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SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX FOR DEFENDANT-APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2008-5059

WILLIAM D. HOCKER (doing business as
Georgia Bowhunters Supply),

Plaintiff-Appellant,

v.

WEST/CRS

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in 03-CV-1501,
Senior Judge Robert H. Hodges, Jr.

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THE FEDERAL CIRCUIT

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UNITED STATES
COURT OF FEDERAL CLAIMS

WILLIAM D. HOOKER, d/b/a)
GEORGIA BOWHUNTERS SUPPLY,)

Plaintiff,)

vs.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket Nos. 03-1501C
04-1126C

Pages: 1 through 118/299
Place: Aiken, South Carolina
Date: September 12, 2007

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS
CIVIL ACTION NO.: 03-1501C

WILLIAM D. HOOKER, d/b/a)	
GEORGIA BOWHUNTERS SUPPLY,)	
)	
Plaintiff,)	Docket Nos. 03-1501C
)	04-1126C
vs.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Aiken County Courthouse
109 Park Avenue,
Aiken, South Carolina

Wednesday,
September 12, 2007

The parties met, pursuant to notice of the
court, at 2:04 p.m.

BEFORE: HONORABLE ROBERT H. HODGES
JUDGE

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1 MS. NICHOLS: Your Honor has read our
2 briefs, but here is a summary of what we're about
3 here today. My client, William Daniel Hooker,
4 had two contracts with the Forest Service on the
5 Savannah River Site since probably 1992. Two
6 separate contracts are addressed here today. The
7 hog contract was awarded in October of 1997, to
8 Mr. Hooker to control the wild hog population on
9 the Savannah River Site. It was an indefinite
10 quantity contract with a minimum base of 200 hogs
11 and two option years.

12 The beaver contract was a requirements
13 contract for trapping beaver that obstructed the
14 flow of streams on the Savannah River Site as
15 well as it was a contract for cleaning culverts.
16 It was awarded in January of 1999, with a base
17 period of two option years.

18 There are basically two issues in this case.
19 One is a modification to the hog contract that
20 was written in September of 1999, and it
21 purported to extend the contract until October
22 31st, 1999, or until a new contract was awarded.
23 You will hear today that a new hog contract was
24 not awarded until November of 2001, and Mr.
25 Hooker claims the minimum amount of that contract

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1 for those two years.

2 The second issue is one of reformation of
3 the beaver contract due to the presence of
4 radiological contamination at the beaver trapping
5 sites, when the contract specifically stated that
6 no toxicological hazards existed and no
7 protection was required. This contradicts the
8 policies that the Department of Energy and
9 Washington Savannah River Company, which manages
10 the Site, since they did require protection for
11 working in soil contamination areas.

12 Mr. Hooker's claim is that he would have bid
13 more on the beaver contract if he had known he
14 would have been working in contamination. And
15 connected with that is the issue of bad faith.
16 As soon as -- in February of 1999, Mr. Hooker was
17 presented with a work clearance permit in order
18 to get into one of the streams on the Site, and
19 it required radiological protection. When he
20 started asking about what was in the water and
21 what he had been in, he did not receive a
22 satisfactory response. He asked for more money
23 to do that kind of work and he was refused. He
24 then looked at some of the other beaver trapping
25 sites and discovered that some of them were

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1 posted with contamination signs, but they had
2 been overgrown with vegetation and they were not
3 readily visible.

4 In June of 1999, Mr. Hooker had an employee
5 videotape one of the sites that was posted. Very
6 quickly after that, two negative things impacted
7 him. One, his hog contract became under
8 investigation, and the other, his beaver trapping
9 sites were cut from 53 to one the next month,
10 which was July.

11 Money was withheld from Mr. Hooker's
12 invoices on the hog contract due to allegations
13 that he had -- his employees had brought domestic
14 hogs onto the property and tried to pass them off
15 as wild hogs. Mr. Hooker claims that these
16 actions were taken in bad faith to get him to
17 abandon his contracts, basically.

18 We will ask the Court to especially note
19 today that no reason was given for the reduction
20 in beaver sites until almost three years after
21 the filing of the complaint, and that was only at
22 deposition when the subject of drought came up.

23 The Court will hear testimony that, indeed,
24 the beaver sites were still obstructed until the
25 end of the year and there was a requirement for

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1 faith are simply unsupported accusations.
2 They're not supported by the evidence, and he
3 certainly cannot prove by clear, convincing
4 evidence that the government acted in bad faith.
5 Here there's a good-faith explanation for every
6 government action taken, and the government did
7 not act improperly or breach this contract.

8 THE COURT: All right. Thank you, Mr.
9 Schroeder. Would you like to call your first
10 witness, Ms. Nichols?

11 MS. NICHOLS: I call Mr. Homer Gabard.

12 THE COURT: Gabard. That would be G-A-B-A-
13 R-D?

14 MS. NICHOLS: A-R-D.

15 THE COURT: All right, Mr. Gabard. Welcome
16 to you. Come right over here. This seems to be
17 our witness chair. Would you raise your right
18 hand?

19 HOMER GABARD

20 having been first duly sworn, was examined
21 and testified as follows:

22

23 MS. NICHOLS: May I have permission to
24 approach so I may reach him with my voice?

25 THE COURT: Certainly.

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1 MS. NICHOLS: Thank you.

2 DIRECT EXAMINATION OF HOMER GABARD

3 BY MS. NICHOLS:

4 Q. Mr. Gabard, how are you?

5 A. I'm fine. How are you today, ma'am?

6 Q. Good. Mr. Gabard, you were the contracting
7 officer during the time of Mr. Hooker's contract; is that
8 correct?

9 A. Yes, ma'am.

10 Q. And can you just tell me a little bit about
11 your job and how long you were at the forest service?

12 A. I was actually at the Forest Service two times
13 at Savannah River Site. I was there from 1979 to 1985,
14 as a business management clerk, and then from 1990 to
15 January of 2004, as a contracting officer. And a little
16 bit about the contracting job is we issued solicitations
17 for supply, construction and services contracts up to \$1
18 million, and I ordered the resulting contract;
19 administered those contracts, meaning either closed them
20 out or terminated them as appropriate.

21 Q. Thank you. At this time I'm going to hand you
22 what has been marked as Plaintiff's 1 and Plaintiff's 2.
23 Plaintiff's 1 is a copy of the beaver and culvert
24 cleaning contract, and Plaintiff's a copy of the wild hog
25 control contract. Would you take a moment to look those

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1 over and make sure that those are, indeed, the contracts
2 that you administered?

3 A. Yes, ma'am.

4 Q. Thank you. To get the one issue out of the
5 way, could you turn to -- I believe it's the third
6 modification of the hog contract. It's the last
7 modification. It might be four. I think it would be at
8 the very, very end of that package.

9 A. Yes, ma'am.

10 Q. And could you just read what the modification
11 -- and it is modification number four. Could you just
12 read that?

13 A. You want what's in section 14?

14 Q. The language in -- yes.

15 A. [Reading] "Contract is extended to October
16 31st, 1999, or until a new contract is awarded."

17 Q. Thank you. And the date on that modification
18 was?

19 A. The effective date was October 1st, 1999.

20 Q. Okay. Did Mr. Hooker continue to hunt hogs
21 after October 31st?

22 A. After October 31st, I believe he continued for
23 one month after that.

24 Q. Okay. And why did he only continue for one
25 month?

1 A. I believe that at some point -- I don't
2 remember the exact date, but at some point in time there
3 was a decision made to have Forest Service personnel
4 perform services, and so this contract was closed out.

5 Q. Was Mr. Hooker notified of that?

6 A. Yes, ma'am.

7 Q. How was he notified?

8 A. I haven't seen anything in writing, so I
9 assume I notified him verbally. I mean, I don't know if
10 -- I haven't seen anything in writing anywhere, so I
11 assume that I notified him verbally.

12 Q. So, I mean, if you had notified him verbally,
13 what would you have said to him?

14 A. I would have told him that the decision had
15 been made by the Forest Service manager at the Savannah
16 River Site to perform the work via Forest Service
17 personnel, and that we we're going to close the contract
18 and he needed to return his government property, and so
19 forth, that he had and --

20 Q. Did you --

21 A. -- he needed to submit a final invoice.

22 Q. Did you require him to do that, just that?

23 A. Yes, ma'am. And he, in fact, did all of those
24 things.

25 THE COURT: Just a minute, Mr. Gabard. I

1 don't hear an objection, but just for my own
2 benefit here and the record's, my impression was
3 you had no recollection at all of the procedure of
4 termination, and that it was probably oral since we
5 haven't found anything in writing. And then you
6 said, essentially, what you would have told him, I
7 believe. Do you recall having told him that, or is
8 that your normal procedure? In other words, how do
9 you know what you would have told him?

10 THE WITNESS: I know that that's what I would
11 have told him because that's normally what our
12 procedure would have been when closing out a
13 contract. We would have asked him to return any
14 government property that he had, and also to submit
15 his final invoice for the contract.

16 THE COURT: So you don't recall this
17 particular case, but that would have been normal
18 procedure?

19 THE WITNESS: That would have been normal
20 procedure, yes, sir.

21 THE COURT: All right. Good. Thank you.

22 Q. [Ms. Nichols] And did Mr. Hooker, in fact,
23 turn in the hog traps and the government property?

24 A. Yes, ma'am, he did.

25 Q. So that was on your request, correct?

1 A. That was my request, yes, ma'am.

2 Q. So Mr. Hooker was prevented from performing
3 under that contract after he turned in the equipment,
4 correct?

5 MR. SCHROEDER: Objection; that improperly
6 categorizes his testimony. I don't believe he said
7 that.

8 THE COURT: Well, is that the case? In other
9 words, did you prevent him from continuing the
10 contract once you had terminated it?

11 THE WITNESS: The contract was closed, yes.

12 THE COURT: Right. I mean, that would be
13 normal, I guess. Did it come up as an issue? In
14 other words, was he asked to leave the property?
15 Is that what you're saying or --

16 MS. NICHOLS: Well, Your Honor, the issue is
17 whether he was prevented from performance.

18 THE COURT: Right. The contract, the witness
19 says, has been closed -- was closed, so I suppose
20 that means the contractor is prevented from further
21 action. Is that the normal policy?

22 THE WITNESS: I don't know that I like the
23 word "prevented," but he could not perform, no.
24 And it was not --

25 THE COURT: He no longer had a contract?

1 THE WITNESS: It was not intended that he
2 continue performance on the contract.

3 THE COURT: Right.

4 THE WITNESS: Because government personnel
5 would be performing those services.

6 THE COURT: Okay. All right. Go ahead.

7 Q. [Ms. Nichols] Just to continue in this line
8 of questioning, did you issue a new solicitation sometime
9 during this period for a new contract?

10 A. Yes, ma'am. As a matter of fact, the
11 modification that you referred me to was done because we
12 put -- we issued a solicitation in August of 1999, with
13 offers due on September 29th, 1999, and the modification
14 was issued and signed in order to give us continued
15 performance until a new contract could be awarded.

16 Q. Okay.

17 A. But it was intended -- we had a short-term
18 modification -- a short-term period until we could get a
19 new contract in place.

20 Q. Did Mr. Hooker bid on the new solicitation?

21 A. Yes, ma'am, he did.

22 Q. And did you then ask him to extend his offer
23 for a period of time?

24 A. Yes, ma'am, I did.

25 Q. And how long was that?

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1 A. I asked for a six-day extension, not only for
2 Mr. Hooker but for any of the other offers that were in
3 the competitive range.

4 Q. Okay. And then did you ask for a second
5 extension after that?

6 A. I believe I did, yes.

7 Q. Okay. And what was the result of that
8 solicitation? Obviously, you got some bids in, and what
9 did you do then, after you had extended it?

10 A. Well, the offers were evaluated. The
11 technical proposals and highest proposals, business
12 proposals were evaluated, a competitive range was
13 established, and I believe it was during the period of
14 the second extension of acceptance, the manager at the
15 Forest Service at Savannah River Site made a decision
16 that the work would be performed via government
17 personnel, and so there was never a contract awarded from
18 that solicitation.

19 Q. Did you testify at deposition that you did not
20 remember whether you notified Hooker of the withdrawal of
21 the --

22 A. I believe I said that I did not remember if he
23 was notified in writing, but he was notified verbally.
24 He was notified that the government would be performing
25 the work.

1 Q. Well, you just testified that you told him
2 that when you required him to turn in his traps?

3 A. Yes, ma'am, because we closed the contract.

4 Q. But that was at the end of December, was it
5 not, in 1999?

6 A. I don't remember the exact date, ma'am, but he
7 was informed that the contract was being closed because
8 the government was going to perform the work with
9 government personnel.

10 Q. Well, then why did you ask him to extend his
11 offer until April?

12 A. We were -- I guess we were still in the middle
13 of -- I know all the -- I don't -- I've been retired
14 three and a half years, and I don't remember everything,
15 but the only thing is I can assume that we were still in
16 the -- at the time I asked for the original -- or the
17 second extension of offers acceptance period, we were
18 still unsure of what we were going to do. As a matter of
19 fact, I don't think I knew that we were even considering
20 doing it in-house until I was informed by the manager,
21 but that's what his decision was.

22 Q. But that would have been when you required
23 Hooker to turn in his equipment, correct?

24 A. Yes, ma'am.

25 Q. I'd like to ask you to take a look at the hog

1 contract, and you probably have reviewed it recently in
2 preparation for this day, correct?

3 A. Yes, ma'am

4 Q. So can you tell me if the hog contract
5 required GET training, and I'm not sure what that stands
6 for. Is it General Employee Training of some sort? And
7 I would refer you to page 16 of the contract.

8 A. Just glancing through here, I don't see
9 anything right off.

10 Q. Are you on page 16?

11 A. Page what?

12 Q. Sixteen. One, six.

13 A. Okay, yes. I see it.

14 Q. Thank you. Could you just read that little
15 piece of it to us, please?

16 A. Under the section "Environment Requirements,
17 Section G," ma'am?

18 Q. It's the section that talks about General
19 Employee Training requirement.

20 A. There's a section here that says: [Reading]
21 "Contractor and all employees shall be required to attend
22 an environmental safety and health orientation at SRFS
23 prior to starting work. The orientation will be no more
24 than two hours long. Each new employee that the
25 contractors hire will be required to attend the above

1 orientation prior to receiving a SRS access badge from
2 SRFS."

