

July 11, 2017

Mr. Kevin S. Minoli
Designated Agency Ethics Official
U.S. EPA (2310A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Minoli:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Assistant Administrator for the Office of Chemical Safety and Pollution Prevention of the United States Environmental Protection Agency.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my positions with the following entities: University of Cincinnati, and the Toxicology Education Foundation. I resigned from my position with the North American Flame Retardant Alliance, and the Toxicology Forum in June 2017. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which I know that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). Upon confirmation, I also will resign from my position with the Environmental Protection Agency's Science Advisory Board.

Upon confirmation, I will resign from my position as general partner of Dourson, Dourson and Fowler, a partnership that owns undeveloped land in Stanton, KY, and I will transfer my financial interest in this entity to my adult son. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of this entity until I have transferred it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know Dourson, Dourson, and Fowler is a party or represents a party, unless I am first authorized to

participate, pursuant to 5 C.F.R. § 2635.502(d).

My spouse is a sole proprietor of her law firm, which does business as Martha C. Dourson, LLC. For as long as my spouse continues to have her law practice, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the firm, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). I also will not participate personally and substantially in any particular matter involving specific parties in which I know a client of my spouse is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I receive royalties from CreateSpace Independent Publishing Platform for sales of my three books: *Messiah's Star (Evidence for Faith) (Volume 1)*; *The Beginning: Let there be light (Evidence of Faith) (Volume 2)*; and *"The Linen Cloths: ...Jesus left behind (Evidence of Faith) (Volume 3)*. I will not participate personally and substantially in any particular matter involving specific parties in which I know CreateSpace Independent Publishing Platform is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

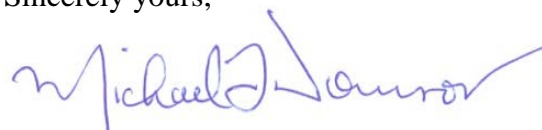
If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I will meet in person with you during the first week of my service in the position of Assistant Administrator in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely yours,



Michael L. Dourson

ICMJE Form for Disclosure of Potential Conflicts of Interest

Instructions

The purpose of this form is to provide readers of your manuscript with information about your other interests that could influence how they receive and understand your work. The form is designed to be completed electronically and stored electronically. It contains programming that allows appropriate data display. Each author should submit a separate form and is responsible for the accuracy and completeness of the submitted information. The form is in six parts.

1. Identifying information.

2. The work under consideration for publication.

This section asks for information about the work that you have submitted for publication. The time frame for this reporting is that of the work itself, from the initial conception and planning to the present. The requested information is about resources that you received, either directly or indirectly (via your institution), to enable you to complete the work. Checking "No" means that you did the work without receiving any financial support from any third party -- that is, the work was supported by funds from the same institution that pays your salary and that institution did not receive third-party funds with which to pay you. If you or your institution received funds from a third party to support the work, such as a government granting agency, charitable foundation or commercial sponsor, check "Yes".

3. Relevant financial activities outside the submitted work.

This section asks about your financial relationships with entities in the bio-medical arena that could be perceived to influence, or that give the appearance of potentially influencing, what you wrote in the submitted work. You should disclose interactions with ANY entity that could be considered broadly relevant to the work. For example, if your article is about testing an epidermal growth factor receptor (EGFR) antagonist in lung cancer, you should report all associations with entities pursuing diagnostic or therapeutic strategies in cancer in general, not just in the area of EGFR or lung cancer.

Report all sources of revenue paid (or promised to be paid) directly to you or your institution on your behalf over the 36 months prior to submission of the work. This should include all monies from sources with relevance to the submitted work, not just monies from the entity that sponsored the research. Please note that your interactions with the work's sponsor that are outside the submitted work should also be listed here. If there is any question, it is usually better to disclose a relationship than not to do so.

For grants you have received for work outside the submitted work, you should disclose support ONLY from entities that could be perceived to be affected financially by the published work, such as drug companies, or foundations supported by entities that could be perceived to have a financial stake in the outcome. Public funding sources, such as government agencies, charitable foundations or academic institutions, need not be disclosed. For example, if a government agency sponsored a study in which you have been involved and drugs were provided by a pharmaceutical company, you need only list the pharmaceutical company.

4. Intellectual Property.

This section asks about patents and copyrights, whether pending, issued, licensed and/or receiving royalties.

5. Relationships not covered above.

Use this section to report other relationships or activities that readers could perceive to have influenced, or that give the appearance of potentially influencing, what you wrote in the submitted work.

Definitions.

Entity: government agency, foundation, commercial sponsor, academic institution, etc.

Grant: A grant from an entity, generally [but not always] paid to your organization

Personal Fees: Monies paid to you for services rendered, generally honoraria, royalties, or fees for consulting, lectures, speakers bureaus, expert testimony, employment, or other affiliations

Non-Financial Support: Examples include drugs/equipment supplied by the entity, travel paid by the entity, writing assistance, administrative support, etc.

Other: Anything not covered under the previous three boxes

Pending: The patent has been filed but not issued

Issued: The patent has been issued by the agency

Licensed: The patent has been licensed to an entity, whether earning royalties or not

Royalties: Funds are coming in to you or your institution due to your patent

ICMJE Form for Disclosure of Potential Conflicts of Interest

Section 1. Identifying Information

1. Given Name (First Name) Michael

2. Surname (Last Name) Dourson

3. Date 01-August-2016

4. Are you the corresponding author? Yes No

Corresponding Author's Name Patricia Nance

5. Manuscript Title
Update: Mode of Action (MOA) for Liver Tumors Induced by Oral Exposure to 1,4-Dioxane

6. Manuscript Identifying Number (if you know it)

Section 2. The Work Under Consideration for Publication

Did you or your institution **at any time** receive payment or services from a third party (government, commercial, private foundation, etc.) for any aspect of the submitted work (including but not limited to grants, data monitoring board, study design, manuscript preparation, statistical analysis, etc.)?

Are there any relevant conflicts of interest? Yes No

If yes, please fill out the appropriate information below. If you have more than one entity press the "ADD" button to add a row. Excess rows can be removed by pressing the "X" button.

Name of Institution/Company	Grant?	Personal Fees?	Non-Financial Support?	Other?	Comments
Hamp, Mathews & Associates, Inc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financial Support via Contract
PPG Corporation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financial Support via Contract
Waste Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Financial Support via Contract

Section 3. Relevant financial activities outside the submitted work.

Place a check in the appropriate boxes in the table to indicate whether you have financial relationships (regardless of amount of compensation) with entities as described in the instructions. Use one line for each entity; add as many lines as you need by clicking the "Add +" box. You should report relationships that were **present during the 36 months prior to publication**.

Are there any relevant conflicts of interest? Yes No

Section 4. Intellectual Property -- Patents & Copyrights

Do you have any patents, whether planned, pending or issued, broadly relevant to the work? Yes No

ICMJE Form for Disclosure of Potential Conflicts of Interest

Section 5. Relationships not covered above

Are there other relationships or activities that readers could perceive to have influenced, or that give the appearance of potentially influencing, what you wrote in the submitted work?

- Yes, the following relationships/conditions/circumstances are present (explain below):
- No other relationships/conditions/circumstances that present a potential conflict of interest

At the time of manuscript acceptance, journals will ask authors to confirm and, if necessary, update their disclosure statements. On occasion, journals may ask authors to disclose further information about reported relationships.

Section 6. Disclosure Statement

Based on the above disclosures, this form will automatically generate a disclosure statement, which will appear in the box below.

Dr. Dourson reports funding for this project was provided by from Hamp, Mathews & Associates, Inc., PPG Corporation, Waste Management, and the University of Cincinnati during the conduct of the analysis.

Evaluation and Feedback

Please visit <http://www.icmje.org/cgi-bin/feedback> to provide feedback on your experience with completing this form.

News from TERA's President and Board of Directors

TERA Joins the University of Cincinnati

Toxicology Excellence for Risk Assessment joined the Department of Environmental Health, at the University of Cincinnati's (UC), College of Medicine on July 6, 2015. TERA will be known as the Toxicology Excellence for Risk Assessment Center (or TERA Center).

TERA was organized in 1995 as a nonprofit with a mission to support the protection of public health through the best use of toxicity data. Now as a Center with the Department of Environmental Health at the University of Cincinnati's College of Medicine, we continue to accomplish this mission through independent evaluation of toxicity data and by interpreting and communicating risk assessment

information through assessments and websites, organizing peer reviews and consultations, improving risk methods through research, and educating risk managers, assessors, and the public on risk assessment issues. TERA has a strong history of enhancing the use of chemical-specific data to increase the rigor and transparency of evaluations aimed at the prevention of potential human health risks.

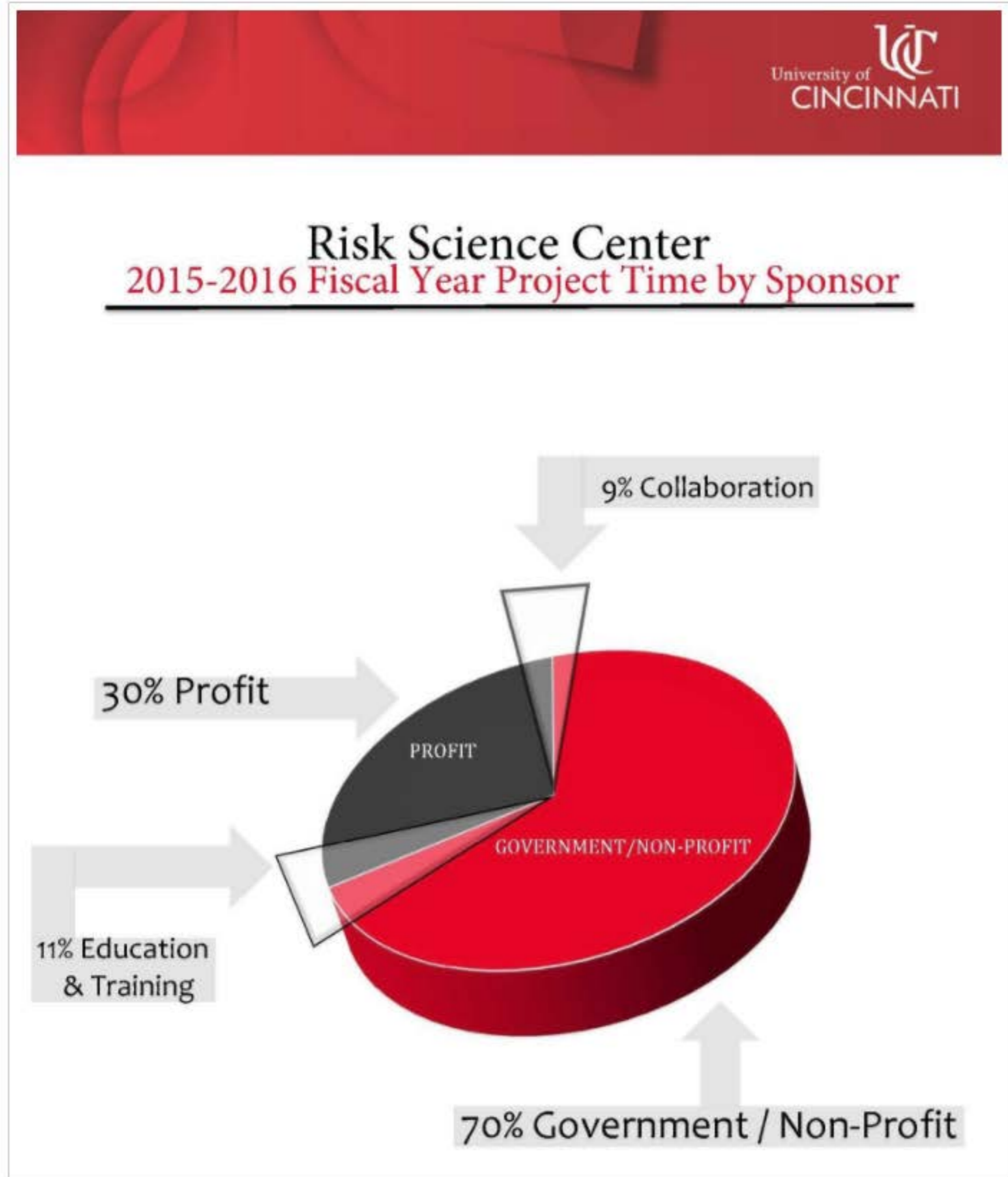
The TERA Center will maintain this rigor and transparency, but will also mesh its work with the research findings of UC investigators in order to develop the next generation of risk assessment methods based on Toxicology 21 principles.

SUPPORTING MISSIONS

TERA Center: To support the protection of public health by developing, reviewing and communicating risk assessment values and analyses; improving risk methods through research; and educating risk assessors, managers, and the public on risk assessment issues.

UC-DEH: To improve the quality of life by identifying the mechanisms of disease and injury due to environmental exposures and genetic factors, and by developing effective methods of preventions and interventions.

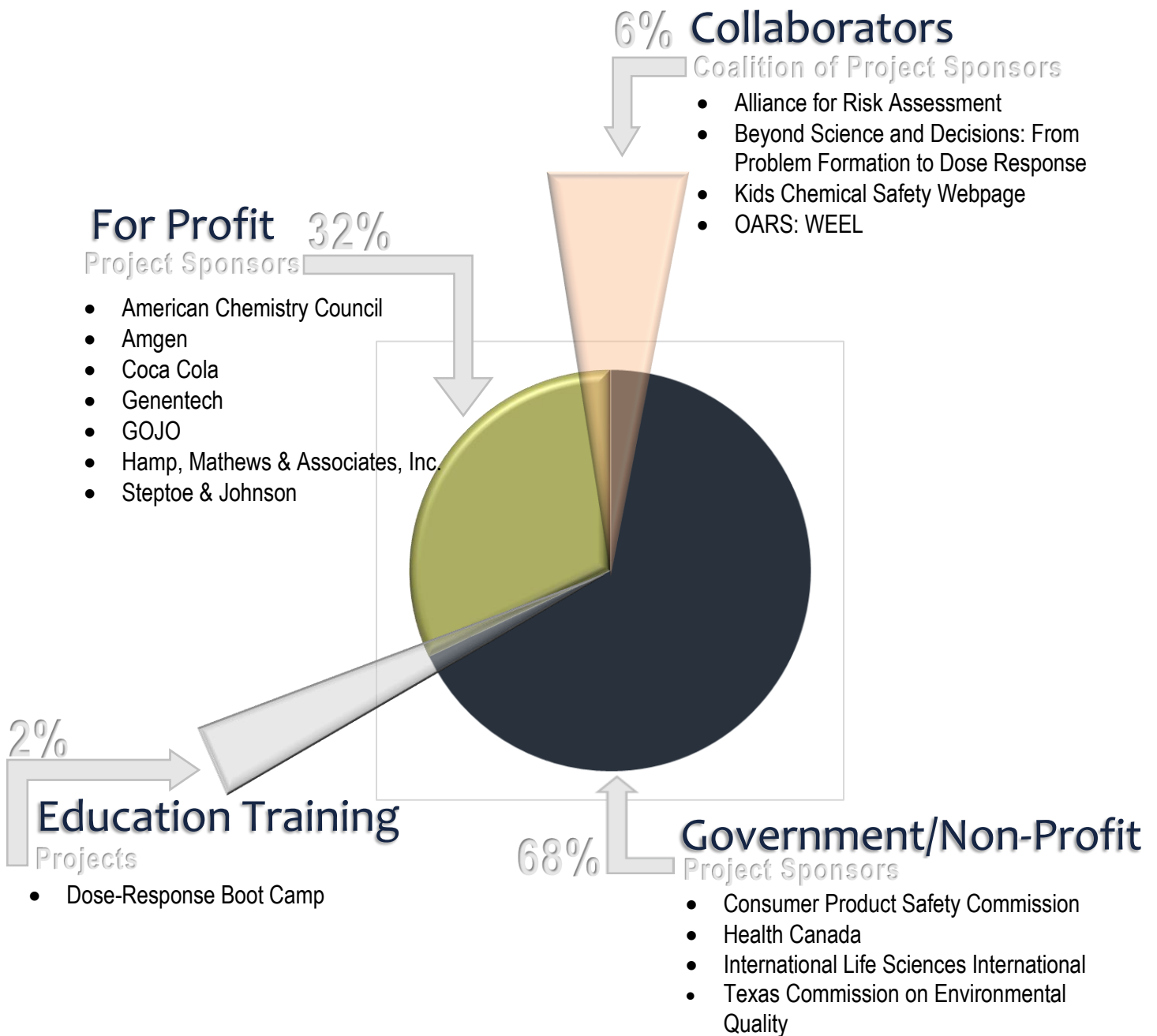
Funding



Popular Links

- ▶ [Environmental Health Academic Programs](#)
- ▶ [Masters of Public Health Program](#)
- ▶ [Core Facilities](#)
- ▶ [Center for Environmental Genetics](#)
- ▶ [Department News & Events](#)

2015 TERA Project Time by Sponsor



The sponsors listed above are sponsors that each comprise 2% or more of our work.

2014 TERA Project Time by Sponsor



43%

For Profit

Projects/Sponsors

- + American Cleaning Institute
- + Amgen
- + Eli Lilly
- + Genentech
- + Morrison & Foerster
- + Quinn

2%

Training

Projects/Sponsors

- + Dose Response Boot Camp
- + FDA Training Course

9%

Collaborations

Projects/Sponsors

- + Alliance for Risk Assessment TCE Coalition
- + Beyond Science & Decisions
- + Kidschemicalsafety.org
- + Occupational Alliance for Risk Assessment

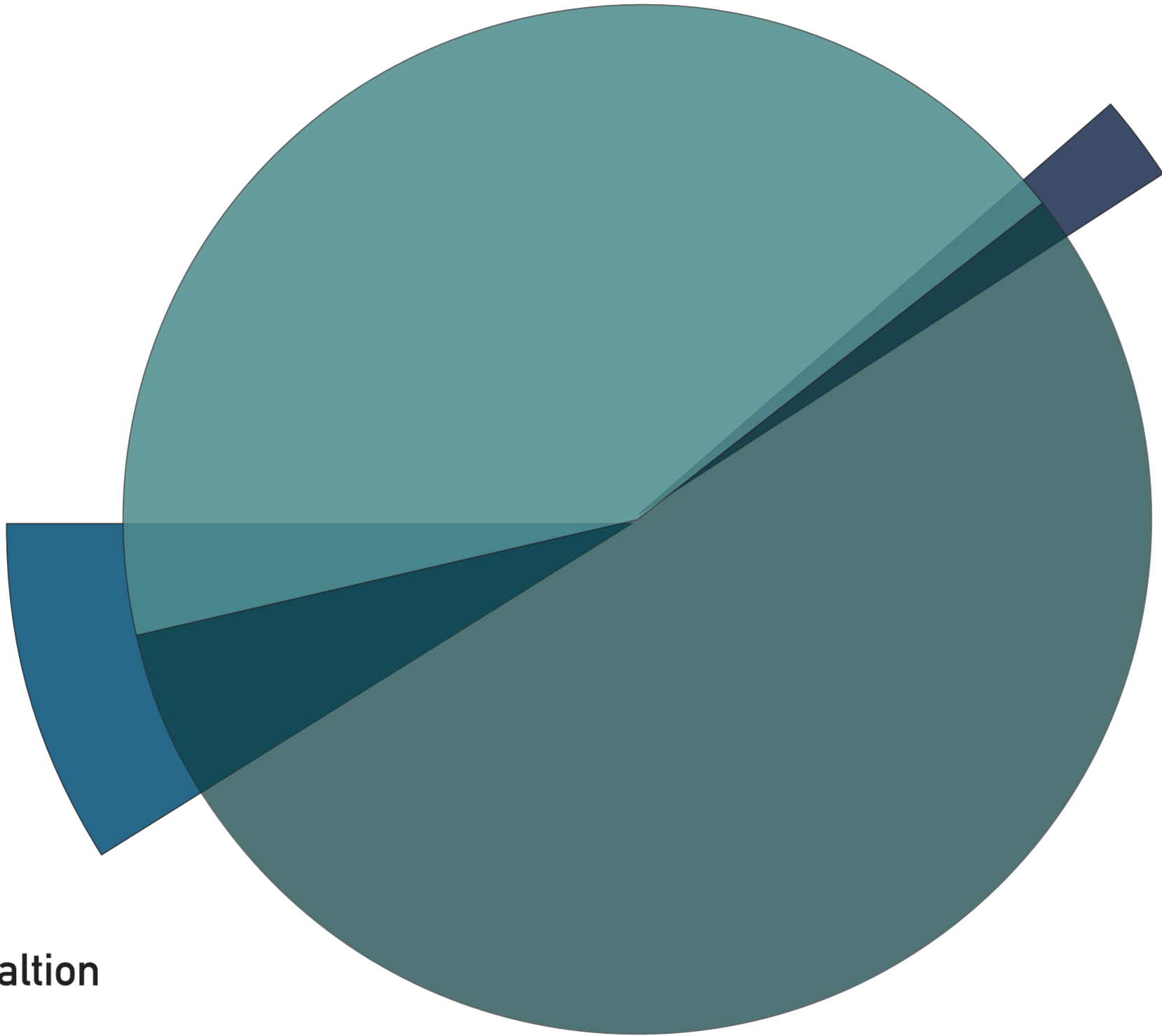
57%

Government/

Nonprofit

Projects/Sponsors

- + Consumer Product Safety Commission
- + ERM: Alaska Sulfolane
- + Health Canada
- + West Virginia Spill - MCHM



