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# Transcript of Hearing - Day 1

**Date:** April 12, 2022  
**Case:** Reflections Park, LLC

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Transcript of Hearing - Day 1  
Conducted on April 12, 2022

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13	9:31 a.m. EST		13	E X H I B I T S	
14			14	(None marked)	
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1	A P P E A R A N C E S	2	1	P R O C E E D I N G S	4
2	ON BEHALF OF APPLICANT, REFLECTIONS PARK, LLC:		2	HEARING EXAMINER ROBESON-HANNAN: All right. I'm	
3	JODY KLINE, ESQUIRE		3	calling the case of CU-2106, the application of Reflection	
4	MILLER, MILLER & CANBY		4	Park Inc. to operate a cemetery at 16621 New Hampshire	
5	200 B Monroe Street		5	Avenue in Silver Spring, Maryland. A couple of notes on	
6	Rockville, Maryland 20859		6	this meeting, because it is done remotely on Teams, you will	
7	Phone: (301) 762-5212		7	see a thing at the top of your screen, recording and	
8			8	transcription have started. This meeting would be recorded	
9	TIMOTHY M. SULLIVAN, ESQ.		9	verbatim by the court reporter anyway. We regularly record	
10	BEVERIDGE & DIAMOND PC		10	using Teams just as a backup for the court reporter. The	
11	201 N. Charles Street, Suite 2210		11	official transcript will be from the court reporter.	
12	Baltimore, Maryland 2101		12	Second, please do not interrupt each other because that	
13	Phone: (410) 230-4150		13	makes it much more difficult, unless you have an objection,	
14			14	a party has an objection. But do not interrupt while you	
15	ON BEHALF OF CITIZENS IN OPPOSITION:		15	are cross-examining or otherwise testifying because that	
16	DAVID BROWN, ESQ.		16	makes it much more difficult -- Teams for the court reporter	
17	KNOPF & BROWN		17	to get an accurate transcription.	
18	401 E. Jefferson Street		18	Second, when we come to citizen testimony or if--	
19	Rockville, MD 20850		19	unless it's an objection, if you want to speak there is a	
20	Phone: (301) 545-6100		20	"raise your hand" button at the top of your screen. You can	
21			21	do that. I see someone has their hand raised and I do	
22	ALSO PRESENT:		22	recognize that and I can monitor it, but I have to make sure	
23	GUS B. BAUMAN, ESQ.		23	we stay within the parameters, the order of proceedings. So	
24	BEVERIDGE & DIAMOND		24	every -- speaking of which, a few words about the hearing,	
25			25	since we have some non-represented people I do believe at	

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<p>5</p> <p>1 this hearing. 2 It's informal, but it does have certain formalities. 3 All testimony is under oath is subject to cross-examination. 4 The order of proceeding, we've modified it in this case 5 because -- to comply with the Court of Appeals remand, which 6 was to -- which was to hear testimony, more scientific 7 testimony in opposition to the use. And that was later 8 revised to permit the Applicant to rebut the opposition 9 testimony. So today we're going to have the opposition 10 present their case, the Applicant present its case or their 11 case, and any rebuttal from the opposition. 12 Now we have a number of preliminary matters. So I 13 think we're going to try to deal with them first. And then 14 we will go forward with testimony from the Applicant. If 15 there are people that are not represented -- I mean, with 16 testimony from the opposition. If there are people that are 17 unrepresented by Mr. Brown or Mr. Klein, we can set aside a 18 time in this hearing where you can testify if you wish. And 19 I would suggest that -- I would like to get into the 20 preliminary matters first, but I would like to suggest 4:00 21 if there are any people that are unrepresented that would 22 like to testify. 23 Now we're going to use the "raise hand" button. Are 24 there individuals in this hearing now who are not 25 represented by either Mr. Brown or Mr. Klein? Please use</p>	<p>7</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: And all you need to 2 do is monitor as you need. Would you kindly put your hands 3 down? You just have to click on that thing again. Thank 4 you, very much. All right. With that, let's get to 5 preliminary matters, which I -- so I -- who wants to start 6 with the preliminary matters? I would assume it's Mr. Klein 7 because he is opposing many things. 8 MR. KLEIN: Good morning. For the record -- 9 HEARING EXAMINER ROBESON-HANNAN: That wasn't 10 pejorative. I just -- 11 MR. KLEIN: It wasn't taken that way. 12 HEARING EXAMINER ROBESON-HANNAN: Okay. 13 MR. KLEIN: For the record, my name is Jody Klein. I'm 14 an attorney with the law firm of Miller, Miller &amp; Camby with 15 an office at 200B Monroe Street in Rockville, sitting across 16 the street maybe from the Hearing Examiner's office right 17 now. I would suggest that we start with the motion that we 18 filed to deny participation of Patuxent Watershed Protective 19 Association and begin by letting Mr. Brown give us a report 20 on the current status of their revival of their articles of 21 incorporation. 22 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, do you 23 have an objection to proceeding like that? 24 MR. BROWN: With the report from me as to the current 25 status of the corporation?</p>
<p>6</p> <p>1 the "raise your hand" button. I see three. No. Okay. I 2 see two that may testify. A Quentin Romai. 3 MR. ROMAI: Romai. 4 HEARING EXAMINER ROBESON-HANNAN: Romai, thank you. 5 And Daniel Blaszkiv. 6 MR. BLASZKIW: Blaszkiv. 7 HEARING EXAMINER ROBESON-HANNAN: Blaszkiv, okay. If 8 there is a time -- are you willing to hear some of the 9 scientific testimony first and then reserve time at 4:00? 10 Or do you -- does that work for you? The other option is we 11 can start with your testimony tomorrow because this is going 12 to go at least until tomorrow. 13 MR. ROMAI: I would prefer my testimony be tomorrow. I 14 have a son who has had seizures and I have to monitor his 15 care. And so I'm not sure I could spend a whole lot of time 16 away. I have to be close enough to observe him. So at 17 least for today, that would be my preference personally. 18 HEARING EXAMINER ROBESON-HANNAN: And Mr. Blaszkiv. 19 MR. BLASZKIW: Blaszkiv. Yeah, I'll hold off until 20 tomorrow as well. 21 HEARING EXAMINER ROBESON-HANNAN: Well, let's schedule 22 it at 9:00, you know, right after the opening of the hearing 23 at 9:30 tomorrow. 24 MR. ROMAI: Thank you. 25 MR. BLASZKIW: Thank you.</p>	<p>8</p> <p>1 MR. KLEIN: Well, the Hearing Examiner had asked you to 2 bring a witness to tell us about it, but you've been kind 3 enough to forewarn us of this current status. So that 4 probably you are to tell us what is the situation now. 5 MR. BROWN: Yes, I'm going to have Mr. Putman speak to 6 that under oath. We will take his testimony on that right 7 now. That will be fine. 8 HEARING EXAMINER ROBESON-HANNAN: All right, Mr. Putman 9 please raise your right hand. 10 Do you solemnly affirm under penalties of perjury that 11 the statements you're about to give are the truth, the whole 12 truth, and nothing but the truth? 13 MR. PUTMAN: I so affirm. 14 HEARING EXAMINER ROBESON-HANNAN: All right. Go ahead, 15 Mr. Brown. 16 MR. BROWN: All right. Mr. Putman, would you please 17 describe the steps that are been taken since the time the 18 motion to disqualify was filed? 19 MR. PUTMAN: Yes, would be glad to. Once I discovered 20 that we had gone into forfeit with the State Department of 21 Assessments and Taxation, I immediately refiled all seven 22 delinquent, nothing to report forms, with the State. They 23 were accepted the next morning. We then engaged an attorney 24 familiar with State Department of Assessments and Taxation 25 procedures to file articles of revitalization. We filed and</p>

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<p style="text-align: right;">9</p> <p>1 we paid for expedited review. That expedited review was 2 accomplished yesterday. And our status on their website was 3 changed late yesterday afternoon to, in good standing. 4 Their legal department committed that I would receive an 5 email by close of business yesterday to that effect, but I 6 have not received that email yet. But I did print the 7 screen at the Department of Assessments and Taxation and 8 that screen print shows that we are in good standing. Is 9 that sufficient? 10 HEARING EXAMINER ROBESON-HANNAN: Well, let's see. Mr. 11 Brown, do you have any other questions? 12 MR. BROWN: Yeah. Mr. Putman, there were a number of 13 other claims made in the motion. Have you addressed any of 14 those? Has the organization addressed any of those? 15 MR. SULLIVAN: May I raise an objection before we move 16 into this next question? 17 HEARING EXAMINER ROBESON-HANNAN: I'm sorry. I can't 18 see who is -- oh -- 19 MR. SULLIVAN: I'm sorry. This is Mr. Sullivan with 20 the Applicant. 21 HEARING EXAMINER ROBESON-HANNAN: Okay. 22 MR. SULLIVAN: And I would -- 23 HEARING EXAMINER ROBESON-HANNAN: You show up on Teams 24 as Mr. Klein. But I can see who is talking now. Go ahead 25 Mr. Sullivan.</p>	<p style="text-align: right;">11</p> <p>1 an email from David Brown to myself and the parties. Mr. 2 Putman, do you want to explain what this is? 3 MR. PUTMAN: I would love to. I can see it, but I 4 can't read it. Can somebody read it for me? 5 HEARING EXAMINER ROBESON-HANNAN: This is -- no, this 6 is your email. Does that help? I just expanded it and blew 7 it up. 8 MR. PUTMAN: Oh, good. Yes, that appears to be the 9 screenshot that I took late yesterday afternoon at the 10 Department of Assessments and Taxation. That's all I have. 11 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Brown, did 12 you have questions on this? 13 MR. BROWN: Mr. Putman, is this the same email that you 14 sent to me? 15 MR. PUTMAN: I believe it is. 16 MR. BROWN: All right. All right. 17 MR. PUTMAN: Yes, I'm sure it is. It says it's from me 18 and to you. So I think this one I sent you at just about 19 the close of business yesterday. 20 MR. BROWN: What are the corporation's plans, if you 21 know, with regard to issuing the resolution regarding 22 actions taken by the corporation while it was in a 23 forfeiture status? 24 MR. PUTMAN: We understand that that is necessary. Due 25 to the lateness of the order from State Department of</p>
<p style="text-align: right;">10</p> <p>1 MR. SULLIVAN: Thank you. I like to object on -- to 2 the extent that the witness is relying on a document that is 3 not before the Court -- I'm sorry, before the Hearing 4 Examiner. And he is offering it for the truth of the matter 5 asserted. So I'm raising a hearsay objection and ask that 6 the testimony be excluded. 7 HEARING EXAMINER ROBESON-HANNAN: Which document? The 8 FSTAT? 9 MR. SULLIVAN: He is making a representation about a 10 document not before -- apparently a screen shot that he is 11 talking about. 12 HEARING EXAMINER ROBESON-HANNAN: Well, as you know, 13 the rules of procedure allow hearsay if reliable. And Mr. 14 Putman has testified as to the status. And we can go ahead 15 and go to FSTAT and check the website. So I'm going to -- I 16 think it's -- I think it may be hearsay, but is reliable. 17 So overruled. Go ahead. 18 MR. BROWN: Mr. Putman, could you take a look at 19 Exhibit, I think it's 127 on the website. I'm sorry, 20 Exhibit 129, 129. 21 MR. PUTMAN: What is it Dave? I don't have those. I 22 don't have access to those exhibits. 23 HEARING EXAMINER ROBESON-HANNAN: I can -- I can share 24 it. Just a second. 25 All right. It should be in front of you, Exhibit 129,</p>	<p style="text-align: right;">12</p> <p>1 Assessments and Taxation, it was not possible for us to 2 convene a board meeting and get the Board and the officers 3 to ratify all the -- whatever interim actions were taken 4 while we were in forfeit. We plan to do that at an early 5 opportunity, but this hearing takes precedence. 6 HEARING EXAMINER ROBESON-HANNAN: Any other questions, 7 Mr. Brown? 8 MR. BROWN: Not on, not on the question of the 9 corporate status. That's all I have. 10 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Klein? Or 11 Mr. Sullivan? 12 MR. SULLIVAN: Yes, thank you. Mr. Putman, your 13 organization, PWPA forfeited its charter in October 2017; 14 isn't that correct? 15 MR. PUTMAN: That's what State Department of 16 Assessments and Taxation website says, yes. 17 MR. SULLIVAN: And that's the agency that would be 18 charged with determining whether your organization's 19 corporate status was in good standing, correct? 20 MR. PUTMAN: Correct. 21 MR. SULLIVAN: Okay. And then your testimony today is 22 that you have revived that corporate charter effective as 23 early as yesterday, even though you haven't got the email 24 yet, correct? 25 MR. PUTMAN: That's correct.</p>

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<p style="text-align: right;">13</p> <p>1 MR. SULLIVAN: And you've -- it is also your testimony 2 that you have not taken any corporate steps to ratify the 3 actions taken during that forfeiture period, correct? 4 MR. PUTMAN: Well, we actually did take those steps, 5 but they were taken and signed before we received 6 notification that our revitalization had been accepted. So 7 is my understanding that they were void in that we must do 8 them again. 9 MR. SULLIVAN: Okay, thank you. I have no further 10 questions. 11 HEARING EXAMINER ROBESON-HANNAN: Any other questions? 12 MR. BROWN: Not here. 13 HEARING EXAMINER ROBESON-HANNAN: Okay, hearing none, 14 we will proceed. Thank you, Mr. Putman. You are -- I 15 didn't get -- the other thing I meant to say, I know -- I'm 16 familiar with Mr. Putman from the original hearing. But 17 whenever you testify, please state your name, address, and 18 email for the record. So Mr. Putman, I'm going to have you 19 do that even though we all have it from the first hearing. 20 But this is a new hearing on remand. So would you please do 21 that? 22 MR. PUTMAN: They can, I will. My name is James F. 23 Putman. I live at 4617 Dustin Road in Burtonsville, 24 Maryland. My email is JPutman2727@gmail.com. And I have a 25 few more things to say, Ms. Hannan, if I might.</p>	<p style="text-align: right;">15</p> <p>1 interest in PWPA's mission, senior officers mentioned to me 2 that they were a nonprofit corporation, a 501C4. And I 3 recall some discussions at the time as to why the original 4 attorney would have made us a C4 rather than a C3. But that 5 passed for future considerations. 6 When I was told that we were not recognized by the IRS, 7 I did some retrieval of some dusty documents from some of 8 our more senior officials discovered the actual language of 9 the articles of incorporation stated an objective as, and I 10 want to quote it, "the corporation is organized exclusively 11 for the promotion of social welfare including for such 12 purposes, the making of distributions to organizations that 13 qualify as exempt organizations under section 501C4 of the 14 Internal Revenue Code." 15 Some of our more senior folks apparently interpreted 16 that as our status, not that we could make distributions to 17 organizations. So they thought we were a 501C4 and so told 18 me. I can find no request for a letter of determination 19 from the IRS or treasury back in those days. And I have 20 concluded, in the absence of such documentations, that no 21 one ever followed through requesting tax-exempt status. I'm 22 not sure what that gets us. 23 If we were a 501C3 and solicited donations, apparently 24 the donor would be able to deduct them as charitable 25 contributions. We have not done that. That is again a</p>
<p style="text-align: right;">14</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: Go ahead. You can do 2 that. 3 MR. PUTMAN: Thank you. 4 HEARING EXAMINER ROBESON-HANNAN: Well, wait. Just on 5 this -- 6 MR. KLEIN: On the subject only, please. 7 HEARING EXAMINER ROBESON-HANNAN: Yes. Are they just 8 on the registration of the corporation? Because that's all 9 we are doing right now. 10 MR. PUTMAN: Okay. Well, apparently a question was 11 raised about my statement at the earlier hearing that PWPA 12 was a nonprofit corporation. And I said that we were a 13 501C, nonprofit corporation. That also was an error. Is 14 this an opportunity to correct that error under oath? 15 HEARING EXAMINER ROBESON-HANNAN: Any objections? 16 MR. KLEIN: No objection to that; please go ahead and 17 clear it up. 18 MR. PUTMAN: Okay. 19 HEARING EXAMINER ROBESON-HANNAN: Okay. Go ahead Mr. 20 Putman. 21 MR. PUTMAN: I was a latecomer to the Patuxent 22 Watershed Protective Association. All of our officers and 23 directors and representatives are volunteers. We are not 24 always as tidy as we should be. And we recognize that, but 25 it's hard to beat on volunteers. When I first expressed an</p>	<p style="text-align: right;">16</p> <p>1 subject for another day. We will look at that all again and 2 make that determination and take whatever action is 3 appropriate. I don't think that our status as a nonprofit 4 is necessary for a participation in this case. And I hope 5 you will share that. 6 But I did make that representation on July 30. It was 7 an error. And I wish to correct it by my statement today 8 under oath. I apologize for that mistake. I've made a few 9 in my lifetime. And I tried to apologize for everyone that 10 I find out about. 11 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, do you 12 have any follow-up questions? 13 MR. BROWN: Mr. Putman, when did you first inform me of 14 the status of the corporation in terms of its good standing 15 or with respect to the IRS? 16 MR. PUTMAN: I believe that was late yesterday 17 afternoon in my email. And I don't even know that I 18 referenced the status with the IRS. I don't think I did. 19 MR. BROWN: That we -- did we discuss this matter after 20 the motion? 21 HEARING EXAMINER ROBESON-HANNAN: Just a second. I'm 22 sorry. Mr. Klein has his hand up. 23 MR. KLEIN: Oh, I actually anticipated that Mr. Putman 24 was finished. So I will withdraw that. I wanted the 25 Applicant to be able to respond to all this when we are</p>

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<p>17</p> <p>1 finished.</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: That's fine. Go</p> <p>3 ahead Mr. Brown. I interrupted.</p> <p>4 MR. BROWN: Did we have a conversation about either of</p> <p>5 these matters prior to the time that the motion to</p> <p>6 disqualify was filed?</p> <p>7 MR. PUTMAN: I don't believe so because I didn't know</p> <p>8 about the existence of my errors until we got the motion to</p> <p>9 disqualify.</p> <p>10 MR. BROWN: Thank you. I have nothing further.</p> <p>11 HEARING EXAMINER ROBESON-HANNAN: Mr. Klein?</p> <p>12 MR. KLEIN: Well, we started by basically saying, let's</p> <p>13 hear from what the complainant's position is. They have</p> <p>14 shown his paperwork that says they have been revitalized. I</p> <p>15 would like to give you our position on -- and since I</p> <p>16 believe you're going to rule on our motion to deny. And Mr.</p> <p>17 Sullivan would like to address that, please.</p> <p>18 HEARING EXAMINER ROBESON-HANNAN: Okay. So are we</p> <p>19 moving away from questioning Mr. Putman?</p> <p>20 MR. KLEIN: We are finished with Mr. Putman.</p> <p>21 HEARING EXAMINER ROBESON-HANNAN: And going to the</p> <p>22 preliminary argument?</p> <p>23 MR. KLEIN: Yes, ma'am.</p> <p>24 HEARING EXAMINER ROBESON-HANNAN: All right. Just</p> <p>25 checking to see if there is no additional questions of Mr.</p>	<p>19</p> <p>1 appeal during a 15 month forfeiture period, excuse me. The</p> <p>2 Tri-County had acknowledged that while it is generally true</p> <p>3 that a complaint filed by a forfeited corporation is in</p> <p>4 nullity, it also argued that it's right to sue was restored</p> <p>5 by the revival of its corporate charter and therefore the</p> <p>6 complaint involved in the forfeiture period was</p> <p>7 retroactively valid.</p> <p>8 The Court of Special Appeals rejected this argument,</p> <p>9 observed that it certainly had -- Tri-County certainly had</p> <p>10 the right to initiate a lawsuit after revival of its</p> <p>11 charter, but a corporation cannot, quote, validate a lawsuit</p> <p>12 that it initiated when its charter was forfeited and</p> <p>13 therefore it did not legally exist by reviving its charter.</p> <p>14 I also pointed out there is a Hill Construction vs. Sunrise</p> <p>15 Beach case at 180 Md. App. 626 that noted the, quote,</p> <p>16 numerous decisions since 1951 holding that an act by a</p> <p>17 corporation while its charter is forfeited is null and void.</p> <p>18 And so that brings us to the issues in this case. Here</p> <p>19 we have NWPA not initiating a lawsuit in court. But what it</p> <p>20 is doing is purporting to take actions in a contested case</p> <p>21 proceeding before the Hearing Examiner. And the Tri-County</p> <p>22 compels that the inclusion of any actions taken during that</p> <p>23 forfeiture period are null and void, which brings me to the</p> <p>24 order that the court -- that the Hearing Examiner issued on</p> <p>25 March 2 in this case.</p>
<p>18</p> <p>1 Putman. Mr. Putman, thank you. You are -- well, you are</p> <p>2 not -- you are excused for now. Go ahead, Mr. Klein.</p> <p>3 MR. KLEIN: Mr. Sullivan?</p> <p>4 MR. SULLIVAN: It will be Mr. Sullivan. Sorry to</p> <p>5 confuse things.</p> <p>6 HEARING EXAMINER ROBESON-HANNAN: That's okay, Mr.</p> <p>7 Sullivan.</p> <p>8 MR. SULLIVAN: As we had pointed out to the Hearing</p> <p>9 Examiner, the question of the revitalization of the</p> <p>10 corporate charter of PWPA does not answer the question of</p> <p>11 what should happen with respect to actions purportedly taken</p> <p>12 during the forfeiture period. Mr. Putman has testified that</p> <p>13 the corporate charter was forfeited in 2017 and testified</p> <p>14 that the earliest -- at its earliest, it would have been</p> <p>15 revived yesterday, April 11, 2022.</p> <p>16 And it's black letter law, Mr. Putman referred to it</p> <p>17 that actions taken by corporation during its forfeiture</p> <p>18 period or a legal nullity. They are null and void. It</p> <p>19 didn't happen because during that time an entity is</p> <p>20 considered to not legally exist if you do not have a</p> <p>21 corporate charter. And as he pointed out, there is a case</p> <p>22 that is very instructive here. The Tri-County Unlimited vs.</p> <p>23 Kids First Swim School case, which is at 191 Md. App. 613,</p> <p>24 it's a 2010 case from the Court of Special Appeals.</p> <p>25 In that case, Tri-County had tried to file a notice of</p>	<p>20</p> <p>1 That order required parties represented by counsel to</p> <p>2 file a prehearing statement, which must list all their</p> <p>3 experts to be calling the case including a summary of the</p> <p>4 testimony and include a written report from each expert.</p> <p>5 And there was another requirement from two weeks later on</p> <p>6 March 28 to supplement those reports and provide a summary</p> <p>7 of testimony.</p> <p>8 NWPA has purported to submit materials on March 14th.</p> <p>9 And then there are some expert materials that were shared</p> <p>10 with us, but not submitted, on March 24th of Mr. Chamberlin.</p> <p>11 But Tri-County tells us that those actions didn't happen</p> <p>12 legal -- as a legal matter. So the question becomes, what</p> <p>13 do we do with that now. We have no objection. The</p> <p>14 Applicant has no objection to PWPA participating as any</p> <p>15 other on the same terms as any other participant in this</p> <p>16 matter now that its corporate charter has been revived.</p> <p>17 But the reality is that the rules that are applicable</p> <p>18 to any party represented by counsel required submission of</p> <p>19 expert materials nearly a month ago. That deadline has</p> <p>20 passed like the deadline to file the appeal in Tri-County,</p> <p>21 which had passed. And therefore, like the Tri-County, which</p> <p>22 had waived its right to repeal, PWPA has waived its right to</p> <p>23 introduce that -- those materials to this proceeding at this</p> <p>24 time, at this late date.</p> <p>25 So the Applicant has no objection to Mr. Brown</p>

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<p>21</p> <p>1 questioning witnesses on behalf of PWPA or PWPA providing 2 fact witness testimony as appropriate. But the deadline for 3 submitting and providing expert testimony has passed. And 4 so we would respectfully request that those matters be 5 excluded from this hearing consistent with the March 2nd 6 order which also referenced -- there was also reference to 7 rule 3.5 of the OZHA rule.</p> <p>8 HEARING EXAMINER ROBESON-HANNAN: Just a minute, Mr. 9 Putman. I do see your hand up. I want to hear from Mr. 10 Brown. Mr. Brown, do you have a response?</p> <p>11 MR. BROWN: Yes, I do. I want to go back to first 12 principles. At first principles take you back to the 13 statute in question that was interpreted in these cases. 14 I'm referring to section 3-512 of the corporations and 15 associations article, Maryland code. And I want to read 16 directly from it.</p> <p>17 The reinstatement and extension of a corporation's 18 existence under section 3-501 of this subtitle, or the 19 revival of a corporation's charter under 3-507 by the 20 subtitle has the following effects.</p> <p>21 One, if otherwise done within the scope of its charter, 22 all contracts or other acts done in the name of the 23 corporation while the charter was void are validated and the 24 corporation is liable for them.</p> <p>25 That's pretty broad language. There are a couple of</p>	<p>23</p> <p>1 before even this hearing has ended confirming the earlier 2 attempt to validate the actions of the corporation while 3 forwarded.</p> <p>4 So what we have here is simply a -- an unwarranted 5 technical objection to basically eliminating the testimony 6 that has been -- that has been prepared in support of the -- 7 of my client. So basically I see no reason why the general 8 language of section 3.5.112.1 doesn't apply in this 9 situation. And that if you would give us the indulgence of 10 another day or so to provide you with a resolution 11 essentially validating all of the actions of the corporation 12 to date with respect to this case, there will be no problem.</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Mr. Sullivan?</p> <p>14 MR. SULLIVAN: Yes, I disagree that the rules that you 15 set forth in your scheduling order should not have the same 16 effect as a legal requirement to meet the deadline to file a 17 lawsuit or to note an appeal. I think that the Tri-County 18 case is right on point on that -- the issue of what happens 19 when you try to take -- when you purport to take actions in 20 a contested legal proceeding during the period of 21 forfeiture, it is -- I believe it is uncontested that the 22 law is that those actions are null and void. I don't see an 23 exception to be made here.</p> <p>24 HEARING EXAMINER ROBESON-HANNAN: My concern is this. 25 If everything they filed is null and void, all right, that</p>
<p>22</p> <p>1 litigated exceptions to this broad validation concept. One 2 of them is that you can't retroactively overcome a 3 deficiency in the -- in a lawsuit. If a lawsuit is untimely 4 when the acts are sought to be validated retroactively, you 5 don't get to relate back with regard to your statute of 6 limitations problem.</p> <p>7 And the same is true when you're doing an appeal. If 8 you haven't filed -- of the corporation hasn't validly filed 9 an appeal during the appeal period, it can't validate that 10 with a -- by reinstating the charter and using an article of 11 validation or a resolution of validation. That's what these 12 cases that interpret this statute stand for.</p> <p>13 But the broad -- with a broad general rule in the 14 statute, is that acts done in the name of the corporation 15 within the scope of their charter will become valid. The -- 16 what we have in this case is an invalid attempt to comply 17 with your requirement to file certain things on a -- at a 18 certain time. But what you have been told today -- first of 19 all, I would say that all of those actions are obviously 20 within the scope of the charter of the corporation. And I 21 haven't heard any argument to the contrary.</p> <p>22 So what you've heard today in testimony is that you 23 will soon be getting another -- basically an updated 24 resolution that -- and I would -- I believe Mr. Putman will 25 make sure that that resolution gets to you while this --</p>	<p>24</p> <p>1 gets remand. I went back and read the remand order. First 2 of all, this was never raised before the Board of Appeals 3 during the appeal. If I exclude all of this on this legal 4 basis, which I'm going to take it under advisement because 5 I've read the Tri-County case, but I didn't have the other 6 cases. I didn't have the benefit of Mr. Brown's argument.</p> <p>7 But if I exclude -- they -- the Court of Appeals 8 remained at this for more opposition testimony. If I now 9 exclude all these scientific things that the opposition has 10 filed, then why are we here? And, you know, they remanded 11 it once for a variety of reasons and one was notice. And 12 notice was statutorily correct.</p> <p>13 So I guess my other question is this. In your opinion, 14 could Mr. Putman adopt the pleadings as his own individual 15 pleadings? And if so, what's your prejudice? You filed a 16 lot of reports refuting these scientific reports. So where 17 would your prejudice be?</p> <p>18 MR. SULLIVAN: Well, let me start by saying that I 19 think the spirit of the remand would still be honored by 20 taking the testimony that the Applicant's witnesses, expert 21 witnesses are going to provide. We have a hydrogeologist 22 who is an expert who is an expert in fate and transport of 23 contaminants who has examined the issues of what will 24 actually happen in the site for the use of this land and 25 whether the impacts will cause an impact on drinking water.</p>

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<p style="text-align: right;">25</p> <p>1 You will get that information.</p> <p>2 The opponent will hear that information. Mr. Brown</p> <p>3 will be able to cross-examine our experts with respect to</p> <p>4 the information. So the water quality issues that were the</p> <p>5 concern of the remand will be addressed and they will be</p> <p>6 addressed in full. And they will be addressed as they apply</p> <p>7 to this use of this land in this site. And nothing that</p> <p>8 the -- that PWPA's experts have offered has any analysis of</p> <p>9 what happens at the site. And so you will not be deprived</p> <p>10 of any information about what the potential impacts of this</p> <p>11 proposed cemetery will be on drinking water.</p> <p>12 HEARING EXAMINER ROBESON-HANNAN: Well, I have up</p> <p>13 Exhibit 127, which is the Board's original remand order</p> <p>14 which was revised. And it says, later revised to allow the</p> <p>15 Applicant's testimony. And what I'm reading is, to be</p> <p>16 remanded to the Hearing Examiner for the taking of</p> <p>17 additional evidence for the limited purpose of allowing one</p> <p>18 or more experts to present views counter to those formed --</p> <p>19 counter to those that formed the basis for the Hearing</p> <p>20 Examiner's decision. And then it was only on motion of Mr.</p> <p>21 Klein that they allowed the Applicant's testimony.</p> <p>22 MR. KLEIN: And could I have -- but I have --</p> <p>23 HEARING EXAMINER ROBESON-HANNAN: I'm not sure that</p> <p>24 hearing more evidence from the Applicant really satisfies</p> <p>25 their remand.</p>	<p style="text-align: right;">27</p> <p>1 on the scientific evidence right now. But I think it</p> <p>2 behooves us to take the Board's remand at its -- you know,</p> <p>3 the gist of its testimony. And so to remove on what some</p> <p>4 would say technical grounds, you know, it's not technical I</p> <p>5 think.</p> <p>6 But I do think that Mr. Putman could adopt these</p> <p>7 pleadings as his own. And I don't see what the prejudice to</p> <p>8 you would be.</p> <p>9 MR. SULLIVAN: The prejudice would be that we have been</p> <p>10 forced to guess throughout these prehearing proceedings</p> <p>11 because the PWDPA has acted as though these rules don't</p> <p>12 exist and we have been forced to guess and we are going to</p> <p>13 be forced to guess today.</p> <p>14 HEARING EXAMINER ROBESON-HANNAN: I wouldn't put it</p> <p>15 that -- why do you put it that way?</p> <p>16 MR. SULLIVAN: Well, I -- one example, in the</p> <p>17 prehearing statement --</p> <p>18 HEARING EXAMINER ROBESON-HANNAN: Mr. Putman just</p> <p>19 testified that he didn't understand the status of this</p> <p>20 charter.</p> <p>21 MR. SULLIVAN: Well, I'm just -- and then I was not</p> <p>22 focusing on that point. I will give you an example. On the</p> <p>23 prehearing submission submitted on March 14 by PWPA, there</p> <p>24 were four expert witnesses who were identified, one of them</p> <p>25 was a gentleman named Dr. Desmond Brown. And he was -- Mr.</p>
<p style="text-align: right;">26</p> <p>1 MR. SULLIVAN: And when they sought the remand, it was</p> <p>2 incumbent upon -- I would argue that it is incumbent upon</p> <p>3 that organization to understand whether they had the legal</p> <p>4 capacity to do so. And the Applicant -- that's -- that was</p> <p>5 not our issue, quite frankly.</p> <p>6 HEARING EXAMINER ROBESON-HANNAN: Wasn't it incumbent</p> <p>7 on you to raise the issue?</p> <p>8 MR. KLEIN: Well, in answer to that, if you take a look</p> <p>9 at the original request for oral argument, it was filed on</p> <p>10 behalf of Mr. Putman and Mr. Brown only. PWPA did not come</p> <p>11 in until later on when we were --</p> <p>12 HEARING EXAMINER ROBESON-HANNAN: But that's why I'm</p> <p>13 saying, why can't Mr. Putman adopt these pleadings as his</p> <p>14 own?</p> <p>15 MR. SULLIVAN: That would be entirely counter to the</p> <p>16 Hearing Examiner's March 2nd order. I mean, if one side has</p> <p>17 to comply with that order and the other side is free to do</p> <p>18 whatever it wants without regard for what is set forth in</p> <p>19 the order, I'm not sure what the point of the order was,</p> <p>20 quite frankly.</p> <p>21 HEARING EXAMINER ROBESON-HANNAN: But substantively,</p> <p>22 they did. Substantively -- I guess my concern is, this is</p> <p>23 the drinking water supply. The second concern is this is</p> <p>24 the drinking water supply for Montgomery and PG County. And</p> <p>25 I think it behooves us to get -- I'm not taking a position</p>	<p style="text-align: right;">28</p> <p>1 Brown was -- or Dr. Brown was identified, but his -- no</p> <p>2 testimony was provided. No inkling of what the subject of</p> <p>3 his testimony would be was provided. And yesterday we</p> <p>4 received from Mr. Brown, counsel for PWPA, a -- and we filed</p> <p>5 an objection with the Hearing Examiner on late introduction</p> <p>6 of Dr. Brown's testimony yesterday, I think.</p> <p>7 HEARING EXAMINER ROBESON-HANNAN: I, I --</p> <p>8 MR. SULLIVAN: And that yesterday we received -- I'm</p> <p>9 sorry. I didn't mean to cut you off.</p> <p>10 HEARING EXAMINER ROBESON-HANNAN: No, go ahead.</p> <p>11 MR. SULLIVAN: Yesterday we received an email from Mr.</p> <p>12 Brown saying that Dr. Brown is no longer an expert witness</p> <p>13 for PWPA, yet he's still going to submit expert testimony</p> <p>14 because he is an individual who lives in the area. And that</p> <p>15 is -- that flouts the order that required expert testimony</p> <p>16 to be provided by March 14th. We got it a day before the</p> <p>17 hearing. So we are just being constantly forced to guess</p> <p>18 and surprised here.</p> <p>19 And another issue, what happened on March 24th, we got</p> <p>20 an email from Mr. Brown suggesting that Mr. Donald</p> <p>21 Chamberlin would testify to the highly technical question of</p> <p>22 how much -- how many patients undergoing chemotherapy will</p> <p>23 die with chemotherapy drugs in their body. This is</p> <p>24 unquestionably a subject for expert testimony. It was never</p> <p>25 submitted to the Hearing Examiner. It was forwarded to us</p>



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<p>29</p> <p>1 and Mr. Brown said that Mr. Chamberlin would testify as a 2 fact witness to this information. 3 This is beyond the scope of a percipient fact witness 4 to testify. This is highly technical expert testimony. Yet 5 they just keep ignoring the deadlines in the order and 6 throwing these things out. And so that's our concern here. 7 HEARING EXAMINER ROBESON-HANNAN: Well, I understand 8 that those are all issues that we can raise as the evidence 9 goes in. I'm going to let Mr. Brown -- do you have anything 10 else, Mr. Sullivan? 11 MR. SULLIVAN: I do not, thank you. 12 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown? 13 MR. BROWN: Mr. Putman, did you have something you 14 wanted to say in response to what you've heard? 15 MR. PUTMAN: I'm not sure whether it's pertinent to 16 this, but let me say it. At the original hearing on July -- 17 HEARING EXAMINER ROBESON-HANNAN: Mr. Putman, just let 18 me stop you. Do you have your camera on? You need to have 19 your camera on. 20 MR. BROWN: I can see him. 21 MR. PUTMAN: I can see me and I can see you. 22 MR. KLEIN: We can observe him. 23 HEARING EXAMINER ROBESON-HANNAN: Okay. 24 MR. KLEIN: I realize you are the one who wants to see 25 his face, but it is showing up on our screens.</p>	<p>31</p> <p>1 PWPA is a subsequent event. Thank you. 2 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, anything 3 else? 4 MR. BROWN: Just let me very briefly conclude that I 5 think your point about lack of prejudice is well taken. I 6 don't think that there should be any doubt on the part of 7 the Applicant that PWPA endorses the actions that have been 8 taken up until now. And we -- and that you will promptly 9 get an official recognition of that fact. To the point that 10 the whole spirit of 3-51.12.1 to validate all prior 11 contracts and acts of the Corporation has the effect of 12 revival will be honored in this particular case without 13 prejudice to the Applicant. 14 And of course the Applicant is free to object to any 15 particular testimony that we proffer on any grounds. And 16 bring up those issues as part of this is just essentially 17 irrelevant. 18 HEARING EXAMINER ROBESON-HANNAN: Well, I -- okay. I 19 wouldn't say it's irrelevant. 20 MR. SULLIVAN: If I may? 21 HEARING EXAMINER ROBESON-HANNAN: Yes, Mr. Sullivan. 22 MR. SULLIVAN: I was just going to respond to that. I 23 take offense at the notion that complying with the statutory 24 requirements of a corporation is somehow irrelevant. 25 HEARING EXAMINER ROBESON-HANNAN: I, I --</p>
<p>30</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: No, I can see now. 2 MR. PUTMAN: Okay. That is a face that I'm certainly 3 am glad you can see. 4 At the original hearing, and I had the reference in 5 front of me a moment ago. At the original hearing on page 6 11, line 9, I said, although I am affiliated with the 7 Patuxent Watershed Protective Association Inc., a 501C 8 nonprofit environmental corporation, my comments today and 9 my previously filed statement are mine and mine alone. 10 I did not at that time have the authorization from the 11 other officers because of a very short timeframe between 12 when I learned of the green cemetery and the deadline for 13 submitting testimony. So I testified as an individual, but 14 I acknowledge my affiliation with Patuxent Watershed 15 Protective Association. I'm not familiar enough with your 16 rules, Ms. Hannan, as to whether I can continue as an 17 individual and I can bring on the witnesses, the expert 18 witnesses that I have identified, and exclude PWPA, the 19 Corporation from this process. 20 HEARING EXAMINER ROBESON-HANNAN: Well, PWPA can be a 21 party right now, as of now. The question is what to do so 22 you would not be bringing them on. The question is what to 23 do with your prior pleadings. 24 MR. PUTMAN: I understand. So I just offer that I 25 previously testified as an individual. And the addition of</p>	<p>32</p> <p>1 MR. SULLIVAN: And complying with this -- the Hearing 2 Examiner March 2nd order. So -- 3 HEARING EXAMINER ROBESON-HANNAN: I understand. What 4 I'm going to do, I'm going to continue. I would -- I'm 5 going to take the matter under advisement because I haven't 6 seen the 3-512. We're going to proceed. And whether Mr. 7 Putman wants to adopt these -- I would like the order of 8 revival in the record. And I would -- if Mr. Putman at a 9 later date decides that he can or he wants to adopt prior 10 pleadings, we can do it. But we're going to -- I'm going to 11 take it under advisement because I definitely want the order 12 of revival in the record. And I needed to look at 3-512 and 13 some of the cases under that. 14 MR. SULLIVAN: And Ms. Robeson-Hannan, we are prepared 15 to proceed accordingly. We would like to note a continuing 16 objection to any introduction of materials submitted by PWPA 17 during its forfeiture period. 18 HEARING EXAMINER ROBESON-HANNAN: Understood. 19 MR. SULLIVAN: Just so we don't have to voice one 20 throughout the hearing. 21 HEARING EXAMINER ROBESON-HANNAN: Understood. 22 MR. SULLIVAN: And we note our -- we would also like to 23 reserve our right to address whether or not PWPA is actually 24 revived. We've seen promises that it will happen. We 25 haven't seen actual confirmation of that yet. So we would</p>

