

1 finishing farms in North Carolina over the next ten years.
2 We really feel like that producing biogas, moving the gas to
3 a central location and cleaning that gas there and using it
4 as renewable natural gas is the model after all the years of
5 trying the model that does show the most promise.

6 And so what that means for like a farm like Sholar
7 is that because there are other farms in the area, quite a
8 few other finishing farms in that area, they would have a
9 density that would allow them to participate in these type
10 projects moving forward. Number one. If we can get a
11 gathering pipeline run towards Delway and that area or we
12 would clean the gas and haul it to an injection site.

13 Q. If I ask another question the Judge will hold me in
14 contempt, so I'll pass the witness.

15 A. Thank you.

16 THE COURT: Thank you, Mr. Neale. You've restored
17 your credibility with the Court.

18 MR. NEALE: I'm glad to hear it. That's important
19 to me.

20 MR. KAESKE: May I, your Honor?

21 THE COURT: Yes. You may cross-examine.

22 **CROSS-EXAMINATION**

23 BY MR. KAESKE:

24 Q. Good afternoon, Mr. Westerbeek.

25 A. Good afternoon, Mr. Kaeske.

1 Q. Did I just hear you say that what it would mean for
2 Sholar is that y'all will clean the gas and bring in more
3 trucks to haul it away?

4 A. No, sir, that would not be the first preference,
5 no, sir.

6 Q. But that's one of the possibilities?

7 A. I guess it could be a possibility. Yes.

8 Q. More truck traffic for the neighbors?

9 A. No. In actuality, what you would want to do is you
10 would want to situate the gas cleaning system to be somewhere
11 that would minimize the amount of travel so it wouldn't
12 necessarily be on the Sholar Farm, no, sir. It could be out
13 on Herring Road, somewhere else, it could be out on 421, you
14 know, all that would have to be evaluated. If it's not done
15 with gathering pipeline.

16 Q. And I guess the point is you don't know what the
17 plan is for Sholar Farm, do you? You don't know what the
18 plan is for Sholar Farm?

19 A. No, consistent with our plans overall, the plan for
20 Sholar Farm would be to capture biogas and utilize it as
21 renewable natural gas, yes, sir.

22 Q. Sorry, sir. You do not currently have a plan for
23 Sholar Farm, do you?

24 A. Yes, sir. I just described what it was.

25 Q. Okay. Are you going to cover the lagoons?

1 A. Potentially, but to be honest, I don't think a
2 lagoon cover is the best option for Sholar. I think the best
3 option could possibly be a dedicated digester.

4 Q. We're going to talk about that in a second.

5 A. That's fine.

6 Q. I would like an answer to this question that the
7 neighbors care about, and that is, are you going to cover the
8 lagoons at the Sholar Farm?

9 A. It will be a covered lagoon at Sholar Farm, yes,
10 sir.

11 Q. No, no, no. Are you going to cover the existing
12 lagoons at Sholar Farm?

13 A. The plans would not be at this point to cover the
14 existing lagoons at the Sholar Farm.

15 Q. Okay. And let's tell the members of the jury the
16 distinction that we just made. What your -- first, this plan
17 that y'all have, it's not implemented in any way by
18 Smithfield on any Smithfield operation, correct?

19 A. That's not true, no, sir.

20 Q. Two weeks before this jury was convened, y'all
21 issued a press release about a plan that you were going to do
22 to try to reduce your greenhouse gas emissions, correct?

23 A. No. We announced our greenhouse gas reduction goal
24 in November of 2016, sir.

25 Q. Sir, October 25th, Smithfield issued a press

1 release about this, what you're talking about right now. Two
2 weeks before this jury was convened, correct? Three weeks.

3 A. Specific to biogas capture, there was a press
4 release two weeks -- I guess two to three weeks ago, yes.

5 Q. Yes. And what you talked about was this that
6 you're talking about right now, anaerobic digesters, correct?

7 A. Excuse me. I'm sorry, I didn't mean to interrupt
8 you, sir. No, we've been talking about biogas capture before
9 the 2016 carbon reduction announcement and since. There's
10 been plenty of press releases related to Optima KV projects
11 in Missouri, projects in Utah, projects in other places.
12 There was one two weeks ago as you refer to, but there's been
13 press -- there's been press releases and talks about this for
14 some time, Mr. Kaeske.