3 Q. Thank you. Keep your finger in there because
4 I'm going to turn you to page 15 the next time.

5 Tell me what that training involves, if you know.

6 A. To be quite honest with you, ma'am, it's been
7 three and a half years since I retired, and I don't
8 remember all the details of that training.

9 Q. Is it safety training? Is that the purpose of
10 it?

11 A. The general-purpose, I believe, yes, ma'am.

12 Q. Would that be training people in sign
13 recognition and what to stay away from?

14 A. Ma'am, I do not remember the contents of that
15 training. As I said, I've been retired for three and a
16 half years, and I do not remember the contents of that
17 training.

18 Q. Okay. Did the hog contractors actually take
19 that training?

20 A. If we required them to do so, I'm sure they
21 did.

22 Q. How did you --

23 A. I can't specifically say that they did. As I
24 say, I've been gone for three and a half years, and this
25 all took place in 1999, and for me to sit here and say I

1 specifically remember that somebody went to training
2 without seeing some record of it, I could not do that.

3 Q. Would you have records if they had actually
4 been trained?

5 A. We would have -- there should be some kind of
6 attendance records, I guess. I don't know if they would
7 even still exist because this being 2007.

8 Q. Is it true that you had to approve all of Mr.
9 Hooker's new employees?

10 A. We asked to see their resumes, and that was
11 not just Mr. Hooker's employees. When we went out for a
12 new contract we asked for information on employees as
13 part of their proposal.

14 Q. Okay. So you do not know if those employees
15 ever went through the training?

16 A. Ma'am, that was 1999, and I'm -- you know, all
17 I can say is we required it, and so all I can do is say
18 that I would assume that they did, but without seeing
19 records showing that they did, I cannot say that.

20 Q. Okay. That's fair. Would you flip back to
21 page 15, and I want to ask you a question about 15.

22 A. Is it okay if I remove the clip?

23 Q. Sure.

24 A. Okay.

25 Q. Did the hog contract require the contractor to

1 submit to monitoring by Westinghouse Health Protection
2 personnel after trapping in specified areas?

3 A. Yes.

4 Q. Yes. What were those specified areas?

5 A. I don't recall that on the hog contract it was
6 ever required. This was in the contract -- again, this
7 is just an assumption on my part, that we had it the
8 contract as a general provision so if they ever entered
9 an area that we suspected there was -- there could be any
10 harm -- not harm, but any possible exposure to any type
11 of hazard, that we could have them monitored to make sure
12 that they were okay when they came out.

13 Q. To your recollection, were the hog contractors
14 ever monitored?

15 A. No, ma'am, because they were working general
16 site. They were not supposed to be entering areas where
17 there were any hazards.

18 Q. Okay. You can put the clip back on that one.
19 We're going to talk about the beaver contract for a
20 moment. Do you know where to find the page that was part
21 of the technical proposal that's at issue today about no
22 toxicological hazards? Can you find that for me in
23 there? I believe, sir, it's toward the middle, or at the
24 end, because it's an insert.

25 A. You're talking about it's on his technical

1 proposal or it's on the government --

2 Q. No, it's on yours.

3 THE COURT: Do you just want to know whether
4 he remembers these particular provisions?

5 THE WITNESS: I remember there was a statement
6 in the contract or something to that effect.

7 MS. NICHOLS: I really would just like to get
8 it on the record, Your Honor.

9 THE COURT: Did you give him a page number?

10 MS. NICHOLS: Sir, can I find it for him?

11 THE COURT: Yes ma'am.

12 Q. [Ms. Nichols] Mr. Gabard, is that an
13 unnumbered page that was inserted near the end of that
14 contract? This is the first page of it, it's entitled
15 "General Specifications."

16 A. Okay.

17 Q. Could you just read that language that
18 starts --

19 A. [Reading] "No toxicological hazards are
20 associated with trapping beaver at SRS. However, normal
21 environmental and physical hazards such as snakes and
22 uncertain footing do exist."

23 Q. Thank you. So it is your testimony that there
24 was no protection required in the beaver contract?

25 A. No, ma'am. Again, they were not supposed to

1 be in areas where they would need -- other than normal
2 protection such as snake leggings or boots or something
3 of that nature.

4 Q. Okay, that's not quite what I asked you, and
5 I'll try and make it clearer: Did the beaver contract
6 require any radiological protection other than --

7 A. No, ma'am, they were not in areas where there
8 was radiation.

9 Q. Did the beaver contract require any of the
10 workers to be Rad II trained --

11 A. No, ma'am.

12 Q. -- or Rad trained at all?

13 A. No, ma'am. Again, they were not supposed to
14 be in any areas where there was radiation.

15 Q. Did the beaver contract require GET training,
16 also?

17 A. Did what, ma'am?

18 Q. The general training that we discussed in the
19 other contract?

20 A. It probably did.

21 Q. Okay.

22 A. It was a standard requirement in our
23 contracts, yes.

24 Q. Okay. How were the contractors badged for the
25 beaver contract and the hog contract?

1 A. At the time that these two contracts were in
2 place, the Forest Service had badging authority and they
3 were badged through the Forest Service office.

4 Q. So they did not go through the regular
5 procedure that any other visitor to the Site would go
6 through; is that correct?

7 A. Well, at that time we had the authority to
8 badge visitors and contractors, timber operators and so
9 forth.

10 Q. Okay. Were you aware of the work clearance
11 permit that was presented to Mr. Hooker in February of
12 1999?

13 A. Yes.

14 Q. Okay.

15 MS. NICHOLS: I'm going to mark this as
16 Plaintiff's No. 3.

17 Q. [Ms. Nichols] Can I just take these away from
18 you?

19 THE COURT: Plaintiff's 3 has been admitted.

20 Thank you.

21 Q. [Ms. Nichols] Mr. Gabard, can you identify
22 what the purpose of that work clearance permit was, if
23 you know?

24 A. It was the work to be performed -- it says:
25 [Reading] "Enter Four Mile Creek near Road Four and

1 bridge -- Road Four bridge to install beaver traps."

2 Q. And that was a beaver trapping site?

3 A. Yes, ma'am.

4 Q. And what was required under that work
5 clearance permit?

6 A. Persons entering creek -- I think they're
7 noting that Mr. Hooker was Rad II qualified. That's not
8 a requirement. After entering creek, Rad-Con ops will
9 survey protective equipment, waders, gloves, etcetera.
10 Standby person required and personal flotation device, it
11 looks like. He is order to rinse off waders -- I can't
12 read all this. It's not really clear.

13 Q. In your memory, when you say "surveyed by Rad-
14 Con," what is Rad-Con?

15 A. I have no idea, ma'am. I'm not familiar with
16 Rad-Con training, other than I know that it's a
17 qualification that some of the Westinghouse employees are
18 required to have because they enter radiological sites
19 and so forth. I have no idea what's involved with that.

20 Q. Did that not say, though, that Rad-Con would
21 survey the equipment, is that not what you read me?

22 A. That's Rad-Con ops. That's actually, I'm
23 assuming, what we call health physics, that monitored
24 personnel at -- on this one particular site.

25 Q. What were they monitoring for?

1 A. You would have to ask some of them because I
2 am not -- I don't know what they were monitoring for.

3 Q. Do you know how many beaver trapping sites
4 there were on Four Mile Creek?

5 A. I believe there were four.

6 Q. Four. Did Mr. Hooker complain to you after he
7 was required to use this protective gear in this beaver
8 trapping site?

9 A. Not initially, no, ma'am.

10 Q. Did he ever ask you for more money on the
11 contract?

12 A. Yes, he did.

13 Q. Okay.

14 A. But after he had been performing the work for
15 a while is when he did that.

16 Q. What did he say?

17 A. He was told by both myself and the COR that he
18 did not have to go into those areas if he did not want
19 to, that if he considered the work to be outside the
20 scope of the contract that he could refuse to do it.

21 Q. How would he trap the beaver?

22 A. We would do the work with someone else if he
23 did not want to do it.

24 Q. Could you do that under the contract?

25 A. If he refused to do it, yes, ma'am. If he

1 said, blatantly, "I do not want to go in those areas,"
2 then we would have no alternative but to find some other
3 way to take care of that problem.

4 Q. If you can recall, did Hooker ask about what
5 was in the Creek?

6 A. Ma'am?

7 Q. If you can recall the answer to this, did Mr.
8 Hooker ask you what was in the creeks?

9 A. I don't recall him asking me that, no, ma'am.

10 Q. Why would he have wanted more money?

11 MR. SCHROEDER: Objection; asks for
12 speculation.

13 THE COURT: Well, if you know. This is
14 essentially cross-examination, I guess. Do you
15 have any idea why he would want more money, other
16 than the normal reasons? In other words, was there
17 a specific request for more money for a reason,
18 that you recall?

19 THE WITNESS: I don't recall him specifically
20 giving me a reason that he wanted more money.

21 Q. [Ms. Nichols] So he didn't say to you
22 something in the nature of: "If I have to work in
23 contaminated areas I want more money"?

24 A. I don't recall him saying that, no.

25 Q. During the time of these contracts did Frankie

1 Brooks report to you?

2 A. Yes, she was the contract office
3 representative.

4 Q. Did she give Mr. Hooker the work orders to
5 trap the beaver?

6 A. Yes.

7 Q. Was that her job?

8 A. Yes.

9 Q. And --

10 A. To give him the delivery orders. She gave me
11 the work order, I signed the delivery order, and she gave
12 them to Mr. Hooker.

13 Q. Okay. Now, how did that work?

14 A. She would give them to me prior to giving them
15 to Mr. Hooker, and then I would sign the delivery order
16 and then give it -- she would give Mr. Hooker's copy to
17 him.

18 Q. Okay. Were the work orders also verbal as far
19 as --

20 A. The work orders were in writing.

21 Q. All of them?

22 A. They might be general -- I believe they might
23 say, "Contractor will perform work in sites one through
24 53 as directed by the COR," and then -- because all the
25 sites were not -- did not have to be trapped all the

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1 time, and then Frankie would give him information as to
2 which sites need to be trapped at any given time.

3 Q. Okay. So you're saying that that general work
4 order to trap sites one through 53 served --

5 A. As directed by the COR.

6 Q. -- as the written order?

7 A. Yes.

8 Q. But then she would amplify that with a verbal
9 order of some other kind?

10 A. Yes. And she might have put it in writing. I
11 don't know right off the top of my head.

12 Q. Okay. I believe you testified that you had
13 actually never visited the beaver trapping sites; --

14 A. No, ma'am.

15 Q. -- is that correct?

16 A. That is correct.

17 Q. In all those years you'd never --

18 A. No, ma'am.

19 Q. Do you know how many beaver trapping sites Mr.
20 Hooker was working in at the end of June, 1999?

21 A. No, ma'am, I do not.

22 Q. Would you agree that he was probably working
23 in all 53, or at least that was the -- do you have any
24 idea?

25 A. I have no way of -- I do not recall, ma'am.

1 Q. Okay.

2 MS. NICHOLS: I am going to enter this as
3 Plaintiff's No. 4, and this is a list of beavers
4 trapped in 1999 by month and they're all numbered.

5 Q. [Ms. Nichols] Did you have anything to do
6 with generating those lists, or was that all from Ms.
7 Brooks?

8 A. No, ma'am. I didn't have anything to do with
9 this list.

10 Q. Okay. Are you aware that at the beginning of
11 July, 1999, the beaver sites were reduced from 53 to one?

12 A. I was aware they were reduced, yes, ma'am.

13 Q. Okay.

14 A. I'm not sure if they were reduced from 53 to
15 one. They were reduced from whatever the previous number
16 was to --

17 Q. I grant you that, yes.

18 A. Okay.

19 Q. And the reason they were reduced?

20 A. Is because of the drought. We did not have
21 the -- as many sites that were being impacted by
22 beaver --

23 Q. And how did you know that?

24 A. Just general knowledge, being told by Frankie.

25 Q. Can you look there and just tell me how many

1 beaver -- I think it's really easy to look and see how
2 many he caught in June, how many beavers he turned in?

3 A. Well, there's a mark up here at the top of the
4 page, but it's partially covered by your exhibit number.
5 I don't know if this whole thing is for --

6 Q. Mr. Gabard, if I told you it was approximately
7 40 to 44, would you agree with that?

8 A. Without looking, it looks like there's several
9 on a couple of receipts here, yes, but without taking the
10 time to sit here and count them, I don't know.

11 Q. Okay. That's good enough. But you would
12 agree with me that he only got one work order in July?

13 A. That work order probably said that he's to
14 trap sites one through 53 as directed by the COR. Now,
15 what sites she directed to him to actually trap during
16 the month of July, I do not know.

17 Q. Okay.

18 A. Because that was based on an as-needed basis.

19 Q. Okay. How long did the drought last?

20 A. Ma'am?

21 Q. How long did the drought last?

22 A. Ma'am, I'm not a weather expert. I don't
23 know.

24 Q. Well, if she told you that the streams were
25 impacted because of the drought and reduced the sites in

1 July, how long did that last?

2 A. Without looking back on the contract records
3 and seeing what we were doing, I do not know, ma'am.

4 Q. Okay, I'm going to hand you Plaintiff's
5 Exhibit No. 5, and this is going to be kind of hard to
6 read but it is your -- would you identify that document
7 as the memorandum that you wrote?

8 A. It looks like a record of a phone call that
9 Mr. Hooker and I had.

10 Q. Right. And when was that summary call? I
11 realize it's hard to read, but --

12 A. I can't make out the date, ma'am.

13 Q. Well, I would say that since it's discussing
14 an invoice dated November 3rd, 1999, that it would have
15 been sometime after that, would it not?

16 A. It would have been after that date, yes,
17 ma'am.

18 Q. Okay. I'd like to refer you to the bottom of
19 the page, where you asked Mr. Hooker why he only caught
20 one beaver in September and none in October.

21 A. Yes, ma'am.

22 Q. Why would that conversation have happened if
23 there was a drought?

24 A. Because even though he may have had reduced
25 sites, the number of beaver that he was catching should

1 not have dropped as significantly from 44 in June down to
2 one in September, or however many he got in July, down to
3 one in September, and none in October.

4 Q. Well, if he was --

5 A. And based on his previous trapping record, as
6 I recall -- I can't cite numbers, specifically, but I
7 know it would have been very odd for him just to have
8 turned in an invoice just for one beaver during a
9 month's time.

10 Q. Well, let me take you back to your previous
11 testimony that you said -- didn't you tell me that the
12 work order was a general work order, sites one through
13 53?