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<p>33</p> <p>1 reserve our right to address that should --</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: I understand. And I</p> <p>3 will note the continuing objection. And I would like to see</p> <p>4 the orders of revival in the record. I mean, the orders of</p> <p>5 revival. The articles of revival in the record. So for</p> <p>6 that, let's proceed.</p> <p>7 MR. KLEIN: Yeah, there's a --</p> <p>8 HEARING EXAMINER ROBESON-HANNAN: Now there is a couple</p> <p>9 of other preliminary matters I think.</p> <p>10 MR. KLEIN: Yeah, I think most of what goes on now is</p> <p>11 more of debate of -- from our side about the witnesses and</p> <p>12 the evidence they are presenting. And so I'm going to just</p> <p>13 defer to Mr. Sullivan. Maybe -- you mentioned Dr. Brown.</p> <p>14 Maybe that's the first one to start with in terms of his</p> <p>15 role in this or whether he is still eligible to even be</p> <p>16 appearing.</p> <p>17 MR. SULLIVAN: And I will -- you mentioned -- we</p> <p>18 discussed Dr. Brown briefly. I believe he said we can deal</p> <p>19 with that evidence as it comes up. But I think it's</p> <p>20 important to note that Dr. Brown was identified as a witness</p> <p>21 in the prehearing submission of PWPA with no notice of the</p> <p>22 subject of his testimony, no summary of assessment, no</p> <p>23 expert report, all of which were required by the Hearing</p> <p>24 Examiner's second order.</p> <p>25 And we filed an objection to that on the record. And</p>	<p>35</p> <p>1 or Mr. Putman are well taken, because we failed to meet the</p> <p>2 deadlines that were imposed. But it is not because we were</p> <p>3 trying to game the system. It was because, in good faith</p> <p>4 when we filed the prehearing statement, we believed that Dr.</p> <p>5 Brown's testimony would be authorized for release by his</p> <p>6 employer promptly.</p> <p>7 That did not happen for reasons that we don't really</p> <p>8 understand. And Dr. Brown, who can testify to this, I</p> <p>9 can't, did not get authorization to release that testimony</p> <p>10 even to us until late the night before I provided a copy of</p> <p>11 it to everyone to see what the testimony was. We saw it for</p> <p>12 the first time then. And I advised my clients that we could</p> <p>13 not sponsor Mr. -- Dr. Brown. And that if Dr. Brown wanted</p> <p>14 to testify, he would have to testify as a resident of the</p> <p>15 area who was concerned about water quality in the Rocky</p> <p>16 Gorge reservoir, which he lives close by to.</p> <p>17 I saw no other way in which we could sponsor his</p> <p>18 testimony. But it really wasn't because we were trying to</p> <p>19 play games, trying to avoid following the rules. And</p> <p>20 whether or not you allow Dr. Brown to testify as a resident,</p> <p>21 concerned resident, is going to be up to you at such time as</p> <p>22 he comes before you to testify. And the fact that he may</p> <p>23 have technical expertise that he can bring to this topic out</p> <p>24 to be regarded not as a handicap, but as a bonus to help you</p> <p>25 make a proper decision in this case.</p>
<p>34</p> <p>1 we've -- that objection continues. We have -- we</p> <p>2 received -- as I mentioned, we received yesterday, just</p> <p>3 yesterday, the day before the hearing, purported expert</p> <p>4 testimony by Dr. Brown. And it is unquestionably material</p> <p>5 that is the subject of expert, not fact testimony.</p> <p>6 And we think it is inappropriate to work around the</p> <p>7 Hearing Examiner -- the rules set forth clearly in the</p> <p>8 Hearing Examiner's March 2nd order by -- at the 11th hour,</p> <p>9 literally the day before -- less than 24 hours before this</p> <p>10 hearing began, to attempt to introduce that testimony in the</p> <p>11 guise of a fact witness instead of the expert witness that</p> <p>12 was offered by PWPA, simply because PWPA couldn't meet the</p> <p>13 deadlines set forth in the Hearing Examiner's second order.</p> <p>14 These deadlines are tight. That was acknowledged. My</p> <p>15 understanding was not at the conference that set the March</p> <p>16 2nd order. But my understanding was acknowledging it as</p> <p>17 that all parties would be running on tight deadlines dealing</p> <p>18 with complex issues for experts. That we understand. And</p> <p>19 the Applicant has worked very hard to meet those deadlines.</p> <p>20 Those deadlines should apply to all parties rather than by</p> <p>21 counsel. And so we object to the introduction of this</p> <p>22 testimony by Dr. Brown at this late date.</p> <p>23 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown?</p> <p>24 MR. BROWN: I think that the -- that the grounds for</p> <p>25 objection to Dr. Brown's testimony being sponsored by PWPA</p>	<p>36</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: Mr. Sullivan?</p> <p>2 MR. SULLIVAN: We hear again that PWPA and others</p> <p>3 should be excused from legal requirements or the</p> <p>4 requirements of the Hearing Examiner. The reality is that</p> <p>5 expert testimony was supposed be submitted by March 14th.</p> <p>6 We got it April 11th, less than 24 hours before the hearing.</p> <p>7 And it's -- whether it is damning or not, these -- if the</p> <p>8 order is to matter, have any effect, we need to put some</p> <p>9 parameters around testimony.</p> <p>10 We have not been able to prepare a -- for cross</p> <p>11 examination adequately. We can -- we will -- can attempt to</p> <p>12 certainly. But it's -- expert testimony, there is a reason</p> <p>13 why it was required to be due to nearly a month ago. And</p> <p>14 there is good reasons for that.</p> <p>15 HEARING EXAMINER ROBESON-HANNAN: Okay. I do agree</p> <p>16 with the Applicant that his testimony -- OZHA's rules, even</p> <p>17 if you're participating as an individual, you have to -- if</p> <p>18 you want expert testimony in you have to file a prehearing</p> <p>19 statement. And this is late date. I don't -- I'm not</p> <p>20 accusing anyone of gaming, but I think that it has not given</p> <p>21 the Applicant sufficient time to prepare, nor --</p> <p>22 You know, we've been referring the expert reports to</p> <p>23 Department of Environmental Health and WSSC. And I don't</p> <p>24 feel like it's given them sufficient time to review and</p> <p>25 really take in the materials. So I'm going to exclude that.</p>

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10 (37 to 40)

<p>37</p> <p>1 I don't agree that it is factual. I think it's a mix of 2 fact and expert witness -- expert testimony. So I am going 3 to exclude him. Is there another preliminary manner? 4 MR. SULLIVAN: There is. And this actually is a good 5 segue into the proposed testimony of Mr. Donald Chamberlin. 6 In the prehearing statement that was filed on March 14 by 7 PWPA, Mr. Chamberlin was identified as a fact witness who 8 had testified to certain factual issues about the site 9 including compliance with the Cloverly Master Plan. 10 On March 24th, 10 days after that prehearing statement 11 was filed, we received an email from Mr. Brown indicating 12 that Mr. Chamberlin was going to provide testimony on the 13 complex question of how many patients undergoing 14 chemotherapy will die with chemotherapy drugs still in their 15 body. That is an issue that is unquestionably expert 16 testimony. Yet it was not -- there's been no expert report 17 submitted. Actually, in fact, there's been nothing 18 submitted to the Hearing Examiner as far as I'm aware on the 19 issue of -- on this proposed testimony. 20 Yet it was not -- there's been no expert report 21 submitted. Actually, in fact, there's been nothing 22 submitted to the Hearing Examiner as far as I'm aware on the 23 issue of -- on this proposed testimony. The was an emailed 24 with the Applicant, but nothing submitted to the hearing 25 examiner and therefore nothing submitted to either WSS or</p>	<p>39</p> <p>1 testifying to and the scope of his testimony. 2 MR. SULLIVAN: If I may, one more point is -- 3 HEARING EXAMINER ROBESON-HANNAN: Yes. 4 MR. SULLIVAN: The rules also reflect that there be -- 5 we have no sense of Mr. Chamberlin's background. There is 6 no CV that's been submitted. There is no resume that's been 7 submitted. We have no way to prepare, to cross-examine him 8 on these expert issues because he hasn't provided 9 information that are required of all other experts. So it 10 is unfair to require us to do this -- to address this as we 11 go. 12 We were entitled to have his expert qualifications if 13 he is going to testify about complex issues, like how many 14 people may die with chemo drugs in their body. And that is 15 not something a percipient witness can just see. And if 16 it's based on experience, we have an -- we are entitled to 17 know that experience was. I mean, it can certainly be an 18 expert based on education, professional training, or 19 experience. But we are entitled to know what that is before 20 this hearing. We are entitled to know that by March 14th, 21 or the very latest, March 20th. We have no idea what that 22 is as we sit here today. 23 HEARING EXAMINER ROBESON-HANNAN: Understood. And what 24 I'm hearing is that Mr. Brown is characterizing him as a 25 fact witness and you are characterizing him as an expert</p>
<p>38</p> <p>1 Montgomery County, DEP on this issue. For the same reasons 2 that -- or similar reasons that Mr. Brown's testimony or Dr. 3 Brown's testimony should be excluded, Mr. Chamberlin's 4 testimony should also be excluded on this issue because it 5 simply didn't comply with the hearing examiner's March 2nd 6 report or the OZHA rules. 7 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown? 8 MR. BROWN: My understanding of the rules is that we 9 were required to provide expert reports and summaries of 10 expert reports. But I don't believe that the rules require 11 the -- any kind of precise delineation of the testimony of a 12 nonexpert witness. And I don't think that we should be held 13 to the description of Mr. Chamberlin's testimony in the 14 prehearing statement. 15 In any case, Mr. Chamberlin is not going to testify as 16 an expert. And if the -- if the Applicant has objections to 17 particular questions or statements made by Mr. Chamberlin 18 that they feel require the opinion of an expert, they can 19 make those objections at the time. But it is my 20 understanding that Mr. Chamberlin is not going to be 21 offering opinion evidence, but simply evidence based on his 22 personal knowledge. 23 HEARING EXAMINER ROBESON-HANNAN: All right. That one, 24 I would like to -- when Mr. Chamberlin comes to testify, I 25 would like to understand a little bit more what he is</p>	<p>40</p> <p>1 witness. And I would like the opportunity at some point to 2 have him proffer what he is going to testify to. I would 3 prefer to do that than to make a decision right now. 4 MR. SULLIVAN: Can we -- is it possible to get a 5 decision that he may be able to testify as to fact issues as 6 a fact witness? We have no objection to him testifying as a 7 fact witness. We do objective he attempts to testify as an 8 expert witness. And it would be helpful have a ruling on 9 that issue standing alone. If you determine that if expert 10 testimony, we would request a ruling on whether or not that 11 would be excluded based on the failure to comply with the 12 order. The March 2nd order. 13 HEARING EXAMINER ROBESON-HANNAN: I guess the question 14 is, what's fact and what's expert. 15 MR. SULLIVAN: Correct. And then if we decided that it 16 is expert testimony, we would as we think would be helpful 17 to streamline proceedings to get that ruling in advance. 18 But obviously we would defer to -- is the hearing examiner's 19 decision. 20 HEARING EXAMINER ROBESON-HANNAN: I'm going to hold 21 that off until he is here to proffer, all right? 22 MR. SULLIVAN: Okay, thank you. The other issue that 23 we had here, really, these are all the same theme here. We 24 are concerned that there will be no bounds upon any expert 25 to testify. Very limited scope of what the PWPA experts</p>

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11 (41 to 44)

<p style="text-align: right;">41</p> <p>1 have provided here. And we are concerned that we are going 2 to have hearing by ambush here and having arguments that 3 were -- and issues -- 4 HEARING EXAMINER ROBESON-HANNAN: Okay. You need to 5 stop using those pejorative -- 6 MR. SULLIVAN: Fair enough. I -- my apologies. I will 7 stop. 8 HEARING EXAMINER ROBESON-HANNAN: It's not a hearing by 9 ambush. We're going to take each -- this is a fair -- I 10 mean, we're going to take every issue and allow you -- 11 MR. SULLIVAN: Yes. 12 HEARING EXAMINER ROBESON-HANNAN: The parties to say 13 that and if you're trying to create a record of hearing by 14 ambush, that's not going to happen. 15 MR. SULLIVAN: And I'm -- my apologies. That was a 16 poor choice of words. We are just concerned that there are 17 no bounds. And to prepare, there is a reason that we have 18 requirements of -- 19 HEARING EXAMINER ROBESON-HANNAN: Why do you think -- I 20 don't understand your argument. Why do you think there is 21 no bounds? 22 MR. SULLIVAN: Because there seemingly have been very 23 few bounds so far in the prehearing leading up as we've been 24 discussing for the past several minutes here. So we're just 25 concerned that we --</p>	<p style="text-align: right;">43</p> <p>1 want to hear the other issues. So if you could forewarn the 2 hearing -- I'm sorry, the potential witnesses of that so I 3 don't have to keep putting my hand up. Thank you. 4 HEARING EXAMINER ROBESON-HANNAN: I understand. I did, 5 after our discussion at the prehearing conference, I went 6 back and read both orders. And I think the scope is 7 environmental issues. So that is correct. And that is the 8 only thing that we will be hearing. 9 MR. KLEIN: Sure. And if I can be even more precise, 10 testimony that is relevant to the potential impact of necro- 11 leachate on groundwater, the reservoir, and watershed. So 12 it's not even environment in the larger perspective, it's 13 narrowed down to the necro-leachate in ramifications. Thank 14 you. 15 HEARING EXAMINER ROBESON-HANNAN: All right. Anything 16 else? 17 MR. SULLIVAN: Nothing else. 18 HEARING EXAMINER ROBESON-HANNAN: Okay. Hearing none, 19 Mr. Brown, do you want to call you next witness? 20 MR. BROWN: My next -- 21 HEARING EXAMINER ROBESON-HANNAN: Just a second, Mr. 22 Klein. 23 MR. KLEIN: I'm sorry. I couldn't get my hand up 24 quick. I thought we discussed when we had our prehearing 25 conference on this that we would that you would accept</p>
<p style="text-align: right;">42</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: Well, I've gotten 2 three things that you've raised objections to, three. One 3 is Dr. Brown. He is excluded, okay? One is the 4 participation of PWPA. That, I'm waiting to see. I need to 5 research. And three, there is Dr. Chamberlin, which is fact 6 or expert. So where are the no bounds? 7 MR. SULLIVAN: Well, though seem -- from my -- from my 8 personal perspective, those seem to be pushing some of the 9 bounds. 10 HEARING EXAMINER ROBESON-HANNAN: I'm not giving you 11 the answers in the timeframe that you want, but you will get 12 fair and reasoned answers. 13 MR. SULLIVAN: Of course, thank you. We've been heard 14 on this issue. 15 HEARING EXAMINER ROBESON-HANNAN: Anything else? 16 MR. KLEIN: Are you finished? I would only ask for one 17 thing myself, and that is somewhat going along with the 18 phraseology used by Mr. Sullivan, but when we do sit down 19 tomorrow morning at 9:30, we would ask that you make an 20 announcement to anybody who has not been a party or called 21 as a witness by the parties, what are the scope of the 22 testimony you will accept. I refer you to the board of 23 appeals guidance as to what they are looking for. 24 And we want to hear all of the evidence on 25 environmental issues and water quality issues. We don't</p>	<p style="text-align: right;">44</p> <p>1 opening statements, opening arguments. If -- 2 HEARING EXAMINER ROBESON-HANNAN: Yes, I apologize. Go 3 ahead. 4 Mr. Brown goes first. 5 MR. KLEIN: I'm sorry. Who would you like to go first? 6 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, because I 7 thought that was the order proceedings that we were going to 8 take. 9 MR. KLEIN: Acceptable to the Applicant, thank you. 10 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown? 11 MR. BROWN: Are we talking about an opening statement? 12 HEARING EXAMINER ROBESON-HANNAN: Yes. 13 MR. BROWN: Well, I hadn't prepared an opening 14 statement. But I will say this. Our focus today will be on 15 the question of what appears to me to be a relatively 16 unresearched area in the technology. The risk to wells and 17 water and water is that those -- that the watershed drains 18 into from the necro-leachate emanating from decaying bodies 19 that are in the ground with particular attention to the fact 20 that the body has been buried under what's called a green 21 burial format. 22 And that will be the focus of our risk today, our risk 23 analysis today, which necessarily must include an evaluation 24 of the kinds of -- the chemical composition of the necro- 25 leachate and the risk of that -- whether the risk of -- the</p>

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12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 risk to the waterways is increased by the nature of that 2 chemical decomposition. That's why a fair amount of our 3 testimony will focus on essentially the biochemistry of that 4 necro-leachate. That's really, that's really the focus. We 5 will be providing expert testimony from Dr. Abia and Mr. 6 Mulowney and Dr. O'Keefe on these subjects. 7 But first of all, we will have Mr. Putman and Mr. 8 Chamberlin testify as fact witnesses with particular 9 attention to the conclusions and analysis that were 10 contained in your expert -- your hearing examiner's report, 11 Exhibit 87, on this very topic, which is a limited number of 12 pages in that report. And the conclusions or testimony from 13 the prior hearing that you relied upon in reaching a 14 favorable conclusion for the Applicant at that time. That's 15 all I have. 16 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Klein? 17 MR. KLEIN: Thank you. Now normally I would start off 18 by doing my oral arguments, but I think we've got enough 19 argument already. So what I think we would like to do is 20 call it an opening statement. And I would like to defer to 21 one of the principles of Reflection Park Inc., the 22 Applicant, to give you the framework and the overview, just 23 a reminder both to you and (inaudible) hearing this for the 24 first time of what we are trying to accomplish in the past 25 and what we are going to try to accomplish today. Mr.</p>	<p style="text-align: right;">47</p> <p>1 who are interested in what's happening here. 2 To begin with, why I'm here, several years ago there 3 was a family in our community that suffered an unexpected 4 death. They were unable to afford a burial. And so they 5 went to the community to raise funds. I was troubled by 6 this because at a time when families are grieving, it seems 7 inappropriate that they are forced to suffer financial peril 8 to give their loved ones a dignified burial. I resolved to 9 do what I could to remedy the situation for my community and 10 for others to Montgomery County. 11 And that's why this project is really close to my 12 heart. The current state of affairs to Montgomery County, 13 the cost over \$11,000 to do a burial. This is the most 14 expensive county in the State of Maryland. Grieving 15 families struggle to afford this. And often they have to go 16 to other options like cremation even if they prefer burial. 17 By removing amenities that are common with conventional 18 burials like embalming, metal and hardwood caskets, concrete 19 vaults, and simultaneously removing the profit -- Reflection 20 Park is a 501C3 nonprofit and will always remain a 21 nonprofit. 22 By doing those two things we believe we can reduce the 23 cost of burial by a half to two thirds in the county for 24 burials at Reflection Part. In addition, we plan to offer a 25 burial assistance fund for those who need it because we</p>
<p style="text-align: right;">46</p> <p>1 Matrusada, would you please introduce yourself? Spell your 2 name. 3 MR. MATRUSADA: Well, yes. I am Haroon Matrusada. I'm 4 one of the founders of Reflection Park. I live at 200 5 Quaint Acres Drive, Silver Spring. 6 HEARING EXAMINER ROBESON-HANNAN: Mr. -- 7 HEARING EXAMINER ROBESON-HANNAN: Let me swear you in. 8 Please raise your right hand. 9 Do you solemnly affirm under penalties of perjury that 10 the statements you're about to give are the truth, the whole 11 truth, and nothing but the truth? 12 MR. MATRUSADA: I do. 13 HEARING EXAMINER ROBESON-HANNAN: Does someone have a 14 phone on? Okay. I don't hear it now. Okay. Go ahead. 15 MR. MATRUSADA: My name is Haroon -- 16 HEARING EXAMINER ROBESON-HANNAN: State your name, 17 email, and street address for the record. 18 MR. MATRUSADA: My name is Haroon Matrusada. Email 19 address, HaroonM@Gmail.com. And my home address is 200 20 Quaint Acres Drive, Silver Spring, Maryland, 20904. Thank 21 you for allowing me to introduce our case. I know you're 22 familiar with much of what, I will say based on your 23 thorough review of our case in the past. However, I would 24 like to establish it in the record nevertheless, there are 25 people who read these transcripts. There are many people</p>	<p style="text-align: right;">48</p> <p>1 believe every human being deserves a dignified burial. And 2 the 40 acres of land that we have, which will be a very 3 beautiful, wooded lot and will not look anything like what a 4 normal cemetery looks like where there will be -- you know, 5 there will be no standing headstones and things like that. 6 We will be open to the public and it will offer people, 7 for free, an opportunity to connect with nature. I think 8 it's ironic a bit to hear that we are discussing 9 environmental issues today because environmental stewardship 10 is also at the core of our mission. Unlike conventional 11 cemeteries that introduce many chemicals like formaldehydes, 12 and toxins in the caskets into the ground, green burial gets 13 rid of all of that. 14 And for those who prefer cremation, they often are 15 unaware of the immense CO2 that's created when the furnace 16 has to get the 4000° to cremate a body. By burying in 17 harmony with the surrounds and replacing the homogenous 18 woods which are today mostly poplars and invasive species, 19 with a rich set of local hardwood trees, we believe we will 20 bring forth a rich habitat and ecosystem. 21 A green burial is not only one of the most eco-friendly 22 uses as I can think of, it's also one of the few land uses 23 that would permanently protect a green space here in the 24 future, because as the land is honored with these bodies, no 25 one can ever develop on top of this again. So no condos can</p>

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13 (49 to 52)

<p style="text-align: right;">49</p> <p>1 be built here, no homes, no chopping this up into a bunch of 2 pieces and rezoning it, no gas stations, no warehouses, no 3 farms with all their herbicides and pesticides, ever, ever. 4 In fact, I can't think of a better way to protect the 5 Patuxent watershed with such permanence than a project like 6 this. Now we are here today to discuss the water quality, 7 potential water quality issues, potential impact to water 8 quality supply to the distant wells on adjacent properties 9 and at the Rocky Gorge reservoir, which is about 2 miles 10 downstream 11 I just want everyone to know that we don't take this 12 issue lightly. We have spent considerable time and expense 13 studying the land, the soil, the topography, the water 14 table, decomposition sciences to ensure the safety of the 15 water supply. And as a result of our initial efforts, the 16 hearing examiner ruled last summer in concurrence with both 17 the EPA and WSSC that the proposed cemetery will not pose a 18 significant risk to the drinking supply in the Rocky Gorge 19 reservoir. 20 For this hearing, we've investigated potential impacts 21 to water quality even further. We will call witnesses, Dr. 22 Helen Dawson, Dr. Rick Pleyas experts in hydrology and fate 23 and transport of contaminants in toxicology and pharmacology 24 respectively, whose expert reports have been submitted and 25 are in the record in this proceeding to demonstrate the</p>	<p style="text-align: right;">51</p> <p>1 really only about the -- 2 HEARING EXAMINER ROBESON-HANNAN: Mr., Mr. -- don't 3 talk when you are muted. You are on the stand. So go 4 ahead. I'm sorry, Mr. Brown. You are on the virtual stand. 5 Go ahead, Mr. Brown. 6 MR. BROWN: Our focus is going to be on the choice of 7 this particular location because my clients are concerned 8 about protecting the integrity of the water supply and the 9 wells in this area. And these are issues that basically 10 would not arise if this green burial cemetery were located 11 in a number of other places in the county that -- where it 12 might be suitable to place it. So it is not about the 13 social utility, the money, the monetary savings, or anything 14 like that. It's only about this particular choice of land 15 and the impacts on the water supply. Thank you. 16 HEARING EXAMINER ROBESON-HANNAN: So that wasn't really 17 a question. But okay. Well, we are out of order already. 18 I think we are going to go forward with Mr. Brown's 19 scientific witnesses. Am I incorrect in that? 20 MR. BROWN: We're going forward with Mr. Putman and Mr. 21 Chamberlin first. 22 HEARING EXAMINER ROBESON-HANNAN: Okay. And Mr. 23 Chamberlin is -- before Mr. Chamberlin comes up, I would 24 like to take a five-minute break to review your prehearing 25 statement, your prehearing statement, okay?</p>
<p style="text-align: right;">50</p> <p>1 scientific basis for our confidence in the safety of the 2 water supply. 3 The opposition brings forth arguments that do sound 4 alarming if considered in the effect without any 5 consideration of the specific circumstances present here. 6 But our experts will demonstrate that our proposal on this 7 land is in fact safe and does not threaten the water 8 supplies. We believe it's important for any development 9 project like this that all efforts are made to protect the 10 safety of others. 11 As a result, we are pleased to present the information 12 and the witnesses here today, which combined with the 13 extensive research and planning work we submitted at the 14 original hearing form a strong body of evidence to allay any 15 concerns regarding the impact of drinking water. We really 16 thank you for your consideration and time. 17 MR. KLEIN: Thank you. 18 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown -- or Mr. 19 Klein, any follow-up questions? 20 MR. KLEIN: No, thank you very much for listening to 21 us. And we are -- 22 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, any cross? 23 MR. BROWN: I just want to note that none of our 24 testimony is going to be directed at the concept of green 25 burial or the social utility of green burial. This is</p>	<p style="text-align: right;">52</p> <p>1 MR. BROWN: Okay. 2 HEARING EXAMINER ROBESON-HANNAN: Go ahead. We will 3 take Mr. Putman first. Mr. Putman, you are still under 4 oath. 5 MR. KLEIN: Madam Chairman, I'm sorry. I put my hand 6 up. I thought you were going to maybe -- I suggest a break. 7 Can we just have a five-minute break? 8 HEARING EXAMINER ROBESON-HANNAN: If you wish a five- 9 minute break -- does anyone object? How about a 10 minute 10 break? 11 MR. KLEIN: Even better. You know, we have a lot of 12 people with only one bathroom. 13 HEARING EXAMINER ROBESON-HANNAN: That might be TMI. 14 But anyway -- 15 MR. KLEIN: Strike that, please. 16 HEARING EXAMINER ROBESON-HANNAN: We could do a 10 17 minute break. 18 MR. KLEIN: Thank you, very much. 19 HEARING EXAMINER ROBESON-HANNAN: 11:00. We will 20 return at 11:00. 21 (A recess was taken.) 22 HEARING EXAMINER ROBESON-HANNAN: In the interim I did 23 look up a couple of things. And one relates to the motion 24 to deny PWPA to exclude their pleading. I couldn't recall 25 issuing an order per se, stating when people had to do</p>

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14 (53 to 56)

<p>53</p> <p>1 things as far as submissions. I did issue an email, which 2 is Exhibit 91, with the agreed-upon timeframe. I'm not sure 3 that makes any difference to the arguments. But I did want 4 to correct that for the record just to (inaudible). 5 Somebody -- there is an additional device. Thank you. 6 Does anybody have a secondary device? Thank you. 7 This is what I have in the record as what the -- 8 what -- It's a summary of what was agreed to. But it was 9 not -- 10 MR. KLEIN: Well, Madam Hearing Examiner, if I might, 11 you did issue a notice of public hearing on remand, notice 12 of scheduling, public hearing after remand and scheduling 13 order. And you dated it March 22, I believe. 14 HEARING EXAMINER ROBESON-HANNAN: Oh, I did -- 15 (Inaudible) secondary device, please turn it off. 16 MR. KLEIN: All right. Oh, it's -- it's Exhibit 94. 17 HEARING EXAMINER ROBESON-HANNAN: You are correct, Mr. 18 Klein. I stand corrected. 19 MR. KLEIN: Because we all had it on our bulletin 20 boards to make sure we got everything filed timely. 21 HEARING EXAMINER ROBESON-HANNAN: I know. Okay. I'm 22 not inviting argument on it because as, you know -- I won't 23 go into it again. 24 MR. KLEIN: No problem. 25 HEARING EXAMINER ROBESON-HANNAN: Some things were done</p>	<p>55</p> <p>1 report and recommendation, Exhibit 87? 2 MR. PUTMAN: Yes, I have. 3 MR. BROWN: That report at pages 32 to 39 is entitled, 4 impact of necro-leachate. Have you had an opportunity to 5 study that part of the report? 6 MR. PUTMAN: I have. 7 MR. BROWN: That part of the report includes a number 8 of references to the transcript of the hearing. Have you 9 had an opportunity to examine those citations and the rest 10 of the transcript? 11 MR. PUTMAN: Yes, I have. 12 MR. BROWN: All right. And is your testimony today 13 basically based upon your examination, after the fact of the 14 transcript and the hearing examiner's report? 15 MR. PUTMAN: Essentially, yes. A few other details of 16 interest to the hearing, I think, but yes. 17 MR. BROWN: All right. Rather than interrupt you, I 18 would like it is just please go forward and tell us what you 19 have learned or discovered or have to say based on your 20 work. 21 MR. PUTMAN: Thank you, I will. I want to start by 22 reiterating for the reman record, that my objections and 23 those of the Patuxent Watershed Protective Association, to 24 this project are directed solely to its location in the 25 Patuxent watershed above the Rocky Gorge reservoir and</p>
<p>54</p> <p>1 timely. Okay. So -- and I did get a chance, I think it's 2 Exhibit 91, which I don't see. I did get a chance to review 3 the opposition's prehearing statements as to Mr. Chamberlin. 4 So who are we starting with? Mr. Brown? 5 MR. BROWN: We are starting with Mr. Putman. 6 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Putman, 7 you are still under oath. 8 MR. PUTMAN: Thank you. 9 MR. BROWN: Mr. Putman, a couple of preliminary 10 questions. First of all, you participated in the prior 11 hearing in this case in July; is that right? 12 MR. PUTMAN: That's correct. 13 MR. BROWN: What sort of time did you have to prepare 14 for the hearing? 15 MR. PUTMAN: Not very much. I learned the existence of 16 the hearing in a local news report. And by the time I found 17 out who OZHA was and the scheduling of the hearing, it was 18 almost past time to get on the agenda. But Nana Johnson was 19 a great help to me and allowed me to get my nose under the 20 tent at the very last minute. I was not well prepared. I 21 had very little research time. But this is such an 22 important subject that I felt that I had to enter. And the 23 story goes from there. 24 MR. BROWN: All right. Since that time, Mr. Putman, 25 have you had an opportunity to review the hearing examiner's</p>	<p>56</p> <p>1 uphill from about 87 residential wells owned by RC compliant 2 residents. 3 If the green cemetery were to be located outside of the 4 Patuxent watershed, I would support it. I would like to 5 state for a moment how we got to the expert witnesses that 6 we present today. When we learned that a remand request 7 would be granted by the Board of Appeals, we searched for 8 expert witnesses whose testimony would be relevant to this 9 case. 10 Through a series of acquaintances, I was referred to 11 Dr. Christian Daughton, regarded by many as the U.S. 12 Environmental Protection Agency's foremost expert in this 13 area, the author of scores of environmental publications, 14 highly regarded by scientists and environmentalists. When I 15 contacted Dr. Daughton and related the Reflection Park 16 proposal to them to place a green cemetery in the Patuxent 17 watershed, he revealed to me that he had lived near the 18 mouth of the Patuxent where it enters the Chesapeake just 19 down a dirt road from Alan Shepard, the astronaut, when his 20 father worked at the Patuxent River Naval Air Station. And 21 so he is acquainted with this river and with the geography 22 of this area. 23 MR. SULLIVAN: I want to object -- 24 HEARING EXAMINER ROBESON-HANNAN: Just stop talking, 25 Mr. Putman. Yes, Mr. Sullivan?</p>

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15 (57 to 60)

<p>57</p> <p>1 MR. SULLIVAN: The testimony right now is out-of-court 2 statements told by someone else for the truth of the matters 3 it asserts and is hearsay. So we have to act on those 4 grounds. 5 HEARING EXAMINER ROBESON-HANNAN: Okay. 6 MR. KLEIN: And I will go further than that. Why are 7 we talking about somebody who is not even going to be an 8 expert to testify to us? I mean, he was going to tell us 9 that somebody said that this was a bad idea. 10 HEARING EXAMINER ROBESON-HANNAN: Okay. This is a 11 double edged -- this is a two toned objection. We have one 12 from Mr. Sullivan asked the hearsay, and we have one from 13 Mr. Klein as to relevance. 14 MR. KLEIN: Thank you. 15 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Brown, do 16 you want to respond? 17 MR. BROWN: First of all, this is simply introductory 18 material. I don't believe that Mr. Putman is going to 19 relate any statements that were made to him by this person 20 for the truth of their -- for the truth of the statements. 21 If he could just get on without these kind of interruptions, 22 we would get to this a whole lot faster. And you can decide 23 what weight to give to statements, because he's just explain 24 how we got where we are with the witnesses right now. 25 HEARING EXAMINER ROBESON-HANNAN: You know, I do see</p>	<p>59</p> <p>1 MR. PUTMAN: The case record. 2 HEARING EXAMINER ROBESON-HANNAN: Oh, in the first 3 hearing? 4 MR. PUTMAN: Yes, ma'am. 5 HEARING EXAMINER ROBESON-HANNAN: Okay. Just 6 clarifying. Go ahead. 7 MR. PUTMAN: Okay. This case has presented multiple 8 opportunities for what I refer to as misdirection, calling 9 to attention the issues that are not and should not be 10 dispositive in this case. Heard a little bit of that from 11 Haroon already this morning. Perhaps this is just 12 marketing. Regardless of the reasons, it's distracting from 13 the real issues of the case. 14 So I want to suggest some topics that are irrelevant to 15 the case and should be deleted from testimony. Number one, 16 other cemeteries in the Patuxent watershed. The WSSC 17 commentary to the DEP referenced existing cemeteries in the 18 Patuxent watershed tract in the, quote, historic layer. 19 That was in Mr. Ortiz's letter of August 30, 21, page 3. 20 Most of these are small family burials on farm fields often 21 dating from the 19th and early 20th centuries before the 22 invention of most chemotherapies and synthetic hormone 23 therapy. I searched, but did not find any commercial 24 cemetery or other cemetery expecting to bury bodies at 25 anywhere near the rate of 600 per acre. Nevertheless, I</p>
<p>58</p> <p>1 that hearsay is admissible if there is some reason -- unless 2 there is some reason to think it's unreliable. And we take 3 these kinds of statements from community associations many 4 times and individuals. But I will say, Mr. Putman, instead 5 of going through how that, these witnesses are going to 6 speak for themselves as to their credentials. And in an 7 effort to speed the hearing up, can we move on to what else 8 you were going to say? 9 MR. PUTMAN: Certainly. What I was going to say then, 10 is that Dr. Daughton felt unable to participate in this 11 hearing. But he referred me to Jim Mulowney as the single 12 best knowledgeable witness that he knew of in this area. 13 Based on Dr. Daughton's request, Mr. Mulowney has agreed to 14 testify and I believe will later today. He introduced me to 15 Dr. Teresa O'Keefe as an expert in hormone therapies among 16 other subjects. I don't know if you've had an opportunity 17 to review their resumes or their CVs, but I would -- 18 HEARING EXAMINER ROBESON-HANNAN: I have. Again, I'm 19 asking you, what is it that you want to say. 20 MR. PUTMAN: Okay. The last thing I want to say is 21 that all of our expert witnesses are unpaid volunteers. Now 22 there are a few issues from the previous case record that I 23 would like to address. 24 HEARING EXAMINER ROBESON-HANNAN: The previous -- what 25 record?</p>	<p>60</p> <p>1 don't think it would be possible for a decision in this case 2 to change history or to relocate existing burial places. So 3 this is just misdirection. 4 Alternate uses of this property. Mr. Von Guten 5 testified to his belief that building houses with septic 6 systems, and by the way, in RC zoning there would be a 7 maximum of eight lots allowed on a 40 acre site and thus 8 eight septic systems. But Mr. Von Guten thought that that 9 could cause much more -- much greater chemo input into the 10 aquifer than the chemo left in the, quote, somebody's body 11 who was interred. That was from the transcript, May of 12 30th. 13 While one may be persuaded by his belief concerning one 14 body, the proposal here is 600 per acre totaling 8000 or 15 more. So I find his comparison wildly non-comparable. But 16 this case is not about septic systems or housing. The decision 17 will probably not regulate housing or septic systems. So 18 it's irrelevant misdirection and should be ignored. 19 Already this morning we've heard some more about 20 traditional cemeteries. And the record includes multiple 21 references to coffins, cement vaults, preservatives, carbon 22 emissions, herbicides, pesticides, fertilizers, upright 23 tombstones, other aspects of traditional cemeteries. Much 24 of it is the marketing language of the national green 25 cemetery movement. While many of these statements may be</p>



