE
20 THAT REFERENCED THERE?

21 A YES, I DO SEE THAT.

22 Q IF YOU WERE TO GO INLAND FROM THAT AREA, FROM WHERE THAT
23 82 IS INDICATED TO GO INLAND, IS THAT THE APPROXIMATE LOCATION
24 OF WHAT YOU RECALL AS BEING THE CHEVRON PORT ARTHUR FACILITY?

25 A YES.

1 Q ISN'T IT FAIR TO SAY THAT YOU CANNOT ANSWER WHY YOU
2 DON'T EAT THE FISH IN SABINE LAKE?

3 A THAT'S KIND OF A TRICKY QUESTION.

4 Q WELL, MA'AM, DID YOU CONSIDER IT A TRICK QUESTION WHEN
5 YOU ANSWERED THAT QUESTION IN YOUR DEPOSITION?

6 A I HADN'T GIVEN IT THAT MUCH THOUGHT. WE CATCH AND
7 RELEASE BECAUSE OF THE CONDITION OF THE LAKE.

8 Q YOU DO RECALL GIVING YOUR DEPOSITION UNDER OATH.

9 A I DO, INDEED, YES.

10 MR. SMITH: MAY I APPROACH THE WITNESS, YOUR HONOR?

11 THE COURT: YES. NOW, HAS SHE ANSWERED THE
12 QUESTION, THOUGH, THE SAME WAY IT'S ANSWERED IN THE
13 DEPOSITION.

14 MR. SMITH: SHE CERTAINLY DID NOT, YOUR HONOR.

15 THE COURT: OH. ALL RIGHT.

16 MR. SMITH:

17 Q QUESTION -- THIS IS PAGE 13, LINE 14: "AND YOU DON'T
18 EAT ANY OF THE FISH YOU CATCH IN SABINE LAKE."

19 ANSWER: "I HAVE NOT."

20 QUESTION: "WHY NOT?"

21 ANSWER: "I CAN'T REALLY ANSWER THAT, I SIMPLY HAVE
22 NOT."

23 DID I READ THAT CORRECTLY?

24 A YOU READ IT CORRECTLY.

25 MR. SMITH: PASS THE WITNESS, YOUR HONOR.

1 THE COURT: MR. WAGNER?

2 MR. WAGNER: NOTHING MORE, YOUR HONOR.

3 THE COURT: OKAY. IS THIS WITNESS EXCUSED?

4 MR. WAGNER: YES, SHE IS.

5 THE COURT: BY THE DEFENSE?

6 MR. SMITH: YES, YOUR HONOR.

7 THE COURT: MS. GREEN, YOU MAY REMAIN IN THE
8 COURTROOM, IF YOU LIKE, OR YOU CAN LEAVE.

9 THE WITNESS: THANK YOU.

10 MR. WAGNER: YOUR HONOR, I WAS GOING TO CONTINUE BY
11 READING A STIPULATION INTO THE RECORD, AND MAYBE IF WE COULD
12 TAKE THREE OR FIVE MINUTES, I THINK WE CAN JUST STRAIGHTEN OUT
13 THE ONE DISCREPANCY ABOUT THE STIPULATION.

14 THE COURT: WE'LL TAKE A TEN-MINUTE RECESS.

15 (RECESS TAKEN, 11:22 UNTIL 11:37.)

16 MR. WAGNER: YOUR HONOR, BEFORE I PROCEED WITH
17 READING THE STIPULATION, MS. GREEN ASKED THAT SHE BE PERMITTED
18 TO CLARIFY ONE ASPECT OF HER TESTIMONY.

19 THE COURT: DO YOU WANT TO RE-CALL HER?

20 MR. WAGNER: YES, PLEASE.

21 THE COURT: ALL RIGHT. MS. GREEN?

22 REDIRECT EXAMINATION OF MARGARET GREEN

23 BY MR. WAGNER:

24 Q MS. GREEN, WHEN YOU SAID IN YOUR DEPOSITION, IN RESPONSE
25 TO A QUESTION BY MR. SMITH, THAT YOU KNOW OF ONE PLANT THAT IS

1 CAUSING PROBLEMS IN SABINE LAKE. WHAT DID YOU MEAN?

2 A THE WAY THAT I HAD UNDERSTOOD HIS QUESTION WAS THAT I
3 HAVE INDEPENDENT, CONCRETE, KNOWLEDGE. AND, SO, I ANSWERED
4 THAT I ONLY KNOW OF ONE IN THAT INDEPENDENT, CONCRETE MANNER.

5 Q KNOWLEDGE OF WHAT?

6 A OF DISCHARGING. ILLEGAL DISCHARGING.

7 Q AND ARE YOU AWARE OF OTHER PLANTS THAT DISCHARGE --

8 A YES.

9 Q -- IN THE SABINE RIVER OR SABINE LAKE?

10 A YES, I AM. UH-HUH.

11 Q DO YOU KNOW WHERE THE CHEVRON PLANT IS THAT IS AT ISSUE
12 IN THIS CASE?

13 A I KNOW THAT IT IS NOT THE SAME CHEVRON THAT I WAS
14 SPEAKING OF IN THE DEPOSITION, AND I WANTED TO CLARIFY IT AT
15 THAT TIME AND WAS NOT GIVEN THE OPPORTUNITY. I DO KNOW THE
16 ONE I WAS SPEAKING OF WAS CHEVRON IN PORT ARTHUR AND THAT THIS
17 IS CONCERNING THE CHEVRON PLANT ON THE SABINE RIVER AND COW
18 BAYOU.

19 MR. WAGNER: THANK YOU.

20 MR. SMITH: I DON'T HAVE ANYTHING FURTHER, JUDGE.

21 THE COURT: OKAY. THANK YOU, MS. GREEN.

22 ALL RIGHT. NOW, WHAT STIPULATION ARE YOU GOING TO READ?

23 MR. WAGNER: THIS IS THE STIPULATION THAT WE ENTERED
24 INTO THIS MORNING.

25 THE COURT: THE ONE THAT YOU FILED THIS MORNING?