14 A. Yes, ma'am.

15 Q. And then didn't you also tell me that he would
16 be directed by Ms. Brooks --

17 A. Yes, ma'am.

18 Q. -- specifically, and that that would be his --
19 wouldn't that be his permission to go out and trap that
20 site?

21 A. Yes, but even if he was trapping one site,
22 only one site, he probably would have caught more than
23 one beaver.

24 Q. Okay. That's good. Let's talk about the
25 investigation of the hog contract.

1 A. Okay.

2 MS. NICHOLS: This is going to be Plaintiff's
3 Exhibit No. 6.

4 Q. [Ms. Nichols] I'm sure you've refreshed
5 yourself on this particular letter. Who initiated this
6 investigation?

7 A. I was the one that requested Wackenhut to
8 conduct the investigation.

9 Q. And when was that?

10 A. I don't remember the specific day, but I
11 believe it was in May of 1999.

12 Q. And what made you ask Wackenhut to start an
13 investigation?

14 A. I was informed that we had domestic hogs that
15 had been placed in the cooler either by Mr. Hooker or by
16 some of his employees. The information on these hogs had
17 been entered on the datasheet in order to try to obtain
18 payment for those hogs and, in fact, when I was told
19 about this, we had already paid for 24 of those hogs.

20 Q. And how much were you paying for a hog at that
21 time?

22 A. Fifty-five dollars per hog.

23 Q. These were large hogs?

24 A. I never saw the hogs. I don't remember if
25 they were large or small. It was immaterial; he still

1 got \$55 per hog.

2 Q. Okay. And just refresh my memory as to how
3 this worked, when you said they brought them to the
4 cooler.

5 A. Well, as part of the contract on a normal
6 basis, when they killed a hog on the Site, at the end of
7 each day they were supposed to bring in the hogs that
8 they killed; place them in the cooler; age them; weigh
9 them and so forth, and put the information on a hog data
10 sheet. In turn, our COR or inspectors would check those
11 hogs, and count them and so forth, and give Mr. Hooker a
12 receipt for the number of hogs that were turned in that
13 day, and then he, in turn, submitted that receipt with
14 his invoice at the end of each month.

15 Q. Okay. And so you just testified that you were
16 told that there were domestic hogs in the cooler?

17 A. Yes, ma'am.

18 Q. And how did you get that information?

19 A. I do not recall who told me, specifically. It
20 would have probably either have been Frankie Brooks or
21 Dr. Jack Maher.

22 Q. And Dr. Maher is who?

23 A. Ma'am?

24 Q. Who is Dr. Maher?

25 A. He's a scientist with the -- with

1 Westinghouse, I believe the Savannah River Laboratory,
2 and he was conducting wild hog research at the Site, so
3 he came to our cooler periodically to get information on
4 the hogs that we had there and checked them to get data
5 for his research, and he is an expert in wild hogs.

6 Q. So he is the one that determined that these
7 hogs were domestic?

8 A. Yes, ma'am.

9 Q. And again, you said the number was how many?

10 A. Thirty-one.

11 Q. Thirty-one.

12 A. They were 24 turned in in May, and seven in
13 June.

14 Q. So what was the result of the investigation,
15 and what did they do, to your knowledge, to investigate
16 this?

17 A. I don't know specifically what Wackenhut did.
18 I know the results were that they determined that Goldman
19 Eller, and possibly Michael Eller, were involved in it,
20 but that Mr. Hooker was not involved in the domestic hog
21 --

22 Q. Did that investigation ever show how those
23 hogs got onto the property?

24 A. Ma'am?

25 Q. Did the investigation ever show how the hogs

1 got there?

2 A. No, ma'am.

3 Q. Didn't Wackenhut man the barricades or the
4 gates that you drive through?

5 A. Yes ma'am.

6 Q. Did they ever see hogs coming through in
7 trucks?

8 A. Ma'am, there are so many ways of entering and
9 leaving the Savannah River Site without going through a
10 manned barricade, or there were at the time, that those
11 hogs could have been brought in by Mr. Eller without ever
12 going through a barricade.

13 Also, all vehicles are not checked as they enter
14 and leave the Site; they're randomly checked, and so
15 those hogs could have been brought in at any time.

16 Q. Why would somebody do that?

17 A. In order to obtain money for hogs that were
18 not caught on the Site.

19 Q. You testified that it was \$55 per hog, right?

20 A. Yes, ma'am.

21 Q. How much do you think you'd have to buy a hog
22 for on the outside?

23 A. I have no idea, ma'am.

24 Q. And so the result of this investigation -- you
25 want to just tell us about the letter you presented to

1 Mr. Hooker?

2 A. Okay, yes. This letter was presented to Mr.
3 Hooker at a meeting on July the 1st, 1999, and,
4 basically, the letter listed some reasons that he was in
5 default on the contract, among them, the issue of the
6 domestic hogs.

7 It also stated that the two Ellers could not be
8 used on the contract any longer, and gave Mr. Hooker 15
9 days to find suitable other employees to continue to the
10 contract.

11 Q. Tell me this, did Michael Eller and Goldman
12 Eller deny these accusations?

13 A. Michael Eller, I never -- he was not at the
14 meeting. Goldman Eller was, as I recall, and if Goldman
15 Eller said anything, it wasn't very much.

16 Q. So is it your testimony that you did not
17 receive letters from both of those gentlemen?

18 A. At a later date, yes, but not at the meeting,
19 no.

20 Q. Okay. You did receive letters from them?

21 A. From both Mr. Ellers, yes.

22 Q. And what did Mr. Goldman Eller's letter --

23 A. Ma'am, without seeing those letters, I do not
24 recall what they said.

25 Q. Okay.

1 A. I mean, if you want me to testify about
2 something that I -- I mean, that's been -- we're talking
3 about seven years, eight years ago.

4 Q. Granted. Can you give me a minute to run back
5 and get those letters?

6 MR. SCHROEDER: Your Honor, I'm going to
7 object on the ground of hearsay to allowing counsel
8 to ask what letters sent by a third party said.

9 THE COURT: Well, let's see. Are they in
10 evidence, these letters?

11 MS. NICHOLS: Yes, they are, Your Honor. If
12 they were received by Mr. Gabard, he can
13 authenticate them.

14 THE COURT: Well, I think he can testify,
15 certainly, to their content if they were addressed
16 to him, particularly if they're in evidence.

17 MR. SCHROEDER: Right. Our objection is to
18 the truth in the matters asserted. The fact that
19 he received a letter that says something doesn't
20 make that letter correct, and so I'm objecting to
21 that aspect of the --

22 THE COURT: Well, I guess we don't know yet,
23 or at least I don't, what the purpose she's
24 offering them for, but it may be merely for the
25 letter's effect on this witness or his rational for

1 doing something later. Is it offered for the truth
2 of the matter asserted Ms. Nichols or --

3 MS. NICHOLS: Well, I'm offering it for the
4 purpose, sir, of pointing out that there were
5 denials of these allegations.

6 THE COURT: And these were from officials of
7 the --

8 MS. NICHOLS: These were -- Mr. Gabard can
9 read from the letter that he presented to Mr.
10 Hooker, but he essentially barred two of his
11 employees forever from the Savannah River Site, and
12 he made these employee --

13 THE COURT: These were government officials;
14 then, right?

15 MS. NICHOLS: These were hired contractors.
16 These were hog trappers.

17 THE COURT: Well, now, wait a minute. So in
18 other words, the witness worked for another hog
19 contractor?

20 MS. NICHOLS: Mr. Hooker was the hog
21 subcontractor.

22 THE COURT: Subcontractor?

23 MS. NICHOLS: Subcontractor at the Site for
24 the Forest Service. And both Mr. Ellers worked
25 with Mr. Hooker.

1 THE COURT: Well, he worked for them,
2 apparently, right? Is that right?

3 MS. NICHOLS: They worked for Mr. Hooker.

4 THE COURT: Well, how could they terminate him
5 or order him off the Site if they worked for him?

6 MS. NICHOLS: Mr. Gabard terminated them --
7 required Mr. Hooker to terminate those two
8 employees.

9 THE COURT: But not Mr. Hooker himself?

10 MS. NICHOLS: No, sir.

11 THE COURT: I guess the letter is to the
12 contracting officer from employees of the
13 plaintiff; is that right?

14 MS. NICHOLS: Correct.

15 THE COURT: I guess I'm a little puzzled with
16 how all this came about, that Mr. Hooker's own
17 employees are contacting the contracting officer
18 instead of Mr. Hooker, for example. In other
19 words, they ran a company together; is that right,
20 the three of them, I guess?

21 MS. NICHOLS: No, sir. Mr. Hooker and Mr.
22 Cromer were actually in the company together, and
23 the Ellers were both employees.

24 THE COURT: I'm sorry. They were what?

25 MS. NICHOLS: They were both employees.

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1 THE COURT: Yes.

2 MS. NICHOLS: And Mr. Gabard can testify that
3 he had a meeting in his office with one of these
4 gentlemen, the Wackenhut security people, and Mr.
5 Hooker, and accused these two gentlemen of these
6 actions, at the same time, barring them from coming
7 back to the Site.

8 THE COURT: All right, why don't we get that
9 testimony, first?

10 MS. NICHOLS: Okay.

11 THE COURT: And then we'll have some
12 foundation.

13 MS. NICHOLS: Okay.

14 Q. [Ms. Nichols] Mr. Gabard, I'm going to ask
15 you to go back to the letter, and I think the easiest way
16 is for you to read the entire letter into the record.

17 A. You want me to read a three-page letter into
18 the record?

19 Q. Yes.

20 A. Okay. [Reading] The letter is addressed to
21 William D. Hooker, Sr., Georgia Bowhunters Supply
22 Company, 5330 Columbia Road, Grovetown, Georgia. The
23 subject is contract --

24 THE COURT: Can you pick this up, ma'am? I'm

25 --

1 A. 53466 --

2 MS. NICHOLS: Sir?

3 THE COURT: Just a minute. I'm wondering if
4 we should give her a copy. Do you have a copy?

5 A. [Reading] 534660-8-04, wild hog control,
6 dated June 30th, 1999. Contract 534660-8-04 was awarded
7 to Georgia Bowhunters Supply Company on October 29th,
8 1997, as a result of competitive negotiated procurement
9 procedures. The contract has a base year and two option
10 years, and the contract was modified effective October
11 1st, 1998, to execute the option and extend the contract
12 to September 30th, 1999, option period one.

13 There have been some actions taken during the
14 performance of this contract that have not been proper or
15 in compliance with the contract, and some of the action
16 could be considered to be illegal. These actions place
17 you in default on this contract and are listed below.
18 Fetal pigs, that were not born, have been removed from
19 sows, placed in the SRI cooler, and entered on the SRFS
20 wild hog data table in an attempt to receive payment for
21 these fetal pigs. Frankie Brooks, COR, refused to pay
22 you for these fetal pigs.

23 Number two. 31 domestic pigs have been brought to
24 the SRI cooler and entered on the SRFS wild hog data
25 table in an attempt to receive payment for these domestic

1 pigs.

2 According to our records, you have received payment
3 for 24 of the domestic pigs on your invoice number
4 107602, submitted on May 31st, for the month of May.
5 Seven of the domestic pigs were brought to the cooler and
6 entered on the data table during June, for which you have
7 not yet invoiced. Hogs and/or pigs have been brought to
8 the SRI cooler, entered on the data table, and then
9 removed from the cooler, and taken to the SRS landfill
10 without the COR or one of the inspectors verifying that
11 the hogs/pigs were in the cooler, and a COR or inspector
12 initialing the data table. Frankie Brooks, COR, refused
13 to pay you for these hogs/pigs. Hogs have been left in
14 the woods until they began to rot, and then brought to
15 the SRI cooler.

16 Recently, two hogs were entered on a data table
17 without the hogs being brought to the SRI cooler as
18 required by the contract. Frankie Brooks, COR, has told
19 you that we will not pay for these two hogs.

20 Although, to our knowledge this has not occurred,
21 we are also concerned about hogs and/or pigs being
22 brought back to the SRI cooler after being removed from
23 the cooler and entered on the data table again so that
24 payment would be made for the same animal twice. This is
25 a concern because the SRS landfill, apparently, does not

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1 require you or your employees to sign in at the landfill
2 as was required in the past.

3 As a result of an inquiry conducted by myself and
4 other SRI personnel and limited investigation conducted
5 by Wackenhut Services, Incorporated, it is my opinion
6 that you are not and are not personally involved in the
7 above listed actions, but that two of your employees,
8 Goldman E. Eller and Michael E. Eller, were and are
9 involved in the above listed actions. Because of my
10 conclusion, that you were not and are not involved in the
11 above listed inappropriate/illegal actions taken by two
12 of your employees, I will not terminate this contract or
13 default at this time, even though you are accountable and
14 responsible for the actions of your employees when
15 performing a federal government contract.

16 Let this letter serve as notice to you that if
17 inappropriate and/or illegal actions are taken on this
18 contract in the future, that the contract will be
19 terminated for default immediately.

20 The following actions are taken by me immediately
21 to ensure that performance on contract 53-4660-8-04 once
22 again becomes appropriate and/or legal and remains
23 appropriate and/or legal.

24 Number one, both Goldman E. Eller and Michael E.
25 Eller are barred from working on this contract or any

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1 other contract with the Forest Service at the Savannah
2 River Site forever.

3 Neither Goldman E. Eller or Michael E. Eller will
4 be issued Site access badges by the Forest Service, and
5 WSI may pursue placing both individuals on a list of
6 personnel to be denied access badges by all entities at
7 SRS.

8 You and your employees working on this contract 53-
9 4660-9-06, beaver control, will enter and leave SRS
10 through barricade two, the Aiken barricade, only. You
11 and your employees will have your vehicles searched each
12 time you enter and leave SRS through barricade two.

13 All hogs, pigs or beavers placed in the SRI cooler
14 will be marked in some manner by the COR or an inspector,
15 and the data table will be initialed by the COR or
16 inspector. Initially, the animals will be marked with
17 spray paint. A COR or an inspector will also issue a
18 receipt to you or your employee each time hogs, pigs
19 and/or beavers are placed in a SRI cooler. You will not
20 receive payment for any animals removed from the cooler
21 prior to the COR or inspector doing these tasks. The
22 receipts must be attached to your invoice each month or
23 the invoice will be returned to you without being
24 processed.

25 COR and/or an inspector will inventory all

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1 government property issued to you or your employees
2 annually prior to the government exercising the right to
3 extend the contract for any option period.

4 The amount of \$1,320 will be deducted from your
5 invoice for June for the 24 domestic pigs that have been
6 paid for or from subsequent invoices, if the amount of
7 the June invoice is insufficient.