15 Q. Okay. And this is what we're talking about. This
16 press release: Smithfield Foods announces landmark
17 investment to reduce greenhouse gas emissions October 25th of
18 2018, right?

19 A. I assume that's the one you're talking about, yes,
20 sir.

21 Q. Yes. Just in time for this jury to come, right?

22 A. No, sir. If you could put that back up, it does
23 talk about all the years' worth of work there's been in
24 biogas and trying to perfect this technology and so forth.
25 If you want to put --

1 Q. I'm sure Mr. Neale would love to talk to you about
2 it, but I need to get to the bottom of a few things first if
3 you don't mind.

4 A. Okay, I'm sorry. I apologize.

5 Q. Okay. This is not -- like you said, this isn't a
6 new plan for you, is it?

7 A. No, sir, it's not.

8 Q. And the idea of reducing your greenhouse gas
9 emissions, that's not a new plan for you either?

10 A. No, sir, it was announced in 2016.

11 Q. There's actually something that was announced
12 earlier than that, wasn't there?

13 A. I'm not sure what you're referring to.

14 Q. What was the year that you told the world that you
15 would reduce your greenhouse gas emissions by ten percent?
16 2014, '12? When was that?

17 A. My understanding, in the sustainability report
18 there was an announcement that there would be a greenhouse
19 gas reduction in our processing facilities of ten percent, if
20 that's what you're referring to.

21 Q. Yeah. Y'all didn't meet that goal, correct?

22 A. No, my understanding is we did meet that goal, but
23 I'm not in the processing side of the business either.

24 Q. Well, maybe tomorrow we'll come back and look at
25 that.

1 A. That would be fine.

2 Q. 2016 you announced you were going to reduce your
3 greenhouse gas emissions, right?

4 A. Yes, by 25 percent by the year 2025 based on a 2010
5 baseline.

6 Q. And the reason that y'all did that is because many
7 of your major customers, like Walmart, said that if you
8 didn't reduce your greenhouse gas emissions they'd stop
9 buying your pork, correct?

10 A. That's not correct, no, sir.

11 Q. That is not true?

12 A. No, I'm not aware of any one of our customers that
13 said if you don't reduce your greenhouse gases we're not
14 going to buy your product. I'm not aware of that, no, sir.

15 Q. All right. Now, in February 2002 -- sorry, in
16 2016 -- I just shut this off.

17 Okay. Here's what I want to focus on. There is a
18 difference between an anaerobic digester and an anaerobic
19 lagoon, correct?

20 A. There's one difference.

21 Q. Yeah. Now, what your plan is is your plan is to
22 install anaerobic digesters at something like 1300 different
23 finishing operations across the state, correct?

24 A. Either anaerobic digesters or covered anaerobic
25 lagoons. One or the other.

1 Q. Okay. And --

2 A. Depending on the site, it could vary depending on
3 what the farmer's preference would be, what might fit best
4 for that site. That would be what would determine which
5 would be utilized.

6 Q. Okay. But you are not telling this jury that the
7 idea is that under this greenhouse gas emission that all the
8 existing anaerobic lagoons will be covered, correct?

9 A. What I'm telling these folks is that either the
10 lagoon will be covered or a covered anaerobic digester will
11 be installed, one or the other. It would depend on the
12 situation on the farm and what might be best for the farm or
13 what the farmer would want.

14 Q. Okay. So let's first talk about what a covered
15 anaerobic digester is. And I'll ask you some very specific
16 questions.

17 A. Okay. That's fine.

18 Q. First of all, there is -- there are how many --
19 let's not do it that way. An anaerobic digester, when you
20 say we will install an anaerobic digester or an anaerobic
21 digester will be installed, what that means is there will be
22 a new pit dug in the ground that waste will go into and that
23 pit will be covered, correct?