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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 true, they are certainly misdirection and irrelevant since 2 there is no traditional cemetery as a party to this 3 conditional use 21-06. 4 And four, other watershed pollutants. We recognize the 5 existence of excretions from animals and fish residing in 6 the watershed, as well as the septic systems of existing 7 residents, leakages, fuel, oil, antifreeze from vehicles, 8 chemicals from road treatment, and miscellaneous trash in 9 the Patuxent watershed. These are unfortunate facts, some 10 of which PWPA has been defending against for decades. 11 Sadly, the hearing examiner in this case will probably 12 be unable to remedy them, and the mere existence of these 13 pollutions should caution us about allowing new sources of 14 pollution to enter this watershed. Why we should allow even 15 the possibility of additional, optional, and voluntary 16 pollution. 17 I would next like the state a bit about septic systems 18 and green cemeteries, which was widely discussed in the 19 original hearing. In responding to your questions to your 20 August 10, 2021 request to be the Department of 21 Environmental Protection, Mr. Ortiz refers to the Baltimore 22 County white paper from 2015 and suggests that, "in the 23 absence of specific design and siting criteria for 24 cemeteries, and makes sense to apply Maryland's requirements 25 for on-site sewage disposal systems,".</p>	<p style="text-align: right;">63</p> <p>1 "Septic tanks remove most separable and floatable 2 materials and function as an anaerobic bioreactor that 3 promotes partial digestion of retained organic matter." 4 That's from their on-site wastewater treatment systems 5 manual, page 1, paragraph 1. In Montgomery County, the 6 twice treated wastewater flows out of the second septic tank 7 compartment into a drain field composed of an underground 8 trench at least 40 to 100 feet or more long, generally lined 9 with a bed of gravel. 10 A perforated sewer pipe placed in the gravel fill the 11 trench is in overlaid with landscape fabric to deter 12 clogging and the trench is filled with soil. The 13 anaerobically treated effluent from the tank is then 14 distributed over the drain field, which had been approved 15 for its location over the water table and its percolation in 16 accordance with Montgomery County standards. Further 17 aerobic processing enters the that occurs in the trench 18 before the effluent enters the soil. 19 The EPA manual referenced previously says, "on-site 20 wastewater treatment systems have evolved from the pit 21 privies used widely throughout history to installations 22 capable of producing a disinfected effluent that is fit for 23 human consumption." That's their same systems manual, 24 Chapter 1, paragraph 1.1. 25 MR. SULLIVAN: I have an objection to again, the</p>
<p style="text-align: right;">62</p> <p>1 So he agrees that there is not a tested, objective, 2 scientific method to prove the environmental safety of green 3 burials and resource instead to a known system that he 4 admits, "is not the same process as decomposition of 5 bodies," but another quote, "in general, it is a similar 6 enough process to use as a benchmark." I must respectfully 7 disagree even with the notion that on-site sewage disposal 8 systems are similar. 9 In Montgomery County approved septic systems are 10 characterized by a process much different from green 11 burials. This household waste process by an on-site sewage 12 disposal system is normally more than 99 percent water 13 concerning -- containing only a small percentage of human 14 waste, urine and feces, with the overwhelming majority 15 consisting of water and soap, detergents from bathing, 16 dishwashing, laundering, handwashing, and similar household 17 uses of water. 18 So the waste entering a septic tank is already highly 19 diluted. When it enters the first compartment of the septic 20 tank, the solids generally sink to the bottom of the tank 21 where they are anaerobically processed. When the first 22 compartment is filled, the processed liquid overflows into 23 the second compartment where additional anaerobic treatment 24 occurs. The environmental protection website describes 25 septic tank treatment as follows.</p>	<p style="text-align: right;">64</p> <p>1 hearsay objection. I don't think that EPA manual is in the 2 record at all and is being offered for the truth of what it 3 states. 4 HEARING EXAMINER ROBESON-HANNAN: I'm going to let it 5 in. Keep going Mr. Putman. 6 MR. PUTMAN: In contrast, the decedent in the green 7 cemetery is placed in a shallow grave and covered with dirt. 8 The decomposing body releases necro-leachate, which is not 9 diluted by water by 99 percent, not captured in a septic- 10 like tank, not treated by anaerobic conception, not treated 11 by a 40 to 100 foot drain leads field. Indeed, there is no 12 treatment before it enters the ground. 13 In the Reflection Park proposal the drain leach field 14 may be as little as 4 to 6 vertical feet of soil, compared 15 to the long septic trench required in Montgomery County. If 16 the Department of Environmental Protection calls for up to 17 100 feet of horizontal passage through soil for preprocessed 18 septic output to be early bio neutralized, how are 4 to 6 19 vertical feet adequate for raw necro-leachate? 20 I understand the DEP attempted to compare the 21 incomparables. There is no existing, proven test of necro- 22 leachate toxicity. So they use what they know. But it's 23 the wrong standard for comparison. And more hearsay, the 24 EPA has not yet contended that in effluent from graves is 25 fit for human consumption. But I now know that this issue</p>

<p>65</p> <p>1 is mostly moot.</p> <p>2 Our expert witnesses will testify that the secondhand</p> <p>3 drugs will be excreted into sewers and septic systems by</p> <p>4 live patients and -- well, some will be excreted into graves</p> <p>5 by buried bodies. While both have the potential to pollute</p> <p>6 our groundwater and drinking water supply, much of the</p> <p>7 septic system waste will be captured by the sludge at the</p> <p>8 bottom of the septic tank. There is no equivalent/capture</p> <p>9 in the proposed cemetery.</p> <p>10 Though even without a cemetery in the drinking water</p> <p>11 shed, society has a problem. It's complex and not well</p> <p>12 understood, but it's probably the cause of an untold number</p> <p>13 of preventable tragedies. However, if we voluntarily allow a</p> <p>14 cemetery uphill from wells and the reservoir, we permit the</p> <p>15 direct, unfettered passage of dangerous secondhand</p> <p>16 chemotherapies, hormone therapies, and other dangerous</p> <p>17 materials to flow into water which can reach wells and the</p> <p>18 Rocky Gorge reservoir.</p> <p>19 Although I searched diligently, I could find no example</p> <p>20 of a large commercial cemetery located in a drinking water</p> <p>21 watershed anywhere else in the United States. Although a</p> <p>22 few local approval authorities likely understand the complex</p> <p>23 chemistry, almost all seem to know instinctively that</p> <p>24 cemetery should not drain directly into wells and</p> <p>25 reservoirs.</p>	<p>67</p> <p>1 acre and several hundred per year proposed by Reflection</p> <p>2 Park.</p> <p>3 Mr. Kopenic noted that the County Council bill, 1515</p> <p>4 specified, "requirements for ensuring that the location of</p> <p>5 any approved conservation burial grounds was protective of</p> <p>6 public health and the environment." These requirements</p> <p>7 included a stipulation that no special exception approval</p> <p>8 may be granted until such time as regulations pertaining to</p> <p>9 conservation burial grounds are promulgated by Baltimore</p> <p>10 County Department of Environmental Protection and</p> <p>11 Sustainability.</p> <p>12 Those new rules were promulgated last fall by Baltimore</p> <p>13 County and will be covered in a little more detail by Mr.</p> <p>14 Chamberlin. But even under the old rules, application of</p> <p>15 the Resh Mill case to Reflection Park proposal is seriously</p> <p>16 misguided. In Baltimore County's citizen's guide to zoning</p> <p>17 in Baltimore County document entitled, Resource Conservation</p> <p>18 Zones Comparison Chart, several zones apply to this</p> <p>19 discussion, particularly their RC4 zone entitled watershed</p> <p>20 protection, that zone surrounds their three reservoirs and</p> <p>21 no cemeteries are permitted there now or at the time of Mr.</p> <p>22 Kopenic's white paper. I'm both astonished and dismayed</p> <p>23 that any serious environmentalist could find the Resh Mill</p> <p>24 proposal to be comparable to, or a model for approval of</p> <p>25 Reflection Part. And incidentally, Resh Mill was never</p>
<p>66</p> <p>1 I would like to spend a moment with the Baltimore</p> <p>2 County Maryland treatment. A white paper written by Kevin</p> <p>3 Kopenic in 2015 addresses zoning and other issues related to</p> <p>4 the Resh Mill reserve, a, "conservation burial ground</p> <p>5 proposed it to be placed in Baltimore County." And Mr.</p> <p>6 Klein entered the white paper into the record as part of his</p> <p>7 August 20, 2021 letter to Mr. Shofar of Montgomery County</p> <p>8 DEP.</p> <p>9 And it was widely quoted in the DEP response to Ms.</p> <p>10 Hannan's questions. Mr. Kopenic acknowledged that, "there</p> <p>11 is a relative scarcity of scientific research concerning the</p> <p>12 potential impact of cemeteries on humans' health and the</p> <p>13 environment, page 2, paragraph 2." And continued on page 5,</p> <p>14 paragraph 5, that, "it is surprising to the author (Kopenic)</p> <p>15 that there is relatively little scientific study or</p> <p>16 regulations regarding the potential human health or</p> <p>17 environmental impacts from cemeteries."</p> <p>18 Nevertheless, he seemed to support the Baltimore County</p> <p>19 Resh Mill proposal despite noticing the lack of</p> <p>20 scientifically proven standards, instead proposing his own</p> <p>21 set of standards that he apparently believed could</p> <p>22 substitute for lack of scientific standards. Resh Mill</p> <p>23 proposed the burials at the rate of less than 100 per acre,</p> <p>24 and 10 to 20 burials per year, per the white paper, page 6,</p> <p>25 footnote 2. Substantially less than the rate of 600 per</p>	<p>68</p> <p>1 approved.</p> <p>2 When Mr. Chamberlin describes a new Baltimore County</p> <p>3 law, it will be apparent that they know much that Montgomery</p> <p>4 County needs to understand before we commit an unnecessary,</p> <p>5 but irreversible disaster.</p> <p>6 Finally, I'm compelled to mention again the zoning code</p> <p>7 section that seems to preclude this project. Section</p> <p>8 3.5.4.3.2.a states, and I quote, "the proposed location of</p> <p>9 the cemetery must be compatible with adjacent land uses and</p> <p>10 will not adversely affect the public health, safety, and</p> <p>11 welfare of the inhabitants of the area." It specifically</p> <p>12 does not say, will only adverse public health a little bit.</p> <p>13 It demands, will not affect. A standard that this project</p> <p>14 cannot meet. I thank you for your kind attention and I will</p> <p>15 be happy to tackle any questions.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, do you</p> <p>17 have any direct questions on direct? I see Mr. Klein's hand</p> <p>18 up.</p> <p>19 MR. BROWN: Mr. --</p> <p>20 HEARING EXAMINER ROBESON-HANNAN: Just a second, Mr.</p> <p>21 Brown. Mr. Klein, did you want to say something?</p> <p>22 MR. KLEIN: No, I had anticipated that Mr. Putman --</p> <p>23 I'll wait until Mr. Brown's finished.</p> <p>24 HEARING EXAMINER ROBESON-HANNAN: Okay. Go ahead, Mr.</p> <p>25 Brown.</p>

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18 (69 to 72)

<p>69</p> <p>1 MR. BROWN: Mr. Putman, did you review the testimony of 2 Dr. Aldada? 3 MR. PUTMAN: Oh, yes I did. 4 MR. BROWN: Were you planning on discussing that? Or 5 was Mr. Chamberlin going to discuss that? 6 MR. PUTMAN: I'll be happy to -- I'll be happy to 7 address anything there. I disagree with the conclusions 8 that Dr. Aldada seems to draw. I -- we have a lot of 9 questions, appropriate, I think for your cross-examination. 10 But I might say off the top of my head that I greatly 11 respect to Dr. Aldada and his academic credentials. 12 At the outset of this project at a community meeting in 13 December, I think of 2020, he posed and then answered a 14 question that went something like this. Is there a risk to 15 ground water from putting bodies directly in the ground. 16 His response to that was something like, there is no 17 evidence that placing bodies directly in the ground pollutes 18 the groundwater. I couldn't believe that conclusion. 19 That's what drove me to do some research. And in just hours 20 before the hearing -- and I found lots of examples of the 21 literature where placing bodies in the ground does produce 22 necro-leachate. That is a risk all over the world. 23 And we then went on a journey where Dr. Aldada 24 addressed many of these items. But he often hedged his 25 conclusions a bit by seldom stating in the record, that I</p>	<p>71</p> <p>1 (A recess was taken) 2 MR. KLEIN: We will begin with some of the technical 3 questions from Mr. Sullivan. 4 HEARING EXAMINER ROBESON-HANNAN: Okay. 5 MR. SULLIVAN: Mr. Putman, so you would -- I think 6 there are actually a few things that we would agree on here. 7 I mean, you would agree with me, I believe, that the proper 8 scope of this hearing should be an assessment of the impacts 9 of the proposed use on this particular piece of land, 10 correct? And not any other piece of land. 11 MR. PUTMAN: Yes. 12 MR. SULLIVAN: And it's not -- really, we can't really 13 address these issues in the abstract. We really need to 14 apply them to this piece of land and what's going on here, 15 correct? 16 MR. PUTMAN: That's correct. 17 MR. SULLIVAN: So any testimony that doesn't get to 18 this piece of land, and this is what I think I heard you 19 saying, should be -- is irrelevant. If we're talking about 20 other places -- if it doesn't get to what's going on here, 21 that wouldn't be relevant to the assessment of whether there 22 could be water quality impacts to the drinking water; is 23 that right? 24 MR. PUTMAN: Let me say this about that. This piece of 25 land has about a 15 or 16 percent slope. It is uphill, at a</p>
<p>70</p> <p>1 can find, affirmative statements. He hedged his answers 2 with, we believe, or it is our intention, or we are 3 confident. Those kinds of things led me to the conclusion 4 that perhaps, after educating himself some more on this 5 project, perhaps he may even himself have some doubts. 6 And I'm not going to ask him that directly, but it's a 7 question in my mind. But we've -- I guess we've given a few 8 of those examples, a few. And perhaps you may address those 9 to him at the appropriate time. I think he just didn't 10 think about this at the outset of this project. And when it 11 became apparent to him that there was some risk he hadn't 12 considered, that produced some concern, I think, that you 13 can find if you read his testimony at the hearing. 14 MR. BROWN: Thank you, Mr. Putman. I have no further 15 questions. 16 HEARING EXAMINER ROBESON-HANNAN: Mr. Klein? 17 MR. KLEIN: Could we go off-line? 18 HEARING EXAMINER ROBESON-HANNAN: Or Mr. Sullivan? 19 MR. KLEIN: Could we go off-line for a second or so we 20 have an internal conversation about whether this is timely 21 to cross-examine Mr. Putman and who's going to do it? We 22 just have a couple of minutes off-line, please? 23 HEARING EXAMINER ROBESON-HANNAN: Sure. So let's say 24 five. 25 MR. SULLIVAN: Thank you.</p>	<p>72</p> <p>1 substantially higher elevation than the reservoir, and of 2 the 87 wells downhill from it. So the fact of gravity has 3 to be considered, because of where this land is, it's 4 configuration, and its location. I'm not sure how Haroon 5 did his earlier measurement, but our measurement is that 6 it's just slightly over a mile from the Rocky Gorge 7 reservoir and only -- and a much shorter distance than that 8 to the wells that are downhill. So it's location, its 9 structure, its tilt, are all factors in this. 10 MR. SULLIVAN: Right. So if you don't consider those, 11 you can't really make the assessment of whether this could 12 be an impact; isn't that right? 13 MR. PUTMAN: Absolutely. 14 MR. SULLIVAN: Right, of course. And so that just 15 wouldn't be relevant. And I think I heard you say, and I 16 think we agree here too that dilution is really important to 17 assessing whether a given discharge will have an impact on 18 the watershed; isn't that right? And I believe you brought 19 up the extreme dilution that happens in the septic systems. 20 So dilution is really important. 21 MR. PUTMAN: So what is really important in the septic 22 systems? 23 MR. SULLIVAN: Dilution. I'm sorry; dilution. You 24 said dilution is really important to making a 25 determination -- you were contrasting and you said that</p>

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19 (73 to 76)

<p>73</p> <p>1 there is a lot of dilution in a septic system and so that's 2 very important to understand that if you're going to assess 3 the impact to a watershed from the discharge. 4 MR. PUTMAN: I believe one of our expert witnesses will 5 take the position that -- 6 MR. SULLIVAN: Well, I will get to them. I will get to 7 those in a moment. I'm just trying to understand your 8 testimony. 9 MR. PUTMAN: I understand my testimony. I do not 10 believe that dilution is the solution to pollution. 11 MR. SULLIVAN: That wasn't the question. The question 12 is, I believe you said -- you were talking about -- we will 13 get back to that. Are you -- do you have a -- are you a 14 hydrogeologist? 15 MR. PUTMAN: No. 16 MR. SULLIVAN: And do you have any experience with fate 17 and transport of contaminants? Any professional or 18 educational experience? 19 MR. PUTMAN: I'm having trouble understanding you. 20 Could you speak a little softer? Or a little more slowly? 21 MR. SULLIVAN: Yes, my apologies. 22 MR. PUTMAN: I'm an old man with hearing aids. And 23 it -- 24 MR. SULLIVAN: You won't -- you will not be surprised 25 that you are the first person to ask me to slow down. So I</p>	<p>75</p> <p>1 cemeteries today? 2 MR. PUTMAN: I am. I believe I just quoted it, the 3 zoning code, to the end of my statement. 4 MR. KLEIN: Okay. So could you remind me of what that 5 was then? 6 MR. PUTMAN: Certainly. For cemetery locations, the 7 zoning code says the proposed location must be compatible 8 with adjacent land uses and will not adversely affect the 9 public health, safety, and welfare of the inhabitants of the 10 area, end quote. 11 MR. KLEIN: And you were reading from section 59-7.6 -- 12 section 6 of the Montgomery County code, correct? 13 MR. PUTMAN: Correct. 14 MR. KLEIN: So my question was, are you familiar with 15 the state of the law dealing with cemeteries in Baltimore 16 County at the present time. 17 MR. PUTMAN: I am familiar with that. I've asked Mr. 18 Chamberlin to cover that, and he will. 19 MR. KLEIN: Well, are you familiar enough to answer 20 questions? I would like to ask you about it. 21 MR. PUTMAN: Try me. 22 MR. KLEIN: All right. And are you familiar with the 23 adoption of bill number 76-21, which in July 6 of 2021 24 amended the laws dealing with cemeteries in Baltimore 25 County?</p>
<p>74</p> <p>1 will do my best. My apologies. Like I said, I do not -- or 2 I actually don't know this. I asked you if you are a 3 hydrogeologist or have hydrogeology experience. 4 MR. PUTMAN: I answered that, that I am not. 5 MR. SULLIVAN: Okay. And then my next question said, 6 do you have experience or training in the area of fate and 7 transport of contaminants. 8 MR. PUTMAN: No more than that of a layman. 9 MR. SULLIVAN: Okay. So it would be important in 10 assessing this issue to have -- to get a detailed 11 hydrogeologic understanding? It would be important hear 12 from experts on this issue, would it not? 13 MR. PUTMAN: Yes. 14 MR. SULLIVAN: Do you -- 15 MR. PUTMAN: You will hear from experts on this. 16 MR. SULLIVAN: On hydrogeology and fate and transport, 17 correct? 18 MR. PUTMAN: On dilution. 19 MR. SULLIVAN: Okay. I believe that that's all that I 20 have. And I believe Mr. Klein has some follow-up question 21 on some separate topics. 22 MR. KLEIN: While Mr. Putman, you spent a lot of time 23 talking about the Resh case in Baltimore County and how it 24 had relevance to Montgomery County. Are you familiar with 25 the state of the law in Montgomery County dealing with</p>	<p>76</p> <p>1 MR. PUTMAN: Yes, sir. 2 MR. KLEIN: Okay. What were the changes that were 3 wrought by that bill? 4 MR. PUTMAN: I would rather not try to do that from 5 memory, Mr. Klein. Mr. Chamberlin has that in his testimony 6 and will give it with absolute certainty. I would prefer 7 not to rely my memory since that wasn't a piece of my 8 testimony. 9 MR. KLEIN: Okay. Well, let me try something that you 10 might feel a bit more comfortable. Are you aware of any 11 applications for approvals of cemeteries in Baltimore County 12 since the adoption of that law that would have allowed for 13 up to 600 burials per acre in the cemetery area? 14 MR. PUTMAN: I believe so, yes. 15 MR. KLEIN: So that is the state of the law in 16 Baltimore County today? 17 MR. PUTMAN: That is -- I believe that is correct, but 18 my understanding is it is very restricted as to the zoning 19 in which that can occur, and precludes any cemetery for any 20 reason in the RC4 watershed protection zone which is the 21 zoning that surrounds all three of Baltimore County's 22 reservoirs. 23 MR. KLEIN: And what's the relevance of that fact to 24 the present application? 25 UNKNOWN SPEAKER: It's land around the watershed.</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 MR. PUTMAN: Well, it's land around the watersheds 2 that -- 3 (Crosstalk) 4 MR. KLEIN: Mr. Putman, would you answer my questions 5 instead of having Mr. Chamberlin whisper in your ear, 6 please? 7 MR. PUTMAN: I would answer it this way, Mr. Klein. 8 The land around -- the land surrounding the three Baltimore 9 County watersheds is zoned RC4, watershed protection, and no 10 cemetery is allowed, nor was one of allowed at the time of 11 Mr. Kopenic's white paper in that zone. 12 RC6 and RC8 zones have been -- have allowed, as a 13 result of the 2021 legislation in Baltimore County, they do 14 allow some cemeteries in the RC6 and RC8 zones, which are 15 away from the reservoir watersheds. And that is what we are 16 talking about here, Mr. Klein. 17 MR. KLEIN: Well, the -- are you able to sort of 18 summarize what you understand the differences are between 19 the zone in which the subject property is located and the 20 zones you are referring to in Baltimore County? What is the 21 relationship or the similarity of the two? 22 MR. PUTMAN: If Montgomery County had a similar zoning 23 code to Baltimore County, all of this land in the Rocky 24 Gorge reservoir, the Patuxent watershed, would be zoned RC4 25 watershed protection and no cemetery would be permitted.</p>	<p style="text-align: right;">79</p> <p>1 MR. SULLIVAN: Is there -- is it the watershed or 2 just -- okay. So I thought I heard you say before that's 3 what I thought was you were opposed to it being in the 4 watershed. My question is, is there any location in the 5 State of Maryland that is not in the watershed. 6 MR. PUTMAN: Every piece of land on the earth is in a 7 watershed somewhere, Mr. Sullivan. But only a relevant few 8 of them are watersheds that have been designated as 9 protected for the purpose of drinking water. So that's what 10 we're talking about here. 11 MR. SULLIVAN: I have no further questions. 12 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, redirect? 13 MR. BROWN: I have no redirect. 14 HEARING EXAMINER ROBESON-HANNAN: Mr. Putman, thank you 15 for your testimony again. Mr. Brown, do you want to call 16 your next witness, please? 17 MR. BROWN: Yes, Donald Chamberlin is next. 18 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. 19 Chamberlin? 20 MR. CHAMBERLIN: Yes, ma'am. 21 HEARING EXAMINER ROBESON-HANNAN: Can you raise your 22 right hand, please? 23 MR. CHAMBERLIN: Done. 24 HEARING EXAMINER ROBESON-HANNAN: Do you solemnly 25 affirm under penalties of perjury that the statements you're</p>
<p style="text-align: right;">78</p> <p>1 MR. KLEIN: And how do you come to that conclusion? 2 What's the fact that that tells us that? 3 MR. PUTMAN: Their RC4 zone watershed protection 4 precludes, does not allow cemeteries of any kind in that 5 zone. So Reflection Park would be in an RC4 zone if 6 Montgomery county had a zoning code equivalent to Baltimore 7 County's. It would be required to be in some other zone. 8 MR. KLINE: Are you -- 9 MR. PUTMAN: And that's the only thing that I'm arguing 10 for; somewhere else where it won't drain into the reservoir. 11 MR. KLEIN: Are you familiar with the Serenity Ridge 12 project cemetery in Baltimore County? 13 MR. PUTMAN: Serenity Ridge? I believe I've heard the 14 term, but I have not studied it. I think that Chamberlin 15 will speak to that one as well. 16 MR. KLEIN: I have no further questions of Mr. Putman. 17 Mr. Sullivan may have a follow-up though. 18 MR. SULLIVAN: I just have one question. And you had 19 said, I believe, if I understand, you would not be opposed 20 to this cemetery if it were not in the watershed, correct? 21 MR. PUTMAN: That's correct. I hold Haroon and Basil 22 in high regard for their stated efforts to provide a service 23 that is not generally available here. I think it's a 24 wonderful idea. And my only objection is that it's got to 25 be outside of the drinking water watershed. Simple.</p>	<p style="text-align: right;">80</p> <p>1 about to give are the truth, the whole truth, and nothing 2 but the truth? 3 MR. CHAMBERLIN: I do so affirm. 4 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, go ahead. 5 MR. BROWN: All right. Mr. Chamberlin, could you 6 describe your role in the Potomac [sic] Watershed Protective 7 Association? 8 MR. CHAMBERLIN: Yes, I have -- 9 HEARING EXAMINER ROBESON-HANNAN: Did he state his -- 10 I'm sorry, Mr. Chamberlin. Can you state your name, street 11 address, and email address for the record, please? 12 MR. CHAMBERLIN: Yes. So for the record, my name is 13 Donald Chamberlin. Last name is spelled; 14 C-H-A-M-B-E-R-L-I-N. and I reside at 4624 Dustin Road in 15 Burtonsville, Maryland 20866. My email is 16 DEChamb@Verizon.net. 17 HEARING EXAMINER ROBESON-HANNAN: Thank you. 18 MR. BROWN: Okay. Mr. Chamberlin, I would like you to 19 describe by telling the hearing examiner about your long 20 term roles in the Potomac [sic] Watershed Protective 21 Association. 22 MR. CHAMBERLIN: Okay. Minor correction. If the 23 Patuxent Watershed Protective Association. The Potomac is 24 that water on the other side of the county. 25 MR. BROWN: Oh, I forgot. Sorry. Thank you.</p>

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21 (81 to 84)

<p>81</p> <p>1 MR. CHAMBERLIN: Yeah, I know. You live closer to that 2 than here. So ever since shortly after the founding of 3 the -- and I'll use the acronym PWPA to refer to the 4 organization. So until shortly after the founding of that, 5 I was asked to become the spokesperson for that 6 organization, because we -- at that time have begun a 7 series -- what turned out to be a long series of people 8 being upset with development proposals that are being 9 proposed in the Patuxent watershed, which more technically 10 speaking is called the Lower Patuxent River watershed within 11 Montgomery County.</p> <p>12 And that is in the northeast corner of Montgomery 13 county. It borders up against Howard County to the north 14 and Prince Georges County to the east. So I have ever since 15 that first request back in the late '90s, I have been, by 16 default I guess, the designated spokesperson for the 17 organization. I'm not an officer of the corporation, and 18 never have been.</p> <p>19 MR. BROWN: What training, knowledge, or experience led 20 the organization to ask you to become their spokesman?</p> <p>21 MR. CHAMBERLIN: I'm loquacious. I have -- I've spoken 22 many times in relation to different projects in my work. 23 Just my role in the neighborhood and in our neighborhood, 24 the civic organization of which I was also a member. And so 25 they had observed me on some occasions and said, would you</p>	<p>83</p> <p>1 So in order to discuss the matter, I had to research 2 what was the typical composition of sewage. And as it turns 3 out, in the particular case, there is a large degree of 4 commonality because, to be somewhat indelicate, sewage is 5 what comes out of the digestive tract and it is therefore 6 the same thing that goes into the ground if a person is 7 buried rapidly without further processing.</p> <p>8 MR. BROWN: So how many years did you -- how many years 9 have you been involved in this kind of advocacy?</p> <p>10 MR. CHAMBERLIN: With PWPA, it's probably been 20 plus 11 years.</p> <p>12 MR. BROWN: Now you were not directly involved like Mr. 13 Putman in the hearing last summer in this case; is that 14 right?</p> <p>15 MR. CHAMBERLIN: Correct, I was not.</p> <p>16 MR. BROWN: Did you know about the hearing as a 17 spokesman of the organization before it took place?</p> <p>18 MR. CHAMBERLIN: I heard about it from the same source 19 that Mr. Putman did, which was a news broadcast. I think 20 there was a channel 9 on the TV and WUSA9. And there was 21 one other public source and there was a local blog in the 22 County that said, hey, guess what the planning board has 23 just done. And we both looked at that and said, how can we 24 never heard about this. And fortunately, Mr. Putman was 25 able to contact the OZHA office and by the skin of his</p>
<p>82</p> <p>1 please be our spokesman. And I said, yes.</p> <p>2 MR. BROWN: All right. In that role, have you come to 3 any kind of detailed, personal knowledge about watershed 4 protection and the impacts on it?</p> <p>5 MR. CHAMBERLIN: I have indeed. Until this present 6 case, all of the cases that we have been involved in involve 7 some developer trying to come into the watershed and pick a 8 larger parcel of land which was attractive by virtue of its 9 being there, and either get zoning changed or get what in 10 those days were called special exceptions, to allow them to 11 put in some dense commercial development, which is against 12 the RC zoning, which applies to all of the land, with some 13 very minor exceptions along the periphery of roadways. It 14 would have violated the stipulations for RC zoning as to the 15 provision of water and sewer capabilities.</p> <p>16 And without exception, all of their proposals involved 17 pumping large amounts of sewage uphill to get it out of the 18 reservoir. Well, that was technically risky as is 19 demonstrated by the long history of what are called sanitary 20 sewer overflows related to WSSC in the Montgomery County 21 environment, and specifically relating to this part of the 22 county. And it showed that sewer breaks were a matter of 23 when and not a matter of if. And I will include sewer 24 breaks and overflows and all these other spillages for 25 whatsoever reason in that category.</p>	<p>84</p> <p>1 teeth, get allowed to testify.</p> <p>2 I was informed at the time that I would not be able to 3 speak on behalf of the organization because I was not a 4 lawyer. And I said, okay. And so the entire duty of 5 speaking on exceedingly short notice, like a matter of 6 hours, fell to Mr. Putman. But I did follow the proceedings 7 of the hearing and I have read the transcript of the 8 hearing. And --</p> <p>9 MR. BROWN: Did --</p> <p>10 MR. CHAMBERLIN: Anyway. Go ahead.</p> <p>11 MR. BROWN: Did you find out after the hearing that 12 there were sources of contact that the planning board had 13 somehow evaporated? And do you know you could do something 14 about that?</p> <p>15 MR. CHAMBERLIN: Yes. During the entire period prior 16 to the recent activities, I would say prior to the time that 17 there was a changeover from special exception to conditional 18 use processing in the planning board, which by the way, cut 19 DEP out of the approval process. Up until that time I had 20 always gotten some notice. Not necessarily official. 21 Sometimes just a phone call saying a particular case was 22 pending. And it since all of these prior cases dealt with 23 water and sewer category change requests, I would also 24 typically get a notice from the Department of Environmental 25 Protection, the water and sewer division, same category</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 change requests number X, Y, Z, as it pertains to the 2 Patuxent watershed is coming up. And I would then obtain 3 the information relative to that activity. 4 So for -- and so I kind of had two channels of 5 information prior to the changeover, after which, to use an 6 old military term, there was a period of radio silence from 7 the planning board, which subsequently I found out that we 8 were, for some reason, not on the new, official contact 9 list. When I found that out, I immediately got in touch 10 with a guy who was the head of that database and said, we 11 need to be back on this list. And he said, it will be done. 12 And it was done the next morning. And we have subsequently 13 received mail from the planning board testifying as to the 14 effectiveness of that reentry into their contact list. 15 MR. BROWN: All right. Let's turn to this particular 16 case. So you said that you have that you have reviewed the 17 transcript of the hearing; is that correct? 18 MR. CHAMBERLIN: Correct, I did. 19 MR. BROWN: And have you reviewed the hearing 20 examiner's report, Exhibit 87? 21 MR. CHAMBERLIN: I did. I'm sorry. Say the last part 22 again. 23 MR. BROWN: Exhibit 87 in the record. 24 MR. CHAMBERLIN: So this is Ms. Hannan's report? 25 MR. BROWN: The hearing examiner's report from last</p>	<p style="text-align: right;">87</p> <p>1 Guten from prior experience? 2 MR. CHAMBERLIN: I do not know him personally, I only 3 am acquainted with his testimony during the first hearing. 4 MR. BROWN: Do you have any particular comments on his 5 testimony as it relates to the issue that we are evaluating 6 today? 7 MR. CHAMBERLIN: I do, and if you will give me a 8 second, I will pull up my notes. I just had cataract 9 surgery and I am having trouble focusing on things like 10 screens and papers and stuff like that because I don't yet 11 have my new set of glasses. So let me extract my page of 12 notes here. 13 So in general, my impression is that, and you'll pardon 14 me if I look at these, rather than the screen. Is that Mr. 15 Von Guten appears to have been primarily as head of the 16 water and septic division of DEP. He appears to have been 17 an administrator, and not a scientist perforce. I found 18 that he tended to stretch the facts and use somewhat vague 19 comparisons in his analogies. He was unable to explain the 20 basis of the key water and sewer standards, which I will 21 refer to as the grave to water table distance that had been 22 implemented. 23 He did not present any evidence, any objective 24 scientific evidence, saying that they had studied the matter 25 and that this was their decision. I think he has -- well,</p>
<p style="text-align: right;">86</p> <p>1 time. 2 MR. CHAMBERLIN: Yeah, her report and decision. Yes, I 3 did look at that. 4 MR. BROWN: And have you focus yourself on pages 32 to 5 39 where she discusses the evidence in the record on the 6 issue of the impact of necro-leachate? 7 MR. CHAMBERLIN: I did. 8 MR. BROWN: All right. Rather than interrupt you with 9 question after question, I would just like you to describe 10 your evaluation of that portion of the report as it relates 11 to the transcript sites that are referenced. 12 MR. CHAMBERLIN: My general reaction to that section of 13 the report was that, firstly, that the charge to DEP was 14 somewhat narrowly constructed. Secondly, DEP and WSSC 15 relied heavily on the existing standard of 4 feet of soil 16 separation to address matters relating to the necro- 17 leachate. They simply said, well, this is a county standard 18 and that's what it is. 19 To my recollection, there was no discussion on their 20 part of any specifics related in any way to the necro- 21 leachate, per se. It was in effect, a nonissue for their 22 decision regarding how they would handle the more 23 conventional bio contaminants found in their input water 24 supplies. 25 MR. BROWN: So did you read, do you know Mr. Gene Von</p>	<p style="text-align: right;">88</p> <p>1 my impression was that he had no idea of the scope of what I 2 will call the residual chemotherapy problem, and that he did 3 not, by his statements that basically all the water was 4 going to percolate straight down to the deep aquifer without 5 even touching the fractured shale layer on the way through 6 belies -- or is evidence of his lack of knowledge about what 7 happens when water percolates down through different kinds 8 of layers on inclined surfaces to get, eventually, down to 9 the deep aquifer. 10 I had some other detailed questions, many of them that 11 I have for cross examination, but in general, in regard to 12 this portion, I would say that he described his experience 13 with water and septic permitting as basically administrative 14 in nature. He applied the existing County standards which 15 do not appear to be basic -- there was no evidence presented 16 that they were based on any objective scientific standards. 17 The soil tests that he describes for the purpose of 18 determining septic suitability and water tables, and then he 19 describes some additional testing requested by DPS, but he 20 didn't describe what that was. And the information wasn't 21 presented. Presumably, some of the grave sites were removed 22 because the test pit concerns and did reveal a high water 23 table in certain areas. 24 He appears to have a lack of concern for the bacterial 25 and viral components of the bodily remains because all he</p>

<p style="text-align: right;">89</p> <p>1 has to do is just say well, the County standards says 4 feet 2 of separation. And that was the only thing he was concerned 3 with. He compares toxins from conventional cemeteries to 4 the current case. That's irrelevant. We're not talking 5 about conventional cemeteries. We're talking about toxins 6 from the bodies interred in this particular cemetery. 7 He talks about a traditional cemetery generating 17,000 8 gallons of liquid as opposed to 20 from a green cemetery. 9 Well, there's no discussion of where these numbers came 10 from, and a conventional cemetery isn't going to generate 11 17,000 gallons of liquid unless they're watering stuff. And 12 all of that discussion is what I would characterize as 13 another arbitrary red herring. 14 I personally know of two cemeteries that do not do 15 watering, and one of them is in Bartonsville. Not in the 16 Patuxent watershed, just south of 198, and the other one is 17 in Hampton Roads in Virginia where my parents are buried. 18 So that's a limited sample of two, but not every 19 conventional cemetery uses pesticides, fertilizers, and does 20 extensive watering. 21 Mr. Von Guten compared the cemetery to a conventional 22 housing project on 2 acres. Well, that demonstrates that he 23 doesn't know what the zoning on this property is, watches 24 are seen as owning which is 5 acres plus average, per house 25 on a large property. RC zoning also means that the houses</p>	<p style="text-align: right;">91</p> <p>1 And he should also know from the Montgomery county 2 requirements that if you're going to put septic things in 3 there and presumably then you will have good bio 4 neutralization, that the water flow down through the soil 5 cannot be too fast. So I didn't see any evidence of that. 6 But he describes a soil consisting of a perfect loam 7 coming from the naturally weathered rock. Well, in theory 8 that exists, but in practice you don't get 10, 12 feet of 9 perfect loam. The water table report talks about many 10 variations in the soil test pits which can result in much 11 less than perfect bio neutralization And the absolute 12 crowning misstatement is -- and it's referred to on page 37 13 of 38 of the OZI report, is that all bacteria and viruses 14 will be rendered harmless in a few inches of soil. That is 15 just so wrong that I don't know where to start. 16 Even Dr. Aldada posited that it would take 6 feet of 17 vertical soil and 40 square feet of surface area for his 240 18 cubic feet of soil. So for Von Guten, who was the head of 19 well and septic division, and responsible for septic stuff 20 to make a statement like that tells me that he really isn't 21 familiar with the issue of bio neutralization in soil. And 22 I will leave it at that. That's probably more than you 23 wanted to know. 24 MR. BROWN: Mr. Chamberlin, did you review the 25 testimony of any of the other Applicant's witnesses that are</p>
<p style="text-align: right;">90</p> <p>1 are put up in clustered structure to significantly reduce 2 the impervious coverage of the area. My neighborhood is 3 that way, the neighborhood across -- up the street from me 4 is that way. Another neighborhood in the watershed abutting 5 the reservoir properties is that way. It's that way through 6 any new development that would occur, including on this 7 property. 8 And having been in the Montgomery county Department of 9 Environmental Protection, if he's going to comment on this 10 case, he should have known what the zoning was, and what it 11 meant. He talks about fine grained soils being good for bio 12 neutralization. In the abstract, that's clear that it is 13 true. However, the water table report which was part of the 14 Applicants package and noted many other characteristics of 15 the ground -- the green cemetery soils which could result in 16 a condition called macro porosity which means that the water 17 will flow through the ground and the soils and not reside 18 there for a long time under perfect soil conditions. 19 I would note that in the report that went along with 20 Dr. Dawson's report, I'll call it the boring report, where 21 they did borehole samples of the areas that are going to be 22 in roads. That report cites a very high percentage of sand 23 in the ground on this property, which surprised me a little 24 bit. I didn't think it would be that much, I knew there 25 would be some.</p>	<p style="text-align: right;">92</p> <p>1 quoted in the transcript that you have particular comments 2 to make on? 3 MR. CHAMBERLIN: I did. And in particular, yes, Mr. 4 Goodnough (phonetic). And give me a second to find that. 5 In regard to Mr. Goodnough, by the time I got through 6 reading his testimony and getting the studies that he had 7 referred to, in particular some Canadian studies and an 8 Australian study, I find that he had significant omissions 9 in the titles of the study. He gave the impression that the 10 studies all pertained to the kind of cemetery we are talking 11 about here. That is absolutely not the case. 12 And I have several pages of questions for him in the 13 cross-examination testimony. And in many of those cases he 14 testified that these studies showed that there was no impact 15 to the various cemeteries. I went back and I got the 16 studies and I looked at them, and first of all he truncated 17 the titles he said these were examinations of contaminants. 18 Well, the real title included the fact that it was based on 19 formaldehyde distribution and had nothing to do with bio 20 contaminants. 21 They were also looking for other contaminants 22 associated with conventional burials. So those are not 23 relevant to the present case. He also cited what he called 24 was a 1992 Australian -- or a WHO study, which was actually 25 1998. And he said -- in regard to the conclusions and I</p>