8 You will not receive payment for any hogs, pigs or
9 beavers not brought to the SRI cooler at the end of each
10 workday as required by the contract.

11 You will not receive payment for hogs, pigs or
12 beavers that are logged on the data tables without the
13 carcass being placed in the SRI cooler.

14 Starting immediately, personnel working on the wild
15 hog control contract or beaver contract will tell the SRI
16 dispatcher the timber compartment number that they are
17 in, and will call the SRI dispatcher on the radio with
18 their new location each time they move from one timber
19 compartment to another timber compartment. Personnel
20 will no longer give their location as general site when
21 contacting the SRI dispatcher.

22 You shall take the following actions: Ensure the
23 site access badges issued to Goldman Eller and/or Michael
24 Eller by the Forest Service are turned in to me prior to
25 leaving this meeting.

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1 Return all government property issued to Goldman
2 Eller or Michael Eller to me no later than July 2nd,
3 1999. This includes two-way radios, chargers, contraband
4 passes, property passes, timber lock key, and any other
5 government property issued to either Mr. Ellers. You
6 will be charged for any government property that is not
7 returned in satisfactory condition or that is not
8 returned. Obtain the location of all hog traps from Mr.
9 Eller, verify that the traps are at the locations, and
10 then accompany Frankie Brooks, COR, to all the traps so
11 that she can account for all 25 traps. You will be
12 charged for any traps or parts of traps that are missing
13 or not in satisfactory condition. All traps must be left
14 open and set, so that an animal cannot trip the door to
15 any of the traps until you are ready to continue
16 performance on the contract.

17 You have 15 calendar days from today to have
18 suitable personnel replace both Mr. Ellers so that
19 satisfactory performance can resume on the contract. You
20 shall submit resumes for the replacement personnel to me
21 prior to the personnel starting work, and persons with
22 the dogs will be required to perform a demonstration with
23 the dogs for SRI and SRS personnel. This demonstration
24 will be evaluated and the person with the dogs will not
25 be allowed to work on the contract unless approved by me.

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1 Failure to have suitable personnel and dogs available to
2 continue performing under the contract at the end of the
3 15 calendar days may result in the government terminating
4 the contract for default under the terms and conditions
5 of the federal acquisition clause 52249-8, default fixed-
6 price supply and service on page 69 of the contract.

7 This letter is also notice to you that the
8 government will not extend the contract for option period
9 two, October 1st, 1999 to September 30th, due to the
10 necessity to make some changes in the contract language.
11 We hope that you will submit an offer for the new
12 solicitation.

13 Please call me at 803-725-0239 if you have
14 questions. Signed by me, Homer R. Gabard, Contracting
15 Officer. Carbon copies to Frankie Brooks, COR; Beth
16 Lemaster, Assistant Manager for Wildlife; and Bill
17 Jarvis, Inspector. And then the four-page -- also, Tom
18 Beret, Inspector; Dr. Jack Maher, SRTC; Jim Carr at WSI.
19 I acknowledge receipt of this letter on the date shown
20 below, signed by W.D. Hooker, 7/1/1999.

21 Q. Thank you, Mr. Gabard. I'm not going to take
22 the Court's time to ask Mr. Gabard to read this denial
23 from Goldman Eller, but would you acknowledge the fact
24 that you did receive written denials from both gentlemen?

25 A. I received written documents from both Mr.

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1 Ellers.

2 Q. And did they deny the allegations?

3 A. I do not recall what was in those documents.

4 Q. Plaintiff's exhibit No. 9. Would you look at
5 this letter and see if you remember receiving that from
6 Mr. Eller, Goldman Eller?

7 A. Exactly not a letter -- it looks like it was
8 addressed to Dave Wilson, the Forest Service manager, and
9 also a letter addressed to me. And it's signed by
10 Goldman Eller.

11 Q. Would you like to take a moment to -- I don't
12 necessarily want you to read into the record, but I'd
13 like to establish that in that letter Mr. Eller did deny
14 the allegations.

15 MR. SCHROEDER: Your Honor, I renew the
16 objection on hearsay grounds. It's obvious that
17 the purpose of introducing this is to get the
18 denial into the record.

19 THE COURT: Are these individuals witnesses?

20 MS. NICHOLS: Mr. Eller has been called. He
21 did not show up today. Maybe tomorrow he will
22 appear.

23 THE COURT: Well, it would be certainly
24 better, technically, I guess, to get it in through
25 him but not --

1 MS. NICHOLS: Okay. I'll withdraw it at this
2 time.

3 THE COURT: Good. Thank you.

4 Q. [Ms. Nichols] I'll take that back. Thank
5 you. Just a few further questions, Mr. Gabard. Is Mr.
6 Goldman Eller still barred from the Savannah River Site,
7 or at least until the time you left, was he still barred?

8 A. Yes.

9 Q. Yes. And what about Mr. Michael Eller?

10 A. No.

11 Q. Did you award a contract to him in 2001, for
12 hog trapping?

13 A. Yes, I did.

14 Q. Yes?

15 A. Yes, I did.

16 Q. Thank you.

17 A. Can I explain why?

18 Q. Thank you.

19 MS. NICHOLS: Your witness.

20 MR. SCHROEDER: Your Honor, I was wondering if
21 the witness might like a break?

22 THE COURT: Yes. I just noticed the fact that
23 I let it go a little too long. Let's take a 15
24 minute break.

25 [OFF THE RECORD]

1 THE COURT: We were talking earlier about the
2 possibility of going to six rather than five, if
3 it's all right with the Court, and doesn't cause
4 any overtime, but I haven't asked any of you, so if
5 anyone has a problem with it, any of the attorneys,
6 let me know, but just because we did have a late
7 start. And then tomorrow, as we talked about,
8 we'll go in at nine, and then probably quit around
9 five or whenever a good stopping place comes along
10 then. So we'll see where we are at close to six,
11 if that suits everyone. All right, you finished,
12 didn't you?

13 MS. NICHOLS: Yes, sir.

14 THE COURT: All right. Thank you. We're
15 ready to proceed.

16 MR. SCHROEDER: Yes, Your Honor, I have copies
17 of our exhibits.

18 THE COURT: Okay.

19 MR. SCHROEDER: And I can give one to the
20 witness and one to the Court.

21 THE COURT: All right. Thank you.

22 MR. SCHROEDER: And the court reporter needs
23 one?

24 THE COURT: Well, let's see. Probably not,
25 initially, but we'll see if she does. I don't

1 A. Yes.

2 Q. And do you know if Mr. Hooker performed any
3 services after that date?

4 A. No, sir.

5 Q. Returning to the first document there, the
6 February 14th, 2000 letter, could you just, please, read
7 the first line -- or read the first sentence, please?

8 A. [Reading] Your final invoice, No. 107624 for
9 \$165 for three hogs trapped in accordance with the above
10 referenced contract, will not be processed for payment at
11 this time because according to the enclosed daily diary
12 there were six panels and two gates missing from the 25
13 government provided hog traps that you used while working
14 on this contract.

15 Q. Now, it says "your final invoice"?

16 A. Yes, sir.

17 Q. Why did you refer to that as a final invoice?

18 A. Because this was his final invoice for this
19 contract.

20 Q. Now, did you send this to Mr. Hooker?

21 A. Yes, sir.

22 Q. And after you did that, did at any time he
23 object regarding receiving this letter discussing the
24 final invoice?

25 A. Not that I recall, no, sir.

1 Q. Did he ever contact you and say "I want to
2 resume services"?

3 A. No, sir.

4 Q. Did he ever at that point say that you
5 breached the contract because you closed out the
6 contract?

7 A. No, sir.

8 Q. Did Mr. Hooker ever try to come out to the
9 Site to perform further services?

10 A. No, sir.

11 Q. Now, switching gears here a little, you
12 testified to the issue of domestic hogs?

13 A. Yes, sir.

14 Q. And how many hogs were at issue?

15 A. Thirty-one.

16 Q. Now, you indicated in your earlier testimony
17 Dr. Maher raised the issue; is that correct?

18 A. Yes, sir. I don't remember if he's the one
19 that specifically told me, but he's the one that informed
20 the Forest Service of that situation.

21 Q. And you discussed something called the cooler,
22 what is the cooler?

23 A. The cooler was a -- like a walk-in type of
24 freezer or -- it wasn't actually a -- well, a walk-in
25 type freezer where the hogs and beaver could be stored

1 Q. Did you have any animosity toward Mr. Hooker?

2 A. No, sir. I didn't.

3 Q. Do you have any animosity toward him now?

4 A. No, sir.

5 Q. And have you acted in bad faith in any way
6 regarding your actions --

7 A. No, sir.

8 Q. -- with respect to Mr. Hooker?

9 A. No, sir.

10 Q. Just one other question: You testified that
11 it was decided not to -- that about the time the contract
12 ended and was closed out, the hog contract, it had been
13 decided not to issue or continue with the solicitation;
14 is that correct?

15 A. Yes, that's correct.

16 Q. And did you make that decision?

17 A. I made that decision after the manager of the
18 Forest Service informed me that we didn't need the
19 services performed via contract, that the services would
20 be performed using government personnel.

21 Q. Who was that person?

22 A. That was David Wilson.

23 Q. And so was it, in fact, he who made the
24 decision?

25 A. Mr. Wilson made the decision to use government

1 issue with the witness who --

2 MS. NICHOLS: I'm sorry. I didn't hear you.

3 THE COURT: I assume that you don't seem too
4 concerned so far about the witness who did not show
5 up, so that doesn't concern me, needless to say.
6 But I assume that's being resolved?

7 MS. NICHOLS: He was informally requested to
8 show up. He did not receive a subpoena, Your
9 Honor.

10 THE COURT: I see.

11 MS. NICHOLS: So we're not that concerned.
12 We were going to serve him if he came today,
13 but --

14 THE COURT: Go right ahead.

15 MS. NICHOLS: Frankie Brooks.

16 THE COURT: Ms. Brooks.

17 - - - - -

18 FRANKIE BROOKS

19 having been first duly sworn, was examined
20 and testified as follows:

21 - - - - -

22 FRANKIE BROOKS

23 DIRECT EXAMINATION BY MS. NICHOLS:

24 Q. Ms. Brooks, we met in deposition --

25 A. Yes.

1 Q. -- probably two years ago, now. Would you
2 identify your job, what your position was for the Forest
3 Service, please?

4 A. I was a wildlife technician.

5 Q. And were you also the contracting officer's
6 representative?

7 A. Yes, I was.

8 Q. Were you the contracting officer's
9 representative on the two contracts that Mr. Hooker had
10 with the Forest Service?

11 A. Yes, I was.

12 Q. And how long had you been out there?

13 A. How long had I been what?

14 Q. How long had you been working for the Forest
15 Service in that capacity?

16 A. Probably 10 years or so.

17 Q. Were you the contracting officer's
18 representative on all of the beaver contracts that Mr.
19 Hooker had?

20 A. Yes.

21 Q. What are you doing now, Ms. Brooks?

22 A. I'm retired.

23 Q. Okay. Can you just tell the Court a little
24 bit about what your duties were in regard to these two
25 contracts, what your duties and what your interaction was

1 with Mr. Hooker and with these contracts?

2 A. Well, they were separate contracts, different
3 contracts. With the hog contract, I told him where to go
4 hunt, to look for hogs --

5 Q. Let me just interject: How did you know where
6 to send him?

7 A. Reports from other people, other than myself.

8 Q. Okay. Other people being whom?

9 A. My supervisors, people with the deer hunts
10 that worked out there and were in the woods more than I
11 was, and the swamps.

12 Q. Would they see the hogs, and then tell you?

13 A. They would. Also, timber stands would be
14 destroyed by hogs, and the timber people would tell me so
15 it varied.

16 Q. Okay. So on the hog contract, you would tell
17 Mr. Hooker or his employees that a certain area had hogs
18 and they should go out there, correct?

19 A. Correct.

20 Q. And how would you identify that area?

21 A. By hunt unit compartments.

22 Q. Okay. How big are the compartments?

23 A. I don't remember. They're several thousand
24 acres. There are different size compartments.

25 Q. But everybody has a map so they'd know what

1 you were talking about?

2 A. Yes.

3 Q. And what was the procedure when the hogs were
4 brought into the cooler? Were you involved at that
5 point? Did you have to log them in?

6 A. I didn't log them in.

7 Q. Okay.

8 A. Mr. Hooker was to log them in, weigh them.
9 There was a clipboard up there with a form for him to
10 fill out.

11 Q. Okay. Were there any employees up there or is
12 it just --

13 A. It's just a cooler.

14 Q. Just a cooler? Nobody minding it?

15 A. [No response].

16 Q. Are you familiar with the contracts that we're
17 talking about today? I mean, were you involved in the
18 contract language itself?

19 A. You mean did I prepare the contract language?

20 Q. No. Well, did you -- I know there are
21 specifications in each contract that are specific to that
22 particular contract?

23 A. Yes.

24 Q. Did you help with that?

25 A. I don't remember.

1 Q. Okay. Let's talk about the beaver contract,
2 first. To your knowledge, as long as the beaver contract
3 was in effect and prior to February of 1999, was there
4 any requirement for the beaver trappers to wear any kind
5 of protection?

6 A. They wore waders. That was all they were
7 required to wear.

8 Q. Okay. Is that in the contract somewhere that
9 says that they have to have waders or --

10 A. I don't remember.

11 Q. -- is that just convenience and comfort?

12 A. I don't remember.

13 Q. The beaver contract, were the beaver trappers
14 required to have any Rad training, radiologic training?

15 A. They weren't required to.

16 Q. Okay. Were they required to go through the
17 General Employee Training, the GET training? Do you
18 know?

19 A. I don't remember.

20 Q. Would that have been part of your job to make
21 sure that happened, or would that have been the
22 contracting office?

23 A. It wasn't part of my job.

24 Q. Okay. Do you know how the contractors were
25 badged?

1 A. They were badged?

2 Q. Yes. Do you know the procedure for when a new
3 employee came on site? Were they badged through the
4 Forest Service, or did they go through the normal badging
5 procedure?

6 A. I don't remember. For a while, the Forest
7 Service did its own badging, but I don't remember when
8 that was.

9 Q. Okay.

10 A. When it changed.

11 Q. To your knowledge, were the beaver trappers
12 ever monitored by Health Protection or industrial hygiene
13 or whatever the name of it is now?