24 A. That would be a new structure built that would be
25 lined either with synthetic -- a synthetic liner or clay,

1 whichever would be the most and would be in compliance with
2 the rules and regulations of North Carolina. In the case of
3 the dedicated anaerobic digester, as I think you're
4 describing it, Mr. Kaeske, you can correct me if I'm wrong,
5 and it would be covered, that's correct. It would also have
6 mixing in it as well.

7 Q. So for example, if Sholar gets a new anaerobic
8 digester, what that means is someone will go to Sholar and
9 dig another storage basin into the ground where hog waste
10 will go, correct?

11 A. Or depending on, as we discussed earlier, or
12 depending on after the design is done, one or the other of
13 the lagoons could be covered as an example.

14 Q. Okay. Let's just stick with the anaerobic
15 digesters right now.

16 A. That's fine. We can.

17 Q. Now, how big are these anaerobic digesters in terms
18 of gallons?

19 A. It would depend. It would depend on the size of
20 the farm.

21 Q. Yes. And so what do you expect that -- let's take
22 Sholar, for example. 6,120 hogs. How big an anaerobic
23 digester is it going to need?

24 A. If we chose to put an anaerobic digester, it would
25 be smaller than the secondary lagoon.

1 Q. Sir, how big would it be in terms of gallons,
2 please?

3 A. Gallons.

4 Q. Let's do it this way. How big in gallons is the
5 secondary lagoon at Sholar right now?

6 A. In terms of gallons, I don't have that number off
7 the top of my head.

8 Q. How about cubic feet?

9 A. I don't have that number off the top of my head.
10 We could talk about surface area if you would like. I would
11 say it would be an acre or less surface area.

12 Q. Sir, I'm looking for a volumetric. See, because
13 what we're storing is a volume of hog feces and urine and
14 manure and waste from the buildings, right?

15 A. No, in this case you're not storing it, you're
16 treating it.

17 Q. It's going into a new hole, correct?

18 A. For anaerobic digestion and treatment, yes, sir.

19 Q. Okay. And I just want to know in terms of volume,
20 how much more volume are we going to put into the ground
21 around the Moon Johnson/Herring Road community?

22 A. There would be no more volume, sir. It would be
23 the same volume.

24 Q. That's interesting. One of the -- there has
25 been -- okay. Let's see if we can make sure that everybody

1 understands what we're talking about. You know the Circle K
2 Farm?

3 A. I am -- I'm familiar with it, yes, sir.

4 Q. Do you recognize this as the Circle K Farm?

5 A. Yes, sir.

6 Q. Okay.

7 MR. KAESKE: Your Honor, I'd ask to publish
8 Plaintiffs' Demonstrative Number -- next.

9 THE COURT: Any objection?

10 MR. NEALE: No, sir.

11 THE COURT: It may be published.

12 MR. KAESKE: Your Honor, I should get organized on
13 my numbers before I move forward.

14 THE COURT: Okay.

15 MR. KAESKE: And it's No. 81, your Honor.

16 **(Plaintiffs' Demonstrative No. 81 marked at this time)**

17 Q. (By Mr. Kaeske) Okay. Now, this is an
18 operation -- is this part of Optima KV?

19 A. It is, yes, sir.

20 Q. This is part of Optima KV. And to be clear, Optima
21 KV was not paid for by Smithfield, right?

22 A. No, I think we established we didn't have to pay
23 for Optima KV.

24 Q. And Optima KV was not Smithfield -- Smithfield
25 didn't put it together. Duke put it together and others,

1 right?

2 A. Smithfield was very involved in putting it
3 together. As a matter of fact, the gas cleaning and
4 injection site is on land that we owned that we donated to
5 the project and we were involved in the design of that
6 project.