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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 have the words in my cross-examination candidate questions, 2 but the bottom line was he left off the last part of the 3 conclusion. And the conclusion said basically, well, they 4 didn't find any contaminates. 5 The part that he left out was, quote, except for 6 pseudomonas aeruginosa, and I'll spell that later if your 7 court reporter wants. But that is a major, major omission, 8 for whatever reason, by somebody who's in business is 9 designing cemeteries and who ought to be concerned with bio 10 contamination. Without going into the details, pseudomonas 11 aeruginosa is a pathogenic organism that is found in the 12 intestinal tract, and it's normally kept in check by your 13 immune system. But when you die it goes away. And 14 pseudomonas aeruginosa causes all kinds of gastrointestinal 15 problems if it gets to anyone else. 16 And it is characterized by its extreme ability to 17 survive in hostile environments, and by the fact that it 18 tends to be resistant to a lot of sanitation measures. So 19 if you'd like I can look up my details on that. 20 MR. BROWN: Well, that's -- 21 HEARING EXAMINER ROBESON-HANNAN: Mr. Chamberlin let me 22 just stop you. I apologize, Mr. Brown, I'm wondering is the 23 Applicant withdrawing its objection to Mr. Chamberlin's 24 testimony, or are you I want to clarify for the record; I 25 didn't think that was a continuing objection. So I'm just</p>	<p style="text-align: right;">95</p> <p>1 detail, an what would be the relevance to the Hearing 2 Examiner of knowing about how this is done in Baltimore 3 County? 4 MR. CHAMBERLIN: I did indeed study it in some detail, 5 had a number of conversations with people from Baltimore 6 County. And the relevance is this. That the size of the 7 land that they require for cemeteries, the areas that they 8 are permitted in, the conditions under which they are 9 permitted, what must be accomplished in order to even apply 10 for a cemetery permit under the new regulations, and so yes, 11 I study the issue and it is highly -- it is instructive for 12 Montgomery County to consider what they have done. So if 13 you would like, I can go into that a little bit. 14 MR. KLINE: Please do. 15 MR. CHAMBERLIN: Okay. So the regulation 76-21 was the 16 product of a long -- a year's long concern in Baltimore 17 County about the effect of green cemeteries. 18 HEARING EXAMINER ROBESON-HANNAN: Mr. Chamberlin, is 19 this a zoning code provision? 20 MR. CHAMBERLIN: It is. 21 HEARING EXAMINER ROBESON-HANNAN: It's a (inaudible) 22 regulation, you're talking about the zoning regulations? 23 MR. CHAMBERLIN: Yes, it refers to their zoning code 24 but it was passed by the County Council, I believe as a 25 regulation or a law. I have the document here, but I don't</p>
<p style="text-align: right;">94</p> <p>1 checking. 2 MR. SULLIVAN: We -- this is certainly falling over 3 into what we would consider, maybe, expert testimony. But 4 we were going to address that on cross. 5 HEARING EXAMINER ROBESON-HANNAN: Okay. That's fine. 6 Go ahead, Mr. -- 7 MR. SULLIVAN: But I'll just say I'm sorry. If there 8 is a clear line, such as we discussed earlier this morning 9 we may, in fact, objected that time. 10 HEARING EXAMINER ROBESON-HANNAN: Okay. Thank you. Go 11 ahead Mr. Brown. 12 MR. BROWN: I'm not asking you, Mr. Chamberlin, to 13 document all of your concerns about Mr. Goodnough's 14 testimony. But if you have given us the essence of that, my 15 question then is whether there are any other witnesses whose 16 testimony you find, and some respect, similarly faulty? 17 MR. CHAMBERLIN: Not with respect to these issues of -- 18 MR. KLINE: Okay. 19 MR. CHAMBERLIN: -- contamination. There are many 20 other things that I take exception to. 21 MR. KLINE: All right. Now you heard Mr. Putman talk 22 briefly about that regulation agreement burials in Baltimore 23 County, right? 24 MR. CHAMBERLIN: I did. 25 MR. KLINE: My question to you is did you study this in</p>	<p style="text-align: right;">96</p> <p>1 remember what the heading was. The number is 76-21. 2 MR. PUTMAN: And that was all cemeteries, not just 3 green ones. 4 MR. CHAMBERLIN: Yeah. 5 HEARING EXAMINER ROBESON-HANNAN: No -- Mr. Putman, and 6 Mr. Chamberlin, you can't talk to each other. 7 MR. CHAMBERLIN: I'm understanding that yes. I got 8 that message. 9 Well, it was referred to as a law in the Baltimore 10 County documentation that I received. And there was also a 11 related COBAR 01.03, chapter 4 which mandated that a 12 hydrogeologic survey of the property be conducted. And this 13 76 -- 21 talk about special exceptions in two of their 14 zoning areas. One of them was a -- at the RC6 zone and the 15 other one was the RC8 zone. 16 And I believe 76-21 says that you have to have a 17 special exception to be allowed to put a cemetery in these 18 zones, and it says that in the RC6 zone a natural burial 19 ground will be allowed only within an area of the 20 Patapsco/Granite area community plan. And that area, 21 roughly speaking, is west of Baltimore City, west of the 22 Beltway and north of Interstate 70. 23 Which is an area that is, I believe, at least 5 miles 24 or more away from the Liberty Reservoir and down gradient 25 and the groundwater and surface water flow from that area</p>

<p style="text-align: right;">97</p> <p>1 goes into the Patapsco and goes out into the bay. And it's 2 not a source of anyone's drinking water. At least, not that 3 I know about. 4 So it says that in that R6 -- C6 zone you can only have 5 something called a natural burial ground. And then, in the 6 RC8 zone which is -- it's another type of zone, it's called 7 the environmental enhancement zone, and the RC6 zone is 8 called the rural conservation and residential zone. So in 9 the RC8 zone, as I read the law, you can have a conservation 10 burial ground which requires a minimum of 60 acres and a 11 maximum grave density of 100 graves per acre. And it 12 requires a permanent conservation trust that the land must 13 be dedicated into that trust for its permanent maintenance. 14 Then, in the RC8 zone you could have both this 15 conservation burial ground and you can also have a natural 16 burial ground, which is what we are describing with respect 17 to the RPI green cemetery property here. However, for a 18 natural burial ground, the minimum acreage required is 150 19 acres. And the maximum overall grave density will be 500 20 per acre with an allowance for some portions to be bumped up 21 to 600 per acre in the event some of the other lands are 22 unsuitable for burial. 23 And both of these types of burial grounds require that 24 a hydrogeologic study with about a dozen specific extensive 25 requirements, including reference to the underground water</p>	<p style="text-align: right;">99</p> <p>1 that either. But it's substantially lower than the areas of 2 the old farm, the open field areas which would use what I 3 call the, stacked cordwood arrangement of rectangles, one 4 after the other. 5 And they, of course, abided by all of the setback 6 regulations and so forth stipulated in the COBAR 01.03, 7 chapter 4. So what's the lesson from that? The lesson from 8 that and the applicability to RPI's proposed green cemetery 9 in Montgomery County is that number one, Montgomery County 10 should be doing hydrogeologic studies which have not been 11 done. And I will make it a point to say that mere 12 simulations do not constitute an in situ detailed 13 hydrogeologic study based on actual examination of the 14 soils. And number two, they require -- Baltimore County 15 regulations require more land if it's going to be a 16 conservation cemetery, conservation burial ground. And 17 significantly more land if it's going to be just a natural 18 burial cemetery. And the reason for all that -- 19 MR. SULLIVAN: If I can state an objection quickly 20 here. I do want to state an objection with respect to the 21 testimony about the need for in situ hydrogeologic studies. 22 That is -- to me, that goes into expert testimony and so we 23 would object to it being offered. 24 MR. CHAMBERLIN: Okay. 25 MR. SULLIVAN: Because he doesn't have any background.</p>
<p style="text-align: right;">98</p> <p>1 flows, be performed. So I believe Mr. Klein earlier asked 2 me, or asked Mr. Putnam if he was familiar with the Serenity 3 Ridge project. I am. I'm not aware of its current status, 4 but I do know that they did, indeed, apply for a cemetery in 5 there on 177 acres, of which in the end, only approximately 6 41 were deemed suitable for burial areas for a variety of 7 reasons having to do with topography and forest set-asides 8 and paths along streams and so forth and so on. 9 And within that 41 acres I had the impression it was 10 roughly divided but that may not be exactly right. Between 11 the forested areas and cleared farm areas because there used 12 to be a farm in that area. And the family that owns the 13 property inherited that property. And in the plan that I 14 saw with respect to Serenity Ridge showed that in the 15 forested areas they were proposing to use what I will call 16 is a radial fan circled arrangement of the graves 17 interspersed throughout the forest so as to absolutely 18 minimize the removal or the damage to any of the trees in 19 their forested areas. 20 They did not go into replacement of any that might have 21 to be removed or damaged. But their objective was to 22 absolutely minimize it. And in accordance with that, I 23 believe that the average density of graves in the forested 24 areas was going to be something under 175, but I haven't 25 looked at that paper in a long time, so don't hold me to</p>	<p style="text-align: right;">100</p> <p>1 MR. CHAMBERLIN: If I remove the word Institute and 2 simply point out that 76-21 law requires a hydrogeologic 3 study, and it uses the word study, and not simulation. A 4 study is required in all these cases. That is in the text 5 of the law. 6 MR. SULLIVAN: And the law would -- right. So if the 7 law -- if your testimony is that the law speaks for itself 8 and Mr. Chamberlin is just stating that is no objection 9 there. 10 HEARING EXAMINER ROBESON-HANNAN: Very well. 11 MR. CHAMBERLIN: And that's pretty much the end of what 12 I was going to say about Baltimore County's regulation and 13 its applicability to the green cemetery. There's a lesson 14 to be learned. 15 MR. BROWN: You're not saying, Mr. Chamberlin, that 16 Montgomery County is obliged to follow Baltimore County 17 regulations, are you? 18 MR. CHAMBERLIN: I am absolutely not saying that, 19 however much I might wish that they would consider that in 20 any further deliberations. 21 MR. BROWN: Is there any further topics that you wanted 22 to provide information on to the hearing examiner that -- 23 other than what we've covered? 24 MR. CHAMBERLIN: Yes. If you will give me just a 25 second, please.</p>

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<p>101</p> <p>1 Let's say, I sort of covered the history, and I</p> <p>2 mentioned, or perhaps I had gotten to mentioning that in the</p> <p>3 course of my investigations it was necessary to read a lot</p> <p>4 of studies. And while I do not, in any way, claim to be an</p> <p>5 expert on any of the subjects of any of the studies, I am</p> <p>6 quite capable of reading what the study is about and reading</p> <p>7 what the study says in its conclusions, and reporting those</p> <p>8 conclusions.</p> <p>9 MR. SULLIVAN: And I'm going to object to the offering</p> <p>10 of this testimony. This is expert material that is subject</p> <p>11 to the rules that apply to experts in this case. There's</p> <p>12 been no qualification of Mr. Chamberlin as an expert, and</p> <p>13 there's been no submission of the summary of his testimony</p> <p>14 consistent with the March 2nd order.</p> <p>15 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown?</p> <p>16 MR. BROWN: He is not testifying as an expert. He is</p> <p>17 not offering opinions. He is testifying as to the facts of</p> <p>18 his investigation. Just the same way an investigative</p> <p>19 reporter who is not qualified in the expertise of the</p> <p>20 particular industry that she is investigating and report on</p> <p>21 the discrepancies that she finds.</p> <p>22 MR. SULLIVAN: I'm sorry. I don't know --</p> <p>23 HEARING EXAMINER ROBESON-HANNAN: I think him merely</p> <p>24 summarizing other conclusions. Whether they're right or</p> <p>25 wrong, there will be a rebuttal, or you will have the</p>	<p>103</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: All right. And</p> <p>2 you've already testified to this. Is this something</p> <p>3 different?</p> <p>4 MR. CHAMBERLIN: Well, this will get to something</p> <p>5 different. Because the second part of that is -- this</p> <p>6 cemetery deals with dead bodies. So I called up the chief</p> <p>7 medical examiner for the State of Maryland and I said, what</p> <p>8 can you tell me about dead bodies.</p> <p>9 MR. SULLIVAN: Objection. Hearsay.</p> <p>10 HEARING EXAMINER ROBESON-HANNAN: Okay.</p> <p>11 MR. CHAMBERLIN: I'm not testifying as to what he said.</p> <p>12 I am simply relating a course of action.</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Okay. But is your</p> <p>14 testimony going to -- okay. I'm --</p> <p>15 MR. SULLIVAN: Can I make one more point, please? I'm</p> <p>16 sorry.</p> <p>17 HEARING EXAMINER ROBESON-HANNAN: Yes.</p> <p>18 MR. SULLIVAN: I'm sorry to interrupt. The point is</p> <p>19 just you asked him what these were. We got a spreadsheet</p> <p>20 that -- it's not -- it's a spreadsheet that lists 89</p> <p>21 different studies and it doesn't include the studies</p> <p>22 necessarily. It includes conclusions about these studies</p> <p>23 and percentages and lots of detailed remarks that --</p> <p>24 MR. CHAMBERLIN: If I may address --</p> <p>25 MR. SULLIVAN: -- this witness is a fact witness and</p>
<p>102</p> <p>1 opportunity of -- but I'm going to let him go ahead because</p> <p>2 he is not asserting his own opinion. He's saying what</p> <p>3 others have opined to.</p> <p>4 MR. SULLIVAN: And then I'm going to object on hearsay</p> <p>5 grounds. There's nothing that shows whether any of these</p> <p>6 studies -- I'm assuming they're the ones that have been</p> <p>7 forwarded to us in a list. There's nothing at all</p> <p>8 suggesting that these are reliable or relied upon by anyone.</p> <p>9 We just don't know. We have no basis, and without an expert</p> <p>10 to be able to make that determination it's hard to see how</p> <p>11 this is even relevant.</p> <p>12 HEARING EXAMINER ROBESON-HANNAN: Mr. Putnam [sic],</p> <p>13 what studies are you referring to? Are they the ones in the</p> <p>14 record from before? Or are these other studies?</p> <p>15 MR. CHAMBERLIN: Assuming, Ms. Hannan assuming that</p> <p>16 you're actually talking to me, but that question.</p> <p>17 HEARING EXAMINER ROBESON-HANNAN: I am. Oh, I'm sorry.</p> <p>18 MR. CHAMBERLIN: Yeah. I forwarded a list of studies</p> <p>19 and I forgot the exact title, but it was like a PWPA list of</p> <p>20 studies. And all I wanted to do was demonstrate the fact</p> <p>21 that I went back and I looked up studies relevant to the</p> <p>22 topics raised by the Applicants expert witnesses. And</p> <p>23 pardon me, this was to see if the material in them and</p> <p>24 the -- as expressed in the conclusions of those studies</p> <p>25 supported the contentions that were being made.</p>	<p>104</p> <p>1 don't take this the wrong way, Mr. Chamberlin, to these</p> <p>2 expert issues has not been established and is when the</p> <p>3 expert testimony --</p> <p>4 HEARING EXAMINER ROBESON-HANNAN: And --</p> <p>5 MR. SULLIVAN: -- that was required to be submitted some</p> <p>6 time ago.</p> <p>7 MR. CHAMBERLIN: I will answer that question directly,</p> <p>8 Ms. Hannan.</p> <p>9 MR. SULLIVAN: Well, it's directed at the Hearing</p> <p>10 Examiner. I'm meeting she --</p> <p>11 (Crosstalk)</p> <p>12 HEARING EXAMINER ROBESON-HANNAN: Well, I -- just a</p> <p>13 second. I don't want to let you answer the question before</p> <p>14 I know, are these studies that you pulled?</p> <p>15 MR. CHAMBERLIN: Yes.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: Are these in the</p> <p>17 record? Are these in the record anywhere?</p> <p>18 MR. CHAMBERLIN: With one possible exception, no. And</p> <p>19 that is earlier in his testimony Dr. Aldada referred to a</p> <p>20 study which he had looked up in answering one of Mr.</p> <p>21 Putnam's early questions about cytotoxic chemicals, and he</p> <p>22 referred to a Dana Farber -- to getting data from Dana</p> <p>23 Farber.</p> <p>24 HEARING EXAMINER ROBESON-HANNAN: Yeah, I remember</p> <p>25 that.</p>

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<p>105</p> <p>1 MR. CHAMBERLIN: Okay. So --</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: Okay. But nothing</p> <p>3 else is in the record. I'm not going to let it in, Mr.</p> <p>4 Chamberlin because I don't even know the studies and I think</p> <p>5 it not that you're unreliable, but I think a non-expert</p> <p>6 characteristic, or a characterization of hearsay, which I</p> <p>7 think stretches it a little too far. So I'm not going to</p> <p>8 let it in.</p> <p>9 MR. CHAMBERLIN: I would say that I believe Mr.</p> <p>10 Sullivan misunderstands the spreadsheet. That spreadsheet</p> <p>11 simply deals with the fact that I went and I looked up these</p> <p>12 studies and I noted the conclusions of the studies when it's</p> <p>13 moot. And I will tell you why it's moot. Because at the</p> <p>14 end --</p> <p>15 MR. SULLIVAN: I'm going to object before we have more</p> <p>16 testimony on this. Because he is under --</p> <p>17 HEARING EXAMINER ROBESON-HANNAN: Well, a client --</p> <p>18 just a second. I don't under -- Mr. Brown, can you proffer</p> <p>19 what he's going to say because I don't want to rule and let</p> <p>20 the testimony in --</p> <p>21 MR. BROWN: We are -- I --</p> <p>22 HEARING EXAMINER ROBESON-HANNAN: (Inaudible).</p> <p>23 MR. BROWN: I believe he's going to say that he did not</p> <p>24 submit that list of studies to demonstrate any substantive</p> <p>25 point. He was just letting the other side know what he</p>	<p>107</p> <p>1 MR. CHAMBERLIN: No, I'm not.</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: So it's not hearsay.</p> <p>3 Let's, again, I'm going to let him continue on this line</p> <p>4 because it's in the record. And I don't know what he's</p> <p>5 going to say, and we can strike it from the record once he</p> <p>6 says it. Go ahead.</p> <p>7 MR. CHAMBERLIN: Okay. So in Dr. Dawson's report, she</p> <p>8 refers to Arpad Vass, who is one of the foremost forensic</p> <p>9 experts in the country. And I had occasion to talk to him.</p> <p>10 MR. SULLIVAN: Objection. Hearsay.</p> <p>11 HEARING EXAMINER ROBESON-HANNAN: I agree. Mr.</p> <p>12 Chamberlin, we can't go there. So do you have anything from</p> <p>13 your personal knowledge that you would like to say, other</p> <p>14 than siding, or critiquing, or referring to expert articles?</p> <p>15 MR. CHAMBERLIN: Okay. Yes I do.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: Okay.</p> <p>17 MR. CHAMBERLIN: Okay. And so this goes directly to</p> <p>18 some of the analyses that are performed. Dr. Dawson, if I</p> <p>19 may refer to her, and her studies posited that --</p> <p>20 MR. SULLIVAN: I'm going to object again because this</p> <p>21 witness has not been qualified as an expert to provide</p> <p>22 expert testimony in response to Dr. Dawson's report. And if</p> <p>23 he were he would have been required to provide that</p> <p>24 testimony by March 28th.</p> <p>25 MR. CHAMBERLIN: I'm not --</p>
<p>106</p> <p>1 looked at in order to evaluate the claims that were being</p> <p>2 made in the reports that were provided.</p> <p>3 MR. SULLIVAN: And -- I'm sorry. That analysis, that</p> <p>4 analysis would be expert analysis. The fact that I may</p> <p>5 have -- that I misunderstood it kind of proves the point. I</p> <p>6 mean, I'm not an expert so maybe I didn't misunderstand it.</p> <p>7 But we need an expert to understand this.</p> <p>8 HEARING EXAMINER ROBESON-HANNAN: I'm going to not let</p> <p>9 it end. Go to your next topic, Mr. Chamberlin.</p> <p>10 MR. CHAMBERLIN: Okay.</p> <p>11 HEARING EXAMINER ROBESON-HANNAN: You're -- the full</p> <p>12 name, I call you -- I called you Mr. Putman, when it comes</p> <p>13 up on the screen it has a little bit that says Mr. Putnam.</p> <p>14 MR. CHAMBERLIN: I'm sorry, yes because I'm using his</p> <p>15 computer.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: Yes.</p> <p>17 MR. CHAMBERLIN: Because it was easier to do so for a</p> <p>18 variety of reasons.</p> <p>19 So on another point, which may be in the same vein, Dr.</p> <p>20 Dawson referred, I think, 17 times by citation in her report</p> <p>21 to Arpad Vass and cited his studies.</p> <p>22 MR. SULLIVAN: I'm going to object again here, on this</p> <p>23 weighing in on expert testimony here. This witness has not</p> <p>24 been qualified as an expert and he is making -- offering</p> <p>25 testimony on substantive studies cited by another expert.</p>	<p>108</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: I --</p> <p>2 MR. SULLIVAN: Pursuant to the March 2nd order.</p> <p>3 HEARING EXAMINER ROBESON-HANNAN: I'm going to let</p> <p>4 him -- there are some things I have questions on Dr.</p> <p>5 Dawson's report. And I'm not an expert. And so I'm going</p> <p>6 to let him voice his concerns. They are not opinions, they</p> <p>7 can be concerns. So go ahead, Mr. Chamberlin.</p> <p>8 MR. CHAMBERLIN: In Dr. Dawson's report she uses as a</p> <p>9 model a 70 pound male -- a 70 kg male and her source for</p> <p>10 that is -- I'm drawing a blank. Anyway --</p> <p>11 MR. SULLIVAN: I understand you're going to allow this,</p> <p>12 Ms. Robeson-Hannan, but I'm still going to object.</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Mr. Sullivan, I don't</p> <p>14 want another objection. I want to hear what the witness is</p> <p>15 going to say. You are free to keep -- I'll note a</p> <p>16 continuing objection, but I can't get through this hearing.</p> <p>17 Now, Mr. Chamberlin, can you kindly just summarize without</p> <p>18 telling us what it is, what your point is going to be? Are</p> <p>19 you saying that --</p> <p>20 MR. CHAMBERLIN: Yes.</p> <p>21 HEARING EXAMINER ROBESON-HANNAN: That she decided, you</p> <p>22 believe she decided to an incorrect study?</p> <p>23 MR. CHAMBERLIN: No. I am simply saying that the</p> <p>24 example she picked, and that other equivalent examples by</p> <p>25 the Applicant used in the 70 pound male as the --</p>

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<p style="text-align: right;">109</p> <p>1 UNIDENTIFIED SPEAKER: 70 --</p> <p>2 MR. CHAMBERLIN: 70 kg male as the basis of the</p> <p>3 estimates as to the amount of necro-leachate that would come</p> <p>4 out. We are bigger now. I went to the CDC site. The</p> <p>5 average. This sir, is not (inaudible) opinion. I went to</p> <p>6 the CD side and --</p> <p>7 HEARING EXAMINER ROBESON-HANNAN: Now just a second.</p> <p>8 Mr. -- stop making faces. Now, we're all in this court, and</p> <p>9 I'm trying to get to the bottom of this. Okay? Now, what</p> <p>10 I'm hearing him saying is we are no longer 70 kg in weight.</p> <p>11 That's what I'm hearing him say. I don't see that as an</p> <p>12 expert opinion.</p> <p>13 Why do you see it as an expert opinion?</p> <p>14 MR. SULLIVAN: Excuse me. We don't know what the bases</p> <p>15 were for the conclusions in that report. There's nothing</p> <p>16 been put in the record as to that. There's nothing that's</p> <p>17 been put in the record as --</p> <p>18 HEARING EXAMINER ROBESON-HANNAN: He just said it was</p> <p>19 the FDA.</p> <p>20 MR. CHAMBERLIN: The CDC.</p> <p>21 HEARING EXAMINER ROBESON-HANNAN: The CDC.</p> <p>22 MR. SULLIVAN: We don't know what that -- we don't know</p> <p>23 what the context of what the CDC would have said this. This</p> <p>24 is -- but I -- my objection has been lodged and I --</p> <p>25 HEARING EXAMINER ROBESON-HANNAN: I'm going to let it</p>	<p style="text-align: right;">111</p> <p>1 name of the guy she cited. It was a study by Dent in 2002.</p> <p>2 It was his Ph.D. dissertation and he's an Australian</p> <p>3 scientist.</p> <p>4 HEARING EXAMINER ROBESON-HANNAN: Well, Mr. --</p> <p>5 MR. CHAMBERLIN: You used that, we're 20 years past it.</p> <p>6 HEARING EXAMINER ROBESON-HANNAN: I'm suggesting, Mr.</p> <p>7 Sullivan, because I can see his face getting --</p> <p>8 MR. SULLIVAN: I'm sorry. I was not trying to make a</p> <p>9 face, my apologies.</p> <p>10 HEARING EXAMINER ROBESON-HANNAN: I will say --</p> <p>11 UNKNOWN SPEAKER: The guys, they work on Saturdays</p> <p>12 because the --</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Wait, who's speaking?</p> <p>14 (Off the record discussion)</p> <p>15 HEARING EXAMINER ROBESON-HANNAN: Okay. I think that</p> <p>16 all he did is point out something in Dr. Dawson's report. I</p> <p>17 have some questions similar to that on Dr. Dawson's report.</p> <p>18 Primarily on all the reports, what I'm missing, and I guess</p> <p>19 I'll just tell you now, is where the reports specifically</p> <p>20 deals with cytotoxic, is that the word, for the -- keep a</p> <p>21 therapy pH. That's what I couldn't find and I may have</p> <p>22 gotten lost in the weeds or -- I'll admit I don't know all</p> <p>23 the language that was contained in the report. But that's</p> <p>24 what I was looking for.</p> <p>25 So let me go back to Mr. Chamberlin. Mr. Chamberlin,</p>
<p style="text-align: right;">110</p> <p>1 in. I'm going to let it in and give it the weight it</p> <p>2 deserves.</p> <p>3 MR. SULLIVAN: Fair enough.</p> <p>4 HEARING EXAMINER ROBESON-HANNAN: It may not be that</p> <p>5 much.</p> <p>6 Go ahead.</p> <p>7 MR. CHAMBERLIN: Okay. The bottom line is this.</p> <p>8 American males are no longer 70 kg males. Per CDC's</p> <p>9 statistics --</p> <p>10 HEARING EXAMINER ROBESON-HANNAN: That's according to</p> <p>11 the CDC?</p> <p>12 MR. CHAMBERLIN: According to the CDC, they have</p> <p>13 concluded that the average American male in the 2015 to 2016</p> <p>14 period was 199.8 pounds. Okay? And the average woman was</p> <p>15 170.8 pounds. And what that means is that the volume of</p> <p>16 microleachate produced by a larger body will be greater than</p> <p>17 that produced by a smaller body, and that's all that I'm</p> <p>18 saying. Okay? And I have calculated the amount -- how much</p> <p>19 greater that would be.</p> <p>20 HEARING EXAMINER ROBESON-HANNAN: Well, don't -- I</p> <p>21 don't think you need to go into that. You're just saying</p> <p>22 her report, in your -- that her report uses the wrong</p> <p>23 comparison for the amount of fluid?</p> <p>24 MR. CHAMBERLIN: I will say that the data she is using</p> <p>25 were out of date and they were based on a -- Dent was the</p>	<p style="text-align: right;">112</p> <p>1 do you have any other critiques that you can make -- you're</p> <p>2 critiquing, I understand, Dr. Dawson's report. Do you have</p> <p>3 any other critiques that don't rely on data that's not in</p> <p>4 the record? And since the Applicant has the opportunity,</p> <p>5 still, to respond because I don't think we're going to get</p> <p>6 through everything today, you know, we can all verify the</p> <p>7 FDA website.</p> <p>8 But Mr. Putman, I would like to stay away from looking</p> <p>9 at studies that are not in the record.</p> <p>10 Mr. Chamberlin (inaudible)?</p> <p>11 MR. CHAMBERLIN: Yes, are you still there?</p> <p>12 HEARING EXAMINER ROBESON-HANNAN: Yes.</p> <p>13 MR. CHAMBERLIN: Okay. It looked like the screen froze</p> <p>14 for a moment.</p> <p>15 I do have one other major item.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: Okay.</p> <p>17 MR. CHAMBERLIN: Well, there are a couple of items.</p> <p>18 Number one is the Planning Board resolution of 27 July, this</p> <p>19 year -- or I'm sorry, 2021, which in effect allows the</p> <p>20 Applicant to come in and clear cut up to 25.6 acres of this</p> <p>21 totally forested property. And I believe this granting of</p> <p>22 this variance is incorrect, and it should not have been</p> <p>23 granted because it does, in fact, confer upon the Applicant</p> <p>24 a privilege that would not be available, and has not</p> <p>25 historically -- one like that been available to other</p>

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<p style="text-align: right;">113</p> <p>1 developers or people wishing to, for instance, build houses 2 on this same property. It is a matter of history and I can 3 cite you some examples that -- 4 HEARING EXAMINER ROBESON-HANNAN: Well, let me stop you 5 there. Are you talking about the preliminary forest 6 conservation plan? 7 MR. CHAMBERLIN: Yes, and the planning board resolution 8 that refers to that. 9 HEARING EXAMINER ROBESON-HANNAN: Okay. Well, that is 10 not something -- you need to tie it to something in the 11 environment -- in the water. 12 MR. CHAMBERLIN: Well, I will do that. 13 HEARING EXAMINER ROBESON-HANNAN: Okay. Go ahead. 14 MR. CHAMBERLIN: So if you allow this to happen, there 15 is no requirement that it happen on any particular schedule 16 and to the extent that you have removed acres of trees from 17 a sloping piece of land with slopes -- predominant slopes of 18 8 to 15 percent in the burial areas on this land, you are 19 going to create one enormous runoff and sedimentation 20 problem. And runoff and sedimentation is already well 21 established by WSSC as a problem for the reservoir and the 22 feeder streams leading to it. And who knows what would be 23 contained in that sedimentation. So that gets directly 24 related to watershed activity, to the water quality. 25 HEARING EXAMINER ROBESON-HANNAN: It was my</p>	<p style="text-align: right;">115</p> <p>1 extent that all of their preliminary discussion would lead 2 you to believe. Okay. 3 And I see this as a very clear danger to the watershed 4 in the fact that it will vastly increase the runoff. And 5 even if they go in and replant trees it's going to be many, 6 many, many years before those trees are large enough to have 7 any stabilization effect on the soil. 8 HEARING EXAMINER ROBESON-HANNAN: All right. I'm not 9 sure I entirely agree, but I'm going on memory, with your 10 characterization of the testimony. 11 Mr. Brown, do you have any follow-up questions? 12 MR. BROWN: Do you have anything else, Mr. Chamberlin? 13 You said you had two matters. 14 MR. CHAMBERLIN: Yeah, my final matter is that it is my 15 firm belief and conviction from having reviewed the Cloverly 16 Masterplan and the associated functional master plan for the 17 Patuxent River Watershed that this proposed cemetery 18 violates both. And the Cloverly Masterplan and I don't know 19 if Mr. Quintan Remain from Cloverly Civic Association is on 20 the list to testify or not, but the Cloverly Masterplan goes 21 into great and continuous emphasis on watershed protection 22 being a fundamental planning principal of the plan. 23 And any sensitive areas are to be protected, and it's 24 specifically says that this plan makes protection of 25 environmental features a priority over development. And by</p>
<p style="text-align: right;">114</p> <p>1 recollection that the Applicant said that he was -- they 2 were going to just open one burial node or -- I don't know 3 what you call it, one burial cell at a time. 4 MR. CHAMBERLIN: That's true. 5 HEARING EXAMINER ROBESON-HANNAN: And then reforest 6 after that. 7 MR. CHAMBERLIN: They did say that. However -- okay. 8 They're under no obligation as of yet to adhere to any 9 particular schedule in doing so. And, in fact, they could 10 come in and do it all at once. The second issue is -- you 11 bring up the reforestation. Okay. 12 HEARING EXAMINER ROBESON-HANNAN: Well, you brought it 13 up, I didn't bring it up. 14 MR. CHAMBERLIN: Oh, right. So if -- they spent 15 considerable testimony about how they were going to do this 16 wonderful reforestation program. And at the end of the 17 testimony, Mr. Post, who was one of their experts as well 18 as, I believe, Mr. Kline, said that there was no -- there 19 was in fact, no requirement to do any reforestation. That 20 it is more along the lines of maybe it's a voluntary tree 21 replanting thing. Maybe by the people that elect to be 22 buried there. 23 So my conclusion is, you know, they can clear cut as 24 much land as they want whenever they want and that there is 25 no requirement to do any reforestation, certainly not to the</p>	<p style="text-align: right;">116</p> <p>1 definition a cemetery containing something on the order of 2 8,700 graves is a commercial development. And cemeteries 3 are defined as commercial activities in the Montgomery 4 County Zoning Code. Okay? 5 And the functional masterplan for the Patuxent 6 Watershed through probably a dozen citations says 7 essentially the same thing. It goes on the need to protect 8 the quality of the water in the Patuxent River and the 9 drinking water watersheds that are associated with it. And 10 so therefore, if nothing else, allowing all of this 11 deforestation to take place will, indeed, contribute and 12 lead to conditions whereby those plans are violated. The 13 Cloverly Masterplan says specifically; this plan makes 14 protection of environmental features a priority over new 15 development and special attention to water quality is 16 necessary. So. 17 HEARING EXAMINER ROBESON-HANNAN: Okay. Anything else? 18 MR. CHAMBERLIN: I think that pretty much covers it. I 19 have a lot more detail on those particular subjects, but 20 we'll leave it at that for now. 21 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Brown, any 22 follow-up questions? 23 MR. BROWN: Nothing further. 24 HEARING EXAMINER ROBESON-HANNAN: Okay. It's 1:00, I 25 suggest we take an hour lunch break and we can come back at</p>

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30 (117 to 120)

<p>117</p> <p>1 2:00 for cross-examination. 2 MR. KLINE: Good idea. 3 HEARING EXAMINER ROBESON-HANNAN: Any objections? 4 MR. BROWN: No objection. 5 HEARING EXAMINER ROBESON-HANNAN: Now, when we're off, 6 remember to mute your mic because everybody can hear. Don't 7 leave the meeting, but just mute your mics and -- 8 MR. KLINE: And we'll mute the camera also so you don't 9 have to look at Mr. Sullivan's face. 10 MR. SULLIVAN: Who said that? 11 HEARING EXAMINER ROBESON-HANNAN: All right. Okay. 12 Thank you. We'll be back at 2:00. 13 (Off the record at 1:02 p.m., resuming at 2:04 p.m.) 14 HEARING EXAMINER ROBESON-HANNAN: I do see a hand up 15 from GTW@GTW Associates.com. And he's muted. So I don't 16 know what that is, but I'm going to allow him to speak if he 17 gets a chance. Well, let's proceed. And so far I haven't 18 heard him, but he is in the meeting. so let's proceed with 19 the -- I think we left off with the cross-examination of Mr. 20 Chamberlin. 21 MR. KLINE: Good afternoon. I think I'll ask you the 22 bulk of the questions, but Mr. Sullivan may want to add 23 something at the end if that's all right with everybody. 24 HEARING EXAMINER ROBESON-HANNAN: That's fine. 25 MR. KLINE: Mr. Chamberlin -- well, let me kind of take</p>	<p>119</p> <p>1 applications in the general area? And what position did 2 PWPA take on those applications? 3 MR. CHAMBERLIN: Yes we have. And in a couple of 4 cases, requested application did not conform to the zoning 5 code and the environmental requirements of the property in 6 question. And in one case, I believe, withdrew the activity 7 for the church. And then another case, I think that ended 8 up going to court in Montgomery County and it was -- it was 9 actually filed as a religious discrimination suit. However, 10 PWPA was not a party to that. We had objected previously 11 when it was an issue before the planning board and the 12 council. And we objected on environmental grounds because 13 of what they were planning to do on the property in 14 question. So does that answer your question? 15 MR. KLINE: It does, if I can break it down into two 16 parts. You said you have opposed certain church 17 applications from a zoning point of view. Explain to me how 18 that -- what was the legal issue about the zoning point, 19 since churches are permitted in all of our zones? 20 MR. CHAMBERLIN: It does. However, the RC zoning 21 requires that there be no water -- no municipal water and 22 sewer services to be provided on the properties in question 23 because they were quite environmentally sensitive. And the 24 churches in question were going to be very large churches, 25 which could not operate without a change to the regulations</p>
<p>118</p> <p>1 care of some of the easier, just loose ends. I heard you 2 comment about commercial development. Do you consider a 3 cemetery to be a commercial development, contrary to the 4 master plan? 5 MR. CHAMBERLIN: I consider it to be a commercial 6 development because I believe it is defined as such in the 7 Montgomery County Code regarding cemeteries. If you look 8 and see what's allowed in what areas where that gets down 9 into discussing cemeteries it's in an area of commercial 10 activities. 11 MR. KLINE: I understand what you're saying. So if I 12 were to have the use table from the zoning ordinance in 13 front of me and turn to section 59-3, you're saying that 14 when -- the bold headline that said it commercial that would 15 include the cemetery within that category, rather than 16 institutional? 17 MR. CHAMBERLIN: I don't have the item in front of me 18 so I can't comment on that. 19 MR. KLINE: Right. But you think that's the likelihood 20 though? 21 MR. CHAMBERLIN: My interpretation for reading it 22 before was that a cemetery wasn't defined as a commercial 23 (inaudible), along with funeral homes and crematoria and 24 things of that nature. 25 MR. KLINE: Has PWPA ever involved itself in church</p>	<p>120</p> <p>1 that would enable that to happen. And the planning board 2 and the county council, if my memory is right, unanimously 3 in both cases, agreed. 4 And in the last case, they said that the revised zoning 5 that came out of the -- what I will call the Burtonsville 6 replan part of the Fairland Master Plan explicitly said no 7 sewer on this property, period, end of story. And the 8 court -- I don't have the decision papers in front of me, 9 but the court agreed and summarily threw out the lawsuit 10 which was derived from that particular case. 11 We were not a party to the lawsuit, not being a 12 decision-maker in that case. 13 MR. KLINE: Well, you continue to use the term zoning, 14 but it sounds like actually you are participating in a sewer 15 and water category change application, which would not be a 16 zoning matter, correct? 17 MR. CHAMBERLIN: Well, the sewer and water issues are 18 zoning matters because the water and sewer master plan 19 relates to specific areas within specific zoning categories; 20 in this case the RC category. So to that extent it is 21 specifically a water and sewer category change, but it also 22 pertained to the requirements within certain zoning 23 categories. 24 MR. KLINE: I guess I'm not going to be able to get you 25 to try to differentiate between what zoning allows and what</p>