14 A. The beaver trappers weren't except one time.
15 The beavers were.

16 Q. Okay. But the trappers themselves were not
17 monitored by Health Protection, to your knowledge?

18 A. No.

19 Q. Up until February?

20 A. [No response].

21 Q. Could you just describe for me, a little bit,
22 the process by which the work orders on the beaver
23 contract were processed? How did that -- well, let me
24 ask it this way: At the time Mr. Hooker was doing this
25 particular contract, were there 53 different beaver

1 sites?

2 A. I don't remember, exactly, if we added 53, --

3 Q. Okay.

4 A. -- added some after he started.

5 Q. Okay.

6 A. I know the final total was 53, but I don't
7 remember when --

8 Q. Okay. At the time that the contract we're
9 talking about was in effect, there were about 53 sites,
10 correct?

11 A. Yes.

12 Q. And how were those sites -- how did they
13 become beaver trapping sites?

14 A. Different ways. People would call me or my
15 supervisors. If they were having trouble with a flooded
16 road or timber being flooded, things like that. They
17 would call and let us know about it.

18 Q. And how would you develop that as a beaver
19 trapping site, or would you just add it to the list and--

20 A. I'd go look at it and see if it really was a
21 beaver problem, and if it was, we'd have to get a Site
22 use to use it so it has to --

23 Q. And how did that happen?

24 A. How did what happen?

25 Q. The Site use?

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1 A. The site use? It's a program that all
2 activities -- Forest Service activities are used through
3 a Site use.

4 Q. And who manages that?

5 A. I don't know who manages that. It goes
6 through DOE and Westinghouse.

7 Q. So how would -- let's say somebody told you
8 that the beavers had dammed some stream up --

9 A. Right.

10 Q. -- or something was flooded and it wasn't on
11 your list, how would you place it on your list as a
12 beaver trapping site, and who would to would you call?

13 A. We put it on a map, put the spot on a map,
14 send it out through a Site use to let everybody see if
15 there was a problem with beaver trapping in that certain
16 area.

17 Q. And who would that go to, specifically?

18 A. It would go to a lot -- everybody out at
19 Savannah River Site, just about. Not every employee, but
20 -- I don't know who all it went to, a lot of different
21 people.

22 Q. Would it have gone to Health Protection?

23 A. I don't remember. I really don't remember who
24 all it went to.

25 Q. But it did go to the Department of Energy?

1 A. Yes.

2 Q. Anyone specifically in that department that
3 you would have --

4 A. I don't know who they went to.

5 Q. And how long would it take for you to get
6 approval of that site?

7 A. I'm sorry. I don't remember how long it took,
8 sometimes, two, three to six weeks.

9 Q. And you actually went out and looked at the
10 site before you --

11 A. Yes.

12 Q. Okay. Now, as to the existing sites, how did
13 that work? How did Mr. Hooker or his employees know to
14 go to certain sites? Did you provide them with written
15 orders?

16 A. I usually would take him, take them and show
17 them where it was.

18 Q. You would do that yourself?

19 A. Myself.

20 Q. Okay. And would you take them every time, or
21 if he had to go back, would you say go back to --

22 A. I wouldn't take him every time he went. I'd
23 take him and show him where it was, where the site was,
24 and tell him to trap there.

25 Q. Okay. How big were these sites, I mean in

1 area? When you specified a beaver trapping area, how big
2 would that area be?

3 A. That varies, too. It could be a culvert under
4 the road, or it could be an area 100 yards long or so.

5 Q. On the streams, would it be one specific area
6 on a stream or an area somewhere up and down the stream?

7 A. Somewhere up and down the streams. Some of
8 them were in one specific area.

9 Q. Okay. We're not going to make you go through
10 all the areas. I'm going to enter this as Plaintiff's
11 Exhibit No. 7, and ask if you can identify that? It is
12 entitled "Beaver trapping sites." It says "FY '92 to FY
13 '97," which I assume means Fiscal Year, but someone has
14 added a "98-99" on it.

15 A. Right.

16 Q. Did you make that notation on that?

17 A. No. I may have. I don't remember.

18 Q. Okay.

19 A. It looks like my writing.

20 Q. Okay. Would you agree that there are 53 sites
21 on this list?

22 A. Yes.

23 Q. Okay. How many sites -- let me just rephrase
24 that. How many of these sites did you visit?

25 A. Every one of them.

1 Q. Every one of them. And how many of these
2 sites were posted as contaminated?

3 A. One that I know of.

4 Q. And which one would that be?

5 A. Fifty-three.

6 Q. That would be Road Four near --

7 A. C Highway.

8 Q. C Highway. And is that on Four Mile --

9 A. Yes.

10 Q. -- Stream or River or whatever you call it?

11 Did you ever visit HP 52, which is -- I think that
12 includes site 25 and site 40?

13 A. Yes, I did.

14 Q. And were those posted?

15 A. Yes, it was.

16 Q. It was? So that would be at 25 and 40?

17 A. [No response].

18 Q. What about site 19 up on Stead Pond Road?

19 A. Site 19 became posted just out of the middle
20 of nowhere. It wasn't posted one day, and then the next
21 day it was posted.

22 Q. Do you remember the time frame when it became
23 posted?

24 A. I don't.

25 Q. And what was that posted as, if you know?

1 A. I don't remember.

2 Q. I'm going to hand you, also, Plaintiff's
3 Exhibit 8, and I'm going to ask you if you are familiar
4 with that document because it did not -- it came from the
5 Rad-Con manager, I believe. Do you know anything about
6 this document?

7 A. I don't think I've ever seen this.

8 Q. Okay. You'll note that it is a list very
9 similar to the prior Exhibit, that someone has gone in
10 and made notations as to whether these places were posted
11 or not. Would you agree with that?

12 A. I agree with what you said.

13 Q. Okay. I'd like you to take a look at the
14 other Exhibit and go to 36, which is noted here as P-Area
15 Outfall. Did you ever see postings at that site?

16 A. No, I didn't.

17 Q. Now, the other sites where you did say you saw
18 postings, were those contamination area signs, or do you
19 remember what they looked like?

20 A. I don't remember what was at 53. I know Mr.
21 Hooker and I went down there, and he showed me a sign
22 that was bent over on the ground, rusted, covered up, but
23 he had found it and showed it to me.

24 Q. Okay.

25 A. But I really don't remember where it's at.

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1 Q. And what did you do then?

2 A. I talked to -- I'm sure I told my supervisors
3 about it, but I had to talk to some people at CSWE, and
4 don't ask me what that stands for. Chuck Fanning was the
5 man's name. I had seen his people clearing the beaver
6 dams out of that area, so I knew he would know what to do
7 about the posted sign, so I went to talk to him.

8 Q. And what was the result of that?

9 A. He said that I needed a work clearance permit
10 for Mr. Hooker to trap in that area, so I got one.

11 Q. Let me draw your attention to Plaintiff's
12 Exhibit No. 3. Is that the work clearance permit you got
13 for that particular area?

14 A. Yes, it is.

15 Q. Now, would that have been on site 53?

16 A. Yes.

17 Q. Okay. Now, you just testified that you'd seen
18 radiation signs on site 40, 36, 25, and 19, I believe. I
19 take that back. You said they suddenly appeared on site
20 19, correct?

21 A. Right.

22 Q. What did you do when you saw that?

23 A. I told them to stay out of there. I talked to
24 our engineering people with the Forest Service because
25 they had also been clearing debris out of those culverts,

1 so I went and asked them if they knew what was going on
2 at that site, and they didn't know at the time, but they
3 said, you know, no more trapping there, no more culvert
4 cleaning, so it was just dropped.

5 Q. Now, is that Stead Pond itself?

6 A. No, that's on Stead Pond Road.

7 Q. So it wasn't the pond itself, it was
8 another --

9 A. Another pond.

10 Q. Another pond, okay. I'd like to draw your
11 attention to the first declaration that you attached --
12 this was attached to, I believe, Defendant's summary
13 judgment motion, and I believe in this declaration you
14 said: "I visited all the beaver trapping sites. None of
15 them were marked as soil contamination areas or otherwise
16 marked to indicate any radiological hazard." Do you want
17 to change your testimony on that particular issue?

18 A. Yes, because 53 was marked. HP 52 was marked,
19 but 19 was not marked at the time when we started
20 trapping there.

21 Q. Okay. But you will confirm that Mr. Hooker
22 and his beaver trappers did trap in some of these areas
23 that were posted?

24 A. He trapped in 53 after we got this work
25 clearance permit.

1 Q. All right. Did he trap in 52, HP52, which is
2 -- we just decided was 25 and 40?

3 A. Yes, he did trap there.

4 Q. Okay. And did he trap inside site 36, which
5 is P-Area Outfall?

6 A. I don't remember, but he probably did.

7 Q. Okay.

8 A. I only remember that site being trapped one
9 time.

10 Q. Okay. Did he trap in site 47, which is Tim's
11 Branch?

12 A. Yes.

13 Q. Is that on the last Exhibit I gave you? Is
14 that marked as a soil contamination area as posted in
15 1993?

16 A. I don't even know what site that is.

17 MR. SCHROEDER: Your Honor, we object to
18 asking about whether it was actually posted because
19 I believe she testified she had never seen this
20 document before. I believe there will be people
21 who can testify to this.

22 THE COURT: Well, as I understand the
23 testimony, she's testifying of her own knowledge.
24 This document is merely a guide that you're going
25 by; is that right?

1 MS. NICHOLS: Yes, sir.

2 THE COURT: Hasn't she been testifying that
3 she does recall these various areas that were being
4 trapped?

5 MS. NICHOLS: Yes.

6 THE COURT: Is that right?

7 THE WITNESS: Right.

8 THE COURT: In other words, you recall those,
9 but we're just using this document as a guide, I
10 think, if I'm following this correctly.

11 Q. [Ms. Nichols] I think my question was: Did
12 the beaver trappers trap in site 47, which was Tim's
13 Branch?

14 A. Twenty-seven? Woodward Road at Millcreek, is
15 that what you were talking?

16 Q. It's just marked here as Tim's Branch?

17 A. Site 27 --

18 Q. Oh, it's site 47.

19 A. 47.

20 Q. It's on the third page of that --

21 A. I'll say he did.

22 Q. Okay.

23 A. I don't remember it.

24 Q. Okay. And how do you explain the fact that
25 you never saw some of these postings? And I'm not saying

1 -- I'm not doubting your word. I'm just -- why do you
2 think you never saw some of them?

3 A. I went in a different spot from where the sign
4 was.

5 Q. Okay. You testified --

6 A. The one that Mr. Hooker and I found was
7 completely on the ground.

8 Q. Right.

9 A. Nobody could see it.

10 Q. Right. The work clearance permit of February,
11 that I think you're holding in your hand or had, did that
12 require Mr. Hooker to be monitored?

13 A. Yes.

14 Q. And was that for only one site on Four Mile
15 Branch or the whole stream?

16 A. It was just that one site.

17 Q. Okay.

18 A. He didn't have to get in the water after that.
19 He could use snares from the bank. He never had to get
20 wet. He could -- he had a little device that he stuck
21 down in the ground to put his Conibear traps in so he
22 wasn't -- unless he went in that one site to remove
23 beaver dams or something, he didn't have to get wet
24 again.

25 Q. Did he ask Mr. Gabard and you for more money

1 on the contract after that incident?

2 A. He mentioned it, yes.

3 Q. And what did he say?

4 A. He said he didn't bid the job to do Rad-Con
5 work.

6 Q. Okay.

7 A. He told me that. I told him he would have to
8 talk to Mr. Homer Gabard about it.

9 Q. And do you know what the response was to that?
10 Did you ever discuss that with Mr. Gabard?

11 A. I told him to. I didn't -- I don't think he
12 got any more money because you can't change the bid in
13 the middle of a contract.

14 Q. Okay. Let's discuss the hog investigation
15 that -- and I believe your deposition testimony was
16 different than your declaration testimony. In your
17 deposition testimony you said you weren't involved in the
18 hog investigation, you weren't even there that
19 day --

20 MR. SCHROEDER: Your Honor, I'm going to
21 object. She appears to be trying to impeach
22 without asking a question.

23 THE COURT: Yeah, I think that's not very good
24 form.

25 MS. NICHOLS: Okay. I apologize, Your Honor.

1 THE COURT: That's all right.

2 Q. [Ms. Nichols] Were you involved in the hog
3 investigation in any way?

4 A. I went to a couple of meetings.

5 Q. Were you at the meeting that Mr. Gabard called
6 with Goldman Eller, and Mr. Hooker and, I believe, Dr.
7 Maher? Were you involved in that meeting?

8 A. Yes.

9 Q. Okay. Aside from being there, did you have
10 any input into that meeting, or have any personal
11 knowledge of the hog investigation, or what hogs were
12 being put into the cooler?

13 A. I don't understand what you meant by the
14 last --

15 Q. Okay. Were you involved in the investigation
16 in any way? Did you look at the hogs in the cooler that
17 were purported to be domestic instead of --

18 A. They were gone by the time I got back to work,
19 the pigs were.

20 Q. Okay, so you did not see them?

21 A. [No response].

22 Q. I believe in declaration you said that the
23 pigs were too little to have walked onto the Site. Let
24 me see if I can't find that. Do you remember making that
25 statement?

1 MR. SCHROEDER: Your Honor, I'm going to
2 object just because I don't think counsel has
3 provided us with a copy, or the witness with a copy
4 of the declaration.

5 THE COURT: The declaration was a part of the
6 summary judgment motion?

7 MS. NICHOLS: Yes, sir.

8 THE COURT: Do you have a copy of the
9 pleadings?

10 MR. SCHROEDER: I don't --

11 THE COURT: I think it's a good idea to have a
12 copy. Do you have another one, Ms. Nichols?

13 MS. NICHOLS: No, I don't. I'm sorry.

14 THE COURT: We might have one.

15 MS. KNOWLES: Do you have one?

16 MR. SCHROEDER: Yes, we have a copy, Your
17 Honor.

18 THE COURT: Good. I've got one to give the
19 witness, I think.

20 Q. [Ms. Nichols] I'm going to show you your
21 declaration.

22 A. What did you want me to read?

23 Q. Okay, I'd like you to read the paragraph
24 concerning the hogs, ending with the statement about the
25 pigs being too small. Just read that.