2013 TERA Project Time by Sponsor

13%

Collaborations

Projects/Sponsors

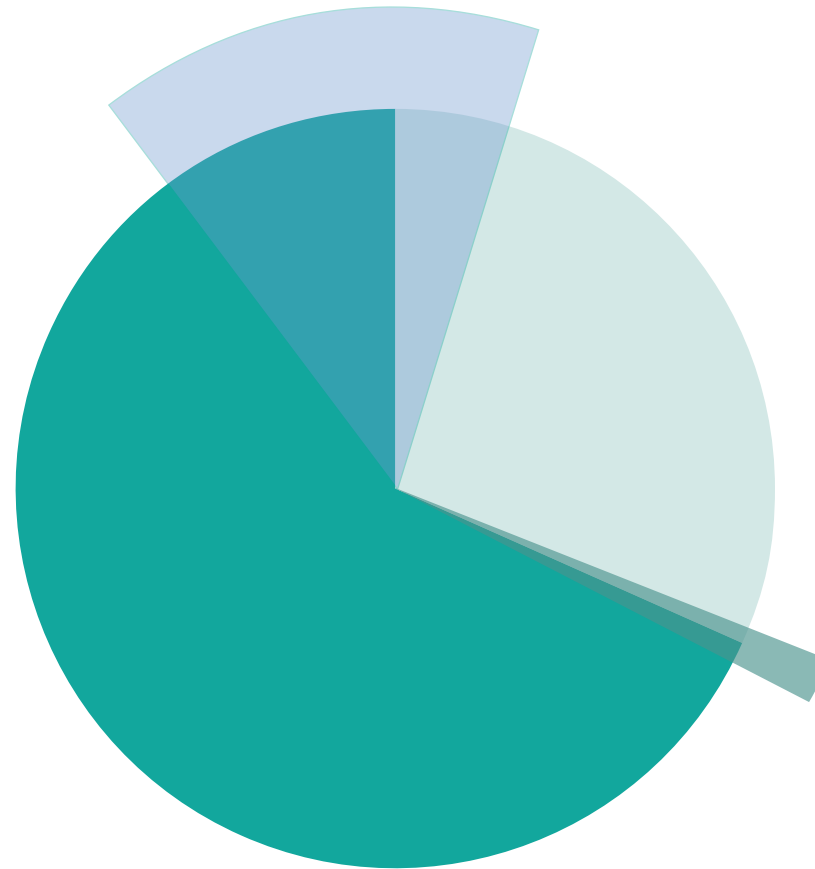
- + Beyond Science and Decisions
- + International Toxicity Estimates for Risk
- + Kidschemicalsafety.org
- + Lessons Learned, Challenges, & Opportunities: The US Endocrine Disruptor Screening Program
- + Occupational Alliance for Risk Sciences

63%

Government/ Non-Profit

Project Sponsors

- + Consumer Product Safety Commission
- + Health Canada
- + NIOSH
- + National Library of Medicine
- + Texas Commission on Environmental Quality



37%

For Profit

Project Sponsors

- + American Cleaning Institute
- + Amgen
- + American Chemistry Council
- + Eli Lilly
- + Genentech

2%

Training

Project/Sponsors

- + Dose Response Boot Camp
- + Food & Drug Administration Training Course
- + Occupational Exposure Training Course

2012 PROJECT TIME BY SPONSOR

40% >
FOR PROFIT
PROJECT SPONSORS

- Drinker, Biddle & Wreath
- Amgen
- ACI - Amer. Cleaning Institute
- Eli Lilly
- NIPERA
- PPG
- American Petroleum Institute

< **7%**
EDUCATION
PROJECTS

- BootCamp
- Training Webinars

^ **22%**
COLLABORATIONS
COALITION OF PROJECT SPONSORS

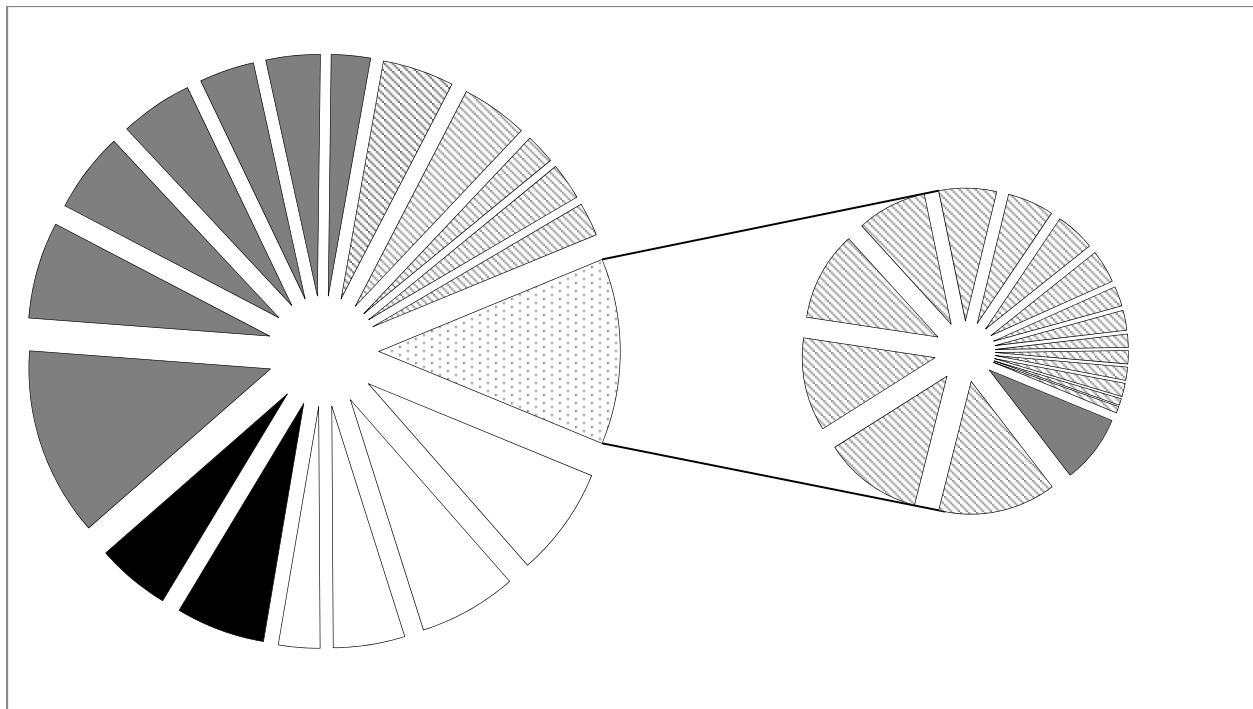
- Beyond Science and Decisions: From Problem Formulation to Dose Response
- Kids Chemical Safety Webpage
- Nuclear Receptors Mode of Action
- Alliance for Risk Assessment
- International Toxicity Estimates for Risk
- Occupational Alliance for Risk Sciences

^ **60%**
GOVERNMENT / NON-PROFIT
PROJECT SPONSORS

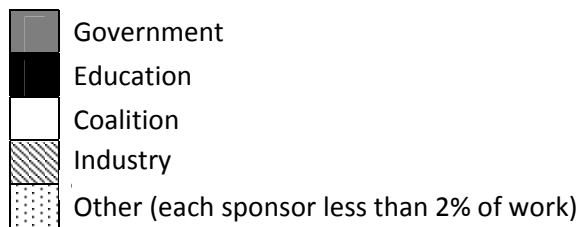
- National Library of Medicine
- National Institute of Occupational Safety and Health
- Consumer Products Safety Commission
- Noblis

The sponsors listed above are sponsors that each comprise 2% or more of our work.

Proportion of Total 2011 Work by Project Sponsor



Each “slice” represents an individual sponsor; shading represents sponsor sector affiliation.



Highlighted Sponsors by Sector Affiliation

Government

- Health Canada
- Environmental Protection Agency
- National Institute for Occupational Safety and Health
- Air Force Center for Engineering and the Environment
- Ontario Ministry of Environment
- Texas Commission on Environmental Quality
- National Library of Medicine

Education

- International Toxicity Estimates for Risk (ITER)
- Dose Response Assessment Boot Camp

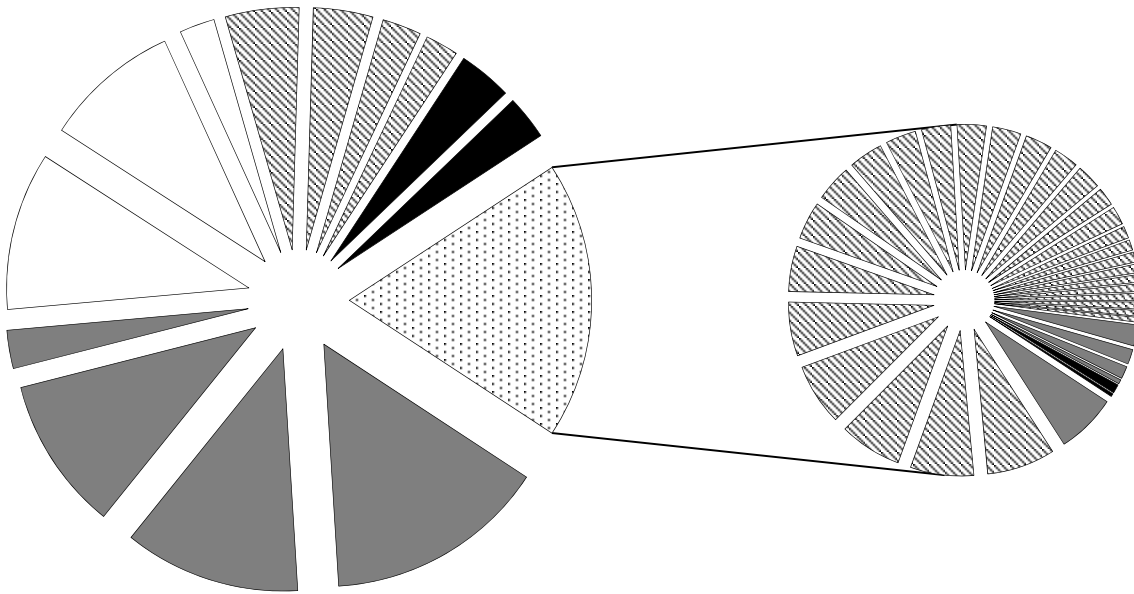
Coalition

- Beyond Science and Decisions Coalition
- Nuclear Receptor MOA Coalition
- Water Environment Research Foundation (WERF)
- Alliance for Risk Assessment (ARA)

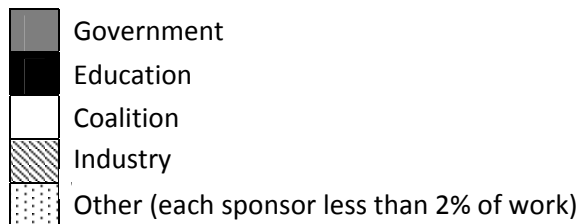
Industry

- AECOM
- American Cleaning Institute
- American Petroleum Institute
- ToxStrategies
- Eli Lilly

Proportion of Total 2010 Work by Project Sponsor



Each “slice” represents an individual sponsor; shading represents sponsor sector affiliation.



Highlighted Sponsors by Sector Affiliation

Government

- Environmental Protection Agency
- National Institute for Occupational Safety and Health
- Health Canada
- National Library of Medicine

Education

- Dose Response Assessment Boot Camp
- International Toxicity Estimates for Risk (ITER)

Coalition

- Beyond Science and Decisions Coalition
- Nuclear Receptor MOA Coalition)
- Alliance for Risk Assessment (ARA)

Industry

- Soap & Detergent Association
- Proctor & Gamble
- Eli Lilly
- Nickel Producers Environmental Research Association (NiPERA)

Executive Branch Personnel

Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

Dourson, Michael Leonard

Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency

Other Federal Government Positions Held During the Preceding 12 Months:

Member, Science Advisory Board, EPA (11/2015 - Present)

Names of Congressional Committees Considering Nomination:

- **Committee on Environment and Public Works**
-

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

/s/ Dourson, Michael Leonard [electronically signed on 06/06/2017 by Dourson, Michael Leonard in Integrity.gov]

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments below).

/s/ Fugh, Justina, Certifying Official [electronically signed on 07/21/2017 by Fugh, Justina in Integrity.gov]

Other review conducted by

/s/ Fugh, Justina, Ethics Official [electronically signed on 07/21/2017 by Fugh, Justina in Integrity.gov]

U.S. Office of Government Ethics Certification

/s/ Apol, David, Certifying Official [electronically signed on 07/25/2017 by Apol, David in Integrity.gov]

1. Filer's Positions Held Outside United States Government

#	ORGANIZATION NAME	CITY, STATE	ORGANIZATION TYPE	POSITION HELD	FROM	TO
1	University of Cincinnati	Cincinnati, Ohio	University/College	Professor	8/2015	Present
2	Toxicology Excellence for Risk Assessment	Cincinnati, Ohio	Non-Profit	President	2/1995	7/2015
3	North American Flame Retardant Alliance	Washington DC, District of Columbia	Non-Profit	Member, Science Advisory Council	4/2012	6/2017
4	Toxicology Education Foundation	District of Columbia, District of Columbia	Non-Profit	President	5/2016	Present
5	Dourson, Dourson and Fowler, a General Partnership owning undeveloped land	Stanton, Kentucky	Partnership	General Partner	1/1994	Present
6	Toxicology Forum	Reston, Virginia	Non-Profit	Secretary	9/2016	6/2017

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	State Teachers Retirement System (OHIO): Guaranteed Retirement 2020 Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
2	TIAA-CREF Equity Index R1	Yes	\$15,001 - \$50,000		None (or less than \$201)
3	University of Cincinnati	N/A		Salary	\$240,055
4	State Teachers Retirement System (OHIO): Target Choice 2020	Yes	\$1,001 - \$15,000		None (or less than \$201)
5	TIAA-CREF Growth R1	Yes	\$15,001 - \$50,000		None (or less than \$201)
6	TIAA Real Estate	Yes	\$15,001 - \$50,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
7	TIAA-CREF Bond Market R1	Yes	\$15,001 - \$50,000		None (or less than \$201)
8	TIAA Access Bond Plus Fund T4	Yes	\$15,001 - \$50,000		None (or less than \$201)
9	TIAA-CREF Inflation-Linked Bond R1	Yes	\$15,001 - \$50,000		None (or less than \$201)
10	TIAA-CREF Lifecycle 2015 Fund - Premier Class	Yes	\$1,001 - \$15,000		None (or less than \$201)
11	North American Flame Retardant Association (protection of lives and property from fire)	N/A		Consulting fees	\$10,000
12	Mercatus Center, George Mason University - June 28, 2016	N/A		Honorary	\$500
13	"Messiah's Star (Evidence for Faith) (Volume 1)," CreateSpace Independent Publishing Platform (value not readily ascertainable)	N/A			None (or less than \$201)
14	"The Beginning: Let there be light (Evidence of Faith) (Volume 2)," CreateSpace Independent Publishing Platform (value not readily ascertainable)	N/A			None (or less than \$201)
15	"The Linen Cloths: ...Jesus left behind (Evidence of Faith) (Volume 3)," CreateSpace Independent Publishing Platform (value not readily ascertainable)	N/A			None (or less than \$201)

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR PARTY	CITY, STATE	STATUS AND TERMS	DATE
1	University of Cincinnati, State Teachers' Retirement System (OHIO)	Cincinnati, Ohio	I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.	8/2015
2	University of Cincinnati, TIAA-CREF	Cincinnati, Ohio	I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.	8/2015

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
1	University of Cincinnati	Cincinnati, Ohio	As a professor I am responsible for leading research into the safety of a variety of chemicals, improving methods for assessment and educating students, other scientists and the general public on risk issues.
2	Toxicology Excellence for Risk Assessment	Cincinnati, Ohio	As the Director and President, I was responsible for leading research into the safety of a variety of chemicals, improving methods for assessment and educating other scientists and the general public on risk issues.
3	North American Flame Retardant Association	Washington DC, District of Columbia	As a member of a diverse science advisory committee, I was responsible for advising NAFRA on risk issues associated with flame retardant chemicals and publishing relevant research.

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Martha C. Dourson, LLC (solo law practice in probate and estates)	N/A	\$15,001 - \$50,000	Legal fees	

6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Red River Gorgeous, LLC, residential real estate (Stanton, Kentucky)	N/A	\$50,001 - \$100,000	Rent or Royalties	\$1,001 - \$2,500
2	Tomlinson, Dourson and Culler, a General Partnership owning farmland (Lucas, Ohio)	N/A	\$50,001 - \$100,000	Rent or Royalties	\$201 - \$1,000
3	U.S. federal credit union (cash accounts)	N/A	\$50,001 - \$100,000		None (or less than \$201)
4	U.S. financial institution (cash accounts)	N/A	\$1,001 - \$15,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
5	Personal loan to Mr. Workman	N/A	\$1,001 - \$15,000	Interest	\$201 - \$1,000
6	Dourson, Dourson and Fowler, a General Partnership owning undeveloped land (Stanton, Kentucky)	N/A	\$15,001 - \$50,000		None (or less than \$201)
7	Residential real estate, Cincinnati, Ohio	N/A	\$100,001 - \$250,000	Rent or Royalties	\$5,001 - \$15,000
8	Thrivent Financial Variable Annuity #1	No			
8.1	Aggressive allocation portfolio	Yes	\$50,001 - \$100,000		None (or less than \$201)
8.2	Limited maturity bond portfolio	Yes	\$15,001 - \$50,000		None (or less than \$201)
9	Thrivent Financial Variable Annuity #2: Aggressive Allocation Portfolio	Yes	\$100,001 - \$250,000		None (or less than \$201)

7. Transactions

(N/A) - Not required for this type of report

8. Liabilities

#	CREDITOR NAME	TYPE	AMOUNT	YEAR INCURRED	RATE	TERM
1	Union Savings, Cincinnati, Ohio	Mortgage (investment/rental property)	\$100,001 - \$250,000	2016	3.25	10 years
2	U.S. Bank, Lucas, Ohio	Mortgage on Personal Residence	\$100,001 - \$250,000	2006	2.99	15 years
3	Whitaker Bank, Stanton, Kentucky	Mortgage (investment/rental property)	\$100,001 - \$250,000	2010	variable	15 year

#	CREDITOR NAME	TYPE	AMOUNT	YEAR INCURRED	RATE	TERM
4	Whitaker Bank, Stanton, Kentucky	Mortgage (investment/rental property)	\$50,001 - \$100,000	2008	variable	15 years
5	Whitaker Bank, Stanton, Kentucky	Exercised Line of Credit	\$10,001 - \$15,000	2017	variable	open ended

9. Gifts and Travel Reimbursements

(N/A) - Not required for this type of report

Endnotes

Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation.

This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a calendar year for the filer's services during any year of the reporting period.

The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

5. Spouse's Employment Assets & Income and Retirement Accounts

Part 5 discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share)
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF). Amounts of income are not required for a spouse's earned income (excluding honoraria).

6. Other Assets and Income

Part 6 discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children.

This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, money market accounts) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

7. Transactions

Part 7 discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during reporting period.

This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, CDs, money market accounts) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

8. Liabilities

Part 8 discloses liabilities over \$10,000 that the filer, the filer's spouse or dependent child owed at any time during the reporting period.

This section does not include the following types of liabilities: (1) mortgages on a personal residence, unless rented out (limitations apply for PAS filers); (2) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (3) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

9. Gifts and Travel Reimbursements

This section discloses:

- Gifts totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.
- Travel reimbursements totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$150 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U.S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

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News Releases from Headquarters › Chemical Safety and Pollution Prevention (OCSPP)

Widespread Praise for Dr. Michael Dourson

Dourson Set to Be Head of EPA Office of Chemical Safety And Pollution Prevention

07/17/2017

Contact Information:
(press@epa.gov)

WASHINGTON (July 17, 2017) Today, President Donald J. Trump announced his intention to nominate Dr. Michael Dourson of Ohio to be head EPA's chemical and pesticides office. Dr. Dourson is a professor in the Risk Science Center at the University of Cincinnati, College of Medicine. He founded the nonprofit Toxicology Excellence for Risk Assessment and worked at the U.S. Environmental Protection Agency, where he won four medals. Dr. Dourson served in multiple positions at the American Board of Toxicology, Society of Toxicology, Society for Risk Analysis, and Toxicology Education Foundation. In addition, to serving on numerous government panels, he is also a member on the editorial board of three toxicology journals.

His nomination is receiving high accolades from across the country:

Samuel M. Cohen, M.D., Ph.D., Professor, Department of Pathology and Microbiology Havlik-Wall Professor of Oncology University of Nebraska Medical Center: "Dr. Dourson is an outstanding, hard-working scientist with a distinguished record in toxicology and risk assessment... He is widely recognized as a leader in the field of risk assessment... Dr. Dourson is well suited for the position of Assistant Administrator for the EPA given his long track record of bringing together individuals from academia, industry, and government regulatory agencies to work together."

Jay I. Goodman, Ph.D., Professor of Pharmacology and Toxicology, Michigan State University: "Dr. Dourson has pursued a very successful career track centered around advancing science-based safety/risk assessment of chemicals... It is without reservation that I recommend Dr. Dourson with my highest level of enthusiasm with regard to his scientific and communication skills, and as an individual of character and integrity."

Dr. Gio Batta Gori, Editor-in-Chief, Regulatory Toxicology and Pharmacology, an international journal: "Dr. Dourson is an outstanding scientist whose career in toxicology spans nearly forty years, the early half of

which with the EPA itself in critical positions of science, policy and administration. Dr. Dourson would bring an unparalleled breadth of experience and savvy to this position, and is ready to run full speed from the start. Dr. Dourson has a can do and winning temperament that inspires confidence, and is well known as an engaging and skillful negotiator. I wholeheartedly endorse his nomination.”