7 Q. Okay. Now, this is the anaerobic -- well, if we
8 look here, what we see is there are ten buildings, right?

9 A. There's actually -- yes, there's ten buildings,
10 that's correct.

11 Q. And there are two lagoons, right?

12 A. That's correct, yes, sir.

13 Q. And those are open lagoons, right?

14 A. They are, yes, sir.

15 Q. Okay. And then, now, here's the new anaerobic
16 digester that was built, right?

17 A. Yes, that's correct.

18 Q. And so that anaerobic digester, waste goes in
19 there, right?

20 A. Manure goes in there, yes, sir.

21 Q. Yeah. And then that's the open lagoon that remains
22 open afterwards, right?

23 A. That's the existing lagoon that now is tertiary
24 treatment, that's correct.

25 Q. Yeah. And what that means is that whatever is

1 under that cover -- so the waste goes by this little image
2 that you have here, the waste goes from the building into the
3 digester and then it goes into the open lagoon after you've
4 taken the gas off of it, right?

5 A. Goes from all ten buildings into that digester.

6 Q. Yes, sir. And then --

7 A. I just wanted to clarify it wasn't just that one.
8 Yes, sir.

9 Q. The waste goes from all the buildings into the
10 digester, right?

11 A. Yes, sir, that's correct.

12 Q. And then it goes from the digester into the
13 open-pit lagoons, correct?

14 A. After it's been treated, correct.

15 Q. Right. And treating it, when you say treating it,
16 what you mean is that the gas is pulled off of it to put into
17 the pipeline, right?

18 A. No, sir. I would say anaerobic digestion is
19 treatment. A product of that is gas, but anaerobic digestion
20 is treating.

21 Q. So these open lagoons, the anaerobic lagoons, they
22 are open, they were open, and they will remain open at this
23 operation, correct?

24 A. It will be open, but they're tertiary treatment.
25 If you go to that site today and you look at that particular

1 existing lagoon, the water clarity is very clear. It's
2 already treated water that's going into it. Anaerobically
3 digested water.

4 Q. You're not telling the members of the jury that
5 there's no odor in those open lagoons, are you?

6 A. At this farm, the lagoons that remain?

7 Q. Yes, sir.

8 A. I have not smelled any odor, no, sir.

9 Q. Okay. So you're saying that the anaerobic digester
10 removes all the odor; that's your position?

11 A. I don't know what all -- you asked me had I smelled
12 odor at the existing lagoons that remained and my answer is
13 no, I have not.

14 Q. Well, I guess we should get some context for that
15 then. You, sir, have told me previously under oath that
16 you've never smelled offensive hog odor, correct?

17 A. No, I think your question was have I ever smelled
18 offensive odor off the property.

19 Q. Yes, sir.

20 A. And my answer to you was, no, I had not.

21 Q. Nowhere in your life have you ever smelled
22 offensive hog odor off a hog property, correct?

23 A. That was the answer to your question, yes, and
24 that's how I answered your question.

25 Q. Yeah. And that's your answer today?

1 A. Off the property line?

2 Q. Yes, sir.

3 A. Yes. And you said offensive odor. You didn't say
4 any odor. I just want to clarify for the jury, I'm not
5 saying I've never smelled any odor off of a farm, but I have
6 smelled farm odors off the property line but not offensive
7 odors, no, sir.

8 Q. Okay. Now, the way this is going to work is
9 that -- and by the way, following up on that, you don't
10 believe that hog odor can interfere with people's lives,
11 correct?

12 A. I don't -- excuse me?

13 Q. You don't believe that hog odor can interfere with
14 people's lives, correct?

15 A. I don't think that it should.

16 Q. No, you don't believe that it can. Sir, we all
17 agree with you that it shouldn't. This is a question about
18 whether it can or not. You don't believe that hog odor can
19 interfere with people's lives, correct?

20 A. I don't know that I've ever made that statement
21 but -- I don't think it should and I don't think it can -- I
22 don't know the answer to that.

23 Q. Well, let me ask you this. What is your answer
24 right now in front of this jury? Can hog odor interfere with
25 people's lives, yes or no?