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31 (121 to 124)

<p>121</p> <p>1 the sewer and water categories allow?</p> <p>2 MR. CHAMBERLIN: The zoning in this case allowed by,</p> <p>3 and I think it was a special exception at the time, that you</p> <p>4 could apply for a special exception, but basically you had</p> <p>5 to apply by the environmental criteria. The water and sewer</p> <p>6 requirements for that property.</p> <p>7 MR. KLINE: Well, can I ask you if -- when you use the</p> <p>8 term special exception, that is a zoning issue? There is no</p> <p>9 church that is required to get a special exception to exist</p> <p>10 in Montgomery County. So when you use the term special</p> <p>11 exception do you mean something in the sewer and water</p> <p>12 category change --</p> <p>13 MR. CHAMBERLIN: Yes.</p> <p>14 MR. KLINE: -- exception?</p> <p>15 MR. CHAMBERLIN: And from that sense in that churches</p> <p>16 are allowed by right in certain zoning categories, you're</p> <p>17 correct in that aspect. However, to get the water and sewer</p> <p>18 category change requested, that required a special</p> <p>19 exception. If that's the distinction you're looking for,</p> <p>20 yeah, that's correct.</p> <p>21 MR. KLINE: All right. And well, could I suggest that</p> <p>22 special exception would not be the right word, but an</p> <p>23 approval by the county council who amends the category</p> <p>24 changes would be the better description of what you're</p> <p>25 talking about?</p>	<p>123</p> <p>1 about?</p> <p>2 MR. CHAMBERLIN: Absolutely.</p> <p>3 MR. KLINE: Okay. So have you -- has PWPA ever</p> <p>4 supported a sewer and water category change in the</p> <p>5 watershed?</p> <p>6 MR. CHAMBERLIN: Yes. Within the past two weeks, I</p> <p>7 think, there was one on a piece of property just west of</p> <p>8 Burtonsville, within the Patuxent watershed, request would</p> <p>9 have no impact on the environment and so we went back to, I</p> <p>10 believe it was a George Deslous, sent an email back to him</p> <p>11 and said no objection to this requested water and sewer</p> <p>12 category change.</p> <p>13 MR. KLINE: And it would have allowed what to occur?</p> <p>14 MR. CHAMBERLIN: It would have allowed the provision of</p> <p>15 public water services to a particular piece of property.</p> <p>16 MR. KLINE: And how is that property going to be used?</p> <p>17 MR. CHAMBERLIN: For a residence.</p> <p>18 MR. KLINE: Okay. Fair enough. You mentioned that you</p> <p>19 felt that the Department of Environmental protection had</p> <p>20 been somehow cut out of the review process. Can you explain</p> <p>21 how you think that occurred, or why it occurred, or did it</p> <p>22 occur?</p> <p>23 MR. CHAMBERLIN: Because of two things. Number one, to</p> <p>24 my knowledge, I didn't see anything in the conditional use</p> <p>25 process that made the EPA a mandatory review process party</p>
<p>122</p> <p>1 MR. CHAMBERLIN: It took a special exception to get the</p> <p>2 change made, or it would have taken that.</p> <p>3 MR. KLINE: Here's what I'm saying. Are you familiar</p> <p>4 with whether there's a special exception process in the</p> <p>5 sewer and water category change process? Is that what</p> <p>6 you're saying?</p> <p>7 MR. CHAMBERLIN: Uh --</p> <p>8 UNIDENTIFIED SPEAKER: That's 20-17.</p> <p>9 HEARING EXAMINER ROBESON-HANNAN: No -- please, no</p> <p>10 whispering to him.</p> <p>11 MR. CHAMBERLIN: (inaudible) and I understand that.</p> <p>12 Yes.</p> <p>13 MR. KLINE: If you know Mr. -- I was about to say Mr.</p> <p>14 Putman myself, Mr. Chamberlin, if you know.</p> <p>15 I don't want to belabor it any more.</p> <p>16 MR. CHAMBERLIN: I will say that I don't know that it,</p> <p>17 specifically under the current guidelines, requires a</p> <p>18 conditional use, which is derivative from the old special</p> <p>19 exception process. But it does, however --</p> <p>20 MR. KLINE: So --</p> <p>21 MR. CHAMBERLIN: These cases did, however, require</p> <p>22 water and sewer category changes to be made.</p> <p>23 MR. KLINE: All right. And it was the environmental</p> <p>24 ramifications or impacts that flowed from that which caused</p> <p>25 you to oppose, at least, the two churches you're talking</p>	<p>124</p> <p>1 in the same sense that had been previously the case for the</p> <p>2 old special exceptions.</p> <p>3 Number two, a fellow that I have had a long</p> <p>4 relationship with in the DEP, the first time he heard about</p> <p>5 this green cemetery was from the same public television</p> <p>6 announcement that we did, so that they had had no notice</p> <p>7 that that was happening.</p> <p>8 MR. KLINE: All right. Have you ever seen a notice</p> <p>9 that would have been sent out by Maryland National Capital</p> <p>10 Park and Planning Commission, or the office of the Zoning</p> <p>11 Administrative hearing to public agencies advising them of</p> <p>12 the application that did have DEP's name on it as an</p> <p>13 addressee?</p> <p>14 MR. CHAMBERLIN: I don't recall ever seeing such a</p> <p>15 message.</p> <p>16 MR. KLINE: Okay.</p> <p>17 MR. CHAMBERLIN: (inaudible) the Planning Board.</p> <p>18 MR. KLINE: Are you familiar with an institution called</p> <p>19 the Development Review Committee?</p> <p>20 MR. CHAMBERLIN: There is one that exists, it may not</p> <p>21 be that exact name, but certainly the same function exists</p> <p>22 within the Planning Board, yes.</p> <p>23 MR. KLINE: All right. So --</p> <p>24 MR. CHAMBERLIN: I know such a function exists.</p> <p>25 MR. KLINE: Okay. So are you familiar with the fact</p>



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<p>125</p> <p>1 that the Applicant filed a preliminary plan of subdivision 2 concurrent with the filing of the conditional use 3 application so that we could process the property for 4 subdivision simultaneously? Are you aware of that? Have 5 you seen the filing of that? 6 MR. CHAMBERLIN: I have seen some discussion of that in 7 the Applicant's request to delay certain aspects of the 8 subdivision planning meeting pending the outcome of this and 9 some other matters. This OZHA review. 10 MR. KLINE: Good. Okay. So you've obviously reviewed 11 the file through Park and Planning's DIAS records. Did you 12 notice that the comments from the public agencies at the 13 time of the development review committee review of the 14 preliminary plan? 15 MR. CHAMBERLIN: I have not reviewed the files within 16 the development agency function within the Planning Board, 17 no. 18 MR. KLINE: So if the Department of Environmental 19 Protection had made any comments on the preliminary plan of 20 subdivision, you wouldn't know what those were? 21 MR. CHAMBERLIN: I don't know what they are, because as 22 I say, I haven't gone into the file looking for it. 23 MR. KLINE: Well, how is it that you saw the fact that 24 I asked for an extension of time to get to the Planning 25 Board, but you haven't seen this other material?</p>	<p>127</p> <p>1 list, yes. But that's functionally what it is, a 2 hydrogeologic study of the property. 3 MR. CHAMBERLIN: No sir, I disagree. To me that does 4 not, in fact, determine what is required in the -- for 5 instance, in the Baltimore County hydrogeologic study, which 6 is a determination of the groundwater flowage on the 7 property. 8 All that report did was it dug down and it looked to 9 see if they hit the water table at the maximum depth of 10 which they were digging, which in most cases, was 10 feet. 11 And they found that it did in a couple of places but that 12 is -- that is by no means a complete hydrogeologic study. 13 Which, if you want an example of what one should look like, 14 I would refer you to the Serenity Ridge effort in Baltimore 15 County that you mentioned earlier. 16 MR. KLINE: Well looking, since you have familiarity 17 with bill number 76-21, is there any definition in here for 18 a hydrogeologic study describing what needs to be 19 accomplished? 20 MR. CHAMBERLIN: Yes, there is. 21 MR. KLINE: Well, what section in that bill describe, 22 what are the components of a hydrogeologic study? 23 MR. CHAMBERLIN: Well -- 24 MR. KLINE: Because I'm looking at it and I just see do 25 one. It doesn't tell me what needs to be in it.</p>
<p>126</p> <p>1 MR. CHAMBERLIN: Because I asked a fellow at the 2 Planning Board, you know, what was going on and I saw that 3 in some of the (inaudible) filings that you had -- and I 4 don't remember exactly which one, but your Applicant would 5 have to file for such a review. And at some point I got a 6 notice from the Planning Board that -- or it might have been 7 an email from somebody at the Planning Board stating that 8 the subdivision review process that you had requested a 9 delay in those dates. That doesn't mean that I sit down 10 and spend all day looking at, you know, Planning Board 11 development activity site logs. 12 MR. KLINE: Well, we've been impressed with the amount 13 of research you've done, I just asked if maybe that was 14 included. 15 MR. CHAMBERLIN: No, it was not. 16 MR. KLINE: Okay. Exhibit number 10 in the record on 17 this application is this document dated June 3, 2020 by ECS 18 mid Atlantic, which we would consider to be a hydrologic 19 study. You claim that there was no such thing by Applicant 20 (inaudible). 21 MR. CHAMBERLIN: I mean -- 22 MR. KLINE: I mean, how did you overlook that? 23 MR. CHAMBERLIN: Are you talking about the water table 24 test report which -- 25 MR. KLINE: That is the way it's labeled in the index</p>	<p>128</p> <p>1 MR. CHAMBERLIN: If you will give me a minute I will 2 take a look. 3 HEARING EXAMINER ROBESON-HANNAN: I'm -- while he's 4 doing that, is there a way, I don't know if I can yet Nana 5 to post it, but is there a way we can submit that into the 6 records so I can take a look at it? Bill 76-21. 7 MR. KLINE: Oh yeah, I'm sorry. I thought you meant 8 the study. 9 HEARING EXAMINER ROBESON-HANNAN: Oh, no. 10 MR. KLINE: Yeah, if you can give me one minute, I can 11 get somebody to come downstairs and get this and email it to 12 everybody. 13 HEARING EXAMINER ROBESON-HANNAN: If they could -- if 14 you could -- that would be great. And while we're on that, 15 I did get, I just saw it from Mr. Putman an email from the 16 state. Wait, let me get it again. And he's forwarding an 17 email from SDAT, purportedly, SDAT. I'm not going to get 18 into -- saying, congratulations the articles of revival has 19 been accepted and approved for record on 3/24/22. 20 So I'm going to forward that. I'll see if I can get 21 Nana to post it, but I'll forward that to the parties 22 MR. KLINE: And while you're doing that, I'm going to 23 make provisions to have Bill 76-21 forwarded to you, and 24 then you can forward it to -- I just don't have everybody's 25 email addresses here with me.</p>

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<p style="text-align: right;">129</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: No, that's fine.</p> <p>2 Thank you.</p> <p>3 MR. KLINE: Very good. I'll be right back.</p> <p>4 MR. WITTEMYER: May I speak Helen [sic] -- Lynn.</p> <p>5 HEARING EXAMINER ROBESON-HANNAN: Just for the record,</p> <p>6 is that -- who just said that?</p> <p>7 MR. WITTEMYER: George Wittemyer.</p> <p>8 HEARING EXAMINER ROBESON-HANNAN: You're -- you have</p> <p>9 your hand raised.</p> <p>10 MR. WITTEMYER: Yes. I would like to testify.</p> <p>11 HEARING EXAMINER ROBESON-HANNAN: Okay. It's not --</p> <p>12 are you -- you're for the application or against?</p> <p>13 MR. WITTEMYER: Well, I am against the application,</p> <p>14 submitted my -- what I would say in Document 95.</p> <p>15 HEARING EXAMINER ROBESON-HANNAN: Well, you're -- we</p> <p>16 have an order for this proceeding, and let me make a</p> <p>17 suggestion, if that'll work for you. We have everybody</p> <p>18 that's a not represented by Mr. Brown, Mr. Kline, our Mr.</p> <p>19 Sullivan, we're going to reserve 9:30 tomorrow for all of</p> <p>20 you to testify, and that way, you don't have to every single</p> <p>21 day of hearings. Can you wait until then, or not?</p> <p>22 MR. WITTEMYER: Well, I can wait but it would be a</p> <p>23 burden on me to wait. And I promise not to take much more</p> <p>24 than 10 minutes of the time.</p> <p>25 HEARING EXAMINER ROBESON-HANNAN: Okay. Let me wait</p>	<p style="text-align: right;">131</p> <p>1 you want to weigh in?</p> <p>2 MR. BROWN: I agree with Mr. Klein for a change.</p> <p>3 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Wittemyer,</p> <p>4 we do have your letter in the record, you're able to come</p> <p>5 tomorrow at 9:30. So we're going -- we will hear from you</p> <p>6 at that time.</p> <p>7 Mr. Wittemyer, did you understand?</p> <p>8 I think he's -- Mr. Wittemyer, did you hear me? You're</p> <p>9 on mute. Okay. Well --</p> <p>10 MR. WITTEMYER: I managed to -- but please believe me</p> <p>11 that I'm not an expert in these matters and I apologize to</p> <p>12 the group.</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Okay. So we will</p> <p>14 take your testimony at 9:30 tomorrow.</p> <p>15 MR. WITTEMYER: Okay.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: Okay. Thank you.</p> <p>17 Go ahead, Mr. Kline.</p> <p>18 MR. KLINE: Well, I think I'll leave the hydrogeologic</p> <p>19 study. You don't think it complied, we thought it complied.</p> <p>20 It certainly gave us all the information we needed. But</p> <p>21 when I just looked at it a second ago, but I'm afraid it's</p> <p>22 gone now, it seemed to me that it provided exactly the --</p> <p>23 I'm sorry. Baltimore County asked for a study that provided</p> <p>24 the information, which is exactly what our study provided in</p> <p>25 terms of basically, the soils and basically where the water</p>
<p style="text-align: right;">130</p> <p>1 until Mr. Kline and we'll see if it's okay with him.</p> <p>2 MR. KLINE: I'm sorry to have held you up. They are</p> <p>3 going to email it directly to you Ms. Robeson-Hannan.</p> <p>4 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Kline,</p> <p>5 while you were we have a gentleman from -- I'm looking --</p> <p>6 what is your name, sir?</p> <p>7 MR. WITTEMYER: My name is George Wittemyer, and I'm a</p> <p>8 property owner very nearby the planned cemetery.</p> <p>9 HEARING EXAMINER ROBESON-HANNAN: I do remember your</p> <p>10 testimony.</p> <p>11 Mr. Wittemyer has asked to interrupt the order of</p> <p>12 proceedings and testify now. And he says it will take about</p> <p>13 10 minutes.</p> <p>14 UNIDENTIFIED SPEAKER: We need to complete cross.</p> <p>15 MR. KLINE: Ms. Robeson-Hannan, I would say sure, let's</p> <p>16 go ahead and do it. But, as I mentioned to you before, I</p> <p>17 had a bad experience with a daycare center where I did that</p> <p>18 and it ended up having 32 people testify. So I'd like to</p> <p>19 continue.</p> <p>20 I'm familiar with the gentleman concerns. He said hey,</p> <p>21 I've got to go pick my granddaughter up at 4 o'clock, I've</p> <p>22 got to get out of here, I can understand it. But otherwise,</p> <p>23 without some (inaudible) we would prefer to keep the flow of</p> <p>24 the case going.</p> <p>25 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Brown, do</p>	<p style="text-align: right;">132</p> <p>1 table is relative to the graves.</p> <p>2 If a Baltimore County has a different way of looking at</p> <p>3 it I guess we all have a chance to look at that bill, we can</p> <p>4 determine --</p> <p>5 MR. BROWN: Could we save the commentary for later and</p> <p>6 could we and get along with the questioning? We're short on</p> <p>7 time here this afternoon.</p> <p>8 MR. KLINE: Thank you very much, Mr. Brown, I</p> <p>9 appreciate the reminder.</p> <p>10 MR. CHAMBERLIN: If I may answer the question that was</p> <p>11 asked earlier? I misspoke when I said it was part of 76-21.</p> <p>12 The requirement is actually contained, and the list of what</p> <p>13 it is to provide is actually contained in the companion</p> <p>14 Cobar 01.03, chapter 4, for conservation burial grounds.</p> <p>15 And it says, at the time of submission for an application of</p> <p>16 zoning, special exception, completed by a hydrogeologist, or</p> <p>17 similarly qualified consultant must be submitted to the</p> <p>18 Department, meaning of environmental protection and</p> <p>19 sustainability, that contains the following: A scale site</p> <p>20 plan showing, and there's a big long list of things, a</p> <p>21 forest buffer delineation in accordance with certain</p> <p>22 criteria, a forest stand delineation as described, and a</p> <p>23 bunch of criteria. A determination of the soil type and</p> <p>24 slow and depth to groundwater, depth to bedrock, groundwater</p> <p>25 flow direction beneath the area proposed as a burial ground.</p>

<p style="text-align: right;">133</p> <p>1 This determination may be based upon scientific literature 2 and available County records, but must be verified by 3 conducting on-site soil boring excavation pits or other 4 investigatory methods as approved by, and a list of 5 criteria. 6 The onsite testing must be sufficient to conclude that 7 the area meets or exceeds the minimum standards set forth 8 in, and a whole bunch of other criteria. Must contain an 9 assessment of the proposed burial practices, density of 10 burial pits, and potential impacts of the buried remains on 11 groundwater quality, surface water quality, and domestic 12 water supplies as it relates to human health and the 13 environment. 14 This assessment should include consideration of the 15 site-specific findings for the soil type, slope, depth to 16 groundwater, bedrock, and groundwater flow direction, and 17 recommendations as to whether there should be any additional 18 restrictions over and above the minimum regulatory standards 19 for burial density allowed by law. 20 The bottom of the burial pit must be at least 6 feet 21 above the seasonal high water table or bedrock. The graves 22 in an approved conservation burial ground must have at least 23 3 feet of cover, the delineated burial areas shall not 24 include delineated forest buffer of any forest stand 25 described as priority 1 annexed area, which is the Baltimore</p>	<p style="text-align: right;">135</p> <p>1 MR. KLINE: Well, I'm just going to ask you to confirm 2 something for me, Mr. Chamberlin, which is consistent with 3 what I believe Mr. Putman said. So as I look at the text of 4 76-21, the new language creating a natural burial area, 5 which is what Serenity Ridge was located, was that there 6 could be as many as 500 burials per acre. There could be as 7 much as 600 burials per acre, I'll say as an average across 8 the site. Is there any information in the bill itself 9 determining what is the level of separation between the 10 grave and the water tables? Looking at 76-21? 11 MR. CHAMBERLIN: I do not believe there is, without 12 going back to read it again. 13 MR. KLINE: Okay. Fine. 14 MR. CHAMBERLIN: I (inaudible) Cobar part. 15 MR. KLINE: You have a better historical knowledge of 16 the bill than I do, but is there any evidence that you've 17 seen which indicates that the regulations included in Bill 18 76-21 were driven by issues related to necro-leachate? 19 MR. CHAMBERLIN: They were related to the matter of the 20 original proposal for a natural burial ground called, I 21 think it was Rushmill, back in 2015. So by definition, that 22 includes necro-related to the decomposition products of the 23 bodies to be buried in that cemetery. Okay? 24 So to answer your question, about the natural burial 25 ground requiring a hydrogeologic survey, paragraph F, which</p>
<p style="text-align: right;">134</p> <p>1 County type. A priority 1 area: high in the Baltimore -- 2 MR. KLINE: Let me -- 3 MR. CHAMBERLIN: -- County Forest -- 4 MR. KLINE: Mr. Chamberlin, clearly you've gone beyond 5 reading what is required in the hydrogeologic study report. 6 You basically are giving me the same list that appears in 7 76-21 in terms 8 MR. CHAMBERLIN: Okay. But the first five items down 9 to where it says, recommendations as to whether there should 10 be any additional restrictions, that relates to the 11 hydrogeologic study. 12 MR. KLINE: Okay. Do you happen to have Bill 76-21 13 available to you, or remember it? 14 MR. CHAMBERLIN: I don't know if I have that with me or 15 not, let me look. 16 MR. SULLIVAN: So when Mr. Chamberlin comes back, I 17 would just ask him to repeat the Cobar citation, I didn't 18 hear it the first time. 19 MR. CHAMBERLIN: I have Bill 76-21, the citation you 20 were looking for was Cobar 01.03, chapter 4. 21 HEARING EXAMINER ROBESON-HANNAN: Well, can we get that 22 in the record too? I can't find it on mine. So we don't 23 have to do it now, let's proceed but I'd like it in the 24 record because, you know, you can read something to me 25 and -- I think it would be easier for everyone to have them.</p>	<p style="text-align: right;">136</p> <p>1 discusses natural burial grounds are permitted subject to 2 the following conditions, and it goes down through there and 3 it says the owner of the land on which a natural burial 4 ground is to be located shall, at the time of the 5 application for a special exception, submit to the 6 Department of Environmental Protection and Sustainability a 7 hydrogeologic study that includes the following. And that 8 includes the items that I itemized for you. 9 So anyway, there are four of them. The scale plans, 10 determination to depth of bedrock, assessment of burial 11 practices and recommendations as to the appropriate number, 12 placement, et cetera of burial sites on the land based on 13 the findings of paragraphs 1, 2, and 3 above. 14 So it is in the law, it is in the plan and I think I 15 have answered that question. And if you'll -- 16 MR. KLINE: (inaudible) I know the Hearing Examiner is 17 going to ask me to provide this, but I think somebody 18 expressed a lack of knowledge of Serenity Ridge. And it was 19 approved, I think, yesterday, or last week. And presumably 20 the Hearing Examiner would like to see that information as 21 well. 22 So to the extent that it has some similarities, it does 23 have a water feature on the property, a tributary to the 24 Patapsco going through the property, does it not? 25 MR. CHAMBERLIN: Yes, it has several water features on</p>

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<p>137</p> <p>1 the property. I do not have any problem with the Serenity 2 Ridge proposal. It's a lot of land, 177 acres, they only 3 use 41 for burial. They are reducing the burials 4 significantly in the treed areas. They are trying to stay 5 away from the water sources and what not, and the dedicated 6 forest areas. And the water drains away from any drinking 7 water source. It goes the other way, down to the -- 8 MR. KLINE: You mentioned -- 9 MR. CHAMBERLIN: -- Patapsco. 10 MR. KLINE: -- forest issues. You said that because of 11 the way our preliminary forest conservation plan was 12 approved we can cut down whatever we want, whenever we want, 13 in whatever sequence we want; is that a correct statement? 14 MR. CHAMBERLIN: That is the implication of the 15 Planning Board resolution that absolves you and gives you a 16 variance to where you don't have to replace any of the 128 17 specimen trees I have the 400 and some you're going to 18 clear. 19 MR. KLINE: Okay. Then let me be -- 20 MR. CHAMBERLIN: As it is -- 21 MR. KLINE: -- break that down. Hold on. I'm looking 22 at the opinion of the Planning Board that you've been 23 referencing, which is in the record, but I can't find the 24 exhibit number fast enough, dated July 27, '21. It reads 25 the project proposes to clear 25.63 acres of existing</p>	<p>139</p> <p>1 and drainage areas that have high water tables that were 2 found in your water table test report. So other than that, 3 in the areas they're going to use for their office 4 buildings, I believe they are -- they have effectively 5 maximize the burial area. I'm not saying that they couldn't 6 squeeze in one more on the edges, but by and large, I 7 believe that it's true. 8 MR. KLINE: Yet the density in burial proposed is not 9 different than what was deemed to be appropriate and 10 acceptable in the Baltimore County legislation, correct? 11 MR. CHAMBERLIN: That's correct. 12 MR. KLINE: Okay. So just for clarification purposes, 13 you mentioned the variances for removal of -- you mentioned 14 128, therefore, I assumed you're talking about specimen 15 trees? 16 MR. CHAMBERLIN: It's -- 17 MR. KLINE: And are you challenging that grant -- are 18 you challenging the grant by the Planning Board of that 19 variance? 20 MR. CHAMBERLIN: I guess I am. 21 MR. KLINE: Why didn't you challenge it at the time 22 that the Board made that decision, or appeal it at that 23 time, rather than wait and bring it up now? 24 MR. CHAMBERLIN: Two simple reasons. Number one, we 25 never knew that the activity was taking place was going to</p>
<p>138</p> <p>1 forest, based on the land use category and the forest 2 conservation worksheet. There is no planting requirement 3 generated for the application. The Applicant proposes to 4 retain 14.66 acres of existing forest on site. 5 All forest savings as well as environmental buffers 6 will be protected in the category 1 conservation easement. 7 So there is specific areas and amounts of forests that has 8 to be retained, correct? 9 MR. CHAMBERLIN: They have to be retained other than 10 the buffer areas because they're in areas that cannot be 11 used for the cemetery because they're in stream valley 12 buffers or floodplains. So that's got to be saved anyway. 13 There is no decision on the part of the RPI's green cemetery 14 to say that they could use those. The criteria -- 15 MR. KLINE: Are you sure of the site plan that there is 16 not areas that are buildable for -- I don't know if 17 buildable is the right word for burial sites, that are being 18 preserved and are outside of the limit of the stream valley 19 setbacks and environmental features? Are you sure, when you 20 say that? 21 MR. CHAMBERLIN: That's a complicated question. I am 22 sure that they have maximized the burial areas that they can 23 use consistent with the limits of the floodplain, stream 24 valley buffers, the mandatory offset adjacent septic areas 25 and the larger areas that they have found, a major swale,</p>	<p>140</p> <p>1 be held by the planning board. And this resolution was 2 passed by consent agenda of the planning board with no 3 public input. And it also had a stipulation in there that 4 says if you don't like it, you can go take me to court. But 5 since we never knew about it and we never had a lawyer at 6 the time, that's kind of moot. There is also a provision in 7 there that says if the Hearing Examiner decides that this 8 activity is not warranted then that resolution becomes moot. 9 And that is, indeed -- 10 MR. KLINE: I'm sorry, I need a little clarification of 11 that. I'm not sure what authority did you just give the 12 Hearing Examiner? 13 MR. CHAMBERLIN: There is a -- I don't have the text of 14 that resolution in front of me. But somewhere toward the 15 end of it -- 16 MR. KLINE: Okay. 17 MR. CHAMBERLIN: -- it says that if the Hearing 18 Examiner rejects the application then this resolution 19 becomes no and void. 20 MR. KLINE: Okay. No, I understand. Yes, there is a 21 standard provision in any forest conservation plan that's 22 companion with a conditional use. If you don't get the 23 conditional use, then you don't have the forest conservation 24 plan. 25 MR. CHAMBERLIN: And that --</p>

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<p>141</p> <p>1 MR. KLINE: That's a conditional use. So that's not an 2 applicable point.</p> <p>3 MR. CHAMBERLIN: Wait, it is an applicable point 4 because the Hearing Examiner gets to decide if this whole 5 thing, this whole effort is a good idea. Okay? And one of 6 the reasons I'm saying it is not a good idea is because of 7 the extensive tree cutting that will be involved, which 8 appears to have been granted the Applicant said he wants to 9 come in and clear-cut stuff to put a bunch of cemeteries 10 racked side-by-side like so much cord wood on the ground.</p> <p>11 When an alternative could have been in a manner similar 12 to that in Serenity Ridge which work their way through the 13 existing forest stands. And that would have, in fact, 14 retained the forest coverage you talked so extensively about 15 in your -- in what I will call the alleged reforestation 16 plan. Okay? Because I believe you, yourself, to do that. 17 Okay? And that would reduce the density of the graves and 18 therefore the bio contaminants emanating from them by a 19 significant margin, which would make this an entirely 20 different proposal. That is what I am saying.</p> <p>21 MR. KLINE: So two questions. The preliminary forest 22 conservation plan approved by the Montgomery County Planning 23 Board and recommended for approval by the staff satisfies 24 the requirements of chapter 22 of the County code on forest 25 conservation, does it not?</p>	<p>143</p> <p>1 MR. CHAMBERLIN: It technically satisfies the minimum 2 requirements in the plan, yes.</p> <p>3 MR. KLINE: And why is it that you feel that the 4 planning board and staff did not, basically, inculcate the 5 ideas that you're talking about, let's try and do better 6 than just the law because they have both recommended 7 approval of the plan that we've got. So why do you think 8 they are wrong and you're right?</p> <p>9 MR. CHAMBERLIN: For the simple reason that the job of 10 the planning staff is to implement the regulations as 11 written. They do not get to make decisions about what it 12 should be. They are required to implement the law as it is 13 written.</p> <p>14 MR. KLINE: Have you looked at the file on the 15 preliminary plan application to see how many versions of a 16 forest conservation plan were submitted by the Applicant 17 until we reached a consensus with the staff?</p> <p>18 MR. CHAMBERLIN: I haven't --</p> <p>19 MR. BROWN: Objection to the relevance of that line of 20 questioning.</p> <p>21 MR. KLINE: Well I objected to the phrase that the 22 Planning staff doesn't give a damn --</p> <p>23 (Crosstalk)</p> <p>24 HEARING EXAMINER ROBESON-HANNAN: Yeah. He's saying --</p> <p>25 MR. KLINE: -- comply with the law.</p>
<p>142</p> <p>1 MR. CHAMBERLIN: It satisfies the requirements insofar 2 as the absolute acreage is concerned. Because --</p> <p>3 MR. KLINE: What do you mean when you say that?</p> <p>4 MR. CHAMBERLIN: What I mean is the original intent of 5 the forest conservation plan was related to vacant 6 agricultural land that was being reconverted for residential 7 purposes. Okay. And therefore, they wanted to insist, as 8 part of the county's challenge to increase the forest areas, 9 they would insist on a certain calculated reforestation 10 percentage.</p> <p>11 Well, that argument and that purpose is kind of moot. 12 It's ridiculous if the entire property is now 100 percent 13 forested as it stands. So it makes no sense to take the 14 application that the -- the interpretation that the Planning 15 Board has had done.</p> <p>16 The other reason they granted the variance it was 17 because they, said in so many words, because we said so. 18 Their actual words were, it's not our policy to require the 19 replanting of any tree -- specimen tree or whatnot taken 20 down within a forest to stand it. Which elsewhere, is 21 defined as a small batch of trees maybe 50 feet by 100 or 22 something like that. It's not talking about massive tree 23 takedowns over 25.63 acres.</p> <p>24 MR. KLINE: You would agree with me, though, the forest 25 conservation plan is in accordance with county law, correct?</p>	<p>144</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: Yeah, Mr. Brown, he 2 raised it, but I think the point -- I get it. The point is 3 taken. So I don't think you need to keep going down this 4 path. I don't see, but I'll double check again -- I don't 5 see the Planning Board resolution. I have Planning Board 6 transmittal letter on the CU in the record but -- and it 7 says that they approved it, but I don't have the actual 8 resolution. So that may be a cleanup thing that will --</p> <p>9 MR. KLINE: We'll have it in your office this evening, 10 ma'am.</p> <p>11 HEARING EXAMINER ROBESON-HANNAN: Thank you so much. 12 Okay. Let's keep going.</p> <p>13 MR. KLINE: I have no further questions for Mr. 14 Chamberlin.</p> <p>15 HEARING EXAMINER ROBESON-HANNAN: Does Mr. Putman. 16 (Crosstalk)</p> <p>17 HEARING EXAMINER ROBESON-HANNAN: Sorry. (inaudible).</p> <p>18 MR. KLINE: And I've worn out Mr. Sullivan so he's got 19 no questions either.</p> <p>20 HEARING EXAMINER ROBESON-HANNAN: Okay.</p> <p>21 Mr. Brown, redirect?</p> <p>22 MR. BROWN: No redirect.</p> <p>23 HEARING EXAMINER ROBESON-HANNAN: Then Mr. Chamberlin, 24 you may be excused.</p> <p>25 MR. CHAMBERLIN: Thank you. At long last, ma'am.</p>

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<p>145</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown do you want 2 to call your next witness? 3 MR. BROWN: Yes, we've had to do some shuffling around 4 due to schedule constraints. Our next witness is Dr. 5 Theresa O'Keefe. 6 HEARING EXAMINER ROBESON-HANNAN: Okay. Ms. O'Keefe? 7 Is she there? 8 MR. BROWN: You're on mute, Dr. O'Keefe. 9 DR. O'KEEFE: Sorry about that. 10 HEARING EXAMINER ROBESON-HANNAN: Dr. O'Keefe? 11 DR. O'KEEFE: Theresa is fine. 12 HEARING EXAMINER ROBESON-HANNAN: Okay. Dr. O'Keefe, 13 please raise your right hand. 14 Do you solemnly affirm under penalties of perjury that 15 the statements you're about to give are the truth, the whole 16 truth, and nothing but the truth? 17 DR. O'KEEFE: I do. 18 HEARING EXAMINER ROBESON-HANNAN: Thank you. Mr. 19 Brown -- oh, and please state your name, address and email 20 for the record. 21 DR. O'KEEFE: My name is Dr. Theresa L. O'Keefe. My 22 address is 20 Richgrain AV. That's R-I-C-H-G-R-A-I-N, AV, 23 Waltham, Massachusetts. And my email address is Theresa, 24 with an H, O'Keefe, that's O-K-E-E-F-E, 17@Gmail.com. 25 HEARING EXAMINER ROBESON-HANNAN: Thank you.</p>	<p>147</p> <p>1 exposed to things in our environment that cause it. And it 2 is a huge issue for children. So I am here today to mostly 3 explain what happens when we don't take care of the 4 treatments we use to treat cancer because they do end up in 5 the environment and they do cause cancer. 6 HEARING EXAMINER ROBESON-HANNAN: Well -- 7 DR. O'KEEFE: And they cause cancer in children. 8 HEARING EXAMINER ROBESON-HANNAN: Thank you -- 9 MR. BROWN: All right Doctor -- 10 HEARING EXAMINER ROBESON-HANNAN: Before we get to 11 that, Mr. Brown, are you going to qualify her? 12 MR. BROWN: I'm doing that right now. I'm just trying 13 to -- 14 HEARING EXAMINER ROBESON-HANNAN: I'm sorry. 15 MR. BROWN: -- I just wanted to make sure -- 16 HEARING EXAMINER ROBESON-HANNAN: I just -- 17 (Crosstalk) 18 MR. BROWN: -- that she understood what the issue was 19 in this case. 20 DR. O'KEEFE: All right. My background is drug 21 development I have a bachelor's degree in biology and 22 biochemistry. I have a Masters degree in veterinary and 23 physiology, and I have a PhD in molecular immunology. I was 24 in academia for seven years, trained with Michael Marbuger 25 and Cesar Milstein. Cesar Milstein got the Nobel Prize for</p>
<p>146</p> <p>1 MR. BROWN: Dr. O'Keefe, we have never met before or 2 spoken before, have we? 3 DR. O'KEEFE: Not that I know of. We have exchanged 4 emails. 5 MR. BROWN: And you are a volunteer witness in this 6 case, as I understand it? 7 DR. O'KEEFE: Yes, Jim Putnam has guilted me into being 8 here. 9 MR. BROWN: All right. I have to tell you, as an 10 aside, Dr. O'Keefe, I used to be a resident of Waltham, 11 Massachusetts because I went the first grade there at a 12 place called Banks School. I walked there every day from a 13 house that was right next to Brandeis University which was 14 just getting started. 15 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Brown -- 16 MR. BROWN: Which reveals my age to you, I'm sure. 17 But let's get on with it. 18 HEARING EXAMINER ROBESON-HANNAN: Thanks. 19 MR. BROWN: Dr. O'Keefe have you been -- has someone 20 made familiar to you the issue that we are trying to work 21 through in this particular case? 22 DR. O'KEEFE: Well, I am a scientist. I too drug 23 development. I run teams that work on developing new 24 therapies for humans. And one of my big areas is cancer. 25 And the great tragedy of cancer is that too often we are</p>	<p>148</p> <p>1 autoimmunity -- antibodies, monoclonal antibodies. I was 2 also trained by Greg Winter who has another Nobel laureate 3 for phage display. 4 For the last 23 years I have been working in biotech 5 companies including Pfizer creating new drugs. If you have 6 heard of the drug Entyvio for Crohn's and ulcerative 7 colitis, I invented it. I want to improve people's lives. 8 About 10 years ago I came across Jim Mullooney and I 9 thought he was nuts. He was talking about hazardous drugs 10 that we used as prescriptions causing cancer in others. And 11 in an effort to prove he didn't know what he was talking 12 about, I sat down with a hazardous or drug list and I went 13 through and proved that he was correct. 14 There are 144,000 drug inserts that have been approved 15 by the FDA, and there are 184 of them that through huge 16 numbers of research and committees, they decided these drugs 17 must be handled as hazardous drugs. Hazardous is a 18 chemicals -- 19 HEARING EXAMINER ROBESON-HANNAN: Well, before we get 20 there, I just want to make sure that she is qualified in the 21 expertise that what -- you know -- 22 MR. BROWN: Yeah. 23 HEARING EXAMINER ROBESON-HANNAN: -- and the record. 24 MR. BROWN: Yes, let me interrupt you Dr. O'Keefe for a 25 moment, and ask you whether or not you have studied the</p>