Kendall B. Wallace, Ph.D., DABT, ATS, Professor, Biochemistry & Molecular Biology, University of Minnesota: “I find Dr. Dourson to be exceptionally pleasant to work with. He is not only a wealthy resource of scientific information and professional networking, but he also adds thoughtful and challenging perspective to the discussions... Dr. Dourson is one of the first persons I turn to when in need of thoughtful opinion and collegial discussion of issues relating to risk assessment science.”

The Rev. John Arthur Nunes, Ph.D., President, Concordia College, New York: “My primary context for knowing Michael is at a Christian retreat center where I lecture each summer. He and Martha Dourson (his wife, a lawyer), are annual attendees. For years, Michael’s judicious integration of faith and the sciences has struck me as impressive as it is rare. Far too often the proposal of a relationship between science and religion is viewed with incompatibility at best or with inimicality at worst. Not with Dr. Dourson. I recall a lecture of mine in which he served up a delight-inducing response to some point of my talk which accomplished precisely the opposite. While I’m unable to recall the precise, technical genealogy of his commentary, I cannot ever forget the captivated looks of fascination painted on the faces of those who listened to him, their deepened enchantment and marveled appreciation for the intricate wonder of the environment. This anecdote could be repeated from numerous casual conversations among friends of Michael. In short, kudos to you for choosing wisely and well. Best of blessings on your critical work for the sake of the creation, its stewardship and our future.”

Oliver Kroner, Sustainability Coordinator, City of Cincinnati, Office of Environment and Sustainability: “I wanted to share my high esteem for Michael Dourson, who has been a mentor to me and many other scientists. Dr. Michael Dourson has been a foundational thinker in the protection of human health from chemical exposure. He has been a tireless champion of science, and the role of science to help quantify risk and uncertainty. His research is internationally renowned, and is likely responsible for protecting, if not saving, an uncountable number of lives around the world.”

Chip May, Executive Director, Camp Arcadia: “I am the executive director of Camp Arcadia, a Christian family camp/resort in Northwest Michigan and I have had the privilege of knowing Mike for at least the past 15 years. My family and I consider Mike and his family the closest of friends. They have been passionate supporters of our ministry over the years and have helped to lead it as well. Mike chaired a beach erosion peer review study about 12 years ago. His professionalism and his ability to work with others well allowed him to deal with a very contentious issue at our camp successfully. Mike listens well, learns from others, and is able to work with people with different views. I highly recommend Mike for this position.”

Read the full letters at <https://www.epa.gov/newsroom/letters-academics-recommending-dr-michael-dourson-lead-epas-office-chemical-safety-and>



NEBRASKA'S HEALTH SCIENCE CENTER

PATHOLOGY AND MICROBIOLOGY

June 30, 2017

Senator John Barrasso, Chairman
Environment and Public Works Committee
Attn: matt_leggett@epw.senate.gov

Dear Senator Barrasso and members of the Committee:

It is with pleasure that I write in support of the nomination of Dr. Michael Dourson for the position of Assistant Administrator of the EPA Office of Chemical Safety and Pollution Prevention. Dr. Dourson is an outstanding, hard-working scientist with a distinguished record in toxicology and risk assessment. I have known Mike for more than twenty years and have had the privilege to work with him on a variety of committees and activities. I am a MD and PhD with a long career as a surgical pathologist and a basic scientist in the field of toxicology, risk assessment, and chemical carcinogenesis, with several areas of interest in common with Mike. He is not only extremely knowledgeable about the scientific and regulatory aspects of environmental chemicals, but is held in high esteem by other scientists in academia, industry, and government, including the Environmental Protection Agency (EPA). He is an individual who interacts well with other, is of the highest integrity and is highly respected for his scientific judgement.

He has recently returned to the University of Cincinnati, where he had obtained his PhD in 1980. Since that time he has had various positions, but was the founder and leader of the Toxicology Excellence for Risk Assessment Center (TERA) for a little more than two decades, the predecessor organization to his current Risk Science Center at the University of Cincinnati. He has considerable administrative experience in leading a large number of individuals. This has also been evident in his leadership positions in numerous committees in national and international organizations, including as president of the American Board of Toxicology and president of the Toxicology Education Foundation. He has served on numerous committees, including the Science Advisory Boards of the EPA.

He has published extensively, with more than 150 publications on various aspects of risk assessment methods or chemical-specific analyses. He is widely recognized as a leader in the field of risk assessment, and these achievements have been rewarded with four bronze medals from the EPA, the Arnold J. Lehman Award from the Society of Toxicology, the Society's highest honor for scientific achievement in risk assessment, and the Achievement Award from the International Society of Regulatory Toxicology and Pharmacology. He is also a diplomate of the American Board of Toxicology, a fellow of the Academy of Toxicological Sciences, and a fellow of the Society for Risk Analysis.

Dr. Dourson is well suited for the position of Assistant Administrator at EPA given his long track record of bringing together individuals from academia, industry, and government regulatory

agencies to work together to address important issues regarding the environment and public health. His leadership skills, his ability to interact with individuals from all sectors, and his well-organized approach to addressing difficult issues will serve the agency and our country well. I strongly endorse Dr. Dourson's nomination for this position.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'S.M. Cohen', with a stylized flourish at the end.

Samuel M. Cohen, M.D., Ph.D.
Professor, Department of Pathology and Microbiology
Havlik-Wall Professor of Oncology
University of Nebraska Medical Center
983135 Nebraska Medical Center
Omaha, NE 68198-3135
(402) 559-6388
(402) 559-8330 (F)



REGULATORY TOXICOLOGY AND PHARMACOLOGY

AN INTERNATIONAL JOURNAL

Dr. Gio Batta Gori
Editor-in-Chief

The Honorable John Barrasso
Chairman, Senate Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Senator Barrasso,

This letter is to endorse the nomination of Dr. Michael L. Dourson, as Assistant Administrator of the Environmental Protection Agency's Office of Chemical Safety and Pollution Prevention.

Dr. Dourson is an outstanding scientist whose career in toxicology spans nearly forty years, the early half of which with the EPA itself in critical positions of science, policy and administration. Dr. Dourson would bring an unparalleled breadth of experience and savvy to this position, and is ready to run full speed from the start.

Dr. Dourson has a can do and winning temperament that inspires confidence, and is well known as an engaging and skillful negotiator. I wholeheartedly endorse his nomination.

Respectfully,

6704 Barr Road
Bethesda, MD 2016
+1-301-229-4277
gorigb@msn.com

MICHIGAN STATE
UNIVERSITY

13 July 2017

RE: **Dr. Michael L. Dourson**, nominee for the position of Assistant Administrator, Office of Chemical Safety and Pollution Prevention, US Environmental Protection Agency

Senator John Barrasso
Chairman, Environment and Public Works Committee
US Senate

Dear Senator Barrasso:

I am a Professor of Pharmacology and Toxicology at Michigan State University. I received a Ph.D. in Pharmacology from The University of Michigan and was a postdoctoral fellow at the McArdle Laboratory for Cancer Research, University of Wisconsin, and I am a former President of the Society of Toxicology.



DEPARTMENT OF
**PHARMACOLOGY
& TOXICOLOGY**

Michigan State University
B440 Life Sciences Building
East Lansing, MI
48824-1317
517/353-7145
FAX: 517/353-8915
web: www.phmtox.msu.edu

It is my pleasure to write to you in support of Dr. Michael L. Dourson's nomination for the position of Assistant Administrator, Office of Chemical Safety and Pollution Prevention, US Environmental Protection Agency (EPA). I have known Dr. Dourson for approximately 20 years. We frequently attend the same meetings and, thus, have the opportunity to discuss science on a regular basis. We both share a passion for enhancing science-based safety/risk assessment of chemicals.

Dr. Dourson has pursued a very successful career track centered around advancing science-based safety/risk assessment of chemicals. He started his career as a staff toxicologist at EPA's Cincinnati Office in 1980 and was Chief of the Office's Systemic Toxicants Assessment Branch when he left in 1995. Clearly, based on his rapid promotion trajectory and awards received, Dr. Dourson was viewed as a very valuable EPA employee. From 1995 to 2015 Dr. Dourson was Director and President of the Toxicology Excellence for Risk Assessment Group (TERA). He grew TERA into a well-respected form where scientists from academia, government, industry and non-profit organizations came to work together to advance science-based safety/risk assessment of chemicals. The ability to bring individuals from different sectors together to work on important toxicology issues is one of Dr. Dourson's fortes. In 2015 Dr. Dourson moved TERA to the next level when

Senator John Barrasso
Chairman, Environment and Public Works Committee
US Senate

Page 2

he joined the faculty at the University of Cincinnati as a professor in the Department of Environmental Health and TERA was incorporated into the Department as the Risk Science Center.

The combination of these work experiences, outlined above, have actually synergized to make Dr. Dourson an ideal candidate for the position of Assistant Administrator, Office of Chemical Safety and Pollution Prevention, EPA. A review of his publications, awards and multitude of invited speaking engagements indicates that he is respected internationally as an expert in safety/risk assessment.

In summary, it is without reservation that I recommend Dr. Dourson to you with my highest level of enthusiasm with regard to his scientific and communication skills, and as an individual of character and integrity.

Please do not hesitate to contact me if additional information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay I. Goodman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jay I. Goodman, Ph.D.
Professor of Pharmacology and Toxicology
goodman3@msu.edu

UNIVERSITY OF MINNESOTA

Duluth Campus

Medical School Duluth

*1035 University Drive
Duluth, MN 55812-3031*

*Office: 218-726-7922
Fax: 218-726-8014
<http://www.med.umn.edu>*

July 12, 2017

TO: Hon. John Barrasso, Environment and Public Works Committee Chairman

CC: [Matt Leggett@epw.senate.gov](mailto:Matt.Leggett@epw.senate.gov).

RE: Dr. Michael Dourson nomination

I am pleased to provide a letter in strong support of the nomination of Dr. Michael Dourson for Assistant Administrator of the EPA Office of Chemical Safety and Pollution Prevention. I have known and worked with Dr. Dourson on a number of professional committees for more than 25 years and am quite familiar with his scientific credentials and personal integrity.

My personal background is that I received my graduate training at Michigan State University and completed a NIH-sponsored Postdoctoral Fellowship at the University of Iowa Toxicology Center before joining the faculty of the University of Minnesota Medical School on the Duluth campus in 1981. Since then I have been awarded tenure and been promoted to Full Professor, served as founding director of both the University of Minnesota Toxicology Graduate Program and the Chemical Toxicology Research Center as well as interim department chair and Associate Dean for Faculty Affairs. In professional circles I have been elected as President of the Society of Toxicology, Chair of the American Board of Toxicology, and President of the Academy of Toxicology. I have served on a number of scientific advisory panels for NIH, the FDA and the EPA and as co-Editor-in-Chief of Toxicology since 2001. This experience has provided me ample opportunities to work with and come to know a number of professional colleagues, including Dr. Dourson.

Dr. Dourson received his graduate training in toxicology at the University of Cincinnati, a premier and nationally recognized center of excellence for occupational and regulatory toxicology before launching his career in regulatory toxicology at the U.S. EPA. Dr. Dourson leveraged that experience at EPA in founding TERA, a non-profit organization dedicated to developing new methods and models for conducting risk assessment and to promoting the scientific foundations to risk assessment theory and application. As Director of TERA for 21 years, Dr. Dourson successfully cultivated international recognition amongst his peers for his contributions and accomplishments in risk assessment science. Testament to his success is the awarding by his peers of numerous awards of recognition by various professional organizations and societies, highlighted by the Society of Toxicology Arnold J. Lehman Award and the International Achievement Award by the International Society of Regulatory Toxicology and Pharmacology, among many others. It is clear that he has earned broad, international respect and recognition as one of the most prominent thought leaders in the science of Risk Assessment.

On a personal level, I find Dr. Dourson to be exceptionally pleasant to work with. He is not only a wealthy resource of scientific information and professional networking, but he also adds thoughtful and challenging perspective to the discussions; And he does so in a highly respectful and engaging manner. He manages the discussion to encourage all voices and differences to be heard and respected, without distracting from the efficient conclusion in reaching a general consensus amongst all discussants. Dr. Dourson is one of the first persons I turn to when in need of thoughtful opinion and collegial discussion of issues relating to risk assessment science. I consider him to be a scientific leader and personal friend and strongly endorse his nomination for Assistant Administrator of the EPA Office of Chemical Safety and Pollution Prevention. I believe he has the scientific and technical knowledge as well as the professional and personal acumen to excel in the duties of the position.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kendall B. Wallace', with a long, sweeping flourish extending from the end of the name.

Kendall B. Wallace, Ph.D., DABT, ATS
Professor, Biochemistry & Molecular Biology

EXHIBIT W

Timothy S Bingman

08/21/2000 02:59:40 PM

To: Robert W Rickard/AE/DuPont@DuPont, Gerald L Kennedy/AE/DuPont@DuPont
cc: Kathleen A Shelton/AE/DuPont@DuPont, Bernard J Reilly/AE/DuPont@DuPont, Andrea V
Malinowski/AE/DuPont@DuPont, Michael S Parr/AE/DuPont@DuPont
Subject: Prospective Contractors for PFOA Criteria Review

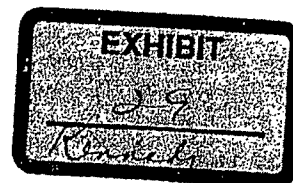
Bobby/Jerry:

As a followup to the go-do I had from this morning's meeting, I've talked to a number of colleagues that use external toxicity peer review services to see who they like as contractors. While everyone had a few names to offer, the common theme that emerged was that TERA (i.e. Mike Dourson) was the leading choice.

One person from another chemical company that used to work in the EPA's Criteria Office in Cincinnati said that Mike enjoys a very good reputation among the folks that are still in the business of "blessing criteria". Other added benefits that were identified for TERA were: 1) their ability to put together an independent peer review panel to oversee their findings; and, 2) their ability to assemble a "package" and then sell this to EPA, or whomever we desired.

My sense is that use of TERA is about as close to an "IRIS process" as we're likely to find in the time we have to work our issue. I'd recommend that, barring any objection from either of you, we strongly consider putting the wheels in motion to get TERA retained for our criteria development/review effort.

Tim.



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CARLA MARIE BARTLETT and)	
JON WILLIAM BARTLETT,)	
)	
PLAINTIFFS,)	CASE NO. 2:13-cv-170
)	
vs.)	SEPTEMBER 30, 2015
)	
E. I. du PONT de NEMOURS AND COMPANY,)	8:30 A.M.
)	
DEFENDANT.)	
)	

VOLUME NO. 12
TRANSCRIPT OF THE PROCEEDINGS OF THE JURY TRIAL
BEFORE THE HONORABLE EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT CHIEF JUDGE
COLUMBUS, OHIO

FOR THE PLAINTIFF:

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Schlichter, Bogard & Denton, LLP
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Ashley Brittain Landers, Esq.
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FOR THE DEFENDANT:

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C. Craig Woods, Esq.
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- - -

Proceedings recorded by mechanical stenography,
transcript produced by computer.

LAURA SAMUELS
FEDERAL OFFICIAL COURT REPORTER
85 MARCONI BOULEVARD, ROOM 302
COLUMBUS, OHIO 43215
TELEPHONE NUMBER: 614-719-3245

1 - - -

2 Thereupon, the following proceedings were held in open
3 court with jurors present at 9:04 a.m.

4 THE COURT: Good morning, ladies and gentlemen.
5 Welcome back. I'm sorry to report that Mr. Quisumbing is sick
6 this morning. I want to thank Ms. Sherry Nichols for filling
7 in for him. She's normally with Magistrate Judge Deavers.

8 With that, DuPont may call its next witness.

9 MR. MACE: Thank you, Your Honor. The defense calls
10 Dr. Michael Dourson.

11 (Witness sworn.)

12 THE COURT: Mr. Mace, whenever you're ready, you may
13 proceed.

14 MR. MACE: Thank you, sir.

15 - - -

16 MICHAEL DOURSON, PH.D.

17 Called as a witness on behalf of the Defendants, being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MACE:

21 Q. Good morning, Doctor.

22 A. Top of the day to you.

23 Q. Could you state your name, please?

24 A. Michael Leonard Dourson.

25 Q. Where do you currently work?

1 A. University of Cincinnati College of Medicine.

2 Q. What do you do there?

3 A. I'm a research professor in environmental health. And
4 we do risk assessment, risk research and then risk
5 communication to the public.

6 Q. Could you please take us through your educational
7 degrees.

8 A. I got my bachelor's of biology at University of
9 Wittenberg in Springfield, Ohio. Then I went down to the
10 University of Cincinnati and got a doctorate in toxicology from
11 the College of Medicine, the place I now have returned to work.
12 I also along the way got certified in toxicology, American
13 Board of Toxicology certification. And I've had some executive
14 training with the U.S. government.

15 MR. MACE: May I approach the deputy clerk, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. MACE:

19 Q. Doctor, we've handed you what's been marked as Exhibit
20 D2455. Do you recognize that?

21 A. Yes, I do.

22 Q. What is it?

23 A. That's my resumé.

24 Q. If we could bring that up, please. Will you bring up,
25 please, from the top down through the employment?

1 Doctor, there's some letters after your name. What's
2 the Ph.D.?

3 A. That's doctor of philosophy in toxicology.

4 Q. The DABT?

5 A. Diplomate of the American Board of Toxicology. That's
6 one of the certifying bodies.

7 Q. ATS?

8 A. The Academy of Toxicological Science, another certifying
9 body.

10 Q. Could you take us through, let's start at the bottom on
11 your employment and take us through your employment history
12 briefly.

13 A. Sure. Briefly.

14 MR. DOUGLAS: Your Honor, I hate to interrupt but I
15 want some clarification if we could have a quick side-bar.

16 THE COURT: You may stand if you wish, ladies and
17 gentlemen.

18 I'll see you at side-bar.

19 - - -

20 Thereupon, the following proceeding was held at side-bar:

21 THE COURT: I think the matter you're going to bring
22 up we just discussed.

23 MR. DOUGLAS: I apologize for not being there. But I
24 just want to be sure but since it's not going to go to the jury
25 whether it's proper to display it on the screen at all.

1 THE COURT: I don't remember what we did with your
2 witnesses. Did we do that?

3 MR. DOUGLAS: I didn't use any resumés.

4 MR. MACE: I would still argue it goes back but,
5 regardless, I should be able to use it as a demonstrative.

6 THE COURT: It's not going to be an exhibit. Without
7 an agreement it won't be an exhibit. I prefer they all go
8 back. We can still do that if you wish. He's going to testify
9 to this anyway.

10 - - -

11 Thereupon, the following proceedings were had in open
12 court:

13 BY MR. MACE:

14 Q. If you could continue with your employment history.

15 A. I got my Ph.D. from University of Cincinnati in 1980.
16 Then went across the street and worked for the Environmental
17 Protection Agency as a staff-level toxicologist; worked in EPA
18 for 15 years at various positions, as you can see. Did some
19 time in Washington, D.C.

20 Q. Let me just ask a few specifics. So the acceptable
21 daily intake group, what did that entail?

22 A. Well, back in 1984 we had the National Academy of
23 Science came up with a new way of managing risk assessment in
24 the federal government. There was a lot of confusion. USEPA
25 took that to heart and one of the things they did is they put

1 together an acceptable daily intake group within our unit to
2 summarize risk values of ADIs that we had already done and that
3 group interacted with other EPA groups that were doing similar
4 work. That led to some interagency work groups with this
5 particular idea, ADI, acceptable intake of the chemical in
6 mind.

7 Q. You have methods evaluation development. What did that
8 entail?

9 A. Part of the National Academy of Sciences' work had to do
10 with new ways to assess risk and so commonly what we've done is
11 we don't experiment on people, we experiment on animals and try
12 to judge the safe level of a chemical from the animal exposure.
13 And the animals, of course, are treated ethically. The point
14 being is we do this for all chemicals because all chemicals are
15 toxic. There's always new methods and new approaches to do
16 this better. That's what our group is charged with doing.

17 Q. You mentioned the National Academy of Sciences a couple
18 times. What is that group?

19 A. Well, it's a -- the National Academy of Sciences is a
20 nonprofit group that does a lot of work for the federal
21 government but it's high level -- they're scientists from all
22 walks of life but they're the A team, the top of the line,
23 usually, and they will do different tasks. So one of them was
24 to develop this idea of risk assessment in the federal
25 government managing the process. That was one of their tasks

1 to do that.

2 Q. Then you went to methods evaluation and development.
3 What was that?

4 A. We talked about the developing methods a little bit
5 already. But after that was, I went to Washington, D.C. and
6 spent a year there in the pesticides and toxics team.

7 Q. What did that involve?

8 A. What that involved was I was part of research and
9 development. EPA is a large organization, and research and
10 development has a lot of aspects to it. One of the
11 coordinating functions that I served as a chief of this team is
12 to talk to our counterparts in EPA's office at Pesticides and
13 Toxic Substances and take the research that folks were doing in
14 that part of EPA and translate it over to the needs of the
15 folks that were evaluating pesticides and chemicals, toxic
16 chemicals like in your window spray. What's a safe level of
17 that? And so we would -- I was doing the translation between
18 the two EPA groups.

19 Q. Let's go up to this one, the systemic toxicants
20 assessment branch. What did that group?

21 A. After I did my gig in Washington, D.C. I returned to my
22 home office in Cincinnati, Ohio and that particular group was
23 charged with doing assessments for safe levels of chemical in
24 water. We also did Superfund site risk assessment work there
25 and we had a variety of tasks that worked for primarily EPA's

1 program offices, the Office of Water and the Office of Solid
2 Waste and Superfund.

3 Q. Then you've got toxicology excellence for risk
4 assessment. What's that group? How did it get started?

5 A. Okay. So, mid-level managers are being bought out by
6 EPA. Bill Clinton was offering these buyouts. I had been 15
7 years in the federal government, learned a lot but was looking
8 for something perhaps different so I took the buyout, which was
9 pretty meager in retrospect, and ended up starting a nonprofit
10 organization. To get an Ohio nonprofit is quite easy. It's
11 \$25 at the time. But then we had to get a 501(c)3 tax
12 exclusion. We ended up getting that. For the last 20 years
13 we've been doing work with various parties.