1 A. Yeah, I think if there was poor management, if
2 there was something going wrong there's a possibility it
3 could.

4 Q. Okay. So you'll acknowledge that hog odor can
5 interfere with people's use and enjoyment of their property,
6 correct?

7 A. It's possible.

8 Q. All right. Now, this new thing that y'all are
9 planning on doing, one of the advantages of this new thing
10 for y'all is -- one second. One of the advantages, that it
11 will increase the storage for hog waste on the operations,
12 correct?

13 A. Increase the storage capacity? In one way, the
14 existing lagoons then would not have to have a dedicated
15 amount of treatment volume in them. So you could actually
16 land apply them lower than you could today, which would in
17 effect increase storage, yes, sir.

18 Q. Yeah. So what you're in essence doing is you're
19 digging new lagoons into the ground, covering them, and
20 you're getting additional storage for how many --

21 A. That would be --

22 Q. Excuse me, sir.

23 A. I'm sorry. I didn't mean to interrupt.

24 Q. That's all right. Let's try it this way. Maybe
25 I'll just withdraw that question and ask this next one. How

1 many billions of gallons of hog waste do Smithfield hogs
2 create in North Carolina every year?

3 MR. NEALE: Objection to the relevance, your Honor.

4 THE COURT: Sustained.

5 Q. (By Mr. Kaeske) How much -- well, you'll agree
6 with me that one of the benefits that Smithfield plans to get
7 from this plan, if you implement it, is increasing the
8 storage on the operations for the hog waste, correct?

9 MR. NEALE: Objection. Asked and answered, your
10 Honor.

11 THE COURT: Overruled. You can answer it if you
12 can, Mr. Westerbeek.

13 A. Once again, the storage is that you could actually
14 increase the storage that's available. It doesn't
15 necessarily mean that you would always utilize that storage,
16 but it would increase the storage that would be available.
17 Yes, sir.

18 Q. (By Mr. Kaeske) So that was -- I'm sorry, sir. I
19 didn't follow. Was that a yes answer?

20 A. Well, it would depend on which scenario you're
21 talking about. Are you focused solely on an option where we
22 dig a new digester, which is correct, that could absolutely
23 be done and we think it's a great technology, or are you
24 focused on the other option which would be covering the
25 existing lagoon?

1 Q. Sir, did you understand my question?

2 A. Apparently I did not.

3 Q. I guess you did not.

4 A. Apparently I did not.

5 Q. Okay. Let's try it this way.

6 A. Okay.

7 Q. The plan is that each farm will build new in-ground
8 ambient temperature digesters, correct?

9 A. No, sir, this is an old -- this is an old
10 presentation that -- that's not correct versus what we stated
11 in the press release that you showed. This is an old -- this
12 is an old scoping document of sorts. It's not the current
13 plan, no, sir.

14 Q. And it's old from when, sir?

15 A. This was probably done --

16 Q. This year.

17 A. -- in 2018?

18 Q. Yes, sir.

19 A. No, sir, I think this was originally done in 2017.
20 I'm not sure -- I've never seen this presentation. I'm not
21 sure I have. This is the only page I've seen of it.

22 Q. Sir, you just told me it was old, but then you told
23 me that you've never seen it? You gave it to me.

24 A. No. I was talking specifically about the -- this
25 particular way of doing -- way of describing what will be

1 done is not the current thinking. And so this was -- has to
2 be an older document.

3 Q. Well, I guess we don't know what your current
4 thinking is because you haven't done it yet, right?

5 A. Well, you should because we've talked about it
6 today and I've described it.

7 Q. Well, you've also provided me this document that
8 says the Smithfield Swine Farm Biogas Strategy for North
9 Carolina prepared by Cavanaugh and Associates and Smithfield
10 Foods, right?

11 A. Yes.

12 Q. And in it it says that each farm will build new
13 in-ground ambient temperature digesters, right?

14 A. My only point there is that the ten percent will
15 cover lagoons, that's probably -- it's the choice of the
16 producer as to which one they'd want to do. They'll
17 certainly have the option to cover their lagoon. I would
18 personally tell you that I think that a dedicated digester is
19 a better option for many different reasons.