1 A. Tell me where it is.

2 Q. Yes. Number 20, I'd like you to read into the
3 record.

4 A. Okay.

5 Q. Okay. Would you just read it out loud,
6 please?

7 A. Oh. [Reading] Around this time, Dr. Jack
8 Maher, a hog specialist, had been doing research on the
9 hogs the Ellers had trapped. Dr. Maher reported that Mr.
10 Eller had turned in domestic piglets. The piglets had
11 more teats than feral piglets at SRS, and had been raised
12 on concrete pads. They had no parasites or dirt on them.
13 They had been killed by a blow to the head and not by
14 dogs, as Mr. Eller had written on the hog trapping log.
15 These piglets were too small to have walked any distance,
16 much less 10 miles or more from the Site boundary to the
17 center of the Site where Mr. Eller claimed he caught them
18 -- trapped them.

19 Q. Okay. So was that declaration made from
20 personal knowledge, Ms. Brooks?

21 A. This is what Dr. Maher said.

22 Q. Well, I think you testified that you didn't
23 see these animals?

24 A. I did. I said this is what Dr. Maher said.

25 Q. Well, I asked you if you had any personal

1 knowledge of what they looked like or if you had seen
2 them in the cooler.

3 A. No, I didn't see them in the cooler.

4 Q. Okay. I think I left a page out of here. I'd
5 like you to read that short sentence, which is number 24
6 in your declaration.

7 A. [Reading] Because of the problems we had with
8 Mr. Hooker, the U.S. Forest Service decided to do the
9 beaver trapping in-house after Mr. Hooker's contract
10 expired.

11 Q. Okay. And did that, in truth, happen? Did
12 the Forest Service decide to keep it in-house after his
13 contract was over?

14 A. Beaver trapping?

15 Q. Yes.

16 A. It was kept in-house afterwards.

17 Q. Was kept in-house. What were the problems you
18 were having with Mr. Hooker?

19 A. It wasn't Mr. Hooker, especially. It was the
20 Ellers bringing in -- his people bringing in domestic
21 pigs to be counted as --

22 Q. But that was on a different contract, wasn't
23 it?

24 A. It was a hog contract.

25 Q. Yes.

1 A. I don't understand what you're asking.

2 Q. Well, I think you just read that "because of
3 the problems we had with Mr. Hooker, we decided to do the
4 beaver contract in-house."

5 A. That wasn't the only reason.

6 Q. Okay. What were the reasons --

7 A. The main reason was it was a very dry year. A
8 lot of the sites had dried up completely, and there was
9 very -- I went around to every site and checked to see
10 how much water was in them, if they needed trapping, just
11 what was going on with the sites, and that was the main
12 reason. They decided to go in-house with the beaver
13 trapping because there were so few sites.

14 Q. Well, that wasn't the trouble with Hooker, was
15 it?

16 A. Like I said, it wasn't with Hooker.

17 Q. Well, you said the beaver contract --

18 A. I really don't know what -- I don't remember
19 saying this, but evidently I did.

20 Q. You said "the beaver contract was kept in-
21 house because of the trouble with Hooker," so is that not
22 true?

23 A. That's not true.

24 Q. Okay. That's fine. Did you visit all of the
25 beaver trapping sites in July?

- 1 A. Yes.
- 2 Q. How often would you do that?
- 3 A. That's all I did, that and look for hog
- 4 trapping sites.
- 5 Q. And did you do that in August?
- 6 A. Yes.
- 7 Q. September?
- 8 A. Yes.
- 9 Q. October?
- 10 A. Yes.
- 11 Q. And I believe you testified that it was
- 12 because of the drought that they dried up?
- 13 A. There was a lot of them had dried up.
- 14 Q. Okay. Were they all dried up or just some?
- 15 A. No, not all.
- 16 Q. Okay.
- 17 A. They weren't all dried up. Some of the sites
- 18 were completely dried up.
- 19 Q. Okay. Can you just tell me which areas were
- 20 dry?
- 21 A. No, I can't. That's been so long ago, I don't
- 22 remember. But there is a list that I made somewhere that
- 23 had where I checked the sites and written what I saw
- 24 about the sites.
- 25 Q. Do you know where that list might be?

1 A. No, I don't.

2 Q. Do you recall how many work orders -- scratch
3 that. One additional question about your declaration: I
4 believe in declaration number -- the declaration you're
5 holding in your hand, you talked about the drought that
6 started in the spring, can you find that for me?

7 A. Can you tell me what number it is?

8 Q. I'll ask it a different way: When did you
9 first notice that the sites had dried up?

10 A. I don't know when I first noticed it. That
11 was part of my job all the time, to keep up with the
12 sites.

13 Q. Okay.

14 A. Not just in July or August. All year, every
15 year.

16 Q. Okay. Well, you would agree, would you not,
17 that -- I'm going to hand up Plaintiff's Exhibit No. 4,
18 which you will see is an actual list of beavers trapped
19 for the year 1999. Would you like to look at that a
20 little bit?

21 A. I see it.

22 Q. Okay. And you'll see it starts with January
23 and continues on?

24 A. January, yes.

25 Q. Could you look at June, and just see if you

1 can estimate how many beavers were -- it doesn't have to
2 be the exact number, but how many beavers were trapped
3 during June?

4 A. Around 55 or so.

5 Q. Okay, and that was June. And how many work
6 orders would you have given, and by worker orders, I'm
7 not describing the general work order that said trap one
8 through 53, but the written or verbal work orders that
9 you would give for June? How many would that have been?

10 A. I talked to him every day, so I can't tell you
11 how many. Most of the time, it was verbal after the
12 first written one. He would call me, sometimes several
13 times a day, to see if I had any new sites, and if I did,
14 I would call him and tell him, but I didn't write any
15 work orders after the first -- the original because we
16 talked every day.

17 Q. Okay. So you couldn't estimate on the basis
18 of June how many specific orders where you said "Go trap
19 in 18," or something like that?

20 A. No. Like I say, I talked to him every day.

21 Q. Okay. So, there were 55 in June, and how many
22 in July?

23 A. I don't see July. I don't see any in July.

24 Q. Okay. What about August?

25 A. Seven.

1 Q. September?

2 A. One.

3 Q. And the rest of the year?

4 A. I see three for December.

5 Q. So between the end of June and sometime in
6 July, they just dried up, correct?

7 A. He wasn't catching any.

8 Q. Okay. Was he going out looking during that
9 time?

10 A. I really don't remember. I'm sure he was.

11 Q. Okay. I think I'm done. Thank you very much.
12 You have to stay there for Mr. Schroeder.

13 THE COURT: All right, Mr. Schroeder.

14 MR. SCHROEDER: Your Honor, can we have a few
15 minutes?

16 THE COURT: Sure.

17 [OFF THE RECORD]

18 THE COURT: Mr. Schroeder?

19 MR. SCHROEDER: Ms. Knowles will cross-examine
20 this witness.

21 MS. KNOWLES: Thank you.

22 FRANKIE BROOKS

23 CROSS-EXAMINATION BY MS. KNOWLES:

24 Q. Ms. Brooks, do you remember earlier talking
25 with Ms. Nichols about beaver site 19?

1 any reason to go into Stead Pond pursuant to their beaver
2 contract?

3 A. No.

4 Q. Ms. Nichols also talked to you about Mr.
5 Hooker going into site 53 on a work clearance permit?

6 A. Yes.

7 Q. Did you talk to Mr. Hooker ahead of time and
8 inform him that he would be going into that site on this
9 work clearance permit?

10 A. Yes.

11 Q. Did he express to you any concerns at the time
12 about having to go into that site?

13 A. No.

14 Q. Did he express any concerns to you after he
15 came out of the site?

16 A. Yes.

17 Q. And what was that?

18 A. He was upset because we had to wait about an
19 hour for the ladies to come back and recheck him and his
20 equipment.

21 Q. What ladies would those be?

22 A. He had to be monitored by Health Protection
23 before he went in the site, him and his equipment, and
24 after he came back out he had to be monitored again.

25 Q. Did he ever tell you that he wanted more money

1 because he did not bid this contract to do Rad work?

2 A. Yes.

3 Q. And what else did he tell you? Did he tell
4 you that Rad workers were paid more?

5 A. Yes.

6 Q. When he was telling you this, did he ever say
7 "I am concerned about my health," or "I am concerned
8 about what's in that site"?

9 A. No, he didn't.

10 Q. Did he ever tell you that he was concerned
11 about what was in site 19?

12 A. No, he didn't.

13 Q. Did he ever tell you that he was concerned
14 about anything in any of the other sites?

15 A. No, he didn't.

16 Q. Now, you talked with Ms. Nichols at some
17 length about the reduction of the beaver trapping sites
18 in the summer of '99. Did you reduce those beaver
19 trapping sites because Mr. Hooker had asked you for more
20 money on the contract because he did not bid the contract
21 to do Rad work?

22 A. No.

23 Q. Did those two things have any association with
24 each other?

25 A. They did not.

1 MS. KNOWLES: May I approach the witness,
2 please?

3 THE COURT: Yes, ma'am.

4 Q. [Ms. Knowles] Ms. Brooks, these are the
5 Defendant's Exhibits, and I'm going to ask you to look at
6 one. All right, Ms. Brooks, would you look at
7 Defendant's Exhibit No. 41, please? And would you
8 specifically turn to page three of that exhibit and tell
9 me what it is?

10 A. Forty-one, page three?

11 Q. Yes.

12 A. Yes.

13 Q. And what is that Exhibit, please?

14 A. This is a contract daily diary.

15 Q. And what was the date on it?

16 A. January the 5th, 2000.

17 Q. And is that your signature at the bottom?

18 A. Yes, it is.

19 Q. And why did you write this note on this daily
20 diary?

21 A. This was the end of Mr. Hooker's contract, and
22 he was turning in the government property to me.

23 Q. And when you met with him, did he at any time
24 tell you that this was not the end of his contract, that
25 he had a contract until the next contract was awarded?

1 A. No.

2 Q. When did you find out that Mr. Hooker made a
3 claim that he was concerned about what was in the water
4 at his beaver trapping sites?

5 A. It was after the contract was over. I don't
6 remember the date, but it was after he was through
7 working out there.

8 Q. And was that when he sent the letter to the
9 CDC?

10 A. Yes.

11 Q. Were you surprised to learn that he had these
12 concerns?

13 A. Yes.

14 Q. And did he ever, during the course of his
15 contract, relay any of those concerns to you other than
16 he wanted to be paid more for doing Rad Worker work?

17 A. No.

18 Q. Okay. Did you ever take any action to
19 retaliate against Mr. Hooker during the course of his
20 contracts, --

21 A. No.

22 Q. -- the hog contract and the beaver contract?

23 A. No, I did not.

24 Q. Would you look at Defendant's Exhibit 66,
25 please?

1 A. Okay.

2 Q. Can you tell me what that is?

3 A. This is a list of the beaver trapping sites
4 that I had gone around and made notations on the levels
5 of the water, what the sites were like, whether they
6 needed trapping or not.

7 Q. Okay. And now, Ms. Brooks, does it say up at
8 the top "FY-92 through FY-93"?

9 A. Yes, it does.

10 Q. And why does it say that up there?

11 A. This was a form that I used throughout all his
12 contracts, and this is what I had in my truck, and I just
13 didn't change the date on it. This was for me --

14 Q. And when you made the notations on this form,
15 Defendant's 66, you made those from what you observed?

16 A. Right.

17 Q. And did you limit Mr. Hooker's beaver trapping
18 sites out of retaliation for any claims that he made?

19 A. No, I did not.

20 Q. Were you even aware he'd made any claims at
21 this point in time?

22 A. No, I didn't, didn't know that.

23 Q. Thank you, ma'am.

24 THE COURT: Anything else, Ms. Nichols?

25 MS. NICHOLS: Yes, sir, redirect.

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FRANKIE BROOKS

REDIRECT EXAM BY MS. NICHOLS:

Q. Ms. Brooks, Defendant's Exhibit 66, which you just talked about the water levels, when did you create this?

A. When did I do this?

Q. Yes.

A. In the summer of '99.

Q. Okay. Can you be more specific about what --

A. No, I don't remember exactly when I did it.

Q. I didn't ask you how many work orders you gave Mr. Hooker in July, did you answer that question for me?

A. How many work orders?

Q. Yes.

A. He had a work order for the month of July.

Q. How many?

A. One.

Q. One?

A. He always got one, and then we talked the rest of the month.

Q. So your testimony was that you didn't find any beavers that needed trapping except for one order in July?

A. He had one work order, just like every other month. Every month I gave him one work order.

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1 Q. But you said you directed him to the
2 individual sites?

3 A. Yes.

4 Q. How many sites did you direct him to in July?

5 A. I don't remember.

6 Q. Do you remember how many sites you directed
7 him to the balance of that year?

8 A. No, I don't.

9 Q. Okay. I'd just like to take you back to your
10 recent testimony about marking beaver carcasses with
11 paint, when did you decide to do that?

12 A. I didn't decide to do that. My supervisors
13 told me to do it.

14 Q. When did your supervisors tell you to do it?

15 A. I don't remember when it was.

16 Q. Well, did you just now testify that it was
17 after the meeting on the hog contracts?

18 A. Yes, but I still don't remember exactly when
19 it was.

20 Q. Okay. So that meeting was June 30th, 1999,
21 correct?

22 A. That's probably when I started marking beaver
23 again, was that week.

24 Q. Okay. And how many beavers did Mr. Hooker
25 catch in July?

1 A. I didn't see any on that list.

2 Q. Okay. All right, and I ask you, again, if you
3 can be more specific about when this list was created?

4 A. When what?

5 Q. When this list was created?

6 A. It was just in the summer of '99. I don't
7 know if it was July, August or September.

8 Q. Okay.

9 A. But it was in that time period.

10 Q: Okay.

11 A. Because it was before a new contract would be
12 even thought about.

13 Q. Okay. Thank you very much.

14 A. Okay.

15 THE COURT: All right.

16 MS. KNOWLES: Nothing further from this
17 witness, Your Honor.

18 THE COURT: Thank you very much.

19 THE WITNESS: Thank you.

20 THE COURT: Ma'am, you may step down. Please
21 do not discuss your testimony, however, with any
22 other witnesses in this case or potential
23 witnesses. The rules prohibit that sort of
24 discussion, which could be punishable by contempt
25 of court. All right, thank you ma'am. You may be

1 THE COURT: Cross-examination.

2 MR. SCHROEDER: Good morning.

3 THE WITNESS: Good morning.

4 MR. SCHROEDER: May I approach the witness
5 to hand her an exhibit?

6 THE COURT: You may.

7 MR. SCHROEDER: Thank you.

8 CROSS-EXAMINATION

9 BY MR. SCHROEDER:

10 Q Okay. If you would please look at Exhibit
11 35.

12 A Okay.

13 Q What is that document, Exhibit 35, please?

14 A It is a request for equitable adjustment
15 that Mr. Hooker sent to me in April of 2004.

16 Q And what was the contract that was
17 associated with?

18 A This was for the hog contract, 53-4660-8-04.

19 Q And that is the one at issue in this case?

20 A Yes.

21 Q And did Mr. Hooker ever make a claim in
22 there that his contract was seeking damages because
23 his contract was allegedly extended for two years?