14 About two-thirds of our work is government and other
15 nonprofits, and about one-third is industry or industry
16 nonprofits. And what we do is we build collaborations between
17 parties. We've got a lot of examples of that.

18 Q. What's the mission of that group?

19 A. It's to provide information to protect the public
20 health.

21 Q. And now you said you're over at the University of
22 Cincinnati?

23 A. Yeah. I've been there for two months as a research
24 professor. I'm still learning what that means.

25 Q. All right. If we could go lower on the page.

1 In terms of teaching, have you lectured in graduate
2 level?

3 A. Yeah. I've actually done -- since we're close to the
4 University of Cincinnati and the College of Medicine, and since
5 I'm an alumni, they've invited me to give lectures every year,
6 nearly, since I've been out. Well, probably not the first
7 couple years. But after I started with TERA I would go over
8 and lecture on a routine basis. I've given some lectures to
9 high school students. That's a challenge. I admire teachers.

10 Q. Sir, your CV is 30 pages. I'm not going to go through
11 all of it.

12 A. Thank you.

13 Q. We're trying to make some progress here. But if we
14 could look over at page 13. You have a section on research
15 risk assessment publications. Have you done quite a few papers
16 and peer-review literature on that?

17 A. Yeah. It's probably near 150. I lost count of them
18 after 100. So I just put in what I think is important.

19 Q. You have a section over on page 28 about awards. Have
20 you received a number of awards regarding risk assessment?

21 A. Right. And a number those awards are team efforts. So
22 I think the very first one it was a team effort. We had four
23 different groups that we worked with that do that particular
24 website for kids chemical safety. The groups are the
25 Cincinnati Poison Control Center, our group, Harvard Center for

1 Risk Analysis and NSF International which is a nonprofit in Ann
2 Arbor that certifies chemicals that touch water. If you open
3 your refrigerator door you'll see NSF certification for the ice
4 maker. So that's what they do. And we've got together and put
5 this website together.

6 Q. I wanted to ask about a particular one over on the next
7 page, page 29. In 2002. Could we bring that one up?

8 Environmental Stewardship Award. What was that?

9 A. That was the work that we did with other group -- other
10 folks on the team to look at the C-8, the CATT team, the
11 assessment team. After we did the report, afterwards, myself
12 and Andy Maier got this award. It was quite gratifying. It
13 was also unexpected.

14 Q. Do you have a copy of the certificate with you?

15 A. Yeah. Actually I brought that.

16 Q. And that was from whom?

17 A. That was from the State of West Virginia.

18 Q. Now, with regard to your work at EPA did you have any --
19 first of all, are you familiar with the term IRIS?

20 A. IRIS, yeah. Very much so.

21 Q. What does it stand for and what is it?

22 A. The Integrated Risk Information System. It's a system
23 designed by EPA staff. I had the lead of the group that
24 developed it but there was teams of people that review the ADIs
25 at the time and now they're called reference doses, but made

1 sure that everybody in EPA agreed to it. Once we all agreed,
2 unanimous consensus, then we put it on the Integrated Risk
3 Information System.

4 Q. How were you involved with it?

5 A. Two ways. My team was -- I was staff lead of the method
6 evaluation and development staff, we were the group that put
7 out the actual IRIS. And the first time we did it was on
8 e-mail and it was very archaic. You can only scroll down. You
9 couldn't go backwards. It was designed only for EPA staff
10 because we found out that our ADIs was not the same between
11 groups. It was actually pretty embarrassing. We had 40
12 chemicals where we actually did the same evaluation and 39 of
13 the 40 were different. That was pretty embarrassing. We got
14 it together and tried to harmonize it. That was the principle
15 behind the IRIS thing.

16 Part of my effort was to lead the team, to build it,
17 build the database. The second part of the effort was I
18 chaired a group that actually did the certification of the ADIs
19 and then we culled and referenced those. We had a hard time
20 harmonizing so we changed the name and very slowly everybody
21 came into harmony.

22 Q. In all that work that you just described with respect to
23 IRIS, Integrated Risk Information System, that was all done
24 while you were at EPA?

25 A. Yeah. All that work was done, right.

1 Q. Sir, were you traveling last week?

2 A. Yeah. Actually I was.

3 Q. Where were you?

4 A. I was in Geneva.

5 Q. For what purpose?

6 A. Switzerland. I was offered to -- selected, I suppose,
7 to attend a joint meeting of the Food Agricultural
8 Organization. So it's a part of the World Health Organization.
9 And another unit of the World Health Organization to do
10 pesticide reviews. So this group gets together once a year for
11 two weeks. I didn't realize it was a two-week assignment at
12 the time I accepted it last year, but nevertheless. And what
13 they do is they review the toxicology or exposure information
14 for about 20 pesticides. And when they do that, at the end of
15 the Thursday you walk out of that meeting and they've got the
16 report done. It's pretty impressive actually the way they do
17 it. And then that report gets edited and things and then it
18 gets released. Sometime later, different member countries, the
19 World Health Organization will use that information to set safe
20 levels of pesticides for their crops. So people can use the
21 pesticide. As long as it doesn't go above a certain level then
22 that's safe use.

23 Q. All right. Let me focus this, sir. You mention the
24 CATT team and the jury's heard a little bit about that. We've
25 been at this for two weeks, going on three.

1 A. Okay.

2 Q. Let's bring up Defense Exhibit D613.

3 MR. MACE: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. MACE:

6 Q. Sir, do you recognize this as the final report that came
7 out of the CATT?

8 A. Yes, it is.

9 Q. And do you understand, sir, that you're here to give
10 fact testimony regarding your involvement in the CATT team?

11 A. Yes.

12 Q. How did you get involved in the CATT team?

13 A. One or more of my staff, either myself or one of our
14 staff, were approached by a contractor with the State of West
15 Virginia to see if we could develop a small group to study this
16 issue.

17 Q. If you could turn over, please, to page 6. The second
18 paragraph. Could you blow that up?

19 It talks about the CATT team being tasked with
20 investigating the toxicity of C-8; developing provisional risk
21 factors; and, establishing human health protective screening
22 levels for air, water and soil. Does that sound like an
23 accurate description of part of what you were doing?

24 A. Yes.

25 Q. Go over to page 8, please. Blow up the third paragraph.

1 The CATT toxicologists met on May 6 and 7, 2002 at EPA
2 offices in Cincinnati, Ohio. Does that comport with your
3 memory?

4 A. Yes.

5 Q. And with respect to TERA, which you've talked about and
6 the jury's heard a little bit about, at page 9, it says TERA is
7 a nonprofit corporation dedicated to the best use of toxicity
8 data to the development of risk values. All the nonTERA
9 toxicologists on the CATT, whether from government agencies or
10 industry, were in unanimous support of including TERA in this
11 project.

12 Is that accurate to your memory?

13 A. Well, the first line is accurate. I'm not so sure I
14 knew about the second part.

15 Q. Let's turn over to the next page, page 10. Why don't we
16 bring up from the top of the page down to Mr. Briggs.

17 So this meeting was held over two days, May 6 and 7,
18 between these toxicologists?

19 A. Yes.

20 Q. Were you familiar -- are you familiar today or were you
21 familiar back at the time with these -- let's start with Mr --
22 how does he say that?

23 A. Cicmanec. John Cicmanec.

24 Q. Dr. Cicmanec from USEPA. Are you familiar with him?

25 A. I'm very familiar with Dr. Cicmanec. I worked on the

1 ADI work group with him and when we traveled on occasion, we
2 had to room together to save money.

3 Q. What about Dr. Rotenberg?

4 A. I know Dr. Rotenberg a little bit less well. He's in
5 Region 3 Philadelphia office. If he walked in here, I'd
6 recognize him. But I didn't work with him on a day-to-day
7 basis.

8 Q. Jennifer Seed, Dr. Seed?

9 A. Dr. Seed is a well-respected toxicologist in USEPA. I
10 worked with her a number of times. She's a developmental
11 toxicologist. Very astute.

12 Q. Dr. John Wheeler from the Agency for Toxic Substances
13 and Disease Registry?

14 A. I knew him a little bit less well. Probably not -- I
15 wouldn't have recognized him prior to that meeting.

16 Q. And he's got that same certification, DABT?

17 A. It's a Diplomate of the American Board of Toxicology.

18 Q. Is that board certification?

19 A. Board certification in toxicology, yes.

20 Q. Tell us about this organization. I think the jury heard
21 that term. I don't think we ever talked about that agency is,
22 what it does.

23 A. It's a U.S. federal agency located in Atlanta, Georgia.
24 They didn't exist -- I guess they came into existence about 20
25 years ago when the Superfund site work became more prominent in

1 the U.S. government. EPA, I believe at the time, was doing the
2 work and it was so extensive they created another agency. I'm
3 sure there's some political things about that but I'm unaware
4 of any of that. And they do have some really good scientists
5 down there. John Wheeler I got to know as a good scientist.
6 They also had some luminaries, Christa Rosa was another person
7 that came from EPA, went down there, did a lot of good work.

8 Q. These individuals from USEPA and the Agency for Toxic
9 Substances Disease Registry, were these knowledgeable and
10 competent people?

11 A. Oh, absolutely.

12 Q. Factually, sir, can you describe for us generally the
13 steps of the process that was followed by the CATT team to come
14 up with the drinking water screening level?

15 A. Well, yeah. In general what had happened was USEPA --
16 TERA staff summarize a large body of information into tables
17 with summaries and then that information was passed out to the
18 CATT team probably three, four weeks ahead of the meeting. The
19 CATT team then looked at the information. If they had
20 questions, they could come to TERA and say, hey, I want more
21 information on this study or whatever. And then we had the
22 meeting and at the meeting we carefully went through each study
23 trying to cull out about this study, where is the place where
24 the study doesn't show any effect.

25 Because what toxicologists do, they'll test experimental

1 animals in an ethical way and they want to test a high enough
2 dose to cause a toxicity. All chemicals are toxic, even water
3 if you drink too much will kill you. So you test high enough
4 to see where the toxicity is and you test low enough to see
5 where there's no effect.

6 Between that gap, you study that and in the CATT team
7 study, each study that way and try to determine the no-effect
8 level and then the effect level. Once you determine that, they
9 culled it out as a no observe adverse effect level and they
10 went through each study. Once they did that, they started
11 looking at different studies and applying this thing called a
12 safety factor or uncertainty factor to take that animal
13 no-effect level and project it to people. That becomes a safe
14 dose for people.

15 So the CATT team did that with each study and then at
16 the end, they went through and had a discussion about the
17 appropriate safety factors for each study because they're not
18 always the same.

19 Q. And was it an open discussion -- based on your personal
20 observations was it an open discussion among the various
21 people?

22 A. Open discussion and free flowing. One reason it's free
23 flowing is what we do in our particular situation and what was
24 followed here is that we don't say who said what in the notes
25 so there isn't a person assigned to a particular statement.

1 Even though during the meeting, of course, a person makes a
2 particular statement.

3 What that allows is anybody to make whatever comment
4 they want based on the science and that focusing on the science
5 is what we had in our meeting. It was a free-flowing
6 discussion.

7 Q. You mention the minutes. Could we bring page 10 back
8 up, please?

9 So this page of the report is titled the CATT
10 toxicologist meeting minutes. It starts at page 10. Could you
11 check your copy there, does that continue through page 35 of
12 the report?

13 A. That's correct.

14 Q. And is that detailed minutes of the various studies that
15 you looked at, some of the key points that were brought out
16 about the studies and the votes to conclusion?

17 A. That's correct.

18 Q. And with regard to that, reaching a conclusion, how did
19 that work? Was it one person/one vote or some other method?

20 A. The attempt is to do consensus. Unanimous consensus
21 would be ideal, of course. The studies are pretty complex and
22 for many of the studies we did have unanimous decisions on
23 where the no-effect level was and the effect level. The
24 uncertainty factors discussions were a little bit more less
25 unanimous. So in those cases what we did was we just voted.

1 Everybody was heard and then the chair, Dr. Staats would --

2 If someone said, hey, the safety factor should be 10,
3 which is sort of our default maximum and other people said,
4 well, I don't think that's a worry at all. I think it should
5 be 1, which is basically saying I don't think we should even
6 use it and other people would say, well, it should be halfway
7 between. Well, halfway between when you use safety factors,
8 you multiply them. Halfway between is not 5 which is what you
9 think normally. It's 3. Three times three is about ten. It's
10 probably a scientific technical point. But three is kind of
11 the midway point.

12 So people would say 1, 3 or 10 often. If there was a
13 spread, the chair would say can we all live with, let's say,
14 this number. Let's say 3. If you can live with it, that's
15 what they went with. But sometimes we voted and there was
16 different votes. That's all laid out in the document.

17 Q. Let's get to the results over at page 33. If you could
18 bring up the screening levels.

19 The report says the screening levels are calculated
20 following the premise that if lifetime exposure is equal to or
21 less than the pRfD or pRfC then no risk of deleterious effect
22 is expected. Is that right?

23 A. That's correct. According to the definition of RfD or
24 RfC.

25 Q. What are those describing?

1 A. The reference dose is the dose with uncertainty spanning
2 perhaps an order of magnitude kind of a tenfold. So it's kind
3 of imprecise. The daily, in the case of a reference, those
4 daily oral exposure or the case of an RfC inhalation,
5 continuous inhalation exposure, it's likely to be without
6 deleterious effects for a lifetime in sensitive subgroups. In
7 the general population including sensitive subgroups. So this
8 protects everybody. That's the intent.

9 Q. We can go to page 35. Blow up for water.

10 The determination was for water that that number was, is
11 that 150 parts per billion?

12 A. 150 micrograms per liter is parts per billion.

13 THE COURT: Is there an objection?

14 MR. DOUGLAS: Your Honor, I would request at this time
15 the limiting instruction with respect to this number.

16 THE COURT: I'll see you at side-bar.

17 You may stand if you wish, ladies and gentlemen.

18 - - -

19 Thereupon, the following proceeding was held at side-bar:

20 THE COURT: The defendants had a different proposed.
21 You want me to use the 2014 as the date of the science -- 2012,
22 excuse me.

23 MR. MACE: Yes.

24 THE COURT: Do you have an objection to that?

25 MR. DOUGLAS: I'm sorry, I'm not following that.

1 MR. MACE: Mentioning the date that the science panel
2 came out with the finding.

3 THE COURT: As 2012.

4 MR. BILOTT: We would ask that the Court read the
5 original instruction that was agreed to.

6 MR. DOUGLAS: I don't think it's a good idea to change
7 anything.

8 THE COURT: It's a long one. I've given it at least,
9 I'm going to guess, seven or eight times.

10 MR. DOUGLAS: But I think this is an important time to
11 give it and I would note that any time the word trial has been
12 mentioned, Mr. Mace pops out of his seat and requests that
13 charge.

14 THE COURT: I'm going to use, for now, the one that
15 was the previous one but I did ask, I think, Mr. O'Brien to
16 take a look at this and tell me what his view is. We'll
17 address that the next time.

18 MR. DOUGLAS: Thank you, Your Honor.

19 - - -

20 Thereupon, the following proceedings were had in open
21 court:

22 THE COURT: Counsel, let me see you again at side-bar.

23 Ladies and gentlemen, you may stand by your seats, if
24 you wish.

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Thereupon, the following proceeding was held at side-bar:

THE COURT: This is not in the list that we put together. Are you talking about the instructions I gave at the beginning of the case?

MR. MACE: I think that is.

MR. DOUGLAS: And several times during the course.

THE COURT: Very good. I'll just stay with the script that we used at the beginning of the case. Thank you.

- - -

Thereupon, the following proceedings were had in open court:

THE COURT: So, ladies and gentlemen, I know you've heard this before but this is an important part of this case.

As you recall, the parties agreed before this case started that, based on the science panel, there was a level that if Mrs. Bartlett proves she's entitled to, that being that she drank the water for more than a year and that the water she drank contained a C-8 level of greater than .05 parts per billion then the issue of general causation would not be one for you to decide.

We're looking at a different standard here, earlier in time. And that's offered for you to consider when you look at DuPont's conduct but not with regard to the issue I just mentioned that the parties have agreed to.

1 So with that, you may continue.

2 MR. MACE: Thank you, Your Honor.

3 BY MR. MACE:

4 Q. Dr. Dourson, I think you mentioned that you could help
5 us understand part per billion maybe?

6 A. Right. So the way you look at part per billion is you
7 take a sugar packet, you open up and you dump it out and you
8 have all those little sugar granules. Of course they all weigh
9 different amounts. Generally they're 10 micrograms to
10 100 micrograms. So if you lick your finger and pick one up,
11 you get 10 micrograms. If you put that into a liter of water,
12 or three cans of Coke or something like that, that's 10 parts
13 per million. 10 micrograms per liter.

14 So 150 is more than that. It's two or three of them,
15 depending on how much they weigh.

16 Q. So before we leave the CATT report, let me just point
17 out a couple things. At page 46 there's a discussion on water
18 and there's the DEP -- DEP is the Department of Environmental
19 Protection?

20 A. I believe so, yeah.

21 Q. Notes the water screening level is higher than DuPont's
22 internal community exposure guidelines for drinking water of 1
23 or 3 parts per billion. However, these guidelines were
24 developed in the early '90s and based solely on two-week
25 inhalation study from '86. Since then, significant additional

1 toxicology data have been collected and the CATT water SL is
2 based on a comprehensive examination of all available
3 information.

4 Did you feel that the number that you came up with with
5 this CATT team was based on a comprehensive examination of all
6 available information?

7 MR. DOUGLAS: Objection. Calling for an expert
8 opinion.

9 THE COURT: We're getting right up to that.

10 This witness is here to talk about the methodology and
11 just the process by which this was done, not to give an expert
12 opinion on anything in conclusions like that.

13 With that distinction in mind, he may answer the
14 question.

15 BY MR. MACE:

16 Q. You may answer, Doctor. Did you feel that your process
17 involved a comprehensive examination?

18 A. Absolutely. The fact is, the usual process is one group
19 does -- looks at all the data by themselves and after they
20 write the report they get it peer reviewed by an outside group.
21 This was different in that we had an outside group come
22 together and collectively develop the risk value. It was
23 actually surprising that we got it done in two days. We've
24 never done that before. We've done it since because we've
25 taken this as a model to apply to other situations. So it was

1 a very good rendition of the data and a good discussion with
2 different viewpoints during the course of the two days.

3 Q. One other point. If we could go over to page 27. This
4 paragraph here on the cancer hazard. Talks about cancer hazard
5 identification.

6 The panel discussed the evidence for C-8 carcinogenicity
7 in humans and agreed that the human carcinogenicity evidence is
8 inconclusive. Although four prostate tumors were reported in
9 retired workers, three of these four cases now are known to
10 have minimal or no C-8 exposure.

11 As part of the studies that the CATT team discussed, did
12 you discuss the '93 Gilliland thesis about the 3M plant and the
13 prostate cancer?

14 A. I believe I did. I'd have to check to make sure.

15 Q. Could you check the report and look at it?

16 A. That was a human study section? That was Gilliland and
17 Mandel 1996? Gilliland and Mandel 1993. I see it.

18 Q. Did your team review both the '93 Gilliland and Mandel
19 and the '96 update?

20 A. Yes, we did.

21 Q. Doctor, did the toxicologists who participated in coming
22 up with the determination that the lifetime exposure to the 150
23 parts per billion or less of C-8 would have no risk of
24 deleterious effects, did those toxicologists sign a
25 certification of the final report?

1 A. Yes, they did.

2 MR. MACE: May I approach the deputy clerk, Your
3 Honor?

4 THE COURT: You may.

5 BY MR. MACE:

6 Q. Doctor, we've handed you what's been marked as D1812.
7 Do you recognize that?

8 A. Yes, I do.

9 Q. Are those copies of the signed certifications?

10 A. Yes, they are.

11 Q. Could you please bring up 1812? Let's start with page
12 dot 3. Mr. Hoepfner, if you could bring up the language at the
13 top.

14 I apologize for the quality of this. Can you see the
15 words, I agree that the notes, as presented, accurately reflect
16 the panel's discussion and conclusions during the May 6 to
17 7, '02 C-8 assessment of toxicity toxicologists panel meeting.
18 You see that language?

19 A. Yes, sir.

20 Q. Down below, did Dr. Wheeler from ATSDR signed that?

21 A. Yes, he did.

22 Q. Go back to the cover page. Did Dr. Rotenberg from EPA
23 sign that?

24 A. Yes, he did.

25 Q. Go to page dot 4. Did Dr. Seed from EPA sign that?

1 A. Yes, she did.

2 Q. And over at dot 5 did Dr. Cicmanec sign it as well?

3 A. Yes, he did.

4 Q. Did you sign it as well?

5 A. Yes, I did.

6 Q. Did all ten of the toxicologists sign it, sir?

7 A. We all signed it.

8 Q. And back at that time, sir, after the final report had
9 been issued, what was your feeling about the process that had
10 been used to come up with that number?

11 A. Again, I --

12 MR. DOUGLAS: Objection.

13 THE COURT: I think it's the framing of the question.
14 Rephrase that, please. Feeling is the word that set
15 Mr. Douglas on his feet.

16 BY MR. MACE:

17 Q. Sir, that process, did you feel that that was a fair and
18 reliable process that had been used to come up with that
19 number?