20 Q. Now, what percentage -- what percentage of the
21 lagoons are going to be covered, sir?

22 A. I don't know the answer to that question yet.

23 Q. Okay. But now getting back --

24 A. 100 percent if you include the covered digesters as
25 a covered lagoon.

1 Q. Yes, sir, but see, what I don't want you to do is I
2 don't want you to confuse -- I'm sure you don't want to
3 confuse the members of the jury --

4 A. No, absolutely not.

5 Q. -- about the difference between an anaerobic
6 digester with a cover on it and the existing lagoons being
7 uncovered, right?

8 A. No, absolutely not. I think we've tried to be very
9 transparent on this as to our intentions.

10 Q. Well, that's interesting. Because what this says
11 is ten -- that little curlicue thing, that means
12 approximately, right?

13 A. I'm aware of that, yes.

14 Q. Okay. And that says that approximately ten percent
15 will cover the existing lagoons, right?

16 A. In this scoping document that's what was used for
17 the analysis. I have no -- I personally feel that would be
18 higher, but that's what was used in that particular analysis
19 that you're showing.

20 Q. And when you talked about in the scoping document
21 the benefits, one of the benefits was that it was going to
22 increase the storage -- that it's going to increase the
23 storage by the volume of the digester, right?

24 A. Well, I think this is where you and I are talking
25 past each other a bit. Storage can be used or unused. My

1 point is it will increase because you would be able to have a
2 lower pump-down level. The storage would be there whether
3 it's used or not. You would hope it would never -- it may be
4 used, it may not.

5 Q. Well --

6 A. Storage is not necessarily used storage is my
7 point.

8 Q. That's also interesting, because the next benefit
9 says, it postpones sludge removal costs for the existing
10 lagoon because of the added volume from the digester. Right?

11 A. No, sir. That's not the reason that the sludge
12 wouldn't -- so in North Carolina, sludge removal --

13 MR. KAESKE: Your Honor, I'm sorry. I ask that the
14 witness be instructed to answer my question.

15 MR. NEALE: Your Honor --

16 THE COURT: He's explaining his answer, Mr. Kaeske.

17 THE WITNESS: Trying to.

18 THE COURT: Overruled.

19 A. So in North Carolina the requirement to remove
20 sludge is based on percentage occupancy of your treatment
21 volume in your lagoon. So it's 50 percent of your treatment
22 volume has to be occupied and then you're required by law to
23 remove that within two years. That's the law, that's what's
24 in our permits, that's what's required.

25 In the scenario that Mr. Kaeske is talking about

1 where a new digester would be installed, it would become the
2 treatment system for the lagoon and it would contain all the
3 treatment. So the existing lagoon, as I described before,
4 would become tertiary treatment or storage, and therefore it
5 would not have to have any sludge removed because there is no
6 treatment volume in it anymore.

7 Q. Well --

8 A. That was my point in this particular --

9 Q. Sir, let's just look at the words on the page.
10 This says, additional farm benefits: Postpones sludge
11 removal costs for existing lagoon, correct?

12 A. As I just explained, yes, sir.

13 Q. And what that means is that the company will have a
14 benefit by putting off the cost of having to remove the
15 sludge from the existing lagoons, correct?

16 A. Could you restate your question?

17 Q. Yes. The company, Smithfield, will have an
18 additional benefit by postponing the sludge removal cost for
19 removing the sludge from the existing lagoon, correct?

20 A. Wouldn't just be the company, it would be anybody
21 that did this would have that impact. If they did a
22 dedicated digester, then that would indeed be the case, yes.

23 Q. Now, one of the additional farm benefits that you
24 also claim is improved public perception, right?

25 A. Yes, sir, that's what's in this document, yes, sir.

1 Q. And the public perception that you're talking about
2 from the Smithfield biogas vision is leveraging farm assets
3 and a demand for renewable natural gas, right?