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<p>149</p> <p>1 impact of these drugs, if they are leached out of the body 2 into the water resources? 3 DR. O'KEEFE: I have not studied them into the water 4 resources. I have studied them going into the bodies, 5 coming out of the body intact, and causing damage to anybody 6 who comes across them. I cannot tell you how they got from 7 the cancer patient, or the patient period, into the one that 8 they caused the affect on, but I can tell you they are there 9 and what they do when they come out. 10 MR. BROWN: So hearing -- 11 DR. O'KEEFE: I'm not a hazardous -- 12 (Crosstalk) 13 MR. BROWN: I would like to qualify this witness as an 14 expert in the risks that are associated with hazardous drugs 15 being excreted from the body. 16 HEARING EXAMINER ROBESON-HANNAN: Mr. Kline? 17 MR. SULLIVAN: Or Mr. Sullivan. 18 HEARING EXAMINER ROBESON-HANNAN: Or Mr. Sullivan. 19 MR. SULLIVAN: Yes. Mr. Brown, can you just clarify? 20 You said exactly what it is you're qualifying her for? I 21 didn't hear it exactly. 22 MR. BROWN: As an expert on the risks -- 23 MR. SULLIVAN: Okay. 24 MR. BROWN: The risks of hazardous drugs that are in 25 the body being excreted from the body and posing risks to</p>	<p>151</p> <p>1 you don't worry about when the -- once they're gone from the 2 patient. 3 MR. SULLIVAN: And you would agree that to assess risk 4 to human health you would need to understand that exposure 5 pathway and exposure threshold, correct? 6 DR. O'KEEFE: I can give you an exposure threshold. 7 MR. SULLIVAN: Well, I'm just asking you if those are 8 important factors for you to consider in assessing risk. 9 DR. O'KEEFE: Absolutely. And you have enough people 10 who deal with wastewater who can do that part in between. 11 MR. SULLIVAN: Right, but that's not you? 12 DR. O'KEEFE: No. I'm a drug -- I do drugs. I do 13 drugs and I do cancer prevention. 14 MR. SULLIVAN: We would object to the qualification of 15 this expert simply because the issue to be decided here is 16 to whether any contaminants from the proposed cemetery will 17 reach water supplies and have an impact on drinking water 18 quality and this expert has just said that that's not her 19 area of expertise. And there's no -- 20 DR. O'KEEFE: Well -- 21 MR. SULLIVAN: And she's done no site specific 22 evaluation about this particular piece of land which is what 23 Mr. Brown told us at the outset of this hearing was focused 24 on. The uses of this particular piece of land. We are not 25 talking about things in the abstract, and I think it's</p>
<p>150</p> <p>1 others. 2 MR. SULLIVAN: But you're not seeking to qualify her as 3 an expert on the risks of hazardous drugs excreted from the 4 body into a water supply and drunk by someone downstream? 5 MR. BROWN: No, I'm not. 6 MR. SULLIVAN: Okay. Then I question the relevance, 7 first of all, of this expert. But I also would ask some 8 questions. 9 So Dr. O'Keefe, did you undertake any site specific 10 analysis with respect to the proposed piece of land at issue 11 here? 12 DR. O'KEEFE: No, I did not. I was only looking at 13 explaining what drugs could get there. 14 MR. SULLIVAN: Okay. And so is it then, fair to say 15 you didn't explore any potential exposure pathways; is that 16 correct? 17 DR. O'KEEFE: I do expose potential pathways for 18 exposure because that is when the drugs come out and how 19 they can get into the next person. 20 MR. SULLIVAN: And your exposure -- but you didn't do 21 any analysis of the specific exposure pathway with respect 22 to the proposed cemetery, correct? 23 DR. O'KEEFE: No. I am only looking at what the FDA 24 and the CDC and the various other drug agencies that talk 25 about which ones we have to worry about. Because most drugs</p>	<p>152</p> <p>1 important to understand that. And then there's potential 2 for confusion if we stray from the analysis of that specific 3 issue. 4 HEARING EXAMINER ROBESON-HANNAN: Yes. Dr. O'Keefe. I 5 thought earlier there was a discussion of how many of these 6 drugs are going to be going into the site, or potentially 7 going into the site? 8 MR. SULLIVAN: And I'll ask you; isn't the question for 9 exposure -- don't you need to analyze the exposure pathway? 10 If it gets into the site, the question here is -- 11 HEARING EXAMINER ROBESON-HANNAN: Okay. 12 MR. SULLIVAN: -- does it go out of the site and 13 actually impact water drinking quality. 14 DR. O'KEEFE: The ones that do go -- that are excreted 15 from humans are going to excrete from the site because if a 16 human body cannot metabolize something there is very little 17 that's going to break it down. 18 HEARING EXAMINER ROBESON-HANNAN: Okay. Let's -- let 19 me get a ruling. I don't know -- I am going to let her -- a 20 lot of these questions or what you're getting to is cross- 21 examination. The question is what to qualify her as, and 22 I'm just suggesting we qualify her in risks of hazardous 23 drugs. I don't think that it's so -- you will -- you know, 24 and we'll give it the way it -- I will give it the weight it 25 deserves. It isn't a jury trial and I am able to</p>

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<p>153</p> <p>1 distinguish, I feel, the difference between, or risks posed 2 in certain scenarios versus, you know, actual water 3 progression (inaudible) of the site. 4 So I'm going to let her testify in the risks of 5 hazardous drugs and being expelled from the body. And we'll 6 go -- and then you have the ability to cross examine, and 7 I'll give her testimony the weight it deserves. So she is 8 qualified as an expert in risks of hazardous drugs being 9 excreted from the body. 10 MR. BROWN: Our point, Ms. Robeson, if the bodies were 11 excreting only non-toxic substances that would pose a lesser 12 risk than if they were excreting toxic substances. And what 13 I feel we need to show as part of our proof, but not a 14 complete presentation is that some of the substances that 15 will be excreted are, indeed, toxic. And that's what she's 16 going to address. So we'll -- 17 HEARING EXAMINER ROBESON-HANNAN: Okay. 18 MR. BROWN: Dr. O'Keefe, would you please -- you have 19 submitted your resume as Exhibit 106. 20 MR. SULLIVAN: We'd like to be able -- I'm sorry to 21 interrupt but we actually might be able to streamline this 22 because we will stipulate to the fact that there are 23 substances that go into the body that will be excreted that 24 will be toxic. That's not -- 25 MR. BROWN: Thank you for that generous offer. I would</p>	<p>155</p> <p>1 have to deal with when you're working on something that is 2 less than 100 g. They are under 2 ounces, and they have a 3 liver the size of your fingernail. All of the sudden risk 4 changes. And lots of the chemotherapy drugs that we use, 5 the old-fashioned ones that are so potent, things like 6 cyclophosphamide, or the tamoxifen, or methotrexate, that 7 are used for not only cancer but they're used for rheumatoid 8 arthritis, those drugs are incredible drugs. They're 9 phenomenal. 10 But 25 to 50 to 85 percent of the drugs that we give to 11 that patient, it will go into the body, they'll consume it, 12 it will end up in their bloodstream, which is called 13 absorption. It will be distributed through the body which 14 is distribution. It will be metabolized and there will be 15 some part of it that all parts of our digestive system are 16 unable to break down. They then, are excreted from the 17 patient as the original cyclophosphamide, methotrexate, and 18 tamoxifen. 19 And we -- anything that -- it can come across the skin, 20 it can come across the drinking water, everything. And it 21 does happen. It gets found in wells of people who are on 22 chemo. Then, if a pregnant woman drinks that, a tiny 23 amount, something that is a fraction of what you would ever 24 consider can cause enormous destruction to fetuses. That is 25 why they are on the hazardous drug list. There are 64 of</p>
<p>154</p> <p>1 like Dr. O'Keefe to summarize the testimony that she's 2 provided for the record. 3 HEARING EXAMINER ROBESON-HANNAN: I'm going to let her 4 testify, Mr. Sullivan. For some reason I can't get -- can 5 you move in towards the table, Mr. Sullivan just -- that's 6 better. Thank you very much. 7 Okay. Go ahead, Dr. O'Keefe. 8 DR. O'KEEFE: All right. It is one of those things. 9 We always talk about the risks to patients, the risks to 10 patients, the risks to patient, and we don't understand that 11 yes, a patient -- a standard patient, and this was also done 12 in some of the reports. A standard patient is considered a 13 70-year-old man, a 70 kg man, who has an A1c of less than 14 5.8 who is a non-smoker who is, you know what lived a 15 perfect life. They are not at risk of anything. You have 16 to hit them with a car, that's the only thing that will kill 17 them. 18 Where we really worry about within the drug world, is 19 the risk to fetuses. The hazard in its drug list, as I 20 said, is 188 drugs, and 88 percent of those drugs ended up 21 on that list because of the damage of what they do to 22 fetuses. It is pregnancy, pregnancy, pregnancy. So 23 something that would not kill a 70-year-old man who has a 24 spleen the size of this. 25 All of a sudden you have a whole other risk that you</p>	<p>156</p> <p>1 these drugs that may cause cancer, birth defects, 2 miscarriages, all kinds of damage to fetuses, children, 3 babies. Almost all childhood cancer is started before the 4 baby is born. 5 And we are very worried about any of these chemicals 6 getting into any water, any well, anything because in the 7 U.S., the cost of treating a single childhood cancer is 8 \$800,000. If the child has leukemia, which is one of the 9 more common types of categories of childhood cancer, and if 10 they need a car T-cell treatment, which is a phenomenal 11 treatment, that's \$1 million just in itself. And that 12 family is devastated. 13 I would like to recommend -- we would like to 14 recommend, there's a lot of people who are trying to prevent 15 childhood cancers, that we don't take any chances. Cancer, 16 not only do you use cancer -- any chemotherapies to treat 17 patients when you're trying to get them to recover from 18 cancer, there are also a lot of -- 19 HEARING EXAMINER ROBESON-HANNAN: Dr. O'Keefe? 20 DR. O'KEEFE: I just did that with my finger. I am 21 very sorry about that. I talk with my hands. 22 HEARING EXAMINER ROBESON-HANNAN: Yes. 23 DR. O'KEEFE: But things like cyclophosphamide, they 24 are used -- I mean if you --, like a woman with breast 25 cancer who is wearing a turban, that's a side effect of</p>



<p>157</p> <p>1 cyclophosphamide. It causes them to lose their hair. 2 Cyclophosphamide is used for breast cancer, is used for 3 ovarian cancer, its use for lung cancer, it's used for most 4 of the various types of blood cancers. And it's used in the 5 treatment phase. 6 But what a lot of people don't talk about is when your 7 cancer comes back and they can no longer treat you then we 8 will frequently use something like cyclophosphamide when 9 tumors start getting too large they won't move to different 10 places in the body and they will get very large and they 11 will press on nerves. And you can't control that with 12 various types of morphemes. And some of the best way to 13 control it is you actually use chemotherapy just to reduce 14 the volume of the tumors. With a various -- like a 15 leukemia, what will happen is the cancer will go into the 16 bones, into the thigh bone and the tumor will grow so big it 17 will break the bone. So -- and we don't talk about a lot of 18 that. But that's actually how a lot of people die with 19 chemotherapy in their body. It is not used for treatment, 20 it is used for pain control. 21 Some of the other drugs on the hazardous drug list are 22 things like tamoxifen which is used for the entire life of a 23 cancer patient, a breast cancer patient who is not 24 responding. It is used to keep the tumor volume down. If 25 you're successfully treated for cancer, breast cancer, you</p>	<p>159</p> <p>1 know, people who die, we should handle them with respect. 2 Families need it. But I can't imagine any of them would 3 want to feel that the things that allowed them to live well 4 have a chance to cause cancer in their children, and in 5 their grandchildren, and in their great-grandchildren. 6 And that's the big thing I want to say. And hormones. 7 I mean, we talked about hormones is estrogen takes eight the 8 different mammalian enzymes to break down. Mammalian 9 enzymes don't exist in bacteria. And that is why estrogen 10 is found in water streams, waterways downstream of municipal 11 waste water treatment. It's found downstream of septic 12 tanks. That's why you get the feminization of fish. 13 And I did find a number that over 12 million patients 14 in the U.S. every year are on estrogen drugs. And estrogen 15 is very, very hardy. That's why Premarin, which was the 16 first of the hormone replacement drugs -- it's called 17 Premarin because it was isolated from the urine of mares. 18 They would then collect the mare's uterine and they would 19 isolate the estrogen out and they make it in all kinds of 20 pills and they put it in bottles and they put it on the 21 shelf and women took it for decades, and they got cancer. 22 And it came out of their bodies. And it went 23 downstream and it went through the septic systems, and it 24 demonized the fish, and it is on the hazardous drug list 25 because it is FDA pregnancy category X. It is never given</p>
<p>158</p> <p>1 only have to take tamoxifen for five years, if you can 2 tolerate it. I couldn't tolerate it so that's why I know so 3 much about how awful it is. 4 But if you have had it come back they will put you on 5 it again just to keep you -- just to give you a quality of 6 life. And we worry about that. But there's also other 7 hazardous drugs that are not so much in my area but over 1 8 percent of people in the U.S. have epilepsy, and through 9 doing a little bit of research for this I discovered that 20 10 percent of the drugs that are used today -- or patients who 11 are taking epilepsy drugs are taking these ones that are not 12 only hazardous going in, but they're excreted in large 13 quantities as hazardous. 14 Well, those patients are going to be taking those all 15 until the day they die. Those get into the water. You 16 know, they excrete from the bodies and they get into the 17 water. They could cause childhood cancer in the children 18 downstream from that. And it takes a very, very little. 19 We're not talking a dose that will cause an effect in an 20 adult. We're talking about a dose that will cause in a few 21 cells that have no immune system. And as I said, have that 22 little tiny liver. 23 And so we've got to do something about that. And this 24 is all I'm asking is that if these are going to be going 25 into the cemetery, and I believe that we should handle, you</p>	<p>160</p> <p>1 to pregnant women unless there's no other choice. 2 Those are the ones I worry about, and that is 64. 64 3 drugs that can cause so much damage. But if you put that in 4 the ground, it's going to come out of the ground, it's going 5 to get in the water and we have to worry about it. How's 6 that for risk? 7 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. -- 8 MR. BROWN: Thank you, Doctor. I really have nothing 9 further. 10 HEARING EXAMINER ROBESON-HANNAN: Okay. Is Mr. 11 Sullivan doing the cross? 12 MR. SULLIVAN: Yes, Ms. Robeson-Hannan. 13 HEARING EXAMINER ROBESON-HANNAN: I'll turn it over to 14 you. 15 MR. SULLIVAN: Dr. O'Keefe, well, you disappear from my 16 screen. 17 DR. O'KEEFE: Oh. I'm here. 18 MR. SULLIVAN: Out there you're, you're down at the 19 bottom there sorry. 20 I'll start for you finished. You just said put it in 21 the ground, it will come out of the ground, it will get in 22 the water. You have done no analysis here to determine 23 whether there is an actual exposure -- and intact exposure 24 pathway, have you? 25 DR. O'KEEFE: Well, there's too many papers out there</p>

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<p>161</p> <p>1 that show that. I don't -- I mean, there's no need for me 2 to do that. 3 MR. SULLIVAN: So the answer is no? The answer is no, 4 correct? 5 DR. O'KEEFE: Do you want me to go do a med search? A 6 medline search? 7 MR. SULLIVAN: I just asked if you had done the 8 analysis -- 9 DR. O'KEEFE: I have done -- 10 MR. SULLIVAN: -- to determine whether there is -- I'm 11 sorry. 12 DR. O'KEEFE: I have done -- 13 MR. SULLIVAN: We can't talk over each other. 14 DR. O'KEEFE: I have done it in the past. 15 MR. SULLIVAN: But you have not done it with respect to 16 this piece of property, correct? 17 DR. O'KEEFE: No, because it's kind of textbook 18 information. 19 MR. SULLIVAN: What kind -- that's -- okay. 20 DR. O'KEEFE: I mean, environment textbooks discuss the 21 problems with estrogen in the environment extensively. 22 MR. SULLIVAN: Okay. But you have done no analysis 23 here to determine whether there is a complete exposure 24 pathway, have you? 25 DR. O'KEEFE: Not in a decade, no.</p>	<p>163</p> <p>1 (Crosstalk) 2 DR. O'KEEFE: I don't know of a single one that has not 3 found estrogen. 4 MR. SULLIVAN: I'm sorry? 5 DR. O'KEEFE: I've not known of a single paper that 6 looked for estrogen in wastewater outflows that has not 7 found it. 8 MR. SULLIVAN: Okay. But that has nothing to do with 9 the property here, correct? 10 DR. O'KEEFE: No, I said I had no analysis -- 11 MR. SULLIVAN: Okay. 12 DR. O'KEEFE: -- of this property. I just know what 13 you're putting in the ground. 14 MR. SULLIVAN: You would agree that most of these drugs 15 you mentioned are excreted within a couple of days of 16 someone taking them, correct? 17 DR. O'KEEFE: Most of them. 18 MR. SULLIVAN: Okay. 19 DR. O'KEEFE: I mean, that's what -- that was what was 20 determined by the FDA and the agencies that were producing 21 it. You know, that's what you are required to do by the 22 FDA in order to get your drug approved. 23 MR. SULLIVAN: So you've said that several drugs cannot 24 be broken down outside of a body. So you disagree with Mr. 25 Putman's testimony this morning that septic systems would</p>
<p>162</p> <p>1 MR. SULLIVAN: Okay. So you have no idea what the -- 2 DR. O'KEEFE: But the CDC -- 3 (Crosstalk) 4 MR. SULLIVAN: -- subsurface conditions here are -- oh, 5 sorry. 6 DR. O'KEEFE: No, not this specific site. But the CDC 7 and NIOSH and everybody worries about the exposure. It is 8 one of the -- it is one of those textbook things that we 9 have to worry about. You know, a lot of people think that 10 the estrogen that we find in the environment is because 11 people are flushing their pills down the toilet. It's not. 12 It's because they're taking their pills as prescribed, the 13 excess is coming out in their urine. The excess is not 14 being cleaned out in the municipal wastewater, it's not 15 being cleaned out by septic tanks and it ends up in our 16 ground water and in our drinking water. 17 There's places where -- towns where they get their 18 drinking water downstream from rivers that is where the 19 effluent from the ones upstream do it. you can actually 20 test it, but there's a lot of papers out there on -- 21 MR. SULLIVAN: But those are all site specific analysis 22 of groundwater flow and of different parts of the exposure 23 pathway, correct? 24 DR. O'KEEFE: Correct. 25 MR. SULLIVAN: Right. And you've done --</p>	<p>164</p> <p>1 degrade drugs? 2 DR. O'KEEFE: Septic systems will degrade a lot of 3 things. They will not degrade the ones that I most worry 4 about. These are the hazardous drugs that are excreted in 5 high quantities. They're like plastic. You know, modern 6 chemistry has gotten us some beautiful, beautiful chemicals. 7 That's why most of our modern drugs were made with 8 industrial chemistry. They brought us plastic. We all know 9 how well plastic breaks down in the environment. 10 MR. SULLIVAN: And so as far as the volume of drugs 11 entering the subsurface, or the environment, you would agree 12 that a living person excretes more volume of drugs than a 13 person who is buried, correct? 14 DR. O'KEEFE: They'll be the same. It depends on how 15 many days before they received the drug, and how much they 16 got. That's one of the big issues of palliative care. You 17 know, you may be getting 50 mg of a drug for somebody who's 18 going to live. But when you're working in palliative care 19 you are giving grams. There's one of the drugs, it's 20 Estramustine, I think it is. It's given to men who are -- 21 have prostate cancer, terminal prostate cancer, palliative 22 care. It is equivalent -- it's estrogen. Basically it's 23 estrogen, and if equivalent to a million times the amount of 24 estrogen that a woman would produce in a day. And they give 25 that to them in every single day in an effort to keep the</p>

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<p>165</p> <p>1 prostate cancer from growing so big that it pushes on 2 nerves. 3 MR. SULLIVAN: And that sounds like, if that were taken 4 over time that's quite a bit of drugs, correct? 5 DR. O'KEEFE: That's every single day they take it. 6 MR. SULLIVAN: Right. So that living person would be 7 excreting more than someone who is buried in the ground, 8 correct? 9 DR. O'KEEFE: No, no. It would be the same. You know, 10 you get it and you die the next day, the drug is still in 11 you. It's got to come out. 12 MR. SULLIVAN: I'm sorry. Well, I misunderstood. And 13 you said that someone could take this for several years 14 every day -- 15 DR. O'KEEFE: Yeah. 16 MR. SULLIVAN: Excretions over several years every day 17 are greater than any excretion from a body? 18 (Crosstalk) 19 DR. O'KEEFE: They don't usually last several years. 20 MR. SULLIVAN: More than a day, two days? A month, two 21 months, weeks? Years? 22 DR. O'KEEFE: It's usually -- from what I understand 23 that only get it for a couple of months because that's how 24 long the people live. 25 MR. SULLIVAN: So someone taking a drug for a couple of</p>	<p>167</p> <p>1 is that volume you have for one day, the next day when 2 you're alive it comes out. If you're buried it comes out. 3 MR. SULLIVAN: Right. But when you're buried, you can 4 only excrete one days worth, in that scenario? 5 DR. O'KEEFE: Correct, absolutely. 6 MR. SULLIVAN: Right. Okay. And if you're alive 7 you're secreting that much every single day you take it -- 8 the drug? 9 DR. O'KEEFE: Yes. But you go into -- 10 MR. SULLIVAN: Okay. That's the point. Thank you. 11 DR. O'KEEFE: You go into a septic system or a 12 municipal waste water treatment. 13 MR. SULLIVAN: So that's if you have a complete 14 exposure pathway, correct? 15 DR. O'KEEFE: You always have a complete exposure 16 pathway. 17 MR. SULLIVAN: How so? 18 DR. O'KEEFE: Because excretion is the last step. 19 MR. SULLIVAN: Okay. So explain the exposure 20 pathway -- explain that to me. How does that work? How you 21 always have an exposure pathway. I don't understand that. 22 DR. O'KEEFE: It's the way drugs work. You take a 23 drug. 24 MR. SULLIVAN: Yes. 25 DR. O'KEEFE: You have to absorb it.</p>
<p>166</p> <p>1 months excretes more of that drug than a corpse would, 2 correct? 3 DR. O'KEEFE: It would be exactly the same. I mean, 4 you know, every day. 5 MR. SULLIVAN: Well, and help me understand here. So 6 for each day the person takes the drug you're saying that's 7 the same as a corpse? Or a body? 8 DR. O'KEEFE: All right. You will excrete it you take 9 it one day you will -- sorry. You take it one day you will 10 excrete it the next day. You take it the next day, you will 11 excrete the same amount. If you die you will excrete that 12 day that they put you in the ground the same amount that you 13 did if you were alive. 14 MR. SULLIVAN: Well, in that single day? 15 DR. O'KEEFE: On that single day. But then you put it 16 in -- 17 MR. SULLIVAN: Right. But if you're alive you're 18 taking it for a longer period of time, correct? 19 DR. O'KEEFE: It will be a total amount. 20 MR. SULLIVAN: That is more if you're alive? 21 DR. O'KEEFE: Each day. 22 MR. SULLIVAN: I didn't think this was a complex issue. 23 It's just -- 24 DR. O'KEEFE: No, it's -- well, the thing is you're 25 trying to make it into a complex issue, and I'm just saying</p>	<p>168</p> <p>1 MR. SULLIVAN: Yes. 2 DR. O'KEEFE: It's from an IV or it's from your mouth. 3 MR. SULLIVAN: I'm following you. 4 DR. O'KEEFE: That goes into your blood supply. 5 MR. SULLIVAN: Okay. 6 DR. O'KEEFE: Yeah, that's called -- that's absorption. 7 Then, it's the distribution and metabolism work together. 8 MR. SULLIVAN: All through your body here, right? This 9 is what's in your body? 10 DR. O'KEEFE: It goes in your body, they go through -- 11 HEARING EXAMINER ROBESON-HANNAN: Wait. I'm sorry, Mr. 12 Sullivan, can you -- when you interrupt I can't hear very 13 well. You have a right to interrupt on cross, but if 14 there's any way -- I have trouble -- 15 MR. SULLIVAN: Oh I -- yes. 16 HEARING EXAMINER ROBESON-HANNAN: -- hearing the -- 17 there's like an interference. 18 DR. O'KEEFE: Okay. How about if I just do it. Okay. 19 HEARING EXAMINER ROBESON-HANNAN: I want, Mr. Sullivan, 20 I want you to feel free, if you think she's going off base 21 or you have an objection. But a back and forth is difficult 22 to pick up. 23 DR. O'KEEFE: Yes, please. Ask questions, because in a 24 lot of ways I feel I'm here as an instructor. I am talking 25 about the issues of drugs. Well, I think his question was,</p>

<p>169</p> <p>1 and correct me if I'm wrong Mr. Sullivan, what is the 2 exposure pathway for -- and correct me if I'm wrong, from -- 3 for excretions from the body to the drinking water. Is that 4 wrong? 5 MR. SULLIVAN: And that is part of my question. And 6 I'm sorry, I'll do my best not to interrupt. That is part 7 of my question, what I was reacting to was the statement 8 that there is always a complete exposure pathway. And 9 that's what I was seeking explanation on. 10 HEARING EXAMINER ROBESON-HANNAN: Oh, okay. 11 DR. O'KEEFE: Okay. I get -- because the problem is 12 just like with a lot of stuff in science will use one term 13 for multiple things. So there is an exposure pathway while 14 the drug is in the patient. And there is an exposure 15 pathway after it leaves the patient. And it's the same 16 term. But the exposure within the body really is only three 17 steps of the (indiscernible). It is absorption, metabolism, 18 and distribution. 19 Metabolism and distribution happen together. 20 Everything that is not used by the body is excreted. So 21 it's like step 1 happens, and then step 2 and step 3 come 22 together. And then, when those are done 4 happens. And it 23 is a toxicology, pharmacology term, and it -- with the FDA 24 they want to know where every molecule of drug goes. 25 So whether you do a clinical trial, you know how much</p>	<p>171</p> <p>1 for those people from someone who has been buried? 2 DR. O'KEEFE: Pretty much -- 3 (crosstalk) 4 MR. SULLIVAN: And let me -- hang on a second because 5 you've done no site specific analysis here. You've told us 6 that. So how can you make any representations about an 7 exposure pathway to the target who might actually drink this 8 water? 9 DR. O'KEEFE: Well, we do know from scientific studies 10 that estrogen does not break down efficiently, i.e. Very 11 little breaks down in the ground. It breaks down very 12 little in a septic tank. It ends up in the water as impact 13 estrogen. 14 MR. SULLIVAN: But excuse me. But only where there is 15 a pathway that water, correct? You need to have a way for 16 the water to get -- 17 DR. O'KEEFE: Well, if the water flows. The water 18 flows -- the liquid flows out of the body. The liquid flows 19 into the ground. The liquid flows into the -- if you had a 20 septic system but you're not, the liquid flows down into the 21 water. That is a direct line. The estrogen doesn't break 22 down. 23 MR. SULLIVAN: Is it your testimony today that you 24 don't need to know anything more about subsurface conditions 25 or the nature of the drug or the soil involved at all, or</p>
<p>170</p> <p>1 you put into the patient. You will -- and they do this in 2 humans because it's a different in humans than it is in the 3 animal. And then, they will be sampling blood. They will 4 be sampling tissue. Checking for where the drug is. Then, 5 they collect all the urine and the feces and they count how 6 much comes out. It is not calculation, it is done 7 experimentally. And it is done for every single drug. So 8 we -- 9 MR. SULLIVAN: So I'm going to get back to the -- oh go 10 ahead, I'm sorry. 11 DR. O'KEEFE: Well, I'm just saying. 12 HEARING EXAMINER ROBESON-HANNAN: No wait. I think she 13 answered that part of your question, but you go ahead and 14 ask your question, Mr. Sullivan. 15 MR. SULLIVAN: Sure. And then, so yes. No, I wasn't 16 asking you about the exposure of the person taking the drug. 17 Because that's not what the issue is here. 18 DR. O'KEEFE: Yeah. 19 MR. SULLIVAN: The issue here is people that will drink 20 water either from beer by private wells or from the water 21 supply at the reservoir that is nearly a couple of miles 22 from the cemetery. And my question is that's the target 23 that we need to address for risk here. Is people either 24 drinking out of wells, or drinking from the public water 25 supply. And my question was is there an exposure pathway</p>	<p>172</p> <p>1 the water to make a determination of risk? 2 DR. O'KEEFE: The nature of the drug is the most 3 important. Estrogen does not break down efficiently in the 4 environment. 5 MR. SULLIVAN: I take your point. And so let's assume 6 that's true, and I have no reason to doubt you. Let's 7 assume that groundwater is 20 feet down and there's -- there 8 are subsurface conditions and there's no water body 9 anywhere, how can you just keep saying -- you keep saying 10 that it's going to get into the water, but you've already 11 said also that you're not a hydrogeologist. You haven't 12 done any site-specific analysis. So how can you make those 13 representations? 14 DR. O'KEEFE: Because there are -- you need eight 15 mammalian enzymes to break down estrogen. 16 MR. SULLIVAN: Right, but it -- 17 DR. O'KEEFE: Until it goes into another mammal the 18 estrogen is not going to come across any of those mammalian 19 enzymes. 20 MR. SULLIVAN: But it also isn't -- there's no -- 21 without looking at the subsurface conditions you don't know 22 where it's going to go. 23 DR. O'KEEFE: Is it -- 24 MR. SULLIVAN: It may not break down, but you don't 25 know where it's going?</p>

<p>173</p> <p>1 DR. O'KEEFE: Is it going to go into another mammal?</p> <p>2 MR. SULLIVAN: I'm not --</p> <p>3 DR. O'KEEFE: The only thing that's going to break it</p> <p>4 down is if it goes into another mammal.</p> <p>5 MR. SULLIVAN: Right. But the question here is -- I</p> <p>6 don't want to belabor the point because you've done no site-</p> <p>7 specific analysis. You don't know if there is a pathway</p> <p>8 here to a well or to drinking water, do you?</p> <p>9 DR. O'KEEFE: No. It's going into the groundwater.</p> <p>10 MR. SULLIVAN: Okay.</p> <p>11 DR. O'KEEFE: Where does the groundwater go?</p> <p>12 MR. SULLIVAN: How do you know that it's going into the</p> <p>13 groundwater?</p> <p>14 DR. O'KEEFE: Because the person is been buried in the</p> <p>15 ground.</p> <p>16 MR. SULLIVAN: Okay. I'll leave it there. And</p> <p>17 decomposing bodies, they're full of mammalian enzymes, are</p> <p>18 they not?</p> <p>19 DR. O'KEEFE: Mammalian enzymes break down very quickly</p> <p>20 because they need oxygen. So within minutes, if you put a</p> <p>21 mammalian oxygen in a pH -- anoxic the pH grows, rises up.</p> <p>22 The mammalian enzymes are destroyed. A problem when we try</p> <p>23 and make industrial enzymes we have to -- we can't use</p> <p>24 mammalian ones. That's why a lot of times you have --</p> <p>25 Making mammalian enzymes preparations is a very</p>	<p>175</p> <p>1 different -- that's a metabolism state. Anoxic means that</p> <p>2 there's not enough oxygen and it becomes -- the pH rises to</p> <p>3 about 5.5.</p> <p>4 MR. SULLIVAN: So it's --</p> <p>5 DR. O'KEEFE: That's why tumors -- just a little bit.</p> <p>6 Is like the stomach is pH 1. A tumor environment is about</p> <p>7 pH 6. But that means the immune system can't get in there.</p> <p>8 MR. SULLIVAN: But my point, I guess, my point, just</p> <p>9 briefly is that you need to -- to understand what the</p> <p>10 breakdowns a body will metabolize certain amounts of drugs,</p> <p>11 right? As you mentioned already.</p> <p>12 DR. O'KEEFE: Most, not estrogen.</p> <p>13 MR. SULLIVAN: Okay.</p> <p>14 DR. O'KEEFE: Not estrogen.</p> <p>15 MR. SULLIVAN: But in order to determine the metabolism</p> <p>16 or breakdown that might happen outside of the body you do</p> <p>17 need to understand the site specific conditions, and the</p> <p>18 soil conditions. You need to know where groundwater is, do</p> <p>19 you not?</p> <p>20 DR. O'KEEFE: Well, if it's flowing it's groundwater.</p> <p>21 I mean, most places in the world have groundwater. True?</p> <p>22 MR. SULLIVAN: Okay. I'm not sure that that's a</p> <p>23 helpful statement. But I was just asking, you need to</p> <p>24 consider the groundwater, the characteristics of the</p> <p>25 groundwater though, do you not?</p>
<p>174</p> <p>1 specialized world because they have to formulate them so</p> <p>2 carefully. If their pH ever becomes acidic, they're gone.</p> <p>3 And when you start having a lot of bacterial overgrowth it</p> <p>4 destroys mammalian enzymes. They're gone. They're gone in</p> <p>5 minutes. So they will no longer be there. The only thing</p> <p>6 that's left within the body tends to be bacterial enzymes,</p> <p>7 and bacterial enzymes are not very efficient at destroying</p> <p>8 these hazardous drugs that are able to excrete from the body</p> <p>9 in huge quantities.</p> <p>10 It's the nature of these. As I said, they're like the</p> <p>11 plastics of the drug world.</p> <p>12 MR. SULLIVAN: Right. So you mentioned that oxic and</p> <p>13 anoxic, I think you use those terms but those terms refer to</p> <p>14 site-specific conditions you would find at a given site,</p> <p>15 correct? Some situations may be more oxic -- anoxic, some</p> <p>16 might be more oxic, correct?</p> <p>17 DR. O'KEEFE: Well, correct. I mean most soil</p> <p>18 conditions --</p> <p>19 MR. SULLIVAN: Yeah, right.</p> <p>20 DR. O'KEEFE: -- are anaerobic. I tend to use aerobic,</p> <p>21 anoxic is something we tend to see within tumor</p> <p>22 environments.</p> <p>23 MR. SULLIVAN: Right.</p> <p>24 DR. O'KEEFE: It means that there's too little oxygen.</p> <p>25 Not necessarily that it's anaerobic because that's a</p>	<p>176</p> <p>1 DR. O'KEEFE: Correct. And I'm only talking about the</p> <p>2 ones that you have to have mammalian enzymes to digest them</p> <p>3 MR. SULLIVAN: Okay. And -- okay.</p> <p>4 DR. O'KEEFE: I'm not talking about all the drugs, I'm</p> <p>5 talking about 64.</p> <p>6 MR. SULLIVAN: And those 64 you mentioned, are they --</p> <p>7 are they the ones that you mentioned in your testimony on</p> <p>8 the NIOSH list; is that correct?</p> <p>9 DR. O'KEEFE: Correct. Well, wait a minute --</p> <p>10 MR. SULLIVAN: Okay. What does NIOSH stand for?</p> <p>11 DR. O'KEEFE: NIOSH is National -- oh no, it's National</p> <p>12 Institute of Safety -- Occupational Safety and Health.</p> <p>13 MR. SULLIVAN: Right. Occupational safety, correct.</p> <p>14 So the NIOSH drug list is really aimed at hazards --</p> <p>15 occupational hazards for people, healthcare workers who work</p> <p>16 with these drugs, correct?</p> <p>17 DR. O'KEEFE: It's people who work with the patients</p> <p>18 who work with the drugs.</p> <p>19 MR. SULLIVAN: Okay. Right. So people that are</p> <p>20 exposed to these drugs fairly frequently?</p> <p>21 DR. O'KEEFE: They don't have to be exposed frequently.</p> <p>22 If they are pregnant they only have to be exposed once.</p> <p>23 MR. SULLIVAN: I'm just saying the NIOSH list itself</p> <p>24 though is an occupational guide. It's a guide for</p> <p>25 occupational --</p>

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<p>177</p> <p>1 DR. O'KEEFE: Yes.</p> <p>2 MR. SULLIVAN: To assess occupational risk, correct?</p> <p>3 DR. O'KEEFE: Yes, correct.</p> <p>4 MR. SULLIVAN: Right. And so --</p> <p>5 DR. O'KEEFE: And as I said, 80 -- 88 percent of the</p> <p>6 ones got on that drug --</p> <p>7 MR. SULLIVAN: Right, if I may --</p> <p>8 DR. O'KEEFE: -- on that list because they want to</p> <p>9 protect pregnant women. Pregnant women only have to be</p> <p>10 exposed once.</p> <p>11 MR. SULLIVAN: Of course. But what we're assessing</p> <p>12 here is not occupational exposure; isn't that correct?</p> <p>13 DR. O'KEEFE: We're -- we're evaluating human exposure.</p> <p>14 MR. SULLIVAN: Right. Human exposure but someone you</p> <p>15 might drink water from a tap somewhere, but that different</p> <p>16 than someone who works with these drugs, correct?</p> <p>17 DR. O'KEEFE: Not really.</p> <p>18 MR. SULLIVAN: So your testimony today is that the risk</p> <p>19 assessment of someone who handles drugs on a regular basis</p> <p>20 and is exposed to them, the analysis is exactly the same as</p> <p>21 someone who might drink water once or twice?</p> <p>22 DR. O'KEEFE: Okay. For the NIOSH exposure --</p> <p>23 MR. SULLIVAN: I'm sorry. Can you just answer that</p> <p>24 question and then you can go on to explain? Yes or no?</p> <p>25 DR. O'KEEFE: Okay. No.</p>	<p>179</p> <p>1 contaminants?</p> <p>2 DR. O'KEEFE: No.</p> <p>3 MR. SULLIVAN: You didn't do any site-specific</p> <p>4 assessment of risk of pharmaceuticals at this property,</p> <p>5 right?</p> <p>6 DR. O'KEEFE: No. I'm working on making new cancer</p> <p>7 drugs.</p> <p>8 MR. SULLIVAN: Okay. Thank you. I have no further</p> <p>9 questions.</p> <p>10 HEARING EXAMINER ROBESON-HANNAN: Okay. Thank you.</p> <p>11 Mr. Brown, any redirect?</p> <p>12 MR. BROWN: I just would like to tread lightly on one</p> <p>13 particular thing that you said, Dr. O'Keefe. You talked</p> <p>14 about a situation where someone who is near death takes a</p> <p>15 drug one day and it's excreted. Takes a drug the second day</p> <p>16 and it's excreted, and then dies on the third day, And you</p> <p>17 said it's excreted again; remember that testimony?</p> <p>18 DR. O'KEEFE: A certain percentage is.</p> <p>19 MR. SULLIVAN: Yes.</p> <p>20 DR. O'KEEFE: And it depends on what is specific for</p> <p>21 the drug. And it's excreted over the next 24 hours.</p> <p>22 MR. SULLIVAN: Here's my question. You've talked about</p> <p>23 day 1, day 2, death, day 3. What happens as to excretion on</p> <p>24 day 4? The second day in the ground?</p> <p>25 DR. O'KEEFE: Well, in fact is when you die, or when</p>
<p>178</p> <p>1 MR. SULLIVAN: Okay. Thank you.</p> <p>2 DR. O'KEEFE: Yes. Okay. If you only -- when you go</p> <p>3 to OSHA -- okay, let me put it this way. Hospitals are not</p> <p>4 bound by OSHA. Could you explain that to me?</p> <p>5 MR. SULLIVAN: No, I don't see how it's relevant</p> <p>6 either. But anyhow, that's --</p> <p>7 DR. O'KEEFE: But what is the --</p> <p>8 MR. SULLIVAN: So let's move on. We're going to move</p> <p>9 on --</p> <p>10 DR. O'KEEFE: These are definitions of --</p> <p>11 MR. SULLIVAN: We are going to move on. Yeah, we're</p> <p>12 going to move on.</p> <p>13 DR. O'KEEFE: -- definitions of -- this is definitions</p> <p>14 of the law.</p> <p>15 MR. SULLIVAN: So we are going to move on.</p> <p>16 DR. O'KEEFE: But when you talk to biology --</p> <p>17 MR. SULLIVAN: So we're going to move on. I'm sorry, I</p> <p>18 would like to move on.</p> <p>19 DR. O'KEEFE: -- it's the same thing.</p> <p>20 MR. SULLIVAN: Okay. That's -- so just to be clear --</p> <p>21 DR. O'KEEFE: Okay.</p> <p>22 MR. SULLIVAN: You don't have any experience with</p> <p>23 hydrogeology?</p> <p>24 DR. O'KEEFE: No.</p> <p>25 MR. SULLIVAN: (indiscernible) transport of</p>	<p>180</p> <p>1 you're about to die, you don't have as much metabolism--</p> <p>2 metabolism going on. So more of it stays in you, but it's a</p> <p>3 fraction of a percentage. And it depends on your liver and</p> <p>4 everything else.</p> <p>5 What you've taken have to come out of you. If you were</p> <p>6 living and functioning and everything else, and the drug is</p> <p>7 excreted within 12 hours. Most of them are not. Most of</p> <p>8 them are like 36 hours. Or 48 hours. Are some of them are</p> <p>9 eight days. So it has -- it's like a curve. It's a curve.</p> <p>10 It's a certain type of curve. It has to get out.</p> <p>11 If you are alive, you will get rid of it in your feces,</p> <p>12 and your urine. Urine will be within the 24 hours, feces</p> <p>13 tends to take a bit longer. If it is not coming out of your</p> <p>14 body and gone into the toilet, it goes with you into the</p> <p>15 ground.</p> <p>16 It then comes out, whether it comes out very quickly</p> <p>17 because it was in your bladder, whether it comes out quickly</p> <p>18 because it was in your colon and you excrete it that way, or</p> <p>19 if it's in your tissues and it has to slowly come out as</p> <p>20 your tissue breaks down, it will come out.</p> <p>21 HEARING EXAMINER ROBESON-HANNAN: May I ask a question?</p> <p>22 At the first hearing, which you were at, but there was some</p> <p>23 testimony that some drugs, like chemotherapy drugs will no</p> <p>24 longer -- most people get removed from chemotherapy before</p> <p>25 they die, although you seem to indicate that's not always</p>