20 MR. DOUGLAS: Same objection. It's word. It's an
21 expert opinion.

22 THE COURT: Overruled. It's a question about process.
23 The objection is overruled. You may answer.

24 THE WITNESS: I thought the process was great. And,
25 again, we've used it subsequently to do complex evaluation.

1 BY MR. MACE:

2 Q. Sir, let me switch topics a second. Are you familiar
3 with the term conflict of interest?

4 A. Yes, I am.

5 Q. What does that refer to?

6 A. Well, there's a couple ways you could look at it. We
7 have a well-established -- we have a conflict of interest
8 statement on our website for all peer reviews and work that we
9 do. Conflict of interest can look to be a financial conflict
10 of interest. So it's not like it's wrong but if I own stock in
11 DuPont, for example, and I would go into this meeting, I would
12 have a financial conflict of interest. That's a financial
13 conflict of interest.

14 There are times when a conflict of interest might be --
15 well, let's go to the bias. Then they have biases. And the
16 way scientists look at biases is we're all biased. I'm a
17 toxicologist so I look at epidemiology data from a toxicology
18 perspective. I have a toxicology bias.

19 So you balance biases on peer review panels but you
20 avoid conflicts of interest. On occasion, someone has such
21 intense biases, that's a conflict. And that's a judgment call.
22 We go through that with each of our panels.

23 Q. Sir, did you have a conflict of interest in working on
24 the CATT team?

25 A. No. Not at all. I didn't have a financial conflict of

1 interest for the reasons that we described on our website.

2 Q. Did anybody at TERA? You had some other members of your
3 team that were on that group. Did anybody at TERA have a
4 conflict of interest working on the CATT team?

5 A. No. They didn't have a financial conflict of interest.

6 Q. A separate issue, Dr. Dourson. If anybody suggested to
7 the jury that TERA was biased toward industry, is that
8 accurate?

9 A. Well, I wouldn't use the word biased toward industry.
10 Our mission is to protect public health and we do this by
11 looking at the science as best possible. Our motto is
12 dedicated to the best use of tox data for risk values. That's
13 what we're all about. We build collaborative information so we
14 work with industry and government and NGOs, nongovernment
15 organizations, to build teams to do this. When you're building
16 a team you can't be overtly or even partially biased with one
17 part of the team or other. You have to just be neutral. We're
18 really -- we strive to be neutral in all cases.

19 If someone said that, I would encourage them to look at
20 our website. You can look at the funding, you can look at the
21 types of work we've done. You can look at, I don't want to say
22 accolades. That's probably too strong. There have been people
23 that have talked about us. For instance, the EPA Inspector
24 General wrote a report on peer reviews --

25 MR. DOUGLAS: Your Honor, I'm going to ask that that

1 be stricken.

2 THE COURT: The objection is sustained.

3 BY MR. MACE:

4 Q. Back in 2002, so let's focus on the year in question.

5 A. Sure.

6 Q. Back in 2002. Was TERA biased toward industry back in
7 2002?

8 A. No.

9 Q. You mentioned funding.

10 MR. MACE: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. MACE:

13 Q. Have you been handed a demonstrative aid which is a
14 printout from your website of funding from over the years?

15 A. Yes.

16 Q. Bring that up, please. And if we could bring up the
17 table at the bottom.

18 What is this graphic showing in terms of just overall
19 before we focus on 2002?

20 A. Just overall it's just the amount work we do for
21 government other than nonprofit versus industry and industry
22 related.

23 Q. So in 2002, which was the year of this CATT team report,
24 how did the breakout work?

25 A. Well, yeah. 72 percent was government or other

1 nonprofit work and 28 percent was industry or industry related.

2 Q. And that number has varied at different times in
3 different years?

4 A. Oh, yeah. Roughly it's about two-thirds government,
5 one-third industry, roughly.

6 Q. Sir, were you personally present during these CATT team
7 meetings, both days, on May 6 and May 7 of 2002?

8 A. Yes.

9 Q. Did you personally observe what went on in the meetings?

10 A. Yes.

11 Q. The jury has seen Mr. Kennedy from Mr. DuPont was part
12 of the meeting?

13 A. Yes, he was.

14 Q. Based on your personal observations, was Mr. Kennedy
15 dominating the discussion?

16 A. No.

17 Q. Did you hear Mr. Kennedy try to strong-arm anyone into
18 voting a certain way?

19 A. No.

20 Q. We saw up on the list that Dr. Butenhoff from 3M was
21 also there as an invited guest?

22 A. Yes.

23 Q. Since 3M had conducted a number of the animal studies
24 and was the manufacture and supplier of C-8 was it helpful to
25 have him there to answer questions anyone would have?

1 A. Yes. Study directors are always useful at meetings like
2 this.

3 Q. During your personal observations during those two days
4 of the meetings, did any of the industry representatives
5 dominate the discussions or the voting?

6 A. No.

7 Q. Were the industry folks lobbying for higher numbers for
8 the screening level?

9 A. No.

10 Q. Bottom line, Dr. Dourson, did it appear to you that the
11 CATT team process was an unbiased process with an open
12 discussion of the science based on the knowledge at the time?

13 A. Absolutely.

14 Q. Sir, did anyone coerce you or improperly influence you
15 in any way to arrive at 150 part per billion number?

16 A. No.

17 Q. Before I sit down, sir, have you ever testified for me
18 before?

19 A. No.

20 Q. Have you ever testified for anyone from my law firm,
21 Squire Sanders or Squire Patton Boggs before?

22 A. No.

23 Q. Have you ever been employed by DuPont?

24 A. No.

25 Q. Do you own any stock in DuPont?

1 A. No.

2 Q. Did you receive a subpoena to be here to testify today?

3 A. Yes, I did.

4 Q. Was that served on you at your office at the University
5 of Cincinnati?

6 A. Yes, it was.

7 Q. Other than reimbursement of your mileage expenses for
8 traveling here to testify and your daily subpoena attendance
9 fee of \$40 are you receiving any money from DuPont?

10 A. From DuPont, no.

11 Q. Did I talk to you by phone to check on some facts a
12 couple of times over the past few months?

13 A. Yes, you did.

14 Q. Did you ever meet me before you walked into the
15 courtroom today?

16 A. No, I haven't.

17 MR. MACE: Thank you, sir. I have nothing further at
18 this time.

19 THE COURT: Thank you, Mr. Mace.

20 Mr. Douglas, you may cross-examine.

21 - - -

22 CROSS-EXAMINATION

23 BY MR. DOUGLAS:

24 Q. Good morning.

25 A. Top of the day to you.

1 Q. Not accustomed to hearing somebody say top of the day.
2 I haven't been in England for quite a while. I guess it's an
3 acceptable way of saying good morning.

4 A. It certainly is.

5 Q. And a good morning to you, sir.

6 Did I hear you say you received a subpoena to be here
7 today?

8 A. Yes, I did.

9 Q. You don't mean to imply to our jurors that but for the
10 subpoena you wouldn't be here?

11 A. I'm not sure how to answer the question.

12 Q. Let me see if I can help you out. When did you receive
13 the subpoena?

14 A. Yesterday.

15 Q. Where were you when you received it?

16 A. At the University of Cincinnati.

17 Q. What time of day did you receive it?

18 A. I think it was the afternoon.

19 Q. How long have you been in Columbus?

20 A. You mean this morning?

21 Q. When did you get to Columbus, Ohio?

22 A. I came in about -- left Cincinnati at 5:30. 7:30
23 roughly.

24 Q. You did not arrive yesterday?

25 A. No, sir.

1 Q. And so but before you received the subpoena you knew
2 that you were going to be here today and testify, correct?

3 A. Yes, I had been --

4 Q. When did you first know, sir, that you were going to
5 travel from Cincinnati to Columbus, Ohio to give testimony for
6 the defendant DuPont in this case?

7 A. Probably last week.

8 Q. That's the first time you ever heard that your testimony
9 would be wanted in this case, in this trial?

10 A. No. Pardon me. I thought I answered your question
11 directly. Maybe I misunderstood it. What was the question?

12 Q. When were you first asked to give testimony in this
13 case?

14 A. I was -- probably several months ago when -- well, I'm
15 not so sure. Several months ago Mr. Mace had questions.

16 Q. And you had spoken to Mr. Mace before today. This isn't
17 the first time you've spoken with him?

18 A. Oh, no. I've spoken with Mr. Mace. He had questions
19 about part of the files that we kept.

20 Q. Was that by telephone?

21 A. Yes.

22 Q. Have you ever met Mr. Mace before?

23 A. No.

24 Q. Have you met anybody from his firm before?

25 A. I don't believe so.

1 Q. What do you mean you don't believe so?

2 A. I don't know everybody in his firm.

3 Q. You didn't mean to suggest to our jurors that you just
4 found out yesterday, you got a subpoena and you got in your car
5 and came here all bright-eyed and bushy-tailed, ready to go to
6 give testimony that you had no idea of -- no way of knowing
7 that you were going to --

8 A. I don't mean to imply that.

9 Q. By the way, you know that -- my name, by the way, is
10 Mr. Douglas. Gary Douglas.

11 A. Nice to meet you.

12 Q. Good to make your acquaintance. You know that folks,
13 paralegals and attorneys from my team, have tried to call you
14 and ask you questions about your files.

15 A. Okay.

16 Q. And you know a Ms. Carol Moore? She's a paralegal.

17 A. Good morning.

18 Q. Why don't you tell the jurors, do you check your
19 messages, sir?

20 A. Check my messages?

21 Q. Yeah. When people leave a message and they call?

22 A. Absolutely.

23 Q. Then you know that Ms. Moore has been calling you
24 several times and you have yet once to return her call. Do you
25 know that?

1 A. I'm not aware of that, sir.

2 Q. You're not aware of that. I thought you checked your
3 messages?

4 A. As I said, I'm not aware of any message from Ms. Moore.

5 Q. So would you be willing to talk to us privately, as you
6 spoke to Mr. Mace?

7 A. Absolutely.

8 Q. Then why didn't you return her calls?

9 A. Sir, I don't know -- I'm not aware of any calls from
10 Mrs. Moore.

11 Q. So when you leave today would you mind talking with me?

12 A. No. No problem at all.

13 Q. Sir, what is your salary?

14 A. At the University?

15 Q. Let's start with TERA.

16 THE COURT: I'll see you at side-bar, counsel.

17 You may stand by your seats, ladies and gentlemen.

18 - - -

19 Thereupon, the following proceeding was held at side-bar:

20 THE COURT: What's this? I mean, he's connected to
21 TERA.

22 MR. DOUGLAS: He's representing that he works for this
23 nonprofit company, that's looking out for the public health
24 which is -- I'm trying to expose that as being just a facade.

25 THE COURT: Did you watch the woman from Planned

1 Parenthood testify before Congress that she made 500,000 a
2 year? You can tell. If this is somebody who was an expert,
3 the fees are always in play. But he's not being paid by
4 DuPont. So what difference does the salary make?

5 MR. DOUGLAS: Because Mr. Mace didn't get into
6 betraying the MSS person who is so concerned about the public
7 health I wouldn't get into it.

8 THE COURT: I'm assuming the head of the Sierra Club
9 makes a lot of money too. What inference would the jury draw
10 from his salary?

11 MR. DOUGLAS: That he's not as altruistic as he's
12 painted to be.

13 THE COURT: I just don't see it. There are people who
14 had nonprofits who are not connected to anything to do with
15 industry that make a lot of money. It's not probative.

16 MR. DOUGLAS: Okay. I'll move on.

17 - - -

18 Thereupon, the following proceedings were had in open
19 court:

20 THE COURT: Mr. Douglas, you may continue.

21 MR. DOUGLAS: Thank you, Your Honor.

22 BY MR. DOUGLAS:

23 Q. Writing down some notes?

24 A. Yes.

25 Q. Does it have to do with your testimony?

1 A. Yes. I wrote down your name so I'd remember it,
2 Mr. Douglas.

3 Q. Sir, I just want to get this straight. You were hired,
4 you say, by the West Virginia Department of Environmental
5 Protection, correct?

6 A. I think --

7 Q. Your company was?

8 A. I think it was a contractor to West Virginia that
9 approached us.

10 Q. Who was that?

11 A. I don't recall off the top of my head.

12 Q. What kind of contractor?

13 A. A contractor that works for the State of West Virginia.

14 Q. What do they do?

15 A. I don't know.

16 Q. So you get contacted by this contractor and you put
17 together, if I understand correctly, a summary of the studies
18 that you had been provided with from DuPont, right?

19 A. Well, there was two tasks. The first task was for the
20 TERA staff to put together a summary of information on this
21 particular chemical which included available information on
22 literature search.

23 Q. So the summary -- and then the summaries were put
24 together by TERA, your company, right?

25 A. Right. What we did then is we summarized --

1 Q. Just yes or no is fine.

2 A. Yes.

3 Q. Then you took the summaries and you gave them to the
4 members of the CATT team?

5 A. The summaries and associated references were given to
6 the CATT team, yes.

7 Q. And then a few weeks passed by and you have this
8 meeting, right?

9 A. Yes.

10 Q. And this meeting lasted a grand total of two days,
11 correct?

12 A. That's correct.

13 Q. And by the end of those two days the CATT team comes up
14 with this number of 150 parts per billion which is 150 times
15 higher than the level which had been set at that time by
16 DuPont, right?

17 A. I'm not aware of what DuPont had set at that time so I'm
18 not sure how to answer your question, sir.

19 Q. I'll rephrase it for you.

20 A. Okay. Thank you.

21 Q. So in this two-day meeting where you're discussing all
22 of this -- all the summaries and all the scientific literature,
23 whatever it was you were doing, grand total of two days you
24 came up with this 150 parts per billion number, right?

25 A. Well, that forgets the prior three or four weeks the

1 team was studying it.

2 Q. So in a matter of three or four weeks and two days --

3 MR. MACE: Your Honor, I object to the interrupting of
4 the witness.

5 THE COURT: Read back the second to last question from
6 Mr. Douglas and we'll let the witness answer.

7 (Thereupon, the last question was read by the court
8 reporter.)

9 THE COURT: And your answer?

10 THE WITNESS: No.

11 BY MR. DOUGLAS:

12 Q. It was a grand total of three or four weeks plus these
13 two days?

14 A. Yes.

15 Q. From the time you were contacted by this contractor,
16 whose name you can't recall, and the time that the CATT team
17 came up with this 150 parts per billion?

18 A. Yes.

19 Q. Now, did I hear you say you didn't know at the time that
20 you did this allegedly comprehensive review that DuPont had
21 already set a level of 1 part per billion? Did I hear that
22 correctly?

23 A. I wasn't sure that I knew that.

24 Q. Are you sure today?

25 A. No.

1 Q. Did Mr. Mace when he spoke to you remind you of that
2 fact?

3 A. He mentioned that fact. I don't think he --

4 Q. So he mentioned the fact but you forgot about it today?

5 A. At the time --

6 Q. Which --

7 A. At the time of the meeting I don't remember being aware
8 of that fact.

9 Q. So you wouldn't be aware of, if you were not aware of
10 that fact, that DuPont had already set a level of 1 part per
11 billion for water, you certainly weren't aware of how they
12 derived that number, correct?

13 A. That's correct.

14 Q. And would it be fair to say that at that point in time
15 the folks at DuPont, the time you assembled your CATT team and
16 in this three or four weeks came up with this 150 part per
17 billion number, would it be fair to say that when you were
18 first contacted by this contractor, whose name you can't
19 recall, that DuPont would have known a lot more about C-8 than
20 you, right?

21 A. Before we were contacted, I would presume so, yes.

22 Q. You knew nothing about C-8 at that point in time,
23 correct?

24 A. I wouldn't say that.

25 Q. Since you guys brought it up on the direct examination

1 about whether your company, TERA, is biased, you know the old
2 Shakespeare saying, he doth protest too much? You familiar
3 with that saying?

4 A. Unfortunately, no.

5 Q. Didn't read much Shakespeare?

6 A. Wasn't my strong suit.

7 Q. I didn't do too well in that class either.

8 So since you guys brought it up, I have a few questions
9 about it.

10 A. Absolutely. Please do.

11 Q. Let's start with how your company was approached. You
12 don't -- you didn't know that you were handpicked by DuPont to
13 do this work?

14 MR. MACE: Objection, Your Honor. Assumes facts.

15 THE COURT: Unless there's a foundation for that
16 question, the objection is sustained.

17 BY MR. DOUGLAS:

18 Q. Did you know, sir, that you were handpicked by DuPont to
19 do this work?

20 A. No.

21 Q. And speaking of bias, you have been accused, on many,
22 many occasion, of being industry biased. Biased in favor of
23 industry. Many media reports, investigative reports by
24 investigative journalists and in consumer interest groups,
25 correct?

1 MR. MACE: Objection, Your Honor.

2 THE COURT: It has to come from the witness, not the
3 attorneys. Keep in mind questions are not evidence. It's the
4 answers from witnesses that are the only evidence you can
5 consider.

6 You may seek your answer.

7 You may answer.

8 THE WITNESS: Okay. Thank you.

9 I guess I'm going to have to say no to that because of
10 the way you phrased it.

11 BY MR. DOUGLAS:

12 Q. So you have been the subject of news reports,
13 investigative news reports where you've been accused of having
14 an industry bias. Yes or no?

15 A. Yes.

16 Q. And you've been quoted in a number of these
17 investigative news reports denying wholeheartedly that you are
18 biased in favor of industry, correct?

19 A. I'm hung up on your word numerous.

20 Q. More than one?

21 A. More than one, yes.

22 Q. How many times?

23 A. I'm aware of maybe three. Independently -- well, three
24 reports.

25 Q. One of them dubbed you the industry favorite, right?

1 A. I don't --

2 Q. You were quoted extensively -- weren't you quoted
3 extensively in an article in which you were referred to as a
4 favorite of industry. A Pulitzer-Prize-winning news
5 journalist. Does that refresh your recollection?

6 A. No, it does not.

7 Q. Why don't we --

8 A. That would be helpful if you pull it up.

9 MR. MACE: Could we approach, Your Honor?

10 THE COURT: I'll see you at side-bar.

11 You may stand if you wish, ladies and gentlemen.

12 - - -

13 Thereupon, the following proceeding was held at side-bar:

14 THE COURT: Do we have the article? And you'd like
15 to -- you would cross him with his own statements?

16 MR. DOUGLAS: Well, and the matters that he responded
17 to.

18 MR. MACE: But it's pretty extraneous, Your Honor, in
19 using the hearsay statements from some media source. It's one
20 thing to ask him about his statements without displaying the
21 document. I don't think he should be allowed to display the
22 document that has hearsay statements by media with nobody I can
23 cross. He wants to bring the reporter in --

24 THE COURT: I'm with you. His statements in here are
25 certainly fair game. And if he can -- I'm sure he's seen the

1 article but that doesn't necessarily make it admissible.

2 MR. DOUGLAS: May I lay the foundation?

3 THE COURT: You can try.

4 MR. MACE: You're not going to allow him to display
5 it.

6 THE COURT: Don't display it.

7 MR. DOUGLAS: It will not be displayed.

8 - - -

9 Thereupon, the following proceedings were had in open
10 court:

11 MR. DOUGLAS: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. DOUGLAS:

14 Q. Do you recognize the article?

15 A. Yes, I do.

16 Q. It's entitled *One-stop science shop has become a*
17 *favorite of industry-and Texas*. Is that the article?

18 A. Yes, it is.

19 Q. And you're quoted extensively in this article, correct?

20 A. I'm quoted in the article, correct.

21 Q. And this was in the Pulitzer-Prize-winning news
22 organization Inside Climate News, right?

23 A. I don't --

24 Q. You don't recall?

25 A. I don't know that.

1 Q. In this article you deny -- you are quoted extensively
2 denying accusations that you are an industry favorite, the
3 go-to guy, the guy who sets these limits really, really high so
4 that industry can just slide right through, right?

5 A. Would you like to point to a particular piece, sir?

6 Q. Absolutely.

7 A. Thank you so much.

8 Q. Do you deny the accusation, second page, one, two,
9 three. You're quoted. You see where you're quoted in the
10 third paragraph?

11 THE COURT: You've seen this article, you're familiar
12 with it?

13 THE WITNESS: Yes, sir.

14 THE COURT: Go ahead.

15 BY MR. DOUGLAS:

16 Q. You're quoted on that page, right?

17 A. Line three?

18 Q. Line three.

19 A. Of page two?

20 Q. On page two.

21 A. Right. Absolutely.

22 Q. Below that, and you're responding to an accusation in an
23 investigation by the Center for Public Integrity and Inside
24 Climate News shows your firm has close ties to chemical
25 manufacturers, tobacco companies and other industries. You

1 were quoted responding to that accusation and that
2 investigation by the Center for Public Integrity, right?

3 A. That's not correct. I wasn't --

4 Q. Do you see the words --

5 THE COURT: Wait. You interrupted.

6 Go ahead. Finish your answer.

7 THE WITNESS: I wasn't responding to accusations. I
8 was just being interviewed by a reporter and answering the
9 questions posed by the reporter.

10 BY MR. DOUGLAS:

11 Q. And the questions had to do -- you were asked about an
12 investigation by the Center for Public Integrity which found
13 that your company had close ties to chemical industry, tobacco
14 industry and other industries, right?

15 A. Well, again, sir, you're asking a question about facts
16 not in evidence. I wasn't --

17 Q. Are you a lawyer, sir?

18 THE COURT: Let's not get into that. That's beyond
19 what this witness can say.

20 Ask the next question.

21 BY MR. DOUGLAS:

22 Q. The subject matter of your interview was this
23 investigation of your company by the Center for Public
24 Integrity. It's right there. Take a look.

25 A. That's not correct.

1 Q. You see on the paper where it says, an investigation by
2 the Center for Public Integrity. You see where I'm reading
3 from, sir?

4 A. I see that. That's what the --

5 Q. You see where it says, shows the firm has ties to
6 chemical --

7 MR. MACE: Object to the cutting off of the witness.

8 THE COURT: He didn't finish the answer.

9 THE WITNESS: Sir, this is written by a reporter. I
10 interviewed with the reporter prior to this. I interviewed
11 with a reporter who asked me questions about TERA. It wasn't
12 in response to anything in particular. And I got this
13 afterwards. And the words that you say are correct but I
14 wasn't responding to anything along these lines. I was just
15 answering questions of the reporter.