4 A. Correct.

5 Q. Into renewable energy markets and increasing farm
6 revenues. That's about making money, right?

7 A. It's about making money for any farmer, yes.

8 Q. Well, and specifically making money -- in this case
9 we're talking about making money for Smithfield, right?

10 A. Well, we just talked about several projects that
11 Smithfield didn't invest in that the farmer is getting
12 revenue from. So it could be Smithfield's revenue, it could
13 be someone else's revenue, but yes.

14 Q. And it says, addressing the public perception
15 benefit of covered lagoons, quote/unquote, right?

16 A. That's what it says, yes, sir.

17 Q. And what you mean by that is that the public
18 perceives there to be a benefit from covering the lagoons and
19 you're going to address that perception of covered lagoons by
20 inserting covered ambient temperature digesters, correct?

21 A. No, sir, that's not what that means.

22 Q. And approximately ten percent will cover the
23 existing lagoons, correct?

24 A. No, sir. I think I've already explained that.

25 Q. Now, do you agree that digesters do not eliminate

1 water quality and odor concerns near hog farms?

2 A. Do they eliminate those, no, I wouldn't disagree
3 with that.

4 Q. You disagree or you agree?

5 A. Well, say it again because I don't want to get -- I
6 don't want to say my answer incorrectly and I'm beginning to
7 not understand your question. So ask me again.

8 Q. Okay. Do you agree that digesters do not eliminate
9 water quality and odor concerns near hog farms?

10 A. I would agree with that, yes, sir.

11 Q. Okay. And so if you put in these covered
12 digesters, it will not eliminate the odor and water quality
13 concerns near hog farms, correct?

14 A. I don't think we've ever publicly said that that's
15 our goal in this project. I would say that it would -- it
16 would be a positive thing. But as we've discussed throughout
17 my testimony today, there are a lot of different factors that
18 go in that, management factors and otherwise, that have to be
19 considered and focusing just on one thing would not be -- I
20 don't think would be appropriate.

21 Q. Right.

22 A. One thing being anaerobic digesters eliminating --
23 yeah, I agree with your statement.

24 Q. Okay. So if the Moon Johnson/Herring Road
25 community gets an anaerobic digester, it's not going to

1 eliminate their odor concerns and their water quality
2 concerns, correct?

3 A. To the degree their odor concerns or water quality
4 concerns -- I think -- no, it wouldn't -- I guess it wouldn't
5 eliminate those. I'm trying to answer your question.

6 Q. Yeah.

7 A. I don't know what to -- go ahead.

8 Q. Thank you.

9 A. You're welcome.

10 Q. So Smithfield Renewables is a company that y'all
11 put together at the end of 2017, correct?

12 A. September of 2017 to be exact.

13 Q. And in September of 2017, you got moved out of
14 Murphy-Brown into a company called Smithfield Renewables, the
15 goal of which is to make a profit from renewable natural gas,
16 correct?

17 A. No, sir. Smithfield Renewables is a business
18 platform, not a company.

19 Q. All right. It's a business platform, the goal of
20 which is to make a profit from renewable natural gas,
21 correct?

22 A. Hopefully so. Any technology that's going to be
23 deployed, you would hope it would have an economic benefit
24 because if it has an economic benefit and has an economic
25 return, then it's going to be more widely used and it's going

1 to be better for everyone.

2 Q. Yes, sir. Smithfield Renewables was not a business
3 platform, as you describe it, that was created to eliminate
4 odor concerns for neighbors, correct?

5 A. Smithfield Renewables was a business platform that
6 was created to ensure we hit our carbon reduction goal of
7 25 percent by the year 2025, a commitment we made back in
8 December of 2016.

9 Q. That was --

10 A. There was never any discussion of whether that was
11 going to make a profit or not make a profit.

12 Q. I'm sorry, sir. Maybe you didn't understand my
13 question.

14 A. Okay.

15 Q. My question was Smithfield Renewables was not a
16 business platform that was created for the purpose of
17 addressing neighbors' odor concerns, correct?