24 A No.

25 Q And if you would please identify document

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1 1-1/2 to 2 feet. The site custodian at HP-52 had a
2 similar dam torn out several months ago."

3 "Update: The water level at this site has
4 risen about 0.3 feet in the period from 3 May to 10
5 May. The dam is now at or slightly above the tops of
6 the downstream pipes. An additional small beaver dam
7 is located approximately 20 feet upstream from the
8 NPDES sample site."

9 BY MS. NICHOLS:

10 Q Thank you. What is the purpose of the
11 gaging in those areas?

12 A I think that they just need to have an
13 accurate flow of water coming through those locations.

14 Q And where is that water coming from?

15 A In this location, some of it is coming from
16 the interior to the H area, which is a facility
17 upstream across Road E, and there is also some water
18 coming in from a natural wetland just upstream of that
19 as well.

20 Q And that would be ground water?

21 A No, that would be surface water.

22 Q Surface water?

23 A Yes. It could be ground water, too, but it
24 just depends on what is feeding that particular
25 wetland.

1 Q Were you aware that the beaver trappers were
2 indeed disturbing the soil in soil contamination
3 areas?

4 A Well, I don't know what is involved in
5 beaver trapping and so I can't make a call on what
6 disturbing the soil is for that particular job. Now I
7 recall -- and let me make something clear here. When
8 our postings say contact radiological control
9 operations prior to disturbing the soil, that has a
10 meaning, okay?

11 What that means is that people can walk
12 through an SCA without rad controls, without rad
13 worker training, dressed like we are right now. But
14 we want to know if you are going to be doing something
15 more than just walking through.

16 But it is our call to determine whether or
17 not it constitutes disturbing the soil, because we
18 want to know if we are going to be able to protect the
19 worker.

20 So when I talk about disturbing the soil,
21 again our survey protocol says that you ask people
22 what are they going to do. If there is going to be an
23 environmental restoration project, where they bring in
24 heavy equipment, backhoes and that kind of thing, I am
25 going to be concerned because we are going to be

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1 generating airborne dust particulates, and I don't
2 want people to breath it in. So I am going to impose
3 some radiological controls.

4 If someone is just pulling just a simple
5 soil sample, I probably wouldn't, because I have to
6 look at what is the possibility of contaminating
7 somebody, and what is the possibility of them inhaling
8 dust. What is the possibility of them ingesting
9 anything.

10 And to me pulling a soil sample, versus
11 doing heavy equipment type work, is completely
12 different.

13 Q Would you require at the very least gloves?

14 A Not necessarily, no.

15 Q Back to these recommendations from Sandy
16 Hyman. Was it done as a response to the NIOSH
17 investigation? Did this have any connection with the
18 NIOSH investigation?

19 A I can't recall when the NIOSH investigation
20 occurred. I think it had to do with the employee
21 concern, and I think that is what it was based on.
22 But that is just speculation on my part.

23 Q Were you involved in the NIOSH investigation
24 at all?

25 A No, I was not.

1 then we will make a determination on whether or not
2 radiological controls are necessary or not.

3 Q Okay. And this is dated in August of 1999?

4 A That's correct.

5 Q So the areas would have been posted after
6 August of 1999 based on your recommendations?

7 A That's correct.

8 Q Okay. So prior to August of 1999 they had
9 not been posted?

10 A Well, they would have been posted, and it
11 would have said soil contamination area, contact RCO
12 prior to disturbing the soil, which is what I think is
13 the other one that we used.

14 Q The second paragraph on the first page, it
15 discusses that the soil contamination areas on site
16 meet the requirements of the DOE Radiological Control
17 Manual?

18 A Un-huh.

19 Q It goes on to say that several of the SCAs
20 on site are well characterized.

21 A Yes.

22 Q Does that mean that they had been sampled?

23 A Yes. What it means is that either we, the
24 Radiological Control Department, or the Environmental
25 Monitoring Department, may have. There was data.

1 Q There was data?

2 A Yes, there was data that we had.

3 Q And based on this paragraph, there were
4 areas where there wasn't any, correct?

5 A There was what we determined to be not
6 enough data.

7 Q And would that include -- now you are
8 mentioning here Steed Pond, K Seepage Basin, and Four
9 Mile Branch to 4 Road, correct?

10 A Un-huh. Correct.

11 Q Has Four Mile Branch to 4 Road now been
12 sampled as far as you know?

13 A As far as I know. I just don't know the
14 answer to that.

15 Q Okay. Based on the Health and Safety Plan?

16 A Well, what you need to understand here on
17 this memo is that it is not meant for just trapping
18 activities. It is meant for any activities that are
19 going to go on in those areas, okay?

20 Q I understand that.

21 A We just want to know who is going in and
22 what are they going to do, and then we will make a
23 determination on whether or not we need to impose some
24 controls, radiological controls.

25 Q Okay. So based on this, prior to August of

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1 1999, you really weren't aware of where -- well, not
2 you personally, but your department did not have any
3 contact with the Forest Service to determine where
4 these guys were going?

5 A I believe that Stephanie did, okay?
6 Stephanie Brown, the RadCon control manager, and in
7 that case, when we found out where is somebody going
8 to go, and not necessarily a trapper, but maybe
9 somebody pulling a sample, and maybe the Forest
10 Service doing a controlled burn, but we just want to
11 know.

12 And they will let us know who is going in,
13 and one of the benefits of this of knowing that and if
14 we know in enough time, and we know ahead of time,
15 then we can go out and do surveys ahead of time and
16 determine, hey, you know what. Our surveys have
17 showed that we don't even need radiological controls.

18 Q But there were the areas that have not been
19 surveyed?

20 A Yes, that is a true statement.

21 Q So what would you tell the folks that were
22 going into those areas?

23 A What I would tell them is -- and our
24 standard position was -- tell us in advance first, and
25 if you want to give us the courtesy to go ahead and

1 Q Do you know why?

2 A There was a concern that radioactive
3 material may have been brought from the site to this
4 property.

5 Q Do you know the exact concerns?

6 A I believe what prompted it was that Mr.
7 Hooker's property -- and I forget the name of the road
8 that it runs on, but I think Columbia Road, but there
9 was some radioactive material postings along the fence
10 line.

11 And I don't know how the information got to
12 the Georgia DNR, but at that point --

13 Q Are you referring to postings by Mr. Hooker?

14 A Yes.

15 Q And what did you do as a result of being
16 called out there by the State?

17 A Well, the State called us out there, and we
18 met Mr. Hooker, and when I told you that I met him
19 once, that is the one time that I met him. We asked
20 Mr. Hooker to show us the areas of his concern, and we
21 were going to do surveys of it.

22 Now, some of the areas that he was concerned
23 about was an archery shop that had some equipment in
24 it. He took us to an area where he would wash off his
25 truck when coming from the site.

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1 recommendations as to those corrections.

2 Q I would refer you to Plaintiff's Exhibit
3 Number 10, and this is a letter dated October 30,
4 2000; and also Defendant's Exhibit 67. Have you had
5 an opportunity to review these documents?

6 A Yes.

7 Q Okay. Good. What were Mr. Hooker's
8 concerns, and when did these concerns arise?

9 A It originated in the employee concerns
10 program in -- I believe it was January of 2000. The
11 original issue came to the Department through another
12 channel, and to the Department, to the Savannah River
13 site office.

14 And it was a determination by various
15 different officials at the Savannah River office that
16 the employee concerns program would be the vehicle
17 that would manage looking into this issue, and so that
18 is how employee concerns got initially involved.

19 Q Okay. And what was the concern?

20 A From the best of my recollection, Mr. Hooker
21 issues had been outlined in a letter to the CDC that
22 had been forwarded to the Department of Energy, and
23 requesting information about what types of substances,
24 radiological or chemical, had been in the streams and
25 ponds that he had been trapping in.

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1 investigator, which is really the compilation of all
2 of the work that various people did.

3 Q Okay. Did you then respond to Mr. Hooker by
4 letter?

5 A Yes, and this is the letter, Plaintiff's
6 Exhibit 10.

7 Q And could you please just tell us what your
8 conclusion was as to the investigation?

9 A Well, for example, on page two, you will see
10 the second paragraph down, where we state that the
11 conclusion dealing with the radiological exposure is
12 those two points; that there was no likely potential
13 for external or internal dose, or the potential for the
14 spread of contamination.

15 And then you also see further down towards
16 the bottom of the page a paragraph dealing with the
17 chemical exposure, and the similar results. That
18 basically the factual information that was gathered
19 did not indicate that there was an increased exposure
20 to the workers, including Mr. Hooker, as a result of
21 anything that was in the water or in the pond.

22 Q And who contributed to that conclusion?

23 A Well, the concern of that piece of the
24 investigation was assigned to WSRC, Westinghouse,
25 Savannah River Company. They assigned I believe it

1 posted as a soil contamination area during the years
2 the trapper was on site; is that correct?

3 A That is what that says, yes.

4 Q And Site Number 43 was another site that is
5 posted as a SCA site, correct?

6 A It says that it is currently posted as an
7 SCA site.

8 Q Okay. I would like to ask you if you were
9 involved in the visits of NIOSH in the investigation?

10 A Yes.

11 Q Could you indicate what triggered that
12 investigation by NIOSH?

13 A Looking back at my report, because I think I
14 have the date --

15 Q I think you mentioned it in your report.

16 A The Department of Energy was contacted by
17 NIOSH as a result of Mr. Hooker's concerns, and they
18 had initiated an investigation at the request of Mr.
19 Hooker, and wanted to determine what was being done by
20 the Department of Energy so far, and we eventually
21 coordinated a site visit with them.

22 And we provided them access to the site, and
23 access to individuals that they needed in order to
24 obtain whatever documents they needed. We escorted
25 them around the various different locations to do a

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1 investigations did not come up until the next year.

2 THE COURT: Well, what I have sort of been
3 trying to puzzle out here is that he has no physical
4 problems. He has not alleged that he has physical
5 problems from this exposure, and insofar as I have
6 heard, he has not alleged that he had to go out and
7 purchase equipment that he had not anticipated in
8 purchasing. So why would his bid have been higher had
9 he had the perfect knowledge beforehand?

10 THE COURT: Well, I think there has been
11 testimony, sir, that working in posted soil
12 contamination areas requires protective equipment, and
13 he did not know that. If he had known -- and he will
14 testify as to this fact, that if he had known or had
15 perfect knowledge of what was not listed in the
16 contract, he would have bid differently. He would
17 have bid more for working in radiological
18 environments.

19 THE COURT: But he decided -- in looking
20 back on it, he took a chance, let's say, by doing it
21 without his equipment, and he has no damage so far
22 that we know of. I mean, you are not alleging that he
23 is physically damaged.

24 So for whatever reason, he did not purchase
25 anything that he would not have purchased anyway. I

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1 am not sure that I understand what his damages were.
2 If there is a breach and there is no damage, there is
3 no money damages to be obtained from it. I am not
4 sure what I can do about it.

5 MS. NICHOLS: Well, we are not alleging
6 breach in that area. We are asking for a reclamation
7 of the contract and that is in our claim.

8 THE COURT: You want to reform the contract
9 to say that it terminated in 2001 instead of -- well,
10 rather --

11 MS. NICHOLS: I think we are talking about
12 the beaver contracts.

13 THE COURT: Okay. So how do you want to
14 reform the contract?

15 MS. NICHOLS: Mr. Hooker will testify that
16 if you have to work in a hot area on the site, you get
17 a multiple of five times the price for working in that
18 area.

19 THE COURT: Where is that requirement? Who
20 requires that?

21 MS. NICHOLS: That would be Mr. Hooker's
22 opinion.

23 THE COURT: Well, who did you say you had
24 next?

25 MS. NICHOLS: I was going to call Dr. Crase.

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1 Q Okay. From 1992 had you ever had any
2 problems with these contracts?

3 A I had one instance where I used the wrong
4 bait.

5 Q And what was that about?

6 A I had permission from the U.S. Forestry
7 Service to use for bait for hogs, and the hogs were
8 eating the fish from '93, '94, and '95, and I did not
9 have permission to catch the fish, but I did use fish.

10 Q And did you get in trouble for that?

11 A I paid \$167 fine for trespassing, and that
12 was it.

13 Q And that was in what year?

14 A I want to say 1995 or '96.

15 Q But other than that had there been any
16 problems with the contract?

17 A No, Ma'am.

18 Q When did your concerns start about the
19 toxicological hazards?

20 A The day I started in Site 53 with a WCP.

21 Q And what is the WCP?

22 A A work clearance permit.

23 Q Let the record reflect that I am handing Mr.
24 Hooker Plaintiff's Exhibit Number 3. And what did
25 that work clearance permit say?

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1 that site prior to signing this, and when you were
2 presented with this work clearance permit?

3 A I had been there at Four Mile Creek for
4 about 7-1/2 years.

5 Q And to your knowledge, you said you never
6 received another one. Was there another permit
7 generated to this same site?

8 A After 30 days. The permit is just good for
9 30 days, and after that, you have to get another one,
10 and I never received another one. Can I explain that?

11 Q Sure.

12 A Upon arriving at Site 53, I was handed this
13 document.

14 Q Who handed it to you?

15 A Frankie Brooks. There were two RCO
16 personnel there.

17 Q Could you just explain what RCO is?

18 A RadCon Officer. These people were supposed
19 to check the health conditions. Where it says RAD II
20 qualified, the RCO people asked me for my credentials,
21 which were in the truck back up on the road.

22 So I had to go back up to the truck and get
23 that badge that I was RAD II qualified.

24 Q Let me just stop you. You were RAD II
25 qualified because of your other job; is that correct?

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1 A Yes, through Westinghouse. I showed them
2 the badge where I was qualified as a RAD II worker,
3 and then I went ahead and did the job. I asked them
4 was it all right to get in the creek, and they said,
5 yeah, go ahead.

6 So I was in the creek with a pair of waders
7 and I don't recall having gloves on at that particular
8 time.

9 Q Did they ever tell you what was in the
10 creek?

11 A No, Ma'am. Well, it was hazardous material,
12 asbestos, and inside the fence there when you work
13 with WCP, it is checked off, or you have procedures
14 that you are supposed to go by.