16 BY MR. DOUGLAS:

17 Q. But you know that there was an investigation of your
18 company by the Center for Public Integrity in regard to your
19 close ties to the chemical industry, tobacco industry and other
20 industries. You're aware of that?

21 A. There was a report prior to this thing.

22 Q. And there's a report after this thing.

23 A. Is there? Okay. Thank you.

24 Q. Not surprised to hear that?

25 A. Surprised to hear what?

1 Q. That there would be other reports of your close ties to
2 the chemical industry?

3 A. You're surprised to hear that?

4 Q. Are you surprised, sir?

5 A. Yes, actually I am.

6 Q. If you go to the next page, I want to ask you about --

7 A. Sure.

8 Q. -- something else in this article about your company
9 and you.

10 A. Okay. Page 3.

11 Q. 3 of 9.

12 A. I've got 3 of 12.

13 Q. Are you familiar with the term, quote, whitewashing the
14 work of industry, end quote? Are you familiar with that
15 phrase?

16 A. No.

17 Q. Your firm has been accused of whitewashing the work of
18 industry, hasn't it?

19 A. If you say so. Are you saying --

20 Q. That's what you did in your work coming up in this
21 three-week magical period of coming up with this 150 parts per
22 billion. You whitewashed DuPont's C-8 problem, yes or no? And
23 if you can't answer it yes or no, I'll come up with another
24 question.

25 A. No. Affirmatively no.

1 Q. In fact, you defended, in this interview, your decision
2 to work with the tobacco industry, right? Which is fine. It's
3 your prerogative. Do you recall defending that?

4 A. I made a comment about a hypothetical.

5 Q. And you said in response to -- in defending your
6 decision to work with the tobacco industry you said, quote,
7 Jesus hung out with prostitutes and tax collectors. He had
8 dinner with them, end quote, to justify your work with the
9 tobacco industry. Were those your words, sir?

10 A. The premise of your question is incorrect. Those are my
11 words. I like to get Jesus quotes in as often as I can.

12 Q. In terms of hanging out with prostitutes, are you
13 analogizing DuPont with the tobacco industry, the companies you
14 work with to prostitutes and tax collectors?

15 THE COURT: I don't think DuPont is in this article,
16 so strike that part of the question.

17 THE WITNESS: It was a hypothetical response given to
18 a reporter's question. The reporter put ties together with
19 tobacco industry that they surmised.

20 BY MR. DOUGLAS:

21 Q. And in response you said, in defending your decision to
22 work with tobacco industry, you worked with tobacco industry,
23 correct?

24 A. We have taken \$85 from Reynolds Tobacco to Xerox some
25 paper for them when they had an issue with chromium when we

1 were doing work for USEPA. We charged them for it. I had a
2 colleague in Philip Morris back in the whatever, back in the
3 late '90s that had a problem with this benchmark dose. It's a
4 model that we can do real well and other people are just
5 learning now and we did that benchmark dose for him and we
6 charged him \$550. That's our tobacco money intake.

7 Q. We'll talk about some more of your tobacco money and
8 other industry money.

9 A. Okay. That would be great.

10 Q. But for you, your 550 bucks that you alleged is all you
11 got, that's like Jesus hanging out with prostitutes and tax
12 collectors. That's the quote.

13 A. The reporter put two different disparate ideas together
14 in that quote.

15 Q. So you say it's taken out of context?

16 A. I don't know what to say.

17 Q. I didn't think so.

18 A. Yeah.

19 Q. And you said in that article entitled favorite of
20 industry, we get criticized by everyone. That's true, right?

21 A. There have been times where we've been criticized by
22 everyone. That's true.

23 Q. Sir, I want to show you P3232 in regard to my questions
24 before about how you became the one that was selected to do
25 this work that took two or three weeks or three or four weeks.

1 I want to show you a document from DuPont, an e-mail P1.3232.

2 MR. DOUGLAS: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. DOUGLAS:

5 Q. Do you know Timothy Bingman?

6 A. I don't think so.

7 Q. You see here we have an e-mail from Timothy Bingman

8 August 21st, 2000 to Robert Rickard. Do you know Robert

9 Rickard? Bobby Rickard as he's referred to?

10 A. I think I do know him.

11 Q. He's sitting right here, right?

12 A. Yes, I do.

13 Q. How do you know him? How do you know him?

14 A. Society of Toxicology meetings. Probably in the last
15 four or five years I've gotten to know him from that.

16 Q. You don't know him -- you didn't know him prior to four
17 or five years ago, sir?

18 A. I don't think so. I apologize.

19 Q. I'm sorry?

20 A. I apologize to Mr. Rickard.

21 Q. You see where it says prospective contractors for PFOA
22 criteria review. See that?

23 A. Sure.

24 Q. And you see where it says Bobby/Jerry. When you see
25 Dr. Rickard, do you call him Bobby? Are you on first-name

1 basis?

2 A. I wouldn't do that, Mr. Douglas.

3 Q. So you haven't. So when you see him at the toxicology
4 meetings, or whatever organization you've seen him, you call
5 him Dr. Rickard?

6 A. Well, usually it's Society of Toxicology meetings it is
7 a first-name basis. If I don't know the person well, and I
8 don't know if it's a doctor or not, I'll go with either first
9 name or mister or miss.

10 Q. So you see it says as a follow-up to the go-do I had
11 from this morning's meeting I've talked to a number of
12 colleagues that use external toxicity peer review services to
13 see who they like as contractors. You see that?

14 A. Yes, I do.

15 Q. You do toxicity peer review, right?

16 A. Yes, we do.

17 Q. That's what we're talking about here in terms of the
18 work you did with the CATT team, right?

19 A. That was actually more risk assessment development but
20 we also do reviews.

21 Q. And it says, one person from another chemical company
22 that used to work on the EPA's criteria office in Cincinnati
23 said that -- let's go back. Sorry.

24 While everyone had a few names to offer, talking about a
25 potential outside contractor, right?

1 A. Yes.

2 Q. The common theme that emerged was that TERA, i.e. Mike
3 Dourson. Is it Dourson or Dourson?

4 A. Dourson is okay.

5 Q. The common theme that emerged -- let's underline common
6 theme -- that emerged was that TERA, Mike Dourson, was the
7 leading choice. You see that?

8 A. Yes.

9 Q. And so it goes on to say, one person from another
10 chemical company -- you see where I'm reading from?

11 A. Yes.

12 Q. So this is folks from chemical companies talking about
13 who's the go-to guy, who's good to use, what company should we
14 hire, right? Is that apparent from what I just read?

15 A. I haven't read it all yet.

16 Q. One person from another chemical company that used to
17 work in the EPA's criteria office in Cincinnati said that Mike
18 enjoys a very good reputation among the folks that are still in
19 the business of blessing criteria.

20 Can we underline blessing criteria?

21 That's sort of like that whitewashing term, right?

22 A. I wouldn't say that, but okay. You do. Go ahead.

23 Q. You've heard the term blessing criteria, right?

24 A. Actually I haven't.

25 Q. It goes on to say, other added benefits besides the

1 blessing criteria -- you know what the word blessing means,
2 right?

3 A. Yeah. I think so.

4 Q. Okay. You know, Jesus blessed people, right?

5 A. Right.

6 Q. And it goes on to say, other added benefits that were
7 identified for TERA were their ability to put together an
8 independent peer review panel to oversee their findings; and,
9 two, their ability to assemble, a, quote, package, and then
10 sell this to EPA or whomever we desired.

11 See where I'm reading from?

12 A. Yeah.

13 Q. You sell things to the EPA, is that what you do?

14 A. No.

15 Q. So they got it wrong here when they were under the
16 impression that one of the reasons you should be hired is
17 because you're able to sell packages to the EPA. They got it
18 wrong, you don't sell stuff?

19 A. Toxicology Excellence for Risk Assessment doesn't
20 advocate for any position. We just do the science. So they
21 got it wrong. You're correct.

22 Q. In the same way, sir --

23 MR. DOUGLAS: May I, Your Honor?

24 THE COURT: Yes.

25

1 BY MR. DOUGLAS:

2 Q. You heard the Judge instruct the jury about this finding
3 of the science panel of .05 parts per billion being capable of
4 causing cancer, sir. So they got this wrong in the same way
5 that you got it wrong. Your great company, full of all this
6 integrity not only got it wrong, you got it wrong by 3,000
7 times higher than this .05 parts per billion. Not even close.

8 A. What's this scientific -- what's this science based on?

9 Q. I ask the questions, sir. Do you have an answer for me?
10 If you can't answer the question, I'll ask you another one.

11 A. What's the question, please?

12 Q. You got it wrong, sir. This number you came up with in
13 three or four weeks following this discussion with Dr. Rickard
14 about blessing criteria, your number of 150 parts per billion,
15 would you agree, mathematically speaking, is 3,000 times higher
16 than this number here, .05 parts per billion?

17 MR. MACE: Objection. Compound. Assumes facts.

18 THE COURT: Let me see you at side-bar.

19 You may stand by your seats, ladies and gentlemen.

20 - - -

21 Thereupon, the following proceeding was held at side-bar:

22 MR. MACE: The objection is that his question is
23 compound. It assumes facts. I also strongly object to the
24 crudity that he's showing to the witness. And particularly
25 with respect to the compound that he had assumed the fact that

1 he had a discussion with Rickard. He never saw the e-mail
2 before. It's an e-mail, not a discussion. It's misphrased.

3 MR. DOUGLAS: I can rephrase it.

4 THE COURT: That e-mail is coming in, I'm sure. But
5 this witness never did say he ever saw it before. We're past
6 that.

7 MR. DOUGLAS: I have no further questions on the
8 e-mail.

9 THE COURT: I want to be clear. I don't like to harp
10 about this but there's sometimes I will weigh in but I'm not
11 going to cover everything that's objectionable. That's what
12 the lawyers have to do on both sides. Sometimes it's
13 frustrating where I sit. But I'm supposed to be neutral.

14 MR. DOUGLAS: Sometimes we can get the sense from the
15 Court that maybe counsel should stand up and object.

16 THE COURT: That issue is number one. But here's the
17 bigger concern I have. Bias is always fair game. No argument
18 there. But the more we get into the findings and the science,
19 the more he's being crossed as if he's an expert.

20 MR. DOUGLAS: Well, he's been called here to testify
21 that this was the best science available, this 150 --

22 THE COURT: I get that. And the process up to this
23 point has gotten into how he was picked, how it was conducted,
24 that sort of thing. That's exactly what you're allowed to do.
25 But the more we get into him versus the science panel we're

1 going to be talking about his expertise and then we're going to
2 get into opinions is my fear. So I would caution you on that.

3 MR. MACE: And to correct his statement that the
4 direct was on best science available at the time when he did
5 the work in 2002. He was here for a very limited purpose.
6 He's way beyond the scope of direct.

7 MR. DOUGLAS: I'll address that. The whole point is
8 this was not the best science. This was junk science. I
9 should be free -- and it wasn't reasonable. Therefore, for a
10 company to believe the industry should --

11 THE COURT: That's what the jury is going to have to
12 decide. But at this point there's nothing pending right now.
13 We're going to take a 15 minute break and you can start again.

14 - - -

15 Thereupon, the following proceedings were had in open
16 court:

17 THE COURT: We are right up to our 15-minute morning
18 recess. We'll see you back in 15 minutes, ladies and
19 gentlemen.

20 (A recess was taken at 10:30 a.m. until 10:47 a.m.)

21 THE COURT: Mr. Douglas, you may continue.

22 MR. DOUGLAS: Thank you, Your Honor.

23 BY MR. DOUGLAS:

24 Q. You discussed that your firm TERA has a website, right?

25 A. We have several, yes.

1 Q. And it's had a website or several websites for years?

2 A. Yes.

3 Q. Take a look, since this came up during your questioning
4 on direct examination by Mr. Mace, I want to take a look at
5 some of that.

6 Can we have the 2012?

7 MR. DOUGLAS: May I approach?

8 THE COURT: You may.

9 BY MR. DOUGLAS:

10 Q. Before we get to it, you recall you were asked some
11 questions on direct examination about the source of funding for
12 your company by Mr. Mace. He produced a table that's from your
13 website, right?

14 A. That's correct, yes.

15 Q. This is also -- what I've handed you is from your
16 website?

17 A. Yes.

18 Q. I want to put it up on the Elmo. You see it's a 2012
19 project time by sponsor. You see where it says that?

20 A. Yes.

21 Q. So, first of all, it says, 2012 and it's 40 percent for
22 profit. You see that?

23 A. Yes.

24 Q. So we had, first of all, we had Dr. Siegel from the
25 Boston University School of Public Health here testified. If

1 somebody had suggested to him that your source of funding from
2 industry was only 1 percent, that would be completely and
3 utterly inaccurate, right?

4 A. I'm sorry, the question again?

5 Q. If somebody were to infer to our jurors that TERA
6 receives only 1 percent of its funding source from industry,
7 that would be misleading?

8 A. That's misleading.

9 Q. So some of your clients are Drinker, Biddle & Wreath.
10 You see that?

11 A. Yes.

12 Q. They're a law firm, right?

13 A. Could be.

14 Q. They are a law firm. Will you take my representation --

15 A. Sure.

16 Q. -- of that fact?

17 And they're a law firm, sir, that defends chemical
18 companies and pharmaceutical companies in lawsuits just like
19 this. Did you know that? It's on your website.

20 A. Do I recall that? I don't recall that off the top of my
21 head.

22 Q. You know what Amgen is, right?

23 A. I think it's a company that does pharmaceuticals.

24 Q. That's one of the sources of your funding is Amgen, a
25 pharmaceutical company?

1 A. That's correct.

2 Q. That's what you're saying here on your website. You
3 look like you've never seen this before. Have you seen it
4 before?

5 A. I've seen this before. I helped put it together.

6 Q. You helped put it together but you can't remember who
7 Drinker, Biddle is, the very first list of the top of the
8 companies that provide 40 percent of your source funding; is
9 that right? Do I have that correct?

10 A. You've confused me, sir. I'm sorry. It's a company
11 that we --

12 Q. You're confused now, sir?

13 A. It's a company we did work for in 2012. You asked me a
14 specific question about them and I don't recall those details.

15 Q. ACI.

16 A. Right.

17 Q. Is that an industry outfit?

18 A. It's industry related.

19 Q. Eli Lilly. We've all heard of Eli Lilly. Another
20 pharmaceutical company.

21 NIPERA. What's NIPERA?

22 A. Nickel producers -- Nickel Institute for -- something
23 associated with the nickel institute.

24 Q. That's another industry outfit?

25 A. Yes.

1 Q. PPG?

2 A. I think they just refer to them as PPG Industries.

3 Q. They're another industry outfit?

4 A. Absolutely. They're all industry.

5 Q. And American Petroleum -- I want to take you through
6 some of the companies that your company has done work for and
7 one of them is the American Petroleum Institute, right?

8 A. That's correct.

9 Q. That's an industry organization, petroleum industry,
10 right?

11 A. That's correct.

12 Q. Let's do the 2013.

13 MR. DOUGLAS: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. DOUGLAS:

16 Q. Sir, you recognize what you've just been handed as
17 another page from your website?

18 A. That's correct.

19 Q. That you helped put together, right?

20 A. Yes, I did.

21 Q. You'll see it's from 2013 for profit. 37 percent,
22 right?

23 A. That's correct.

24 Q. And again we see American Cleaning Institute, Amgen
25 again, American Chemistry Council, Eli Lilly again and

1 Genentech. You see that?

2 A. Yes, I do.

3 Q. Genentech is a chemical company. You saw Amgen. What
4 is Genentech?

5 A. I think it's a pharmaceutical company.

6 Q. Sir, you've written in the peer review I think you said
7 you lost count after 100, right, contributed to the peer review
8 literature?

9 A. Yes.

10 Q. And do you recall an article entitled *Peer consultation*
11 *on relationship between PAC profile and toxicity of petroleum*
12 *substances?*

13 A. Yes, I do.

14 MR. DOUGLAS: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MR. DOUGLAS:

17 Q. We talked before about conflicts of interest. Do you
18 recall that when you were asked by Mr. Mace, what is a conflict
19 of interest?

20 A. Yes.

21 Q. And sort of the same idea of disclosure is in
22 acknowledgments that would be in a peer review journal, if
23 there are any, you would list them, right?

24 A. Right.

25 Q. Could we put the title page, please?

1 This is the article that I just asked you about, right?

2 A. Yes.

3 Q. And that's you, you authored this article?

4 A. Yes, sir.

5 Q. And if you just go to the second to last page, I think
6 it's the second to last, you'll see a section, conflict of
7 interest and below that, acknowledgments?

8 A. Yes.

9 Q. You see that? And it says, the American Petroleum
10 Institute, on behalf of the Petroleum High Production Volume
11 Testing Group, provided TERA with financial support for the
12 peer consultation meeting and preparation of the manuscript.

13 You see that?

14 A. Yes.

15 Q. You've written an article called *The importance of*
16 *problem formulations in risk assessment: A case study*
17 *involving dioxin-contaminated soil*. You recall that?

18 A. Yes, I do.

19 MR. DOUGLAS: May I approach?

20 THE COURT: You may.

21 BY MR. DOUGLAS:

22 Q. You have the article in your hand right now?

23 A. Yes, I do. Thank you.

24 Q. I have it displayed on the Elmo. And that's you, you're
25 the lead author on this?

1 A. Yes, I am.

2 Q. And if you go to, again, the second to last page.

3 Acknowledgment. The authors wish -- you're one of the authors,
4 right?

5 A. Yes.

6 Q. The authors wish to thank Robert Budinsky of the Dow
7 Chemical Company for his thoughtful comments on the early
8 drafts. You see that?

9 A. Yes, I do.

10 Q. By the way, you've received financial remuneration from
11 the Dow Chemical Company over the years, right? Your company
12 has?

13 A. On this particular paper?

14 Q. Not asking about this particular paper. Over the years
15 your company, TERA, has received financial remuneration from
16 Dow Chemical Company?

17 A. For several projects, yes.

18 Q. And you authored a piece called *Crystallographic*
19 *Analysis and Mimicking offers Estradiol Binding:*
20 *Interpretation and Speculation*. Do you recall that article?

21 A. I'd have to see that to make sure. That sounds like
22 letters to the editor.

23 Q. Well, I misspoke. It's a letter to the editor.

24 A. Right. And that was by Tom, the lead author, Thomas
25 Osimitz.

1 Q. Why don't I just give you a copy of it.

2 A. That works, yeah. Thanks.

3 MR. DOUGLAS: May I approach?

4 THE COURT: You may.

5 BY MR. DOUGLAS:

6 Q. Is that the article you had in mind?

7 A. Yeah. That's the letter to the editor.

8 Q. The letter. Excuse me. Let's put that up on the Elmo.
9 This is the title of the article, right, the letter?

10 A. Right.

11 Q. And that's you?

12 A. Right.

13 Q. Signing off as one of the people signing off on the
14 letter, right?

15 A. Yes.

16 Q. And it says, the work was supported by the North
17 American Flame Retardant Panel of the American Chemistry
18 Council which previously provided funding for travel expenses
19 and honoraria to the authors as members of NAFRA.

20 You see that?

21 A. Yes.

22 Q. So it would be another industry organization who has
23 supported or funded your work, right?

24 A. The TERA work, right.

25 Q. Just a moment.

1 A. No worries.

2 Q. You authored an article with a Dr. Samuel M. Cohen who
3 we're going to hear from in a little while called *Linear*
4 *low-dose extrapolation for noncancer health effects is the*
5 *exception, not the rule.* Do you recall that?

6 A. Yes, I do.

7 MR. DOUGLAS: May I approach?

8 THE COURT: You may.

9 BY MR. DOUGLAS:

10 Q. You have it in your hand, sir?

11 A. Yes, I do.

12 Q. First I want to ask about this fellow, Samuel M. Cohen.
13 You know him? You co-authored an article with him.

14 A. I know him.

15 Q. How long have you known Dr. Cohen?

16 A. I've known of him for probably a dozen years. Working
17 with him is infrequent.

18 Q. Did you know that he is a retained expert for DuPont in
19 this case?

20 A. No.

21 Q. Is that the first you're hearing of it?

22 A. Yes.

23 Q. He's going to take that very witness chair when you are
24 done? You didn't know that?

25 A. I didn't know that.

1 Q. And if you go to, I believe, again, the second to last
2 page, it might be the third to last page, under acknowledgments
3 and declaration of interest. You'll see it states, this paper
4 that you wrote or co-authored with Dr. Cohen, this paper was
5 prepared with financial support provided by the American
6 Chemistry Council to Gradco LLC doing business as Gradient.

7 You see that?

8 A. Yes.

9 Q. That's another industry company that's funded your
10 company TERA, correct?

11 A. Yeah. The American Chemistry Council through Gradient.

12 Q. Right.

13 A. Right. Gradient is a consulting group, it's not
14 industry. That's correct.

15 Q. We could go all day. I'll just do one more.

16 A. Sure.

17 MR. DOUGLAS: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. DOUGLAS:

20 Q. You recognize what you are holding in your hand, sir?

21 A. Yes, I do.

22 Q. What is that?

23 A. A paper that was just recently published in the Journal
24 of Toxicology by my co-authors Rhian Cope who is now with the
25 Australian Authority for Medical Veterinary Sciences, Sam Kacew

1 up at the University of Ottawa and myself.

2 Q. If you go to the acknowledgments in this article. It
3 states, this research is performed by scientists with the MPI
4 Research located on North Main Street in Mattawan, Minnesota
5 (sic). This research is sponsored by Brominated Flame
6 Retardant Industry Panel of the American Chemistry Council
7 located at 700 Second Street in Washington, D.C. You see that?