18 A. Not specifically, no, sir.

19 Q. Right. And this is not -- this biogas technology
20 that you're talking about, that is not being implemented in
21 order to address neighbors' odor concerns, correct?

22 A. It's one part of a total system. You know, we've
23 talked about our environmental management system today and
24 we've talked about continuing improvement and we've talked
25 about a lot of the improvements that have occurred at the

1 Sholar Farm and at other farms throughout -- throughout the
2 history of the farm. Including many of the things we've
3 discussed, increasing the size of the lagoons, the spray
4 field orientation, the type of spray system we use. All
5 those sort of things that we've talked about at length today.
6 This would just be an addition to that, is the way I would
7 answer your question.

8 Q. Mr. Westerbeek, do you acknowledge that spraying of
9 hog effluent or waste or whatever you want to call it into
10 the air of the Moon Johnson/Herring Road community is a
11 nuisance for the neighbors?

12 MR. NEALE: Objection, your Honor, to the leading
13 conclusion.

14 THE COURT: Sustained. You can ask the question a
15 different way, Mr. Kaeske, but you're asking for a legal
16 conclusion so I'll sustain the objection to that question.

17 Q. (By Mr. Kaeske) Do you agree that the spraying of
18 hog waste into the air of the Moon Johnson/Herring Road
19 community causes the neighbors an interference with their use
20 and enjoyment of their property?

21 MR. NEALE: Same objection, your Honor.

22 THE COURT: Sustained.

23 Q. (By Mr. Kaeske) Do you agree that spraying hog
24 waste in the air creates odor problems for the neighbors?

25 A. No, sir, I don't agree with that.

1 Q. Okay. So you moved the spray fields, you say, you
2 moved the spray fields in order to, you said, be a better
3 neighbor, but you won't acknowledge that spraying hog waste
4 into the air is bad for the neighbors, right?

5 A. I think when you look at everything in total, all
6 the things that we've done on the farm and continue to do, I
7 don't think that -- to your point, I don't agree that
8 spraying manure, spraying effluent from a secondary lagoon at
9 the Sholar Farm causes an odor concern for the neighbors.
10 But we've done plenty of things over the years to make sure
11 that's not the case.

12 MR. KAESKE: Your Honor, do you want me to
13 continue --

14 THE COURT: If you're at a stopping place, I think
15 we probably ought to --

16 MR. KAESKE: Yes. Obviously, I can't be done
17 today.

18 THE COURT: Well, yes, obviously.

19 Mr. Westerbeek, I'm going to have to insist you
20 come back tomorrow. Do not discuss your testimony with
21 anyone until you come back.

22 THE WITNESS: Okay.

23 THE COURT: Ladies and gentlemen, I want to remind
24 you of your instructions. You're not to discuss the case,
25 not even among yourselves. Don't do any investigation about

1 it. Avoid any reports about the case that might be in any of
2 the news media. And there are four of these, I think I got
3 them all. Don't form any opinion until you've heard all the
4 evidence. Keep those instructions in mind and I'll excuse
5 you until 9 o'clock in the morning. Thank you very much.

6 (Jury out at 4:31 p.m.)

7 THE COURT: You can step down, Mr. Westerbeek.

8 THE WITNESS: Thank you, sir.

9 THE COURT: We haven't resolved the nondisclosed
10 witness problem. Do you want to show up at 8:30 in the
11 morning and hash that out then? Would that be appropriate?

12 MR. NEALE: Yes, sir.

13 THE COURT: Mr. Kaeske?

14 MR. KAESKE: I'd like to know who it is that they
15 want to call.

16 THE COURT: Well, I would, too. Can you tell him
17 who it is?

18 MR. NEALE: Yes, sir. There are two witnesses in
19 that category that we would intend to call. One is Mr. Gary
20 Saunders with the Department of Air Quality. He was first
21 disclosed to the plaintiffs on April 30th of 2018. His name
22 is on a pretrial order for another case entered May 22nd. I
23 believe Mr. Kaeske has met with him. He's a public
24 regulator. His testimony would take I suspect --

25 THE COURT: Well, tell him who the other one is and