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<p>181</p> <p>1 the case with palliative care. But how -- I guess what I am 2 trying to ask is how much loading of this thing is in the -- 3 of the bad drugs, or the toxic drug is in the body, you 4 know, five days out? 5 DR. O'KEEFE: It -- you mean, five days after they die? 6 HEARING EXAMINER ROBESON-HANNAN: Yeah. 7 DR. O'KEEFE: Whatever was in their body when they 8 died. 9 HEARING EXAMINER ROBESON-HANNAN: Okay. That was my 10 question. And can you just explain that for me? Because 11 if they're no longer secreting it, excreting it, they're no 12 longer excreting it -- 13 DR. O'KEEFE: Because they no longer have the kidneys 14 working, they no longer have their digestive system working. 15 It just sits in there. 16 (The recording was conc 17 HEARING EXAMINER ROBESON-HANNAN: Okay. 18 DR. O'KEEFE: You know excretion is an active process 19 in mammals. We have to work to get it out. And when 20 we're dead, nothing really works very well. 21 HEARING EXAMINER ROBESON-HANNAN: Okay. So the same 22 amount would be in there as the amount when they die? 23 DR. O'KEEFE: Yeah. And -- sorry about the cat. She's 24 my supervisor. It really comes down to how the patient and 25 the physician want to treat the cancer. Because when you're</p>	<p>183</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: All right. Mr. 2 Sullivan, any questions based on my questions? I -- 3 MR. SULLIVAN: I'm just -- I'm trying to understand. I 4 think you asked how much it would be in the body after it 5 was administered, is that correct? Did I hear that 6 correctly? And if that's the case, I would ask Dr. O'Keefe, 7 isn't it true that most of these drugs are excreted from the 8 body within, well I think you said 24 to 36 hours, 48 hours, 9 maybe? 10 DR. O'KEEFE: If you are a healthy person. Because it 11 comes down to what the patient is. So if you have a patient 12 who is dying there liver is not going to be metabolizing as 13 well. Their kidneys, their renal function starts degrading. 14 So frequently you will actually see a lower -- a slower rate 15 of all these things. 16 All these numbers that we can work off of that are in 17 the drug insert, those were done on that standard, you know, 18 30 to 50 year old male, 70 kg, A1c -- you know, all that 19 thing, non-smoker, non-drinker, you know all that sort of 20 stuff. But if you read in the detailed ones that are 21 supplied to the pharmacists and physicians and everybody 22 else, it will give messages on, you have to be careful about 23 giving this to somebody who is having renal issues because 24 you can over does them. Because of their normal metabolism 25 is not working properly.</p>
<p>182</p> <p>1 treating cancer you usually are, you know, if you're using 2 chemical drugs it will be five treatments every -- every 3 three weeks. So you'll be, you know, you'll get five 4 infusions every three weeks. If you have the cancer come 5 back they will sometimes do 12 of those. But at a certain 6 point, they are no longer treating the cancer. They are 7 just trying to improve your quality of life. 8 And it's those quality of life treatments that are 9 really where they use an awful lot of chemotherapy. Is -- 10 cancer, if you've ever had cancer it is an awful disease. 11 It is frightening and family -- I mean, a lot of patients 12 will actually take stage 4 cancer, there's a lot of patients 13 who will take chemotherapy just because it makes their 14 families feel like something is being done for them. 15 And the doctors are only giving it to try and reduce 16 pain. 17 HEARING EXAMINER ROBESON-HANNAN: Okay. 18 DR. O'KEEFE: And it's not considered -- it's not 19 classified as treatment. Cancer treatment, it's palliative 20 treatment. But you also have things like methotrexate which 21 is a cancer drug, were also finding it is a phenomenal drug 22 for rheumatoid arthritis. So patients who are on 23 methotrexate, which is one of the really bad ones, 50 24 percent of it comes out, they are their entire life on it 25 because if they don't they are in agony.</p>	<p>184</p> <p>1 MR. SULLIVAN: But metabolism does happen of these 2 drugs before death and after death, correct? 3 DR. O'KEEFE: Before death. It doesn't happen after 4 death. 5 MR. SULLIVAN: It's your testimony today that there is 6 zero metabolic activity breaking down -- 7 DR. O'KEEFE: No significant -- 8 MR. SULLIVAN: -- any drugs after death? 9 DR. O'KEEFE: Insignificant. Insignificant because 10 they require mammalian enzymes to break them down and 11 mammalian enzymes are gone very shortly. I mean, you 12 have -- liver enzymes will last, depending on the 13 temperature the person is kept at, some of them will last 14 for a day or two. A lot of them will not. Some of these 15 drugs have to be broken down in other organs, depending on 16 all the circumstances. 17 We have to go drug, by drug, by drug on which one is 18 broken down, which enzymes have short half-life, long half- 19 life, functional. This is functional half-life. There's 20 just too many. It's like estrogen, as I said, eight 21 different enzymes. There's one, we don't even know what it 22 is. We know it's in there, but we don't know what it is. 23 MR. SULLIVAN: And so yeah. So I think I'm hearing you 24 say that it really -- one size doesn't fit all, you really 25 need to look at the specifics correctly all the time --</p>

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<p>185</p> <p>1 DR. O'KEEFE: Absolutely.</p> <p>2 MR. SULLIVAN: The specifics of the drug, the specifics</p> <p>3 of the conditions that somebody is in, and --</p> <p>4 DR. O'KEEFE: Absolutely. And when you have --</p> <p>5 MR. SULLIVAN: And you've done none of that analysis,</p> <p>6 correct?</p> <p>7 DR. O'KEEFE: And when you have 12 million patients</p> <p>8 taking estrogen every day --</p> <p>9 MR. SULLIVAN: I'm --</p> <p>10 (Crosstalk)</p> <p>11 DR. O'KEEFE: -- you're going to have a lot of estrogen</p> <p>12 running around.</p> <p>13 MR. SULLIVAN: I'm sorry. And you didn't do any of</p> <p>14 that analysis here, correct?</p> <p>15 DR. O'KEEFE: No. No, it's all -- it's all --</p> <p>16 MR. SULLIVAN: Okay. Thank you.</p> <p>17 DR. O'KEEFE: -- in the research in all the --</p> <p>18 UNIDENTIFIED SPEAKER: Am I allowed to ask a question</p> <p>19 or not?</p> <p>20 MR. SULLIVAN: No.</p> <p>21 DR. O'KEEFE: Sure.</p> <p>22 HEARING EXAMINER ROBESON-HANNAN: Wait. Who is</p> <p>23 speaking?</p> <p>24 MR. SULLIVAN: I was asked by my client if he was</p> <p>25 allowed to ask a question and we were going to take the</p>	<p>187</p> <p>1 MR. BROWN: No. Object.</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: Well, let's do one</p> <p>3 thing at a time. Do you and Mr. Diaz --</p> <p>4 MR. SULLIVAN: Yes, I do have a question.</p> <p>5 HEARING EXAMINER ROBESON-HANNAN: Go ahead.</p> <p>6 MR. SULLIVAN: So Dr. O'Keefe, how many milligrams</p> <p>7 would be a typical dose of a breast cancer drug? A daily</p> <p>8 dose?</p> <p>9 DR. O'KEEFE: I would have to -- it depends on the</p> <p>10 cancer drug. Most cancer drugs are given in cocktails of</p> <p>11 about four. If you go look --</p> <p>12 MR. SULLIVAN: I'm sorry four what? What's that</p> <p>13 measurement?</p> <p>14 DR. O'KEEFE: There are four different, like the moxi</p> <p>15 and everything else. It is all actually in -- it's given in</p> <p>16 Exhibit 106, appendix 2. It will list all the drugs that</p> <p>17 are on the NIOSH list. If you -- that will give you a list</p> <p>18 and then you can go to the individual drug insert and it</p> <p>19 will tell you the amount that was used in the clinical</p> <p>20 trial.</p> <p>21 MR. SULLIVAN: So --</p> <p>22 DR. O'KEEFE: Whether or not that is still used that</p> <p>23 will be. But you have to go look at the NIH ones. But a</p> <p>24 lot of these ones now, because they use them in doses that</p> <p>25 are more, or less, than what was done in the clinical</p>
<p>186</p> <p>1 authority away from you to run your hearing, so we said no.</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: Oh, okay. Well, you</p> <p>3 know, if he wants -- I don't have an issue -- I would</p> <p>4 prefer -- actually there is such a thing as unauthorized</p> <p>5 practice. Is there any way you can ask your question to Mr.</p> <p>6 Sullivan to --</p> <p>7 MR. SULLIVAN: Can you give us a moment and I can just</p> <p>8 confer with Mr. --</p> <p>9 UNIDENTIFIED SPEAKER: I so --</p> <p>10 MR. SULLIVAN: We'll mute for a moment and I'll confer.</p> <p>11 DR. O'KEEFE: I do have to get going shortly. I have</p> <p>12 to go to a doctor's appointment myself. I am not a</p> <p>13 physician, I cannot practice medicine, but I can tell you</p> <p>14 what they do.</p> <p>15 HEARING EXAMINER ROBESON-HANNAN: Okay. Understood.</p> <p>16 Just wait for -- we'll see if he has any follow-up.</p> <p>17 Mr. Brown, are you going to have any follow-up?</p> <p>18 MR. BROWN: No, ma'am.</p> <p>19 MR. DESMOND BROWN: So if there is unauthorized</p> <p>20 practice so that the client can ask questions, and I also,</p> <p>21 as a homeowner in the community ask a question through Mr.</p> <p>22 Brown, the lawyer?</p> <p>23 HEARING EXAMINER ROBESON-HANNAN: Who is speaking?</p> <p>24 MR. DESMOND BROWN: This is Desmond Brown, who was not</p> <p>25 allowed to testify.</p>	<p>188</p> <p>1 trials. You'd have to go look at what those are. Some of</p> <p>2 them are milligrams, some of them -- usually they're mgs</p> <p>3 per kg. Like Cyclophosphamide, the maximum dose that was</p> <p>4 used for a 70 kg man that was used in the clinical trial</p> <p>5 meant that they were giving them, I think, two to three</p> <p>6 grams a day.</p> <p>7 MR. SULLIVAN: Okay. So let's go -- I wanted to talk</p> <p>8 about the breast cancer drugs you mentioned though. That's</p> <p>9 what I'm trying to get a sense of the dosage. Do you know</p> <p>10 just a typical ballpark dosage?</p> <p>11 DR. O'KEEFE: Oh no. I could tell you how much is give</p> <p>12 for Keytruda. Keytruda is fabulous. They only give 50 mg</p> <p>13 of that.</p> <p>14 MR. SULLIVAN: Okay.</p> <p>15 DR. O'KEEFE: But the other ones -- Keytruda is a</p> <p>16 biologic, no worry about it --</p> <p>17 MR. SULLIVAN: I understand that. But I'm asking you</p> <p>18 is that the dosage per day?</p> <p>19 DR. O'KEEFE: No. Keytruda is amazing. They only need</p> <p>20 to give 50 mg five times.</p> <p>21 MR. SULLIVAN: Okay. So that's --</p> <p>22 DR. O'KEEFE: It's not a hazardous drug. You will have</p> <p>23 to go look at what is practiced.</p> <p>24 MR. SULLIVAN: What is a typical daily dosage of an</p> <p>25 estrogen replacement?</p>



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<p>189</p> <p>1 DR. O'KEEFE: I'd have to go look at them.</p> <p>2 MR. SULLIVAN: Okay.</p> <p>3 DR. O'KEEFE: I'm not a physician. But you can go look</p> <p>4 at the drug insert and they'll tell you what they are. It's</p> <p>5 all public information.</p> <p>6 MR. SULLIVAN: Let's assume, just for the sake of</p> <p>7 argument that there sake -- and I'm going to make up a</p> <p>8 number here, 100 mg of a drug, whatever the drug is, it's</p> <p>9 one of your nasty drugs. Let's assume you get 100 mg a day.</p> <p>10 Okay? And you take the drug for five years. And you</p> <p>11 excrete that drug, and then you said that septic systems</p> <p>12 can't break it down. So you're talking some massive amount</p> <p>13 of drug that is going straight into the wherever from a</p> <p>14 septic system, correct?</p> <p>15 DR. O'KEEFE: Do you know something a better person to</p> <p>16 answer these questions is Jim Mullooney because he is the</p> <p>17 one that deals with hazardous drugs in septic systems. I</p> <p>18 would only be parroting what I remember him saying. He can</p> <p>19 give you the actual accurate answer.</p> <p>20 MR. SULLIVAN: Okay, so you're not able to answer the</p> <p>21 question, just to be clear?</p> <p>22 DR. O'KEEFE: Well, I do know that a septic tank of a</p> <p>23 cancer patient frequently the grass doesn't grow over them</p> <p>24 for two years.</p> <p>25 MR. SULLIVAN: Okay. Thank you. I have no further</p>	<p>191</p> <p>1 question? That's not a question.</p> <p>2 MR. DESMOND BROWN: It is a question.</p> <p>3 HEARING EXAMINER ROBESON-HANNAN: Get to your question.</p> <p>4 MR. DESMOND BROWN: I'm asking a question. So do you</p> <p>5 agree that the dose, based on that argument, that a patient</p> <p>6 takes daily with the last than the total body dose?</p> <p>7 DR. O'KEEFE: Depends on the drug. Depends on if it's</p> <p>8 fat soluble, depends on if it's water-soluble. Depends</p> <p>9 on -- you know, it has to -- you have to go on dose by dose.</p> <p>10 MR. DESMOND BROWN: Perfect.</p> <p>11 DR. O'KEEFE: That's why when I made all the various</p> <p>12 list that were submitted I went to each individual drug</p> <p>13 insert and --</p> <p>14 MR. DESMOND BROWN: Yes, ma'am.</p> <p>15 DR. O'KEEFE: -- and read what they had said for all</p> <p>16 the different --</p> <p>17 MR. DESMOND BROWN: Correct.</p> <p>18 DR. O'KEEFE: -- conditions.</p> <p>19 MR. DESMOND BROWN: So is it not true that the estrogen</p> <p>20 drugs that you are most worried about our fat soluble drugs</p> <p>21 that would be very much distributed across the body --</p> <p>22 DR. O'KEEFE: Absolutely.</p> <p>23 MR. DESMOND BROWN: -- and therefore -- okay. Thanks.</p> <p>24 That's my only question. Thank you very much.</p> <p>25 HEARING EXAMINER ROBESON-HANNAN: Any questions based</p>
<p>190</p> <p>1 questions.</p> <p>2 DR. O'KEEFE: But that's the information I have.</p> <p>3 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, any</p> <p>4 questions?</p> <p>5 MR. BROWN: Nothing further.</p> <p>6 HEARING EXAMINER ROBESON-HANNAN: Mr. Desmond Brown, I</p> <p>7 am not going to allow you to ask -- normally, we do let the</p> <p>8 community ask questions, but because you were specifically</p> <p>9 excluded there are times when people get into testimony,</p> <p>10 instead of asking a question. Can you limit it just to a</p> <p>11 question?</p> <p>12 MR. DESMOND BROWN: I certainly can.</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Okay. Then, I will</p> <p>14 ask you to limit it only to a question.</p> <p>15 MR. DESMOND BROWN: Okay. So the question I have for</p> <p>16 DR. ABIA, and thanks for your testimony, was you mentioned</p> <p>17 earlier about the dose that a patient takes is something</p> <p>18 that would be excreted daily following each new dose. Okay?</p> <p>19 DR. O'KEEFE: Depends on the drug.</p> <p>20 MR. DESMOND BROWN: Right. And so my question for you</p> <p>21 is there needs to be a certain amount of drug that gets</p> <p>22 distributed to the body to allow for a sort of steady state</p> <p>23 between what's in the body, what's in the plasma, and what</p> <p>24 the patient takes, and therefore --</p> <p>25 HEARING EXAMINER ROBESON-HANNAN: Wait. Is that a</p>	<p>192</p> <p>1 on his question?</p> <p>2 MR. SULLIVAN: No, not for me.</p> <p>3 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown?</p> <p>4 MR. BROWN: I think we're done.</p> <p>5 HEARING EXAMINER ROBESON-HANNAN: Dr. O'Keefe, thank</p> <p>6 you, you may be excused.</p> <p>7 DR. O'KEEFE: Thank you very much. I hope I was</p> <p>8 helpful.</p> <p>9 HEARING EXAMINER ROBESON-HANNAN: All right. Mr.</p> <p>10 Brown, you have one more witness?</p> <p>11 MR. BROWN: I believe that Dr. Abia has been patiently</p> <p>12 listening all day from South Africa and it's -- I guess it's</p> <p>13 somewhere around 9:00 or 10:00 out there. If he's still on</p> <p>14 I would like him to testify next.</p> <p>15 HEARING EXAMINER ROBESON-HANNAN: Dr. Abia, are you</p> <p>16 here? Wait, I -- Dr. Abia, okay, I see you. Would you</p> <p>17 please re-raise your right hand?</p> <p>18 Do you solemnly affirm under the penalties of perjury</p> <p>19 that the statements you're about to make are the truth, the</p> <p>20 whole truth, and nothing but the truth?</p> <p>21 I think you're on mute. You're on mute. There, I</p> <p>22 think you're --</p> <p>23 DR. ABIA: sorry about that.</p> <p>24 HEARING EXAMINER ROBESON-HANNAN: Did you -- okay. Let</p> <p>25 me just re --</p>

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<p>193</p> <p>1 Do you solemnly affirm under penalty of perjury that</p> <p>2 the statements you're about to make are the truth, the whole</p> <p>3 truth, and nothing but the truth?</p> <p>4 DR. ABIA: I do.</p> <p>5 HEARING EXAMINER ROBESON-HANNAN: Okay. Please state</p> <p>6 your name, address and email for the record.</p> <p>7 DR. ABIA: My name Luther King Abia Akebe. I live at</p> <p>8 46 Rocky Ridge Estates, 1133 Springhaas Road, Roodepoort,</p> <p>9 1709 South Africa.</p> <p>10 HEARING EXAMINER ROBESON-HANNAN: And your email?</p> <p>11 DR. ABIA: My email address is LutherKingA -- A, like</p> <p>12 apple, @youda.fr. (LutherKingA@youda.fr)</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Thank you.</p> <p>14 Go ahead, Mr. Brown.</p> <p>15 MR. BROWN: Dr. Abia, welcome to the United States, if</p> <p>16 just electronically. My name is David Brown. You and I</p> <p>17 have never spoken before, have we?</p> <p>18 DR. ABIA: No. I don't recall.</p> <p>19 MR. BROWN: Doctor, what is it that you are a doctor</p> <p>20 of? And what does that mean in your country?</p> <p>21 DR. ABIA: I am a doctor in water care, so I specialize</p> <p>22 in applied environmental microbiology, and recently</p> <p>23 appointed as an assistant professor of applied environmental</p> <p>24 microbiology at the University of KwaZulu-Natal. And that</p> <p>25 also led me to join the South African Council of</p>	<p>195</p> <p>1 And for the past years after my PhD I've been working</p> <p>2 as a post-doctorate research fellow before being appointed</p> <p>3 as associate professor. I've been working on environmental</p> <p>4 microbiology. And usually, using the one heard approach,</p> <p>5 which is an approach that looks at that interaction that</p> <p>6 looks at that interaction between the humans, animals, and</p> <p>7 the environment and disease transmission between them.</p> <p>8 MR. BROWN: Has any of your work --</p> <p>9 HEARING EXAMINER ROBESON-HANNAN: Mr. --</p> <p>10 MR. BROWN: -- been particularly focused on cemeteries?</p> <p>11 DR. ABIA: Yes. 2015 to 2018 I did a study on the</p> <p>12 impact of internment, or burials, on groundwater.</p> <p>13 MR. BROWN: I'd like to offer Dr. Abia as an expert on</p> <p>14 the micro bio impacts of interments on water resources</p> <p>15 including wells, and water supplies.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Sullivan,</p> <p>17 do you have an objection?</p> <p>18 MR. SULLIVAN: Not to that classification, no.</p> <p>19 HEARING EXAMINER ROBESON-HANNAN: Okay. He is so</p> <p>20 qualified. (Inaudible) Mr. Brown.</p> <p>21 MR. BROWN: All right. Dr. Abia, you volunteered to</p> <p>22 testify in this case; is that right?</p> <p>23 DR. ABIA: Correct.</p> <p>24 MR. BROWN: And is that based on -- is that</p> <p>25 volunteerism based on some concerns about this project as</p>
<p>194</p> <p>1 Professional Natural Scientists, that look into</p> <p>2 environmental aspects, human aspects, and animal aspects</p> <p>3 from a microbiological point of view.</p> <p>4 MR. BROWN: If you know, Doctor, does getting a</p> <p>5 doctoral in South Africa, is it comparable to an educational</p> <p>6 attainment of getting a doctorate at a college or university</p> <p>7 in the United States?</p> <p>8 DR. ABIA: Yes. It's a doctorate. It's a PhD, just</p> <p>9 like every other place in the world.</p> <p>10 MR. BROWN: All right. Would you please -- what let me</p> <p>11 answer this question first. If you've been listening all</p> <p>12 day I gather you have understood what we are -- the issue</p> <p>13 that we are talking about in this case; is that correct?</p> <p>14 DR. ABIA: Correct.</p> <p>15 MR. BROWN: So would you explain to the Hearing</p> <p>16 Examiner the qualifications and experience that would</p> <p>17 (inaudible) you to be -- to help shed some light on the</p> <p>18 issues in this case?</p> <p>19 DR. ABIA: Yes. I am a microbiologist, as I said,</p> <p>20 specifically an environmental microbiologist. I studied</p> <p>21 micro -- I started studying microbiology in 2000, so that</p> <p>22 should be 22 years now of studying microbiology. And I did</p> <p>23 my Masters in BSE, which were more based in the medical</p> <p>24 microbiology, and then I moved for my PhD into environmental</p> <p>25 microbiology.</p>	<p>196</p> <p>1 you have perceived it?</p> <p>2 DR. ABIA: Yes.</p> <p>3 MR. BROWN: So would you please describe, based on your</p> <p>4 training and experience, and what you've done in South</p> <p>5 Africa why you would be concerned about the approval of this</p> <p>6 project in this particular location?</p> <p>7 DR. ABIA: Thank you. May I start by saying that,</p> <p>8 first of all, before even being a microbiologist I think</p> <p>9 there is also one thing which is always missed because the</p> <p>10 work that we do as scientists do not go down to the general</p> <p>11 public. So I joined the Aspen New Voice Fellowship, which</p> <p>12 is this platform that allowed me to translate my research</p> <p>13 into popular articles that the common person could get. And</p> <p>14 this was because I was more concerned of the many impacts of</p> <p>15 environmental pollution on human health and animal health,</p> <p>16 and environmental health in particular.</p> <p>17 So in this particular case, what I want to point out is</p> <p>18 any form of cemetery, or any form of burial, whether</p> <p>19 traditional, whether green, or whatever thing, would be a</p> <p>20 bad idea, in an area that a water catchment that is meant</p> <p>21 for drinking. Because, as you might have seen in Exhibit</p> <p>22 102-A, being some articles that -- those are just some, but</p> <p>23 there are a lot of them out there that are pointed.</p> <p>24 And I would like to start by saying that first of all,</p> <p>25 the natural environment as it is, is a (inaudible) for the</p>

<p>197</p> <p>1 environment, which means that it has this way of cleaning 2 itself. That is the natural process, it happens normally. 3 But this happens because it a form of balance that nature 4 has set. However, when anthropogenic activities come in 5 that balance is no more there. And once we alter that 6 environment, that we change that natural system and that 7 natural system cannot function in its normal way. 8 And one of the things is like, if we take bacteria for 9 example, which is my field of experience. If we take 10 microorganisms, the take micro organisms, micro organisms, 11 they are excreted from animals y are excreted from animals, 12 they are excreted by birds, by wildlife and everything. But 13 the environment has a way of controlling that because they 14 can only excrete small quantities. But when human 15 activities come in to alter that environment, then we change 16 that whole setting. And so that's -- those are the basis 17 from which I'm going to come because there are two 18 components. 19 First of all, that if we look at burial, based on the 20 experience and the work that I did, if we look at burial we 21 will understand that first of all, the first thing that will 22 be of concern is that any decomposing body, this one is 23 normal science, any decomposing body is already a rich 24 source of nutrient. 25 Now, the error that may come up or the error that some</p>	<p>199</p> <p>1 a way of controlling this. Now, the problem comes in when 2 we give these resistant organisms enough nutrients to grow 3 faster than they could have grown with the limited nutrients 4 in their environment. Now, when we do that then we boost 5 that micro load within the environment beyond their -- the 6 buffering capacity of the environment and that is when it 7 becomes a problem. 8 And when they grow in that environment, they will leach 9 down into the cracks and one thing we have to understand is 10 by digging as I saw in the work that I was doing -- by 11 digging in that soil and closing it we can't close it to the 12 normal way it was in the beginning. So we create cracks 13 which allows decomposing leachate to pass through and maybe 14 create some underground stream that can get down into nearby 15 waters. 16 And secondly, even when these organisms are in that 17 environment, another way of surviving that allows them not 18 to be filled and not to be killed easily is that they form 19 biofilms whereby they produce extracellular proteins that 20 allows them to bind and form, like, some sort of a mat. We 21 will see that even when we have, like, sanitary filtration 22 for example, for water treatment. At one point some of the 23 surface needs to be removed because the bacteria would have 24 formed a mat from where they can slough off gradually and 25 get into the water that is already treated.</p>
<p>198</p> <p>1 people might have, may think is that's every organism will 2 just come from outside. No. They are organisms or they are 3 bacteria that are originally found in the soil. They live 4 there already. And these organisms have already developed 5 ways of protecting themselves in the environment. 6 Now, if we have decomposing bodies inside the ground, 7 then we are providing those bacteria with a rich source of 8 nutrients that will allow them to grow further. So these 9 also, as a -- sorry. So apart from the leaching into the 10 ground water as I was saying, the nutrient load that will 11 also, that can leach inside there that will provide high 12 nutrients to the organisms. 13 The second aspect I want to bring is organisms in the 14 environment are already in competition. They are forced 15 into competing with each other as a mechanism of survival. 16 So one of these mechanisms of survival is that they produce 17 antibodies. They will produce antibiotics. I beg your 18 pardon. They produce antibiotics. Now, these antibiotics 19 are meant to eliminate competitors, so that they can have 20 enough food to grow. But because it's a competition, the 21 other organisms that are targeted by the antibiotics need to 22 develop a defense mechanism, which means that these 23 organisms automatically develop a form of resistance to what 24 the opponent that allow them to survive. 25 But again, as I mentioned earlier, the environment has</p>	<p>200</p> <p>1 Which means that the filtering capacity of that 2 filtration system breaks. So we get a breakthrough. That 3 is the same thing that can happen in the soil. Once the 4 bacteria have gotten up to a stage whereby the buffering 5 capacity of the soil cannot hold them anymore, they start 6 peeling off gradually and they can contaminate water through 7 runoff or through any other way, depending on the soil type. 8 And the last point I will want to bring in here is even 9 if these bacteria die again, they are not completely dead. 10 They die, but yet DNA is still available, especially with 11 resistant genes. DNA fragments that carry resistant genes 12 have been found in soil far before we even started talking 13 about antibiotics. Now, if we have a larger quantity of, or 14 a huge concentration of these organisms it therefore means 15 that we have created a huge DNA pool within the environment 16 and this DNA survive long after even the bacteria have died. 17 For example, DNA has been found in permafrost that were 18 over 30 years old. It's in one of the papers that I was -- 19 give in Exhibit 102-A. So which means that if this DNA is 20 present in the environment there are three things that can 21 happen. First, DNA is transferred between bacteria of 22 related species or closely related species by conjugation, 23 whereby it's a form of mating where these organisms come 24 together to mate in order to keep their kind going. 25 Or it can happen by transduction, which is the transfer</p>

<p style="text-align: right;">201</p> <p>1 of DNA from special bacteria virus which are in the -- the 2 bacteriophages. There are a lot of them in the soil, they 3 have been found in many places. And when these viruses feed 4 on those bacteria they can transfer that DNA too other 5 bacteria. 6 However, there is a third form of resistance and 7 precision, which is transformation. In this one, the 8 bacteria themselves pick up free DNA from the environment 9 and in the case of burial, for example, this is likely what 10 we are going to be seeing most often. Because the bacteria 11 will die but yet, DNA will be available. And DNA is smaller 12 than the bacteria. Like, a very minute fraction of the 13 bacteria which means that it can easily go through cracks 14 and find itself at longer distances than the intact 15 bacteria. 16 And these ones have already been found in groundwater 17 sources, surface waters and wells. And if bacteria that are 18 present inside there that were not resistant before, pick up 19 this DNA then they develop resistance also. And resistant 20 bacteria, as we know it to be, antimicrobial resistance is a 21 very big problem, which have been mentioned in -- at the UN, 22 at the WHO and everything. 23 And there is no way we can completely eliminate the 24 threat that these bacteria in the environment will be linked 25 to humans because today the World Health Organization has</p>	<p style="text-align: right;">203</p> <p>1 you would agree that its' important to understand, specific 2 site conditions in order to make that assessment, correct? 3 DR. ABIA: I do. 4 MR. SULLIVAN: For example, you talked about the 5 digging in the soil in the cemetery that you were 6 researching; was that in South Africa that was the subject 7 of your search? 8 DR. ABIA: (No audible response). 9 MR. SULLIVAN: And what was the geologic setting there; 10 the subsurface geologic setting there? 11 DR. ABIA: I want to also say that I'm not a geologist 12 or a hydrogeologist, but I want to say that the water table 13 was low in some places and high in some places. But in any 14 case, we were digging above and below burial ground to see 15 what was there. Whether the table was high or the table was 16 low we were seeing comparable micro communities. And we 17 were seeing comparable disease causing bacteria in both 18 cases. 19 MR. SULLIVAN: So help me to understand. I thought I 20 had understood that the soil conditions would have an impact 21 on microbial growth, depending on -- that specifics soil 22 conditions matter; is that not what you testified to? 23 DR. ABIA: The soil nutrients and soil conditions, I 24 don't understand what you mean by soil conditions 25 specifically.</p>
<p style="text-align: right;">202</p> <p>1 advocated that for us to solve for human diseases, 2 especially antimicrobial resistant ones, to be solved then a 3 one-herd approach needs to be taken, which involves that 4 interaction between humans, animals, and the environment. 5 This concept is broad because there is no way the 6 environment can be separated from human health. There is 7 just no way. 8 So it means that everything that we do, every form of 9 pollution that we cause in the environment in this case, 10 using cemeteries, for example, is going to be a problem 11 downstream, especially if that cemetery is not well located. 12 Therefore, while I think that green cemeteries are some 13 beautiful ideas which I have write in other places, I think 14 that a wrong location, especially in a catchment that serves 15 drinking water using such a place for such purposes would be 16 a very bad idea. 17 Thank you. 18 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Brown, do 19 you have follow-up? 20 MR. BROWN: I have nothing further. 21 HEARING EXAMINER ROBESON-HANNAN: Mr. Sullivan? 22 MR. SULLIVAN: Hi, Dr. Abia. I believe you just -- 23 I'll start where you finished here. You had said I think 24 that locating a cemetery, if it is not well located, can be 25 a problem for health risks; is that correct? And I think</p>	<p style="text-align: right;">204</p> <p>1 MR. SULLIVAN: Well, the type of soil. You know, what 2 kind of soil are we talking about? Is this course grained 3 sand, you know, or is this clay and silt, or something to 4 that effect? That's what I was getting at. 5 DR. ABIA: The different types will have -- for 6 example, bacteria have been found -- bacteria and viruses, 7 for example, have been found to attach more to smaller 8 particle sizes. So depending on the type of soil that is 9 there -- but however, even if they are smaller particle 10 sizes and the attached, when they form that whole biofilm 11 mat then, they start -- that mat become like a reservoir, 12 and environmental reservoir from which the bacteria 13 constantly release into the nearby environment. 14 MR. SULLIVAN: But will this attach in the same way all 15 the time, and also -- that's what I'm trying to understand. 16 I'm trying to understand whether this is a universal rule 17 that I don't care what kind of soil you have the same thing 18 is going to happen, or whether -- and I think you did say, 19 that you know, that some -- with some more dense soils than 20 say coarse sand that the microbes would attach along the way 21 and so that things would be filtered out; is that correct? 22 DR. ABIA: Come again, please? 23 MR. SULLIVAN: Let me back up and try -- 24 DR. ABIA: A little bit slower, please? 25 MR. SULLIVAN: Sure. And my apologies. So the type of</p>

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<p style="text-align: right;">205</p> <p>1 soil and some surface conditions if you have matters for 2 this analysis; where that microbial bacteria is going to -- 3 or where that microbial bacteria is going to go and how fast 4 it's going to get there; is that right? 5 DR. ABIA: Yeah. 6 MR. SULLIVAN: Okay. And so I -- 7 DR. ABIA: And in some -- 8 MR. SULLIVAN: Go ahead. 9 DR. ABIA: And in some cases where we had, from the 10 works that I have done with bacteria surviving in the 11 environment and trickling down, where we are -- like the 12 experiment that I ran, unfortunately, that's not published. 13 But it was a preliminary study to see what was happening. 14 If we have clay soil, for example, mostly clay soil then 15 what happens is that we create a -- what happens is that we 16 create some sort of water log. That kind of allows 17 trickling, but at a slower rate. 18 However, that clay soil now forms, like, some sort of 19 a -- more of a -- I would say more of a concrete base and 20 allows it that water then -- though it doesn't trickle, to 21 come back to the surface, especially during heavy rain 22 falls. And when it comes back to the surface, then we now 23 have surface runoff that goes back into nearby waters. 24 Where we don't have clay soils at the bottom, and we 25 have more coarse particles and other sand particles, then we</p>	<p style="text-align: right;">207</p> <p>1 MR. SULLIVAN: And my question is, and I hope I say it 2 right, is there needs to -- you had made the point as you 3 were closing over your direct exam with Mr. Brown, that if a 4 cemetery is not well located that it could cause problems. 5 I'm paraphrasing what you said, but that's pretty much what 6 you said, right? 7 So the thing I'm trying to figure out, is how do you 8 determine whether something is well located or not? And one 9 of the things that you would want to look at are the soil 10 conditions because on either extreme that you just 11 mentioned, that probably wouldn't be well located if you 12 have things spooling, on the one hand, or if you have things 13 going straight through super, super porous? 14 DR. ABIA: Okay. As I said, I'm not a soil -- or a 15 geologist or what ever thing. But one thing I know is when 16 I talk about wrongly located, or poorly located, I'm talking 17 about being in a catchment that is definitely going to be 18 used for drinking. Because if we look at what is the 19 watershed, I just happened to have been reading and looked 20 at that definition. It says is that piece of land that 21 drains down into some -- which therefore means that if it is 22 located within a watershed there is already some drainage 23 that would occur there. 24 And as I said at the beginning, any form of -- or 25 duration of that ground, it is my belief that any form of,</p>
<p style="text-align: right;">206</p> <p>1 have a more downward trickling. That is based on the work 2 and that I did, and that is what I thought. 3 MR. SULLIVAN: Right, and that's what -- the point I 4 was trying to get at. So if it's too dense, you might get a 5 pool, and I'm using layman's terms because this is complex 6 stuff. If it's too dense you get a pool, but if it's too 7 course, it's going to go straight through. But there must 8 be a sweet spot where it's dense enough to not have it slow 9 straight through too quickly, and it's porous enough that -- 10 our permeable enough, I get those mixed up, that you're not 11 going to create a pool on top; isn't that right? 12 DR. ABIA: I can't say for sure. 13 MR. SULLIVAN: But it is, in any event, the analysis, 14 the site-specific analysis of the subsurface conditions 15 would be relevant to the analysis of whether, as you said, a 16 well -- a cemetery is not well located, and the types of 17 soil beneath it went way into that decision, correct? 18 DR. ABIA: I didn't get that. 19 MR. SULLIVAN: And the depth to groundwater -- 20 HEARING EXAMINER ROBESON-HANNAN: Wait. Wait. I 21 couldn't understand that answer. I'm sorry. Can you ask 22 your question for -- 23 MR. SULLIVAN: Sure. 24 HEARING EXAMINER ROBESON-HANNAN: -- Mr. Sullivan, and 25 then just wait a moment for his answer?</p>	<p style="text-align: right;">208</p> <p>1 or duration that would occur within such a system will 2 increase such flow of water. Because by digging and closing 3 will definitely create ground channels that will allow water 4 probably and leachate from those bodies to move, either 5 downward or outwardly if the base is to clay, or to hard for 6 the water to go. But depending on the situation, like I 7 said earlier, heavy rainfall in an environment that is clay 8 like, will definitely lead to the water coming back and then 9 we will have run off. 10 MR. SULLIVAN: Okay. But you didn't conduct any site- 11 specific analysis with respect to this piece of property 12 where the cemetery is proposed, correct? 13 DR. ABIA: I am in South Africa so there is no way I 14 did a site specific analysis in the U.S. 15 MR. SULLIVAN: Okay. And if you -- some of the -- I 16 believe -- well, and so you've not looked and you're not a 17 hydrogeologist so you've not looked at any fate and 18 transport of contaminants with respect tot this site, 19 correct? 20 DR. ABIA: As I said, I am in South Africa and I have 21 not been there to do the work. 22 MR. SULLIVAN: I understand. I'm just asking the 23 questions to make the record clear. I understand where 24 you're at, sir. 25 DR. ABIA: But one thing I understand -- one thing I</p>