8 A. Yes, I do.

9 Q. That's another company, another industry organization
10 that you have worked with, sir; is that correct?

11 A. That's correct.

12 Q. We could go through many, many more of your articles and
13 there are dozens of different chemical industry, pharmaceutical
14 industry and other industries that you have worked with over
15 the years, right?

16 A. That's correct.

17 THE COURT: Counsel, let me see you at side-bar for
18 just a moment.

19 You may stand by your seats, ladies and gentlemen.

20 - - -

21 Thereupon, the following proceeding was held at side-bar:

22 THE COURT: We've got a juror pretty much completely
23 out. I'm thinking of -- I'm think about maybe excusing him.
24 We had said we've got eight, seven or six.

25 MR. PAPANTONIO: Which one is it?

1 THE COURT: If you're looking at the front row, two in
2 from the left.

3 MR. DOUGLAS: Blue shirt.

4 THE COURT: Yes.

5 MR. DOUGLAS: Judge, if I can be heard on this. What
6 I noticed is he's almost, I call it the hound dog effect. It's
7 almost as if he's sleeping and all of a sudden he'll pop up and
8 he'll start taking notes.

9 THE COURT: I noticed that, too. I can't tell if he's
10 completely out or not. But I am concerned. None of us want
11 anybody to decide the case who hasn't heard the whole case.

12 MR. PAPANTONIO: We are very concerned about that.

13 THE COURT: That's why I keep doing this. It's not
14 working. Usually with most people it shakes them up a bit. I
15 noticed it seems to have no effect.

16 MR. MACE: What I have seen with jurors that they're
17 still listening even though their eyes are closed.

18 THE COURT: That's what we never know for sure.

19 MR. PAPANTONIO: Judge, here's what I've noticed also.
20 There are two jurors that keep looking down at him when he's
21 asleep almost as if they want to wake him up.

22 THE COURT: Right. I noticed that, too.

23 MR. PAPANTONIO: That's a very big concern of ours.

24 THE COURT: We can address that maybe at 5:00 today
25 but I'm thinking the other option would be for me to take him

1 in and just ask him is there anything we can do to help you,
2 can you bring some coffee in with you. My guess is he's
3 medicated, he's not doing this deliberately.

4 MR. MACE: We have no objection to your talking to
5 him, Your Honor. Obviously in a discreet manner.

6 THE COURT: I'd do it privately unless there's an
7 objection I'd just bring him in. Why don't we do that?

8 MR. PAPANTONIO: Judge, can we talk about it a little
9 bit more before we do that?

10 THE COURT: All right.

11 MR. PAPANTONIO: But we have the same concerns. But
12 so what we've been trying to put everything together and what
13 we are observing is he keeps -- the other jurors keep looking
14 at him like wake up.

15 THE COURT: Yes. That's my observation as well.

16 MR. MACE: I haven't observed that, for the record. I
17 have not observed that.

18 THE COURT: Thank you.

19 - - -

20 Thereupon, the following proceedings were had in open
21 court:

22 THE COURT: Mr. Douglas, you may continue.

23 BY MR. DOUGLAS:

24 Q. Just a few more questions.

25 A. Sure.

1 Q. Sir, you would agree that risk assessment is an inexact
2 science?

3 A. Risk assessment is like a logic problem. It falls into
4 different disciplines of toxicology, epidemiology and other
5 disciplines, medical science. So it's imprecise.

6 Q. So you would agree that it's an inexact science?

7 A. Well, I think my views have changed a little bit over
8 the years but inexact is another way to say it, perhaps.

9 Q. You've written an article entitled *The inexact science*
10 *of risk assessment and implications for risk management*, right?

11 A. Yes. That was back in the late '90s, I believe. Which
12 is why I made the statement my views have changed somewhat.

13 Q. I'm going to ask you about some of the views you've
14 expressed in that article.

15 A. Thank you.

16 MR. MACE: Your Honor, may we approach?

17 THE COURT: I'll see you again at side-bar.

18 You may stand if you wish, ladies and gentlemen.

19 - - -

20 Thereupon, the following proceeding was held at side-bar:

21 THE COURT: Mr. Mace.

22 MR. MACE: Counsel has been dancing over the line but
23 now he's clearly crossing it asking opinion testimony that he's
24 excluded me from getting into with him. If he wants to open
25 the door to this.

1 THE COURT: Is this the article? How do you respond?

2 MR. DOUGLAS: The same way I responded before the
3 break, Your Honor. This witness was portrayed, was brought
4 here to testify about reliable -- he asked the witness to vouch
5 for the reliability. Whether that question was objectionable
6 and therefore it goes to the reasonableness of the company
7 relying on it.

8 THE COURT: I get that. But the trouble is this is a
9 different study. This is a general attack, not attack but it's
10 a limiting as far as so it doesn't go to this particular study.

11 MR. DOUGLAS: I'll move on.

12 - - -

13 Thereupon, the following proceedings were had in open
14 court:

15 THE COURT: Mr. Douglas, you may continue.

16 BY MR. DOUGLAS:

17 Q. You received that award there you brought with you to
18 court today from the West Virginia Department of -- from the
19 West Virginia DEP?

20 A. Yes.

21 Q. May I see it, please?

22 A. Sure.

23 MR. DOUGLAS: May I approach?

24 THE COURT: The deputy clerk would give it to you.
25 If you would.

1 BY MR. DOUGLAS:

2 Q. Did it come framed or did you have it framed?

3 A. I framed it.

4 Q. Did somebody ask you to bring it with you today?

5 A. Yes.

6 Q. Was that before or after you were subpoenaed to be here?

7 A. That was before.

8 Q. By the way, this subpoena is really just a charade for
9 the jurors, right?

10 A. I'm not sure what you mean.

11 Q. We talked before that you intended to come here even
12 before you were served with a subpoena. You recall that
13 testimony earlier?

14 A. I think the question was, I talked to Mr. Mace. I'll
15 try to get this correct. Talked to Mr. Mace several months ago
16 about questions of what we had in our file and then subsequent
17 to that, Mr. Mace indicated that there might be a trial and the
18 trial would be somewhere in the range of the end of September
19 so would you please consider holding that week available.

20 Q. And you did hold the week available?

21 A. The first three days available. And then last week I
22 found out it was going to be today.

23 Q. When did you find out it would be today?

24 A. Last week.

25 Q. Last week. So you've been planning to be here for quite

1 a while, right?

2 A. No.

3 Q. Well, you were planning to be here before you were even
4 served with the subpoena?

5 A. Yes.

6 Q. Weeks before, right?

7 A. I'm not sure what you mean by planning. I have it on my
8 schedule.

9 Q. Well, I think it's pretty simple but maybe I'm not being
10 articulate enough. You did tell us that you set aside this
11 week?

12 A. Right.

13 Q. Right? You planned on being -- you understand the word
14 planned?

15 A. It has -- planning is putting it on the schedule and
16 preparing for it.

17 Q. So you cooperated with Mr. Mace in setting aside time
18 three days out of this week to potentially testify at this
19 trial?

20 A. Yes.

21 Q. And you grabbed your little certificate here you got
22 from the DEP of West Virginia, right?

23 A. Yes.

24 Q. So you could show the jurors, hey, I got a certificate,
25 right?

1 MR. MACE: Your Honor, I object to the demeaning
2 nature of these questions, the whole attitude.

3 THE COURT: Listen, about side-bar, the objection is
4 sustained.

5 BY MR. DOUGLAS:

6 Q. Sir, were you told to bring your certificate?

7 A. I was not told to bring it. I was -- it was asked if I
8 would bring it and I said yes.

9 Q. Sir, this has to do -- you were given this certificate
10 for the work you did when you came up with this 150 parts per
11 billion, right?

12 A. We got the certificate for the work we did to
13 scientifically evaluate the information and came up with a
14 scientifically-based number.

15 Q. Which was 150 parts per billion?

16 A. For oral exposure, that's correct.

17 Q. Which was 150 times higher than what DuPont had already
18 set at the time you did your work, right?

19 A. That may or may not be true.

20 Q. You know that other states and other offices of
21 Environmental Protection have done risk assessments over time
22 both before and after your work?

23 A. Yes.

24 Q. And being naturally and intellectually curious, I'm sure
25 you're aware of these other results, right?

1 A. I'm aware in general terms of these other results, yes.

2 Q. I want to share a few of them with you for a moment.

3 Okay?

4 A. Certainly.

5 Q. I'm going to -- do we have that slide?

6 Bobby Rickard, Dr. Rickard had a report in this case and
7 he summarized all of the other risk assessment values that have
8 been done over the years. I'll just ask you to assume that.

9 A. Okay.

10 Q. My question was, were you aware of that, that
11 Dr. Rickard prepared a report in this case?

12 A. I'm not aware of that report.

13 MR. DOUGLAS: With counsel's permission.

14 THE COURT: Any objection, Mr. Mace?

15 MR. MACE: As long as it's clear this is not -- this
16 slide is not out of Dr. Rickard's report. It's something
17 counsel created.

18 BY MR. DOUGLAS:

19 Q. What this is, is the values were taken from
20 Dr. Rickard's report, which we'll establish when he testifies,
21 and summarized on this table that we did create, but taken from
22 his report.

23 So this is C-8 risk assessments over time for drinking
24 water per Dr. Rickard's report dated January 27, 2015.

25 THE COURT: Take that down while they're talking.

1 MR. MACE: Let me just note for the record, I noticed
2 an error. But he can use it. We'll just point out the error
3 later.

4 THE COURT: Put it back up.

5 BY MR. DOUGLAS:

6 Q. You see in 1988, DuPont had set a level of 1 part per
7 billion. We talked about that, right?

8 A. Yes. We talked about it.

9 Q. So your number, and by simple math of 150 parts per
10 billion, would be 150 times higher than that, right?

11 A. Well, you're making a comparison on the basis of one's
12 science generated and one is not. I don't think the comparison
13 is appropriate.

14 Q. Sir, let's just do the math and let the jury decide
15 what's science based. Your number of 150 parts per billion is
16 150 times higher than 1 part per billion, correct?

17 A. Again, sir, you're comparing different things.

18 Q. Sir, is 150 parts per billion 150 times higher than 1
19 part per billion?

20 A. That's easy to answer. It is.

21 Q. Thank you. And in 2002, Environ, a DuPont contractor,
22 had set a risk assessment of 14 parts per billion. I'm going
23 to ask you to assume that. Were you aware of that?

24 A. I don't believe so.

25 Q. And that would be, if my math is correct, 14 parts per

1 billion or -- let's do it the other way around. 150 parts per
2 billion is more than ten times higher than 14, right? So the
3 number you got was over ten times higher than Environ, right?

4 A. That's correct.

5 Q. Not even close, right?

6 A. Is that a question?

7 Q. Yeah. Those two numbers are not close. Something
8 that's ten times higher than another value is not close. If
9 you're having trouble, I'll move on to another question.

10 A. You're, again -- I don't know the basis of the Environ
11 2002 assessment.

12 Q. They're all based on the same available information that
13 was out there that you based your -- that TERA found 150 parts
14 per billion, right?

15 MR. MACE: Objection. Compound. Assumes facts.

16 THE COURT: Rephrase the question.

17 BY MR. DOUGLAS:

18 Q. Let's just move on to Minnesota Department of Health.
19 Were you aware that they had formed a risk assessment and came
20 up with a value of 7 parts per billion in water?

21 A. I wasn't aware of that in 2002.

22 Q. But 150 parts per billion would be 20 times higher than
23 7 parts per billion, right?

24 A. If we're comparing just strictly numbers.

25 Q. Just numbers, sir?

1 A. And assuming nothing else, then, sure, you could do the
2 math. It's easy.

3 Q. So the North Carolina Division of Water Quality found a
4 value limit of 2 parts per billion in water. Were you aware of
5 that?

6 A. No.

7 Q. And 150 parts per billion would be 75 times higher, sir,
8 than 2 parts per billion, right? Simple math?

9 A. Simple math.

10 Q. We can go down the list. You'll see Minnesota set a
11 limit of 1.5. Again, in 2013, North Carolina Division of Water
12 revisited the subject and lowered theirs to 1 part per billion.
13 And then were you aware of the Maine Center of Disease Control
14 set a value of .1? Were you aware of that, sir?

15 A. I'm not aware of that.

16 Q. Sir, did you know that the New Jersey Department of
17 Environmental Protection set a limit of .04 parts per billion?
18 .04, that's even lower than this .05 in 2006. Did you know
19 that.

20 A. I wasn't aware of that.

21 Q. Your value of 150 was a number, 150 parts per billion is
22 3,500 times higher than the value of .04.

23 THE COURT: Counsel, let me see you at side-bar.

24 You may stand if you wish, ladies and gentlemen.

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Thereupon, the following proceeding was held at side-bar:

THE COURT: So this was a process witness as I understood, not an expert, and the process arguably would include what did you do before you came up with these numbers. But this is a 2002 report. How do the numbers that come after that play into this witness?

MR. DOUGLAS: I think it still goes to the reliability of the methodology. The result is so far off from every other organization that has ever looked at it.

THE COURT: You mean all the ones. A number of these were in existence before they completed their study. I have no issue with that. But there are things that come after.

MR. DOUGLAS: I think it still goes to the issue of getting it right and how unreliable this was. It was not reasonable.

THE COURT: Then what he's testifying to is the standard. I thought we agreed he was testifying as to the process?

MR. DOUGLAS: It is about the process. What I'm demonstrating is by virtue of the fact that his calculation was so off the reservation is that it wasn't reliable and it wasn't reasonable for the company to rely on it. It's so outlandish.

MR. MACE: I think he's opened the door pretty broad in this, Your Honor, and showing that slide I'm entitled to

1 refer back to that slide now.

2 THE COURT: Obviously. I wouldn't argue that point.
3 It's been used. I'm inclined to tell the jury that this
4 doesn't go to -- it doesn't go to -- it goes to the
5 reasonableness of the work done. That's the only basis they
6 can consider.

7 MR. DOUGLAS: That's what I'm offering it for.

8 THE COURT: I'd also not go along if you tell me to.
9 But it would be the defendant that's asking for it.

10 MR. MACE: I'm not asking for it.

11 THE COURT: Very good.

12 MR. PAPANTONIO: One other thing. The juror next to
13 number two one time had to nudge. I started watching.

14 THE COURT: The nudging is probably a good thing.

15 MR. PAPANTONIO: It is. It is. But I've been
16 thinking about the last conference, the last time we talked
17 about this. I think we're really prejudiced, both sides, to
18 have the Court say, you got to stay awake, because he doesn't
19 know where that comes from. And if we can continue to monitor
20 this, I literally saw --

21 MR. MACE: I think the courtroom deputy or somebody
22 could do it. I have no problem if one of the court staff does
23 it.

24 THE COURT: I'd be more concerned about that. First
25 of all, my bailiff isn't here. I know this fill-in bailiff

1 really well but that's not part of what they're used to doing.
2 I also thought maybe let them bring coffee in.

3 MR. MACE: We have no objection to that. Probably a
4 good idea. I'd like to bring some myself, Your Honor.

5 THE COURT: It doesn't apply to anybody else.

6 MR. PAPANTONIO: What I'm concerned about is how much
7 has been missed. I really am very much concerned.

8 MR. MACE: I think Your Honor has been monitoring that
9 pretty well.

10 THE COURT: I'm trying to. Sometimes it works.
11 Sometimes it doesn't. We'll continue. Right now we're not
12 going to do anything.

13 - - -

14 Thereupon, the following proceedings were had in open
15 court:

16 THE COURT: Mr. Douglas, you may continue.

17 BY MR. DOUGLAS:

18 Q. So what I'm getting at is the reliability of your work
19 that you did back then and, sir, this is not the first time
20 that your risk assessment was very different than other
21 agencies or governmental agencies for other chemicals; is that
22 right?

23 A. That's correct. We did something for the State of West
24 Virginia just last year and we lowered the number by eight
25 fold.

1 Q. Well, I'm talking about Alachlor. Remember your company
2 did work on Alachlor?

3 A. Alachlor, I'm sorry. Acetochlor?

4 Q. Just a moment.

5 A. That's okay. Take your time.

6 Q. Thank you.

7 A. It's not always easy.

8 Q. You remember that your company, TERA, reviewed studies
9 that suggested serious health risks with respect to drinking
10 water in Wisconsin as a result of chemicals manufactured by the
11 company Monsanto. You recall that?

12 A. I believe that was the acetochlor which is an herbicide
13 and its degradation products in water, in ground water. I
14 think that's what you're referring to.

15 MR. DOUGLAS: May I approach, Your Honor?

16 THE COURT: You may.

17 MR. MACE: May we approach, Your Honor?

18 THE COURT: Yes. You may stand if you wish, ladies
19 and gentlemen.

20 - - -

21 Thereupon, the following proceeding was held at side-bar:

22 MR. MACE: So our objection, Your Honor, would be --

23 MR. DOUGLAS: I'm not going to offer it.

24 MR. MACE: I don't want you displaying it. This is
25 another one of these media slander campaigns.

1 THE COURT: Let's do this. I'm going to be strict
2 about foundation. Ask him if he's seen this before, ask him if
3 he's familiar with it before we get into and no representation
4 of who did it.

5 MR. MACE: Or what they said.

6 THE COURT: Until there's some authentication. He's
7 not in the category, for example, of two or three DuPont
8 witnesses that I said could be crossed on things that they
9 maybe should have been aware of. He's not in that category.

10 MR. MACE: But, Your Honor, we'd object to how he used
11 the prior document like this repeating hearsay statements and
12 displaying them, even orally, to the Court.

13 THE COURT: Not necessarily saying I disagree. But
14 we're done with that. And we can bring it back on redirect.
15 But again, I encourage the adversarial process. You have to
16 tell me if there's something that you believe is inadmissible.

17 MR. MACE: I'm telling you now.

18 MR. DOUGLAS: Judge, just I think counsel jumped the
19 gun. I'm not going to offer this in evidence.

20 THE COURT: But even if you don't offer it, if you
21 describe it to the jury, essentially testifying. If he doesn't
22 have any knowledge.

23 MR. DOUGLAS: May I explain?

24 THE COURT: All right.

25 MR. DOUGLAS: There's a table in here that talks about

1 the values. I'm just going to use it to refresh his
2 recollection as to what his findings were and what the other
3 agencies were.

4 THE COURT: If he can identify it, has some idea,
5 that's what we'll see.

6 MR. DOUGLAS: That's all.

7 - - -

8 Thereupon, the following proceedings were had in open
9 court:

10 BY MR. DOUGLAS:

11 Q. Sir, I'm just going to ask you to turn to page 8.
12 That's a table on page 8.

13 A. Is this the latest copy of this? We talking about this
14 document or not?

15 Q. Sir, this document is not going to come into evidence.
16 There's a table I'd like to direct your attention to. If you
17 would just go to page 8.

18 A. Yes, sir. I have it.

19 Q. There's a chemical that is mentioned on that page in the
20 table. You see that?

21 A. I see six chemicals. Which one?

22 Q. The first one on the left.

23 A. Alachlor.

24 Q. And the one to the right is Alachlor ESA?

25 A. That's right.

1 Q. Do you recall that you were asked to do a risk
2 assessment to come up with a determination of level of parts
3 per billion were for Alachlor ESA? By you, I mean your
4 company?

5 A. We were not charged to do that, no.

6 Q. Do you see where it says Wisconsin? And in that matter,
7 Wisconsin determined a level of 20 parts per billion with
8 respect to this Alachlor ESA in the drinking water. Does that
9 sound about right to you?

10 A. That's what the table says, yes.

11 Q. Do you recall Minnesota came up with a value of 70 parts
12 per billion in its risk assessment advice?

13 A. That's what the table says, yes.

14 Q. And North Carolina came up with .4 parts per billion?

15 A. That's what the table says.

16 Q. And your company came up with 5,600 parts per billion?

17 A. That's not our number.

18 Q. That's not your number?

19 A. No, sir.

20 Q. That's wrong?

21 A. That's not correct. We were not charged to come up with
22 safe water levels. We were charged to come up with acceptable
23 daily intakes.

24 Q. And the value was 5,600 parts per billion?

25 A. That was determined by somebody else.

1 Q. It's not your company?

2 A. This isn't the latest version of the document. It's not
3 in evidence. We have an annotated version of this correcting
4 it along with a press release and it's on our website if you
5 wish to see it.

6 Q. Sir, your work was criticized. You talk about the
7 certificate but in fact the Little Hocking Water Association is
8 extremely critical of the work that you did, that TERA did in
9 this case; is that correct?

10 MR. MACE: Objection, Your Honor.

11 THE COURT: Objection is sustained.

12 THE WITNESS: Are we still on this?

13 BY MR. DOUGLAS:

14 Q. No. You can put that down.

15 A. Thanks.

16 MR. DOUGLAS: Those are all the questions I have for
17 you now, sir.

18 THE COURT: Mr. Mace, you may redirect.

19 - - -

20 REDIRECT EXAMINATION

21 BY MR. MACE:

22 Q. How are you doing, Doctor?

23 A. Good.

24 Q. Some of us have had too much caffeine today.

25 A. It's good to be here.

1 Q. Let me see if I can clear up a few things. Won't take
2 too long.

3 If we could bring up D613. So this is the CATT team
4 report. Could you go over to dot 3, page 3.

5 In terms of the contractor that you couldn't recall the
6 name of, does this refresh your recollection?

7 A. Yeah. Thank you.

8 Q. What was it?

9 A. The National -- that sounds right.

10 Q. National Institute for Chemical Studies?

11 A. Yes. Thank you.

12 Q. So your testimony was West Virginia hired this
13 contractor. The contractor hired you?

14 A. That's my understanding from my recollection.

15 Q. Let's go down to the bottom of the page and I wanted to
16 get -- in regard to these three doctors from EPA. Counsel
17 threw some rocks at you, your team. Are you aware of any
18 criticism that was ever made of any of those EPA scientists
19 that were on that CATT team?