15 I mean, after I got through and I set the
16 trap in the water, per the contract all traps had to
17 be set in the water, and that is a State of South
18 Carolina law that the traps be set in the water.

19 And after I got out of the water, they
20 didn't have a step off pad for me to step on, and so
21 they were trying to figure out what to do, and so I
22 said go up there to my truck and get one of those
23 garbage bags out of my truck, and I said I'll step on
24 that.

25 So I stepped on that, and they didn't have a

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1 many beavers you trapped in July?

2 A There were none caught in July.

3 Q None caught in July?

4 A No.

5 Q And what was the reason for that, Mr.

6 Hooker?

7 A I believe it was because I asked what was in
8 the water at Four Mile Creek, and the first time --

9 MR. SCHROEDER: Objection, speculation. The
10 question calls for speculation as to how someone else
11 acted.

12 THE COURT: I thought the question was how
13 did he feel about it. What was the question again?

14 BY MS. NICHOLS:

15 Q Why didn't you trap any beavers in July?

16 A I believe it was because when I asked about
17 Four Mile Creek, and also about HP-52.

18 Q Okay. But what I am asking is were you
19 given work orders for each site that you were to trap?

20 A I was given one work order to trap Sites 1
21 through 53.

22 Q And how did you then know which site to go
23 to?

24 A Frankie would issue the work orders, and
25 once that WCP came out, and that is that document

1 the beaver contract.

2 Q All right. Did you observe the beaver
3 trapping sites when you were out hunting hogs?

4 A Yes, all the time.

5 Q And what was the condition of those beaver
6 trapping sites?

7 A Beavers were building dams, and stopping up
8 culverts, and there was flood and timber damage.

9 Q But you were given no work orders for
10 trappings?

11 A No, Ma'am.

12 Q And back to June, did you have an employee
13 videotape one of the signs?

14 A Back in June, and I want to say June 1st, I
15 was setting traps in HP-52, and that was a particular
16 where I felt like that I needed to maybe hire stand-by
17 personnel.

18 And I hired a guy by the name of Mark
19 Schmitz, and I told him that the water was about a
20 foot deep, and at this particular site the water was
21 about a foot deep, and the stream was about -- it
22 might be two foot in that particular area.

23 But I gave him a life jacket, and I told
24 Mark, and when Frankie first pulled up there, and I
25 told her I was going to video it, and I told her I

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1 plants, and if it was clean work, then you did it just
2 like you would an outside job.

3 But if you were stepping inside and into
4 radiation areas, you automatically estimated it at
5 five times. You don't know what is going to happen.
6 When you are dealing with other companies that have
7 control over the HP, they don't go to work at the same
8 time you do.

9 They may say they do, but as an example,
10 they were supposed to have been there at eight o'clock
11 on June 1 at HP-52. Well, they got there at 11
12 o'clock.

13 So there I am standing there with the guy
14 who is the standby man. We got paid, but it is not
15 the same. These bigger companies work by the hour. I
16 didn't work by the hour. I worked by the quantity.
17 It was a quantity and not quality type job.

18 Q So your testimony would be that you would
19 have bid five times the amount on a job?

20 A At a minimum.

21 Q And what was the price per beaver during
22 that contract at issue?

23 A I want to say about \$45. It might have been
24 less than that. I would have to look at the actual
25 contract. It was like a three year contract.

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1 Q Was that posted at all times while you were
2 trapping there?

3 A No.

4 Q Did you continue to hunt hogs with Mr.
5 Hooker in the last half of 1999?

6 A Yes, Ma'am.

7 Q And did you have occasion to go into any
8 beaver trapping sites to look at them?

9 A Yes, Ma'am, with the hog contract, we are
10 all over those protective sites.

11 Q All right. Was there still beaver activity?

12 A Yes, Ma'am.

13 Q But you were not catching any beaver,
14 directly catching any beaver during that time; is that
15 correct?

16 A No, Ma'am.

17 Q Was the water level very low?

18 A No.

19 Q Do you know where the water comes from in
20 Four Mile Creek or HP-52?

21 A The majority of the beaver sites are spring
22 fed, and so from the outfall and from the plant, but
23 the majority of the sites we were in were spring fed.

24 Q While you were trapping beaver and hunting
25 hogs on these sites during these current contracts

1 CROSS-EXAMINATION

2 BY MR. SCHROEDER:

3 Q Good afternoon. Ms. Nichols just asked you
4 to testify about when you saw a sign at Site 19 for
5 the first time?

6 A Yes, right.

7 Q Did you say what date that was?

8 A I think it was early '97.

9 Q '97

10 A Around that time, yes, sir.

11 Q And that is also a test site, too, which you
12 stated in your deposition; is that correct?

13 A I think so, sir.

14 Q And what did the site sign say?

15 A Just soil contamination. It was barricaded.

16 Q Did you notify Mr. Hooker about that sign?

17 A Yes, sir.

18 Q Did you notify him immediately about that
19 sign?

20 A It would have been that day, sir.

21 Q And that was in a beaver area?

22 A Yes, sir.

23 Q Do you know when the beaver contract at
24 issue in this case was awarded?

25 A No, sir, I don't.

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1 MR. SCHROEDER: Okay. I am just going to
2 ask you to do something here. May I approach, Your
3 Honor?

4 THE COURT: Yes, indeed.

5 BY MR. SCHROEDER:

6 Q I am going to show you what has been
7 previously submitted as joint stipulations of fact in
8 this trial.

9 A Yes, sir.

10 Q Could you please just read out loud
11 paragraph 40?

12 A On January 22, 1999, the Forest Service
13 awarded Mr. Hooker a requirements contract, blah,
14 blah, blah, contract number 53-4660-9-06. beaver
15 contract, to trap beaver.

16 Q And so that was long after you saw those
17 signs, right?

18 A The first time I saw them would be before
19 that.

20 MR. SCHROEDER: Okay. Thank you.

21 THE COURT: All right. Anything else?

22 MR. SCHROEDER: No further questions, Your
23 Honor.

24 THE COURT: Thank you. You may step down.

25 (Witness excused.)

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1 THE COURT: All right. Does the Plaintiff
2 rest?

3 MS. NICHOLS: The Plaintiff rest, Your
4 Honor.

5 THE COURT: And we would like to move for
6 judgment, Your Honor. We don't believe that the
7 Plaintiff has made a prima facie case as to its
8 claims. I believe there has been no competent
9 evidence that there has been any type of
10 contamination.

11 The Plaintiff did not call any witnesses
12 that testified as to the soil contamination claim, and
13 that the claim should be dismissed. There has been no
14 evidence of bad faith submitted either.

15 With regard to the hog contract, Mr. Hooker
16 has presented no evidence that those were not domestic
17 pigs, and that the contracting officer did anything
18 wrong in that regard.

19 And we presented on cross in the contracting
20 officer's testimony that he acted in good faith, and
21 made the decisions based on the information that he
22 had, which was unrebutted.

23 Also unrebutted is the extension of the hog
24 contract issue with regard to Modification Number 4.
25 Mr. Hooker had no evidence that he ever took any steps

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1 to perform after November 30, 1999, and he turned in
2 his equipment. And therefore cannot seek any pay for
3 work that was not performed.

4 THE COURT: Let me ask you this. This is
5 one of a number of things which are not clear. You
6 point out that there was no evidence of an attempt to
7 perform after October 31 until the end of the
8 contract.

9 But we have not talked much about what the
10 legal effect of that condition is. In other words,
11 does it make any difference whether there had been an
12 attempt to work after October 31?

13 Is it the government's position that the
14 contracting officer told the Plaintiff that the
15 contract was over in October of 2001?

16 MR. SCHROEDER: No, Your Honor. There was a
17 suspension. However, the contractor officer testified
18 that he attempted to cover the period, and the new
19 solicitation was pending, and that in late 1999 or
20 January of 2000, they made a decision not to award
21 that contract.

22 The Plaintiff had also made no objection
23 when he was sent the memorandum or letter from the
24 contracting officer, which clearly indicated that the
25 final invoice had to be submitted, and Mr. Hooker has

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1 allegation, but it is a very difficult allegation to
2 prove against the United States, simply because the
3 presumption at best or the law provides for government
4 employees a presumption that they act in good faith.

5 And which is a presumption incidentally that
6 I afford any witness initially. In other words, I may
7 assume someone acted in good faith and it is not a big
8 deal, because I tend to assume that everyone acts in
9 good faith, and everyone tells the truth, whether they
10 work for the government or not.

11 But for whatever purpose bad faith was
12 brought into it, and number one, as a matter of fact,
13 I could not see any bad faith through the witness
14 stand, and the next question in my mind is if I had,
15 so what.

16 What is it that the government did in bad
17 faith that amounts to money damages, and that is
18 something that was foremost in my mind in this type of
19 case, and I need find some injury or problem that
20 warrants damages of some kind that is within my
21 jurisdiction, and then have a way of calculating those
22 damages.

23 But from the very beginning, I could not see
24 the damages here, and again if Mr. Hooker had been
25 told in the contract, and even there I am not sure

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1 None of that was tied together here,
2 however, and we found out or I did sort of for the
3 first time just before we broke about the beaver
4 contract and the contracting officer -- well, the
5 Plaintiff said that he only got one beaver, or his
6 attorney did.

7 Well, the way that I now understand it
8 worked was that there was a work order given and it
9 included in that work order an area to hunt for the
10 beaver, and that the Plaintiff only got one beaver in
11 each of the four more outings.

12 Then there was a problem. Either the
13 Plaintiff was not using the spray or however he gets
14 them, or there were not that many beavers, and if
15 there weren't as many beavers, that is not really the
16 government's fault.

17 I can't see where it would be their fault,
18 whether there is a drought or something else. I can't
19 see that as being the fault of the government. I have
20 got just dozens of things that I could talk to you
21 about, and I don't want to bore everyone to death.

22 But I will as I say issue an opinion
23 shortly, and confirm most of what I have said, and I
24 will incorporate what is in the record from what I
25 have jus said, and also before the break.

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM D. HOOKER, d/b/a) Civil Action No.: 03-1501C
GEORGIA BOWHUNTERS)
SUPPLY,)
Plaintiff,)
vs.)
THE UNITED STATES OF)
AMERICA,)
Defendant.)
_____)

JOINT STIPULATION OF FACTS

The parties to this action stipulate to the following facts:

I. Background

1. The Savannah River Site (SRS) is a large area and is located in Aiken, Barnwell and Allendale counties, South Carolina.
2. SRS, which is owned by the United States, contains a number of complex and unique nuclear facilities.
3. These facilities produce radioactive isotopes used for defense, space exploration and medical purposes.
4. The Department of Energy's (DOE) Savannah River Operations Office has responsibility for the oversight of SRS, including waste management and environmental remediation activities conducted at the site.

5. Only a small portion of SRS is used for nuclear, waste management, environmental clean-up and administrative facilities; the remaining acreage is forested.
6. In 1989, DOE entered into a Management and Operating contract with the Westinghouse (now Washington) Savannah River Company to operate the SRS facility.
7. DOE has contracted with Wackenhut Services Inc. to provide security services for SRS.
8. The United States Forest Service, is an element of the United States Department of Agriculture and has responsibility for the nation's public forests.
9. Because of the Forest Service's expertise in forest and natural resources management, DOE has an interagency agreement with the Forest Service to manage the natural resources at SRS, including timber and wildlife management.
10. DOE entered into a Federal Facilities Agreement on August 16, 1993 with the United States Environmental Protection Agency (EPA) and the South Carolina Department of Environmental Control (SCDHEC) for the clean-up of SRS.
11. This agreement requires DOE to study all areas, that is, all operable units at SRS that contain hazardous, mixed (hazardous and radioactive), or radioactive waste and to propose remedial action.

12. EPA and SC DHEC must review all studies DOE prepares and must agree to the remedial action proposed by DOE; EPA and SC DHEC also must agree to the closure of the particular operable unit.
13. The characterization of operable units started well before 1989 and is mostly completed.
14. DOE, EPA and SC DHEC have agreed to the priority for the cleanup of operable units according to published criteria. Clean-up decisions are made according to the risk from long term exposure to the chemicals in operable units.
15. DOE assumes that long term exposure is 2000 hours per year for 25 years, consistent with industrial exposure using EPA risk assessment methods.
16. Most of the operable units containing hazardous, radioactive or mixed waste are in or near the nuclear facilities, that is, the reactor areas, C-Area, K-Area, L-Area, P-Area and R-Area, and the chemical separations areas, F- and H-Areas. DOE and WSRC have used process knowledge, detailed records, and environmental monitoring data from the beginning of SRS to identify operable units.
17. DOE conducts a comprehensive monitoring program for hazardous chemicals and radioactivity in the environment, including air, soil, water and wildlife.
18. DOE takes more than one hundred water samples per year for the purposes of environmental monitoring and cleanup investigation.

19. Specifically, for the period 1992 through the third quarter of 1996, water quality measurements and analyses were performed monthly at all locations (156 samples/year); metal analyses were performed quarterly at all locations (44 samples/year); and pesticides/herbicides analyses were performed monthly from selected locations (50 samples/year).

20. For the fourth quarter of 1996 through the year 2000, water quality and metals measurements and analyses were performed monthly (180 samples/year), and pesticides and herbicides analyses were performed quarterly at all locations (60 samples/year).

21. The EPA is the Federal agency responsible for issuing primary drinking water standards.

II. The Hog Contract

22. On October 29, 1997, Mr. Hooker, d/b/a Georgia Bowhunters Supply, was awarded an indefinite quantity (requirements) contract for hog trapping by the Forest Service. Contract No. 53-4660-8-04 (the "Hog Contract").

23. The purpose of the contract was trap and remove hogs causing damage at SRS.

24. The contract term was for one year, with two option years that the Government could exercise in its discretion.

25. According to Mr. Hooker's technical proposal, submitted during the pre-award process, Mr. Hooker and three employees, Andy Cromer, Goldman Eller and Mike Eller, were to staff the Hog Contract.
26. According to the proposal, Mr. Hooker would hunt and trap hogs by using hog traps and by hunting hogs with specially trained and experienced hog dogs.
27. Mr. Hooker represented that he had a total of 97 "trail", "bay" and "catch" dogs available for contract work.
28. Mr. Hooker bid \$55 per hog for the base period and each of the two option periods.
29. The minimum estimated quantity for the base period and the two option periods was 200 hogs.
30. Mr. Hooker was responsible for providing dogs with rabies vaccinations.