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<p>209</p> <p>1 understand is looking at the area, it's sloping as I heard 2 earlier comments, it's sloped about 15 degrees which means 3 that there will be definitely a downward movement of water. 4 MR. SULLIVAN: If it were 15 percent -- 15 degrees; if 5 that's the case that's what your testimony is? 6 DR. ABIA: Yes. 7 MR. SULLIVAN: But you don't have personal knowledge of 8 that? 9 DR. ABIA: There is an inclination. 10 MR. SULLIVAN: It's an inclination, but you don't have 11 personal knowledge of the slopes at the site, correct? 12 DR. ABIA: I have not read it entirely. 13 MR. SULLIVAN: And you would agree that a best practice 14 in siting a cemetery would be -- you need to consider things 15 like the depth to groundwater, you need to consider the 16 depth to the -- you know the burial depth and then the depth 17 from the burial to the groundwater, correct? 18 DR. ABIA: Correct. 19 MR. SULLIVAN: Okay. And do you have a sense of what a 20 best practice is for the burial depth? 21 DR. ABIA: 1.8 meters. 22 MR. SULLIVAN: Or -- 23 (Crosstalk) 24 MR. SULLIVAN: -- best practices. 25 DR. ABIA: 1.8 meters, or 6 feet.</p>	<p>211</p> <p>1 MR. SULLIVAN: And what are the subsurface conditions 2 at the site here? What's the soil type? 3 DR. ABIA: I have not taken the time to look at it 4 deeply. 5 MR. SULLIVAN: Okay. And how does groundwater -- 6 DR. ABIA: And I know that there is -- I know that it's 7 a mixture of clays. I don't know clearly, I can't remember, 8 but I have it somewhere. I know -- yeah, I know that it's a 9 mixture. 10 MR. SULLIVAN: And what's the highest the water table 11 comes below the burial sites at this proposed location? 12 DR. ABIA: I did not memorize that. 13 MR. SULLIVAN: But did you look at that? I mean, did 14 you do any research on that yourself? 15 DR. ABIA: Yeah, I did look at some of the documents, 16 some of the places that were in that area. But I don't 17 remember keeping any of them in my mind. 18 MR. SULLIVAN: I have nothing further. 19 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, any 20 redirect? 21 MR. BROWN: No redirect. 22 HEARING EXAMINER ROBESON-HANNAN: Doctor you -- I 23 appreciate the time you've taken and the distance you've 24 traveled virtually, and you may be excused and thank you. 25 DR. ABIA: Thank you very much.</p>
<p>210</p> <p>1 MR. SULLIVAN: And what's that based on. 2 DR. ABIA: Pardon? 3 MR. SULLIVAN: What's the basis for that calculation? 4 DR. ABIA: Well, I'm not sure, but I just know that 5 it's to prevent, especially the upward flow of anything that 6 has been put into that grave. 7 MR. SULLIVAN: Okay. 8 DR. ABIA: It should be deep enough to prevent 9 scavengers from brining them back up. That is why it goes 10 down to the point. 11 MR. SULLIVAN: And you mentioned in your testimony a 12 couple of times things going through cracks. Right? I mean 13 things that could go through cracks. That's what I wrote 14 down that you had said. But whether there are cracks to go 15 through, that depends on the subsurface conditions of the 16 cemetery's location, correct? 17 DR. ABIA: I believe that by excavating we create them. 18 MR. SULLIVAN: And they're all one size fits all 19 regardless of soil conditions? 20 DR. ABIA: One size doesn't fit all, but I don't think 21 the site - that site has specific or unique geology 22 settings which have not been found in other places and work 23 on cemeteries have been reported in many other countries and 24 which I believe will be similar to the site we are talking 25 about.</p>	<p>212</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: Okay. All right. 2 Mr. Brown do you have another witness? 3 MR. KLINE: Madam Hearing Examiner could I interrupt 4 for a second? Could we have a break for a minute just to 5 cool off a little bit in our room here? 6 HEARING EXAMINER ROBESON-HANNAN: Yes. 7 MR. KLINE: Thank you. 8 (A recess was taken.) 9 HEARING EXAMINER ROBESON-HANNAN: Thank you. We're 10 back on the record. 11 I did want to say, just for the record there's a 12 gentleman sitting with Mr. Kline and Mr. Sullivan who did 13 say a couple of things during some exchanges. It's Mr. 14 Bauman, are you -- Mr. Bauman, are you a counsel of record 15 in this case as well? 16 MR. BAUMAN: I'm with Beveridge &amp; Diamond, a colleague 17 of Mr. Sullivan. 18 HEARING EXAMINER ROBESON-HANNAN: A colleague. Okay. 19 Thank you. 20 All right. Mr. Brown, I think we're on your next 21 witness. 22 MR. BROWN: Yes, we're on my last witness, Mr. Jim 23 Mullooney. 24 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Mullooney, 25 can you raise your right hand, please?</p>

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<p>213</p> <p>1 MR. MULLOWNEY: I can. Can you see me?</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: I am looking for you.</p> <p>3 MR. MULLOWNEY: I can see me.</p> <p>4 MR. BROWN: Look for the orange vest.</p> <p>5 HEARING EXAMINER ROBESON-HANNAN: Okay. Now I can.</p> <p>6 Do you solemnly affirm under penalties of perjury that</p> <p>7 the statements you're about to make are the truth, the whole</p> <p>8 truth, and nothing but the truth?</p> <p>9 MR. MULLOWNEY: I affirm.</p> <p>10 HEARING EXAMINER ROBESON-HANNAN: Please state your</p> <p>11 name and business address -- or address and email for the</p> <p>12 record.</p> <p>13 MR. MULLOWNEY: It is James T. Mullowney, Jr., 38</p> <p>14 Column St., Newport, RI 02840. My email is JMulowney,</p> <p>15 M-U-L-L-O-W-N-E-Y, at Pharma, P-H-A-R-M-A, dash Cycle,</p> <p>16 C-Y-C-L-E.com (Jmulowney@PharmaCycle.com).</p> <p>17 HEARING EXAMINER ROBESON-HANNAN: Thank you.</p> <p>18 Mr. Brown.</p> <p>19 MR. BROWN: Good afternoon, Mr. Mulowney, and thanks</p> <p>20 for sticking with us so long. My name is David Brown of the</p> <p>21 law firm of Knopf &amp; Brown, counsel for Mr. Putman and the</p> <p>22 Patuxent Watershed Protection Protective Association. The</p> <p>23 reason I introduce myself is we've never met before, have</p> <p>24 we?</p> <p>25 MR. MULLOWNEY: We have not.</p>	<p>215</p> <p>1 MR. MULLOWNEY: Geology.</p> <p>2 MR. SULLIVAN: Oh, just straight geology?</p> <p>3 MR. MULLOWNEY: Yeah.</p> <p>4 MR. SULLIVAN: Not hydrogeology?</p> <p>5 MR. MULLOWNEY: Well, geology in general covers</p> <p>6 hydrogeology.</p> <p>7 MR. SULLIVAN: Okay. A survey course on geology, then?</p> <p>8 MR. MULLOWNEY: I've had one course in it, yes.</p> <p>9 MR. SULLIVAN: Okay. And do you have any experience</p> <p>10 with analyzing the fate transport of contaminants?</p> <p>11 MR. MULLOWNEY: Quite a bit of it.</p> <p>12 MR. SULLIVAN: And do you have any professional</p> <p>13 experience -- I mean, I'm sorry, any professional training</p> <p>14 in that? Or education?</p> <p>15 MR. MULLOWNEY: I do.</p> <p>16 MR. SULLIVAN: Go ahead and describe your educational</p> <p>17 experience with fate and transport of contaminants.</p> <p>18 MR. MULLOWNEY: Well, I have a degree in chemistry, and</p> <p>19 my professional experience with it is I worked in the</p> <p>20 hazardous-waste business for 35 years, and one of the things</p> <p>21 we did was clean up hazardous waste sites. And so to</p> <p>22 determine what needs to come out of the ground, you have to</p> <p>23 figure out what the point source is, and I had analyzed all</p> <p>24 of the flowcharts from the engineers on the groundwater</p> <p>25 flow, where the point source was, in the case of a flooded</p>
<p>214</p> <p>1 MR. BROWN: And you are testifying here today as a</p> <p>2 volunteer?</p> <p>3 MR. MULLOWNEY: I am.</p> <p>4 MR. BROWN: And I've looked over your testimony and it</p> <p>5 says you want to testify about, quote, the second hand</p> <p>6 cytotoxic chemotherapy chemicals which cause cancer, birth</p> <p>7 defects, miscarriages and other horrible diseases, and the</p> <p>8 dangers of these chemicals present to wells and drinking</p> <p>9 water supplies downhill from a cemetery practicing green</p> <p>10 burials.</p> <p>11 Before we get to that testimony, I would like you to</p> <p>12 describe for the Hearing Examiner the education and</p> <p>13 experience that would (inaudible -- technical difficulties).</p> <p>14 HEARING EXAMINER ROBESON-HANNAN REPORTER: Okay. We're</p> <p>15 going to go back on.</p> <p>16 HEARING EXAMINER ROBESON-HANNAN: All right. Thank</p> <p>17 you. Okay, were back on the record.</p> <p>18 MR. SULLIVAN: And I believe, Mr. Mulowney, you had</p> <p>19 just -- I had asked you if you had taken -- or had a degree</p> <p>20 in hydrogeology and you had responded that you took a course</p> <p>21 when you were in college, correct?</p> <p>22 MR. MULLOWNEY: Correct.</p> <p>23 MR. SULLIVAN: And what year was that?</p> <p>24 MR. MULLOWNEY: The course was in 1985.</p> <p>25 MR. SULLIVAN: And what was the course?</p>	<p>216</p> <p>1 canal, it was pretty obvious.</p> <p>2 And we would remove the point source so you could clean</p> <p>3 up the rest of the groundwater before -- a lot of times</p> <p>4 these sites already had contamination in groundwater.</p> <p>5 MR. SULLIVAN: But you didn't do the analysis yourself,</p> <p>6 you reviewed the analysis, it sounds like? What would your</p> <p>7 title? Yeah, you didn't conduct the analyses yourself,</p> <p>8 correct?</p> <p>9 MR. MULLOWNEY: No, but I bid on the projects.</p> <p>10 MR. SULLIVAN: Okay.</p> <p>11 MR. MULLOWNEY: I've had a lot of titles, including</p> <p>12 owning a (indiscernible) for a hazardous-waste site where we</p> <p>13 shipped hazardous waste throughout the country, dump</p> <p>14 trailers full of contaminated soil. Never a dead body. I</p> <p>15 haven't seen this one yet, but that's --</p> <p>16 MR. SULLIVAN: But you have no analysis, you've never</p> <p>17 undertaken analysis of any risks attendant to a cemetery?</p> <p>18 MR. MULLOWNEY: Oh no. No.</p> <p>19 MR. SULLIVAN: Okay. We'll go ahead and allow this</p> <p>20 witness to be qualified. But I would say is that -- well,</p> <p>21 will handle it on cross and on rebuttal.</p> <p>22 HEARING EXAMINER ROBESON-HANNAN: Okay. I have the</p> <p>23 qualification as risk of release of cytotoxic chemicals. So</p> <p>24 you're -- so you are so qualified, Mr. Mulowney.</p> <p>25 MR. MULLOWNEY: Well, I started all of it.</p>

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<p>217</p> <p>1 MR. BROWN: Mr. Mullowney --</p> <p>2 MR. MULLOWNEY: No, I really did. My ego's pretty big</p> <p>3 right now.</p> <p>4 MR. BROWN: Mr. Mullowney?</p> <p>5 MR. MULLOWNEY: Yes.</p> <p>6 MR. BROWN: Mr. Mullowney, I would like you to explain,</p> <p>7 based on your experience that you gained in studying the</p> <p>8 release of toxic chemicals into the environment why it was</p> <p>9 that you decided to volunteer your time and energy to this</p> <p>10 particular project.</p> <p>11 MR. MULLOWNEY: I was asked, for one. I was asked</p> <p>12 through a friend of mine, Dr. Christian Daughton, and asked</p> <p>13 Jim Putnam. And I've been talking to Dr. Daughton for 15</p> <p>14 years on this very subject. I actually was the guy that</p> <p>15 brought the subject to his attention in 2007. Dr. Daughton</p> <p>16 is the number one expert on drugs in the environment in the</p> <p>17 U.S., One of the top in the world.</p> <p>18 When I first talked to him he said nobody is looking at</p> <p>19 chemotherapy drugs. We're looking at the larger volume</p> <p>20 drugs. And I said you know what, do it differently, this is</p> <p>21 not a dose for someone's chemical. These are non-threshold,</p> <p>22 so you don't need a lot of it. You just need a few</p> <p>23 molecules that start a chain reaction. And that was in</p> <p>24 2007.</p> <p>25 And shortly afterwards, Dr. Daughton put out a nice</p>	<p>219</p> <p>1 and I don't have any connection to autism at all. But every</p> <p>2 friend that I know that has an autistic child had a parent</p> <p>3 go through a chemotherapy treatment. So there is the part</p> <p>4 of a direct exposure when you have a parent and your wife is</p> <p>5 pregnant or ready to be pregnant -- now this field is really</p> <p>6 new and it's taking off everywhere. You've got it not only</p> <p>7 through OSHA and NIOSH, and the nurses, but it's in Europe</p> <p>8 on the clean water directive. And so you're going to hear</p> <p>9 more about the non-dose response, the non-threshold</p> <p>10 chemicals and they point right to the cytotoxins.</p> <p>11 So another point I want to make is back in 1970 when</p> <p>12 our most liberal president formed the EPA, OSHA, the Clean</p> <p>13 Water Act, that was Richard Nixon. So we have these</p> <p>14 agencies that were formed in the 70's but they couldn't have</p> <p>15 any relationship with some of the agencies that were already</p> <p>16 in place, like the FDA. So I spent a lot of time in the</p> <p>17 last 15 years talking to the EPA and they'd say call the FDA</p> <p>18 and the FDA says call the EPA. Nobody takes responsibility</p> <p>19 for it. And that's where Daughton and I have done a lot of</p> <p>20 work. The rest of the world is all working on this. That's</p> <p>21 one point I want to make.</p> <p>22 The other point we should keep in mind is the CERCLA</p> <p>23 Super Fund regulations. So it's the polluter pays. That</p> <p>24 was my load canal. So I don't know if you know what we do.</p> <p>25 I have a series of patents on collecting human waste from</p>
<p>218</p> <p>1 paper -- well, the first one I'd seen was in 2008, and then</p> <p>2 2009, 2010 it wasn't popular with the EPA, but it's still</p> <p>3 popular with some of my other friends throughout the world</p> <p>4 on controlling not just the volume, not the dose response</p> <p>5 and not the concentration. You know, I read the 500-year-</p> <p>6 old toxicology from Paracelsus is the dose makes the poison.</p> <p>7 You've got to throw that out, that doesn't apply to these</p> <p>8 drugs. It has no bearing whatsoever.</p> <p>9 Because what happens with these chemicals because</p> <p>10 they're cytotoxin's, they're not toxic, lead toxic, you get</p> <p>11 a certain amount of lead, you die. Cytotoxic, you get one</p> <p>12 molecule of it and it starts a chain reaction but altering</p> <p>13 your DNA. And it's traces. If you're a fetus or a child,</p> <p>14 every one of your cells is dividing. So one molecule of</p> <p>15 these chemicals can get in, it can block the replication.</p> <p>16 And a lot of times in chemo patients, they die. But if</p> <p>17 they don't die, they become a mutation, which in a child --</p> <p>18 my finger up, in a child is a birth defect. And one of the</p> <p>19 things that I saw when I started this is that the birth</p> <p>20 defects, not only childhood cancers -- and when I started</p> <p>21 this in 2007 I realized how dangerous these chemicals are</p> <p>22 and how they can harm rapidly dividing cells, at any level.</p> <p>23 And it was terrifying to me and that's how I got involved in</p> <p>24 this.</p> <p>25 The other reason I do what I do is because back then --</p>	<p>220</p> <p>1 patients undergoing cytotoxic chemotherapy treatments, right</p> <p>2 at their homes so it doesn't go down the septic system,</p> <p>3 doesn't get in the drinking water, doesn't destroy the</p> <p>4 septic, and that's our goal is to make sure, one, the point</p> <p>5 source never goes down the drain, which we will get to.</p> <p>6 Not to ramble on, but our biggest competitor out of</p> <p>7 Denmark -- we're vicious competitors, they stay with me when</p> <p>8 they come to Newport. So.</p> <p>9 So when we do solve this problem with the septic</p> <p>10 systems and I know that's -- your point is that this</p> <p>11 cemetery is no more dangerous than a septic system, and I</p> <p>12 agree, absolutely agree with you. That's what we do. We're</p> <p>13 going to collect the waste before it gets down into the</p> <p>14 septic systems, transport and dispose of it just like we</p> <p>15 handle every other very dangerous chemical. And at that</p> <p>16 point, 10 years from now, if we do have the cemetery</p> <p>17 somebody is going to have to dig it up because that's what's</p> <p>18 going to have to happen because that will become the point</p> <p>19 source.</p> <p>20 So my statement is putting a green cemetery -- putting</p> <p>21 a cemetery of any type is a bad idea in a watershed. But a</p> <p>22 green cemetery is even worse because of the layers and you</p> <p>23 know there are no layers; it goes through so fast. It</p> <p>24 breaks down into the water. It's in a watershed, so if you</p> <p>25 ask me if I know anything about geology, yeah, it's in a</p>



<p style="text-align: right;">221</p> <p>1 watershed. It's going to go into the water. You know, 2 polluting Silver Spring is not a good idea. And this will 3 pollute Silver Spring. 4 Now we -- I work every day on getting people to control 5 these genotoxic, cytotoxic chemo drugs, and once we solve 6 that problem, the next problem is going to be the bodies 7 that are drinking into the drinking water. There's no 8 doubt. That's my testimony. 9 MR. BROWN: Mr. Muldowney, perhaps you heard earlier 10 testimony from my clients today suggesting that there were 11 better places to locate a green burial cemetery away from -- 12 further away from places where wells and drinking water 13 might be contaminated. I want to understand whether or not 14 you're saying that the risks from the leaching of cytotoxic 15 chemicals are such that there shouldn't be any green burial 16 locations anywhere? 17 MR. MULLOWNEY: No, that's not my testimony. It just 18 shouldn't be in a watershed. There are plenty of places 19 where it will not get into the groundwater. And it does 20 biodegrade. I mean, it will degrade eventually. They're 21 synthetic organic compounds, but some of them take 20 years 22 to biodegrade. You just don't want them in your drinking 23 water. You don't want them exposing your children, your 24 grandchildren. 25 And if you know the term genotoxic, well cytotoxic is</p>	<p style="text-align: right;">223</p> <p>1 We had a bill in Rhode Island where I live, five, six 2 years ago and it was to require the collection of human 3 waste from certain cytotoxic chemotherapy treatments to be 4 paid for by the insurance companies. This was in 2016. We 5 had the former head of the Harvard School of Public Health, 6 Dr. Peter Boyle. Then he ran the international agency for 7 research on cancer for the World Health. He flew from Leon, 8 France to testify in Rhode Island. We thought we had the 9 bill passed. 10 Unfortunately, the strongest government group we have 11 is the pharmaceutical industry and they sent 50 lobbyist to 12 squish the bill. Now we're not done with that. We've got 13 other processes going. And we eventually will stop the 14 dumping of cytotoxic chemotherapy drugs through a person's 15 body. It's going to get there, but we don't want to have 16 another source that we have to deal with 10 years down the 17 road. 18 And one of the things they've talked about is the 19 wrapper from methotrexate which was one of the drugs. If 20 you take that wrapper and put it in the trash, it's a felony 21 under EPA regulations. But up to 90 percent of that drug 22 comes right out of the patient. And one of the places they 23 use methotrexate, and I know this is disgusting, you have to 24 excuse me, I'm having allergy attacks today. Is in the ER 25 room</p>
<p style="text-align: right;">222</p> <p>1 toxic to the cell. So it alters the DNA. Genotoxic is a 2 very similar term that's used but a teratogenic chemical, 3 that affects your children's children. Now, when I started 4 this, before I even called Dr. Daughton my mother was going 5 through a cancer treatment. I was working at a hazardous 6 waste facility in Framingham, Mass. and guys were coming in 7 with syringes, drums full of syringes. We were breaking the 8 tip off of it and putting it in a 5-gallon pail to go to the 9 medical waste incinerator and taking the syringe and putting 10 it in a 5-gallon pail to go to a non-regulated waste 11 facility. 12 It's like, what are we working with here? That 13 particular chemical is mustargen. You think -- it's 14 actually liquid mustard gas, it's a chemotherapy drug. And 15 at this point it was in 2007, the EPA was starting to look 16 at the drugs as environmental pollutants. They've stopped 17 doing that because it terrifies them. But it's happening 18 throughout the world. 19 And I think you're going to find that if you put this 20 cemetery here, and your excuse is well, it's no worse than a 21 septic system, that's irresponsible. And for the 22 governments to allow that to happen. I use the word 23 insidious. As you can tell I've done a lot of this before. 24 You can probably see my TED talk on my website, as well as 25 some other testimonies that I've done.</p>	<p style="text-align: right;">224</p> <p>1 So you've got a dangerous situation with a pregnant 2 woman and they have to terminate the pregnancy, they use 3 methotrexate. You lose the baby within hours. You have to 4 take the wrapper, put it in a cytotoxic waste container. 5 You have to take the syringe and put it in a cytotoxic waste 6 container. It's an EPA regulated hazardous waste. If you 7 don't it's a felony. But we ignore what comes out. And in 8 the case with the cytotoxic drugs, which are not -- non-dose 9 dependent, they are non-threshold chemicals, write that 10 down, you're going to see a lot of research on it. 11 So let's reiterate, any amount is dangerous, even from 12 an excretion from a body. 13 Any questions? 14 MR. BROWN: Thank you, Mr. Muldowney. No further 15 questions. 16 HEARING EXAMINER ROBESON-HANNAN: Mr. Muldowney, I had 17 a question. I think that you will be getting questions on 18 whether you know any geology or site specific issues with 19 regard to this, but what makes you say that you foresee that 20 this is going to be the next point source solution? Is 21 there a specific reason you say that? Or why -- what was 22 the basis of your comment there? 23 MR. MULLOWNEY: No, it will go back to common sense. 24 There's different reasons for it. We know where it's going 25 to go. It just makes no sense to put it right in the</p>

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<p style="text-align: right;">225</p> <p>1 watershed. And there's a tremendous amount of research -- 2 not research, there's legislation going on in Europe. And I 3 think you're going to see the clean water directive, they've 4 already added the chemotherapy drugs, that it has to be 5 implemented. That was last year. A lot of things get held 6 up by the COVID pandemic. But it's not (inaudible). 7 HEARING EXAMINER ROBESON-HANNAN: Now, the watershed, I 8 mean, that could -- I live in Howard County and Ellicott 9 City has a huge watershed. I mean, huge. Would your 10 opinion apply to the same, or is it a watershed that goes 11 into a drinking supply? 12 MR. MULLOWNEY: Good question. And from what I've seen 13 from the reports I've read the watershed with the cemetery 14 goes into a drinking water supply. A reservoir. 15 HEARING EXAMINER ROBESON-HANNAN: Okay. And I guess 16 the other thing that I was looking for in the literature but 17 I haven't found it is, is there anything that you know of, 18 and maybe I just missed it, which is highly possible, is 19 there anything that you know of that's specifically studies 20 impacts of these chemicals in green burial cemeteries? The 21 transport and the -- or would that have been a question -- 22 anyway. Anything that you know of? 23 MR. MULLOWNEY: This is the first time I've heard of a 24 green burial. But there is a tremendous amount of 25 information on fate and transport of cytotoxic drugs</p>	<p style="text-align: right;">227</p> <p>1 that just because one element is missing there's byproducts 2 that could be in the water supply that aren't getting 3 screened? 4 MR. MULLOWNEY: Well, say you have a UV light 5 destruction, people kind of tout. So you take an apple and 6 you put it under UV light and it turns it into an orange, 7 but you're still looking for an apple. You're going to say 8 it's gone, but it's not. That's why the point source 9 collection is so important. Pull it out before it gets in 10 because you'll never get it out again. 11 HEARING EXAMINER ROBESON-HANNAN: Okay. I'm going to 12 turn it over to Mr. Brown to see if he has any -- well, let 13 me turn it over to Mr. Sullivan for cross. 14 MR. SULLIVAN: Can I just have one moment to confer 15 with my client before I start? 16 HEARING EXAMINER ROBESON-HANNAN: Sure. Sure. 17 MR. SULLIVAN: Okay. Thank you for indulging me. 18 Mr. Muldowney, you haven't done any site specific 19 analysis for the property that is proposed for the cemetery, 20 correct? 21 MR. MULLOWNEY: I read what was given to me. And why 22 would (inaudible) site specific? 23 MR. SULLIVAN: Yes, or no? 24 MR. MULLOWNEY: No. 25 MR. SULLIVAN: Okay. No. Right. And so you have not</p>
<p style="text-align: right;">226</p> <p>1 throughout the world. 2 HEARING EXAMINER ROBESON-HANNAN: Throughout soil or 3 through waste water treatment -- waste -- you know? 4 MR. MULLOWNEY: All of it, soil, water. I was reading 5 a -- I actually read a report that just cited hundreds of 6 cases where they know that it's in the soil. Now, another 7 thing I want to just make a point of. When you talk about 8 metabolism or you talk about destroying something, so I use 9 cyclophosphamide. 10 So when you have a cyclophosphamide molecule and your 11 body destroys it, the first breakdown product, the first 12 metabolite is acrolein. Now acrolein is a high level U.S. 13 EPA poison that's a P003. Cyclophosphamide is a lower level 14 that's a UO36, no UO68. My number's a little screwed up. 15 So when you look at -- 16 When people say well, it's metabolized. Well, what 17 does it make? When you talk about the waste water treatment 18 plants, okay. If you're looking for it and then it's gone, 19 but what does it make? So the other byproduct of 20 cyclophosphamide is a phosphine mustard. Well, chemical 21 weapons. So when I talk about these drugs being chemical 22 weapons that's where they came from. That was the first -- 23 actually mustargen was the first chemotherapy drug. So I'm 24 going to tell -- 25 HEARING EXAMINER ROBESON-HANNAN: Well, are you saying</p>	<p style="text-align: right;">228</p> <p>1 evaluated whether there is an exposure pathway that is 2 intact from a body to a drinking water source, correct? 3 MR. MULLOWNEY: No. That is not -- 4 MR. SULLIVAN: Okay. Thank you. 5 MR. MULLOWNEY: That is not correct. I read the 6 literature and you can see fairly clearly the flow of the 7 groundwater and where the cemetery is and it's going to get 8 there. And it's -- 9 MR. SULLIVAN: And what's your basis for that? Break 10 it down. I want to understand your analysis. You had said 11 common sense, but that -- I don't understand what that 12 means, so explain how you reached that analysis. 13 MR. MULLOWNEY: It's in a watershed. 14 MR. SULLIVAN: Let me start you off, actually, for 15 example. For example, there's some wells nearby, did you 16 calculate the well capture zone around each of those wells? 17 MR. MULLOWNEY: No, I didn't calculate anything. 18 MR. SULLIVAN: Okay. Right. So it's fair to say that 19 if the water -- or whatever comes out of a body doesn't 20 reach one of the well capture zone there would be no impact 21 on that well, correct? 22 MR. MULLOWNEY: But what I'm saying is it will reach 23 there at very, very low levels and -- 24 MR. SULLIVAN: And what's the basis for that? I'd like 25 to understand the basis for that. You're not a</p>

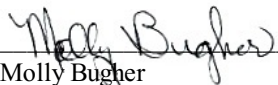
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<p>229</p> <p>1 hydrogeologist, correct?</p> <p>2 MR. MULLOWNEY: I am not a hydrogeologist.</p> <p>3 MR. SULLIVAN: And you've done no site specific</p> <p>4 analysis, correct?</p> <p>5 MR. MULLOWNEY: And I never will.</p> <p>6 MR. SULLIVAN: Yet, somehow you're reaching a</p> <p>7 conclusion that wells will be contaminated and I need to</p> <p>8 understand the basis for that.</p> <p>9 MR. MULLOWNEY: Just the simple drawings of the</p> <p>10 watershed that you're putting this in.</p> <p>11 MR. SULLIVAN: And which drawings --</p> <p>12 MR. MULLOWNEY: And you --</p> <p>13 MR. SULLIVAN: -- which drawings. Wait a minute, I've</p> <p>14 got to understand. Which drawings and what is important</p> <p>15 about those drawings?</p> <p>16 MR. MULLOWNEY: Just the flow of the water. Where's it</p> <p>17 located.</p> <p>18 MR. SULLIVAN: And where is the water located? What's</p> <p>19 the depth of the groundwater?</p> <p>20 MR. MULLOWNEY: In some cases it was 2 feet, some cases</p> <p>21 it was more.</p> <p>22 MR. SULLIVAN: On this site?</p> <p>23 MR. MULLOWNEY: On some of the stuff that I saw.</p> <p>24 MR. SULLIVAN: Okay.</p> <p>25 MR. MULLOWNEY: I'm not paid to do this. I have a day</p>	<p>231</p> <p>1 MR. MULLOWNEY: Well, I read that it's a combination of</p> <p>2 sand, silt, and clay. And it wasn't clear --</p> <p>3 MR. SULLIVAN: And how does that -- so what -- what's</p> <p>4 the importance of that analysis?</p> <p>5 MR. MULLOWNEY: In a hazardous waste site, because --</p> <p>6 MR. SULLIVAN: This is not a hazardous waste site</p> <p>7 though, so let's talk about a cemetery.</p> <p>8 MR. MULLOWNEY: Okay. So let's talk about lead.</p> <p>9 MR. SULLIVAN: Actually, let's talk about this</p> <p>10 cemetery. I'd like you to explain --</p> <p>11 MR. MULLOWNEY: (inaudible) clay.</p> <p>12 MR. SULLIVAN: Let's talk about --</p> <p>13 HEARING EXAMINER ROBESON-HANNAN: Mr. Sullivan. Mr.</p> <p>14 Sullivan, could you give him a --</p> <p>15 MR. SULLIVAN: Well, I'd like to reframe my question if</p> <p>16 I could, that's what I was trying to do.</p> <p>17 HEARING EXAMINER ROBESON-HANNAN: There were a lot of</p> <p>18 questions in there.</p> <p>19 MR. SULLIVAN: I know and I was trying to slow it down</p> <p>20 and back it up.</p> <p>21 HEARING EXAMINER ROBESON-HANNAN: Not -- and you're</p> <p>22 talking very fast and I couldn't keep up. So take one</p> <p>23 question at a time and then we'll go from there.</p> <p>24 MR. SULLIVAN: Okay. Thank you. I will. And my</p> <p>25 apologies, I was talking too fast. It's getting late in the</p>
<p>230</p> <p>1 job so.</p> <p>2 MR. SULLIVAN: Sure.</p> <p>3 MR. MULLOWNEY: I --</p> <p>4 MR. SULLIVAN: You've also made representations under</p> <p>5 oath that this will pollute drinking wells and so I'm trying</p> <p>6 to understand --</p> <p>7 MR. MULLOWNEY: It will.</p> <p>8 MR. SULLIVAN: -- what your basis is there.</p> <p>9 MR. MULLOWNEY: It is under oath. It will -- it will</p> <p>10 pollute drinking water.</p> <p>11 MR. SULLIVAN: Tell me how. Tell me how. You don't</p> <p>12 know what is the -- what is the zone of capture around the</p> <p>13 wells? And how far are the wells from the proposed burial</p> <p>14 sites? If you could answer those two questions that would</p> <p>15 be helpful in understanding.</p> <p>16 MR. MULLOWNEY: Well, from what I read, I just looked</p> <p>17 at the drawings, it shows the slope of the land, the slope</p> <p>18 of the watershed, the groundwater being at 2 feet, in some</p> <p>19 cases it was more. Groundwater comes up, groundwater goes</p> <p>20 down, you're going to get it in the ground water. I mean,</p> <p>21 that's common sense. I can't attest to be a geologist. I'm</p> <p>22 not. I didn't do --</p> <p>23 MR. SULLIVAN: You really don't -- you really don't</p> <p>24 have any idea - you have no idea what the subsurface</p> <p>25 conditions here are, do you?</p>	<p>232</p> <p>1 day.</p> <p>2 HEARING EXAMINER ROBESON-HANNAN: And it's hard for me</p> <p>3 to pick up, so please go ahead.</p> <p>4 MR. SULLIVAN: Yes. Help me understand your -- what is</p> <p>5 your understanding of the well -- the capture zone around</p> <p>6 the closest well to the burial sites? And I believe you</p> <p>7 said that you didn't calculate that so you don't know it,</p> <p>8 correct?</p> <p>9 MR. MULLOWNEY: Well, I don't know it. I never will.</p> <p>10 MR. SULLIVAN: Great, that's all I asked. And my next</p> <p>11 question is, how far is the nearest drinking well to the</p> <p>12 proposed burial sites?</p> <p>13 MR. MULLOWNEY: Close enough.</p> <p>14 MR. SULLIVAN: No, I'm looking for a quantification,</p> <p>15 not a qualification. A quantitative answer.</p> <p>16 MR. MULLOWNEY: I didn't do that.</p> <p>17 MR. SULLIVAN: Okay.</p> <p>18 MR. MULLOWNEY: And once again --</p> <p>19 MR. SULLIVAN: Right.</p> <p>20 MR. MULLOWNEY: Unless you want me, you know, if you</p> <p>21 want me to.</p> <p>22 MR. SULLIVAN: I don't want you to do anything. I'm</p> <p>23 just asking you a question.</p> <p>24 MR. MULLOWNEY: I just saw the drawing and go, well,</p> <p>25 it's right here. It's going to go downhill. For most</p>

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<p style="text-align: right;">233</p> <p>1 chemicals it doesn't matter, cytotoxic it does. It's going 2 to go into the drinking water. It's common sense. As I 3 said, I've had -- I owned a contaminated site from 4 trichloroethylene. 5 MR. SULLIVAN: Okay. 6 MR. MULLOWNEY: I worked on the EPCBs. 7 MR. SULLIVAN: So let me get back to the -- you and I 8 can talk CERCLA all day, but it would be helpful to anybody 9 else. 10 I just need to understand -- so just to clarify, you 11 did no analysis of actually processing risk here using any 12 site specific data period? 13 MR. MULLOWNEY: No. 14 MR. SULLIVAN: Okay. Thank you. I have nothing else 15 right now. 16 HEARING EXAMINER ROBESON-HANNAN: Okay. Mr. Brown, any 17 redirect? 18 MR. BROWN: No redirect. 19 HEARING EXAMINER ROBESON-HANNAN: All right. Mr. 20 Mullooney, I thank you for taking your time on a volunteer 21 basis to be here. 22 MR. MULLOWNEY: And if you need me again, just call. 23 HEARING EXAMINER ROBESON-HANNAN: Okay. We'll find 24 you. All right. 25 MR. MULLOWNEY: I have a wealth of information that</p>	<p style="text-align: right;">235</p> <p>1 HEARING EXAMINER ROBESON-HANNAN: Okay. Sorry. I 2 didn't see him get in here. 3 MR. BROWN: How did Dr. O'Keefe's Get there? 4 HEARING EXAMINER ROBESON-HANNAN: Yes. You can watch 5 me, I'm just moving to the door. Okay. He's not as calm as 6 Dr. O'Keefe's. 7 Let's -- is there anyone here that is not represented 8 by Mr. Brown that would like to testify right now? Okay. 9 I'm not hearing anybody so what we're going to do is adjourn 10 this hearing and were going to reconvene tomorrow, April 13, 11 at 9:30 a.m. at which time we will take individual testimony 12 from people who are not represented by either party, from 13 the community, and then, we will proceed with the 14 Applicant's case. 15 Any objections to that? Okay. With that we are 16 adjourned. Thank you. 17 MR. KLINE: Thank you. 18 (The recording was concluded.) 19 20 21 22 23 24 25</p>
<p style="text-align: right;">234</p> <p>1 will scare most of you. 2 HEARING EXAMINER ROBESON-HANNAN: Okay. All right. 3 Thank you very much and you can be excused unless you want 4 to stay, but you're excused. 5 MR. MULLOWNEY: I think I want to stay. What's going 6 on next? 7 HEARING EXAMINER ROBESON-HANNAN: Well, it's 5:09, so 8 that's what we're going to discuss. 9 Mr. Brown, was that your last witness? 10 MR. BROWN: Yes. 11 HEARING EXAMINER ROBESON-HANNAN: And then, I think I 12 previously said that we were going to take members of the 13 community that are not represented by Mr. Brown at 9:30 14 tomorrow. And their testimony will need to relate to 15 environmental matters and specifically contamination -- 16 factors that could contribute to contamination of 17 groundwater. 18 So Mr. Klein, do you have anyone that you can get 19 through and, like, 20 minutes, or no? 20 You're on mute. 21 MR. KLINE: I would say no. I would say if you've got 22 somebody who's sitting there that doesn't want to come in at 23 9:30 tomorrow, we could hear them. But I don't think you 24 want to start with our presentation tonight because we won't 25 make a dent in it.</p>	<p style="text-align: right;">236</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the 5 best of my ability from the audio recording as provided; and 6 that I am neither counsel for, related to, nor employed by 7 and of the parties to this case and have no interest, 8 financial or otherwise, in its outcome. 9 10 11  12 Molly Bugher 13 Date: April 21, 2022 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<b>alc</b>	<b>above</b>	132:21, 142:25	155:20, 172:18,
154:13, 183:18	55:25, 133:18,	<b>according</b>	191:21
<b>abia</b>	133:21, 136:13,	110:10, 110:12	<b>act</b>
3:9, 45:5,	203:14	<b>accordingly</b>	19:16, 57:3,
190:16, 192:11,	<b>absence</b>	32:15	219:13
192:15, 192:16,	15:20, 61:23	<b>accurate</b>	<b>acted</b>
192:23, 193:4,	<b>absolute</b>	4:17, 189:19	27:11
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