20 A. Criticism from whom? I'm not aware of any criticism of
21 their participation on the CATT team.

22 Q. Or their work on the CATT team?

23 A. No. Not aware of any of that.

24 Q. What about from the Agency for Toxic Disease Registry,
25 Dr. Wheeler. Are you aware of anybody criticizing his work on

1 the CATT team?

2 A. I don't have any -- I'm not aware of anything along
3 those lines.

4 Q. Do you recall this Ohio EPA observer who was at the
5 meeting?

6 A. Right. I hadn't met him before. If he walked into the
7 room now, I wouldn't recognize him. There was an Ohio person
8 there.

9 Q. Counsel asked you about a couple organizations, the
10 Center for Public Integrity and Inside Climate. Are those
11 state or federal governmental agencies?

12 A. I don't believe so.

13 Q. And in the same article that he showed to you he read
14 you the first half of your sentence. We get criticized by
15 everyone. He didn't read the second half. But that doesn't
16 change the fact that TERA is neutral. Is that what you
17 actually said?

18 A. Yeah. Absolutely.

19 Q. He showed you Defendant's Exhibit -- P1.3232 and there
20 was an implication at one point that you had a phone
21 conversation with Dr. Rickard before the CATT team was formed.
22 Did you have any conversation with Dr. Rickard before the CATT
23 team was formed?

24 A. Not that I recall.

25 Q. So you referred to this e-mail from 2000 and words I

1 don't think he emphasized, their ability to put together an
2 independent peer review panel. Is that what you did, put
3 together an independent peer review panel?

4 A. In the case of the CATT team, I think folks were already
5 chosen. I'm not so sure we actually put that panel together.
6 I'd have to go back and sort that.

7 Q. Was that part of Dr. Staats from West Virginia?

8 A. I believe that was already prearranged.

9 Q. You talked about your mission statement on the website.

10 MR. MACE: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. MACE:

13 Q. I've handed you or the clerk has handed you a
14 demonstrative aid that we haven't marked as an exhibit. Do you
15 recognize that?

16 A. Yeah.

17 Q. What is that?

18 A. That's a page out of our TERA website.

19 Q. Could we bring that up, please? Let's bring up the
20 first couple paragraphs.

21 TERA was founded on the belief that an independent
22 nonprofit organization can provide a unique function to protect
23 human health by conducting scientific research and development
24 on risk issues in a transparent and collaborative fashion and
25 communicating the results widely.

1 Was that the attitude you brought toward your work on
2 the CATT team?

3 A. That's the attitude we bring with all our work,
4 including the CATT team.

5 Q. You refer to your mission being protection of public
6 health by developing, reviewing and communicating risk
7 assessment values and analyses. Is that what you brought to
8 bear with the CATT team?

9 A. Right. We didn't do much in the way of communication
10 but we certainly did do in the way of development.

11 Q. Were you aware that the State of West Virginia had
12 enlisted Dr. Becker from Marshall University and a couple other
13 people on the communication aspect?

14 A. I don't recall those details.

15 Q. You didn't get involved in that aspect of it?

16 A. Not at all. No.

17 Q. In terms of TERA's core principles and values, if we
18 could go down to that. Honesty and integrity, independence,
19 transparency, collaboration. Those are the core principles
20 you've tried to live by?

21 A. Absolutely. On a daily basis. And we try to always
22 improve it.

23 Q. Over at the third page there's a reference in the last
24 paragraph here. An award from the Independent Charities Seal
25 of Excellence. What's that about?

1 A. We were -- because we're a 501(c)3, a nonprofit
2 corporation, we're allowed to apply for the Combined Federal
3 Campaign. So what that is, it's federal workers can give their
4 money away. They can give it to charities. So the 501(c)3 tax
5 code allows us to be considered a charity even though we're a
6 science work, we're a charity by that definition and so we were
7 accepted into the campaign and of course there's a lot of them
8 operating and we were awarded the seal of excellence, which was
9 quite surprising, but we were humbled to get it.

10 Q. You refer to high standards of public accountability,
11 program effectiveness and cost effectiveness. That was part of
12 the consideration?

13 A. Oh, absolutely. Right.

14 Q. You referred to an Office of the Inspector General USEPA
15 evaluation. You're familiar with that report?

16 A. Yeah. Very familiar.

17 MR. MACE: May I approach the deputy, Your Honor?

18 THE COURT: You may.

19 BY MR. MACE:

20 Q. Again, we're using this as a demonstrative aid so it
21 doesn't have an exhibit number on it. You're familiar with
22 that report?

23 A. Yes, I am.

24 Q. Would you bring that first page up?

25 What --

1 MR. DOUGLAS: Your Honor, may we side-bar?

2 THE COURT: You may stand by your seats, ladies and
3 gentlemen, if you wish.

4 - - -

5 Thereupon, the following proceeding was held at side-bar:

6 MR. DOUGLAS: I don't understand how this is a
7 demonstrative issue not being shown to the jury. I don't know
8 what this is.

9 THE COURT: What's it connect to this?

10 MR. MACE: Counsel has impunged (sic).

11 MR. DOUGLAS: Impugned.

12 MR. MACE: Whatever he's done. Criticized the witness
13 and his organization. Plaintiffs' counsel has severely
14 criticized the witness and his organization and implied that
15 they are industry beholden and --

16 THE COURT: Here's TERA.

17 MR. MACE: So they're one of the people asked to
18 consult on this for the EPA and reviewed --

19 THE COURT: So they're in here. I get that. You just
20 don't want it displayed. You don't care if there's questions
21 about it.

22 MR. DOUGLAS: It shouldn't be displayed.

23 MR. MACE: What if I just do page four?

24 MR. DOUGLAS: Just ask him.

25 MR. PAPANTONIO: Just ask the question.

1 MR. DOUGLAS: The witness is here to testify, not to
2 read documents.

3 THE COURT: I mean I'd say you're about even on that
4 score. And I have to tell you, both sides, that's been an
5 unusual method for me. I'm not used to that. But having said
6 that, you don't want any part of this in?

7 MR. DOUGLAS: No. It's collateral.

8 THE COURT: It's collateral. You can ask him. We'll
9 leave the document out at this time point.

10 - - -

11 Thereupon, the following proceedings were had in open
12 court:

13 BY MR. MACE:

14 Q. Doctor, can you describe the document for us? What's
15 that about?

16 MR. DOUGLAS: Objection, Your Honor. I think that's
17 the whole --

18 THE COURT: Overruled. You may answer.

19 THE WITNESS: The Inspector General of USEPA was
20 looking at the Integrated Risk Information System process.
21 That's an agency unit and specifically the peer review within
22 it. Remember, when I was back at EPA our group helped develop
23 IRIS. It was mostly internal. Then I left EPA and it started
24 to get more influential, which is good, and it has these
25 external peer review panels, and there's lots of angst about

1 them from a variety of groups, not just industry. NGOs and
2 everybody, I suppose. So the Inspector General said, we're
3 going to look at the process. And unbeknownst to us, they
4 looked at the process and they pulled out examples of other
5 processes that were done well and they pulled out TERA as an
6 example comparability. And there's a table that shows
7 comparability with not only IRIS but also TERA and then four
8 other government organizations.

9 BY MR. MACE:

10 Q. So is this one of the records you referred to when
11 counsel was questioning you with regard to some of the rocks
12 that had been thrown at TERA by some outside organizations and
13 you were saying, well, the Inspector General had --

14 A. Yeah. That's it. Right.

15 Q. In terms of the review that was done by the Office of
16 Inspector General at USEPA, did they find that you had adequate
17 controls for conflict of interest and independent research to
18 identify potential panelist bias or conflict?

19 A. Yeah. We came across, in comparison, very good on that
20 issue and others as well. And they summarize in a table in the
21 appendix that's easy to see.

22 Q. Let's switch to a new topic. Counsel showed you a
23 couple documents. The 2012 project time by sponsor. And he
24 focused on the 40 percent for profit and some of the companies
25 there. But he ignored completely the 60 percent government

1 nonprofit. So could you tell us a little bit about what you
2 did for the National Library of Medicine over the years?

3 A. Yeah. In that particular -- that was 2012. I think
4 what we were doing is we put together a database of risk values
5 called international toxicity estimates for risk. It's freely
6 available, has lots of different people's risk values on it,
7 including those have been through independent vetted peer
8 review by our group but also the Dutch and the Health Canada
9 and EPA's IRIS.

10 Q. Refers to NIOSH, National Institute of Occupational
11 Safety and Health. What have you done for them over the years?

12 A. In that particular case, NIOSH is a group that protects
13 American workers. What we did that particular year, we've been
14 working with them every year, we were doing immediately
15 dangerous to life and health estimates. So in other words, you
16 got a worker goes into a place, there's a certain level in air.
17 If it's immediately dangerous to life and health, they're out
18 of there. We're determining those levels for NIOSH. We
19 actually got an award for that that's listed somewhere.

20 Q. That's enough.

21 A. Sure.

22 Q. I'm sorry to cut you off.

23 A. That's fine. I talk too much sometimes.

24 Q. Consumer Products Safety Commission. What have you done
25 for them over the years?

1 A. Right now we're doing a series of work on Phthalate
2 ester exposure information and there was a review team, a team
3 that was put together for the Phthalate esters and it was a
4 National Academy of Science structure team and we did an
5 independent peer review for that team. That team, National
6 Academy of Science team, wanted independent peer review and
7 Consumer Products tagged us to do that for them.

8 Q. I guess the bottom line on this graphic is in terms of
9 the amount of your funding that came from government nonprofit,
10 was it more than half, 60 percent?

11 A. Oh, yeah. Those are, yeah.

12 Q. So focusing on the 40 percent, the for profit, would
13 that be taking things out of context with regard to the overall
14 work?

15 A. Well, we try to be neutral and work for all parties. So
16 that's an important part of our work. Just focusing on one
17 part of it of course misses the rest.

18 Q. Then on the 2013 graphic, again, he focused on the
19 37 percent. But that year did you, as well, do 63 percent
20 government nonprofit?

21 A. Right. Yeah.

22 Q. You talked about some of these. What about Health
23 Canada, what have you done for them over the years?

24 A. We do a lot of work for Health Canada. We do a lot of
25 their independent peer reviews. They had something called

1 Domestic Substances List. 23,000 chemicals. They whittle it
2 down, they write reports and we help review those reports.
3 That's one aspect. That's probably a large aspect. We've also
4 done other smaller tasks for them, independent peer reviews.

5 Q. And maybe you should clarify for us. What is Health
6 Canada?

7 A. Oh, it's -- Health Canada is the federal health agency
8 for Canada and that includes environmental protection for not
9 only humans but also ecological systems, birds, butterflies and
10 fish. And that's a large agency. And then they have separate
11 agencies like we do in the U.S. for occupational safety and
12 health and pesticide evaluations.

13 Q. So Health Canada would have, in Canada, the same
14 responsibility and even more than USEPA does in the United
15 States?

16 MR. DOUGLAS: Objection. It's leading. He's
17 testifying.

18 THE COURT: Rephrase.

19 BY MR. MACE:

20 Q. Does Health Canada, in Canada, do equivalent functions
21 to what USEPA does in the United States?

22 A. I would say that's correct.

23 Q. While we're on the context point. We went over this
24 graphic in your direct examination, you'll recall, in terms of
25 your work different years. You recall that?

1 A. Yes.

2 Q. And counsel chose to focus on two years that aren't even
3 on this page in 2012 and 2013. But back in the year that's at
4 issue for what you were brought here to testify about, the CATT
5 team, what was the percentage breakdown back then?

6 A. Yeah, it was 72/28. I think we also had a large USEPA
7 task, the World Trade Center disaster peer review. We did
8 that. That was in that year as well.

9 Q. Who was that done for?

10 A. We were approached by, this is a sad story of course.
11 The trade centers go down for the terrorist attack. A year
12 later, nine different government organizations had put together
13 a risk document and they invited us to -- asked us to do the
14 independent peer review. Exactly which agency asked us, I
15 think it was USEPA but I'm not sure.

16 Q. But any event, it was governmental agencies, not private
17 industry?

18 A. Right.

19 Q. All right. Then in terms of the overall, are the actual
20 numbers consistent with your testimony that, on average, about
21 two-thirds of your work is government and nonprofit work as
22 opposed to industry work?

23 A. That's correct.

24 Q. Counsel showed you a graphic, again I apologize for my
25 marks. That's all I have. You made a comment something about

1 comparing apples to apples. What was your comment about that?
2 Counsel said, aren't these numbers different than this number?

3 A. Yeah. You can do the quantification, of course, but
4 that's not how scientists compare things. You have to
5 understand what goes into that number. What we did, per se,
6 was the ADI. Different states have different assumptions of
7 how much water is drunk, do they partition it to food or soil
8 or something. So there's other steps that go from the ADI,
9 which is what we did, and then of course use a set assumptions
10 to get to the level using West Virginia's assumptions.

11 I'm not sure what the other groups have done so it's
12 hard to compare. And I also know that there's other
13 organizations out there, the Committee on Toxicology of the
14 United Kingdom has a value as well.

15 So it's just a matter of you need to understand the
16 basis of the number before you start to compare one to another.

17 Q. Is that, again, an example of how you have to keep
18 things in context?

19 A. Well, you do. There's some differences in the
20 acceptable daily intake amongst these groups. They also are a
21 different time. It's 2014 versus 2002. So there had been --
22 science marches on and you should always incorporate the latest
23 science.

24 Q. In fairness -- so we have been using this calendar or
25 timeline. Your work, sir, on this CATT team was done in 2002?

1 A. Right.

2 Q. And counsel referred to this science panel report. That
3 came out in 2012, ten years later?

4 A. The science --

5 Q. Science panel he referred to. It's a poster over here?

6 A. Okay. Oh, that. Okay.

7 Q. 2012.

8 A. I had trouble with that as a fact, but whatever.

9 Q. Counsel showed you this graphic that's got numbers after
10 that time that have other values, right? After 2012?

11 A. Yeah. There's '13 and '14. Is that what you're --

12 Q. Yes.

13 THE COURT: I'll remind the jury, the numbers are
14 different don't have anything to do with the issues we've
15 talked about as far as general causation. They do have to do
16 with the state of knowledge that DuPont had at the time.

17 BY MR. MACE:

18 Q. Sir, I guess in closing, Mr. Douglas asked you about the
19 reliability of your work on the CATT team. Was your work in
20 2002 on the CATT team reliable based on the state of the
21 knowledge at that time?

22 A. Absolutely.

23 MR. MACE: Thank you. Nothing further.

24 THE COURT: Thank you. Recross, Mr. Douglas?

25 MR. DOUGLAS: Just a few.

- - -

REXCROSS-EXAMINATION

BY MR. DOUGLAS:

Q. Just a few and we'll let you get back to Cincinnati.

Despite all the accolades we've been hearing about and all this stuff you put on your website, you're in control of what goes on the website, right?

A. That's right. Myself and my team.

Q. So to put that in context, it's your website. You helped create what it says, right?

A. Well, we're a nonprofit. I don't own anything in the nonprofit.

Q. I didn't ask anything about nonprofits. I'm asking you, again, you participated in creating the website. All those facts and figures, 40 percent industry, 60 percent nonprofit and government, right?

A. It's our website.

Q. That's your website. You approved that, right?

A. Yes. It's our website, right.

Q. Despite all these accolades that we've been hearing about, your certificate that you were asked to bring to court and you obliged, somehow the folks at DuPont and other folks who throw in -- other organizations, apparently, who are throwing rocks at your company, have the impression that you're in the business of blessing criteria, right?

1 A. You're asking me what?

2 Q. Some folks at DuPont, the folks at DuPont have the
3 impression, despite everything that we've heard from Mr. Mace,
4 that you're in the business of blessing criteria?

5 MR. MACE: Objection. Foundation.

6 THE COURT: You're asking him to speculate about what
7 people at DuPont knew.

8 MR. DOUGLAS: I'll rephrase.

9 BY MR. DOUGLAS:

10 Q. You see where it says blessing criteria?

11 A. Yes, I do.

12 Q. Let's read the sentence again together. One person from
13 another chemical company that used to work in the EPA's
14 criteria office in Cincinnati said that Mike enjoys a very good
15 reputation among the folks that are still in the business of
16 blessing criteria. You see where I read from?

17 A. Yes, I do.

18 MR. MACE: Objection. Foundation. Triple hearsay.

19 THE COURT: I understand this will be coming in
20 anyway. Starting with that. But there has to be some
21 foundation for this witness to be able to answer a question
22 about this document.

23 BY MR. DOUGLAS:

24 Q. My question, sir, is you are unaware of what the term
25 blessing criteria means?

1 A. I've never heard that phrase before.

2 Q. If I told you it means whitewashing science, does that
3 help you understand the phrase?

4 MR. MACE: Objection. Move to strike.

5 THE COURT: Objection is sustained. Don't answer it.

6 BY MR. DOUGLAS:

7 Q. You were asked just now on redirect about all these
8 folks that praised your work with the CATT team. You recall
9 those questions?

10 A. Some of them.

11 Q. But you do know, sir, that at the time you issued your
12 report, right after, the Little Hocking Water Association was
13 highly critical of your work, aren't they, the folks that were
14 drinking they water?

15 MR. MACE: Objection, Your Honor.

16 THE COURT: One moment. Do you know anything about
17 the report?

18 THE WITNESS: I don't think so.

19 THE COURT: There has to be a foundation. At this
20 point the objection is sustained.

21 BY MR. DOUGLAS:

22 Q. You don't recall, sir, that the screening level of 150
23 parts per billion established by your CATT team generated much
24 criticism and controversy when the results were released? You
25 don't remember that?

1 A. I don't think I'm aware of that.

2 Q. You did the work, sir. You took three, four weeks you
3 came up with this 150 number that is far different than any
4 number anybody else has come up with. Do you remember the
5 Little Hocking Water Association?

6 MR. MACE: Objection, Your Honor.

7 THE COURT: Do you have any knowledge of the water
8 association?

9 THE WITNESS: I don't have any recollection of knowing
10 that.

11 BY MR. DOUGLAS:

12 Q. Did you ever hear of Little Hocking?

13 A. Little Hocking?

14 Q. Yeah.

15 A. I think we have Hocking Hills in Ohio but I'm not sure
16 about Little Hocking.

17 Q. Have you ever heard of Tupper Plains?

18 A. I'm sorry?

19 Q. Ever heard of Tupper Plains?

20 A. I don't believe so.

21 Q. Sir, at the end of the day, the value that you and your
22 CATT team came up with, 150 parts per billion, is numerically
23 higher than this figure here, .05 parts per billion. We've
24 agreed it's numerically higher, right?

25 A. I don't agree with what's on that chart.

1 THE COURT: And that's something that, again, is not
2 at issue. The question is whether you agree with the number or
3 not.

4 BY MR. DOUGLAS:

5 Q. Do you agree your number of 150 parts per billion is
6 3,000 times higher than this .05 parts per billion, right,
7 numerically speaking? Let's keep it simple.

8 A. I'm in the business of comparing like to like.

9 Q. Just answer my question, sir.

10 MR. MACE: Objection to the question, Your Honor.

11 THE COURT: There's not a response to the question.
12 It's a straightforward question. If you can answer.

13 THE WITNESS: There is a difference between the number
14 150 and the number 0.5, yes, there's a difference.

15 BY MR. DOUGLAS:

16 Q. It's 3,000 times higher, correct?

17 A. There's a difference between the numbers. The basis of
18 those numbers are not, at least that one, is not intelligible
19 to me. So I have nothing more to say.

20 Q. This is completely unintelligible to you. That's what
21 you're saying?

22 A. The basis of that number I don't understand.

23 Q. You're here to testify about how great your work was
24 that you did in reaching 150 parts per billion. That's what
25 you said your work was reliable, right? Just think about the

1 question and answer only the question.

2 A. And we have a report that establishes a basis of that
3 number.

4 Q. Right.

5 A. All you have there is four lines.

6 THE COURT: Well, there's a lot more than four lines
7 there. And, Doctor, if you're not familiar with it, just leave
8 it at that. That's not a number picked out of the air.

9 THE WITNESS: I apologize.

10 BY MR. DOUGLAS:

11 Q. Would you agree if there were no emissions, if DuPont
12 didn't put this chemical C-8 into the drinking water of tens of
13 thousands of men, women and children that --

14 MR. MACE: Objection, Your Honor.

15 BY MR. DOUGLAS:

16 Q. There would be no need to be any of the work that you
17 did --

18 MR. MACE: Objection. Argumentative.

19 MR. DOUGLAS: -- if there were no C-8 in the water in
20 the first place.

21 THE COURT: Objection sustained.

22 MR. DOUGLAS: Those are all the questions I have.

23 THE COURT: Thank you, Doctor. You may step down.

24 Ladies and gentlemen, we'll be in recess for one hour.

25 (A recess was taken at 12:00 p.m.)

Overview Actions (0000)

Person ID: Pers.Assgn:

Find by: Name:

EE group: Active - Exempt Personnel ar: Univ. of Cincinnati (Exempt)

EE subgroup: Faculty - 1212

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Start Date	End Date	Act.	Action Type	ActR	Reason for action	C...	E
10/16/2017	12/31/9999	Z5	Separation	11	Accepted New Job(Acad.	D	0
09/01/2017	10/15/2017	Z4	Salary Adjustments	01	Merit	D	3
09/01/2016	08/31/2017	Z4	Salary Adjustments	15	AAUP Merit Increase	D	3
08/01/2015	08/31/2016	Z1	UCHire	01	Initial Hire	D	3

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Entry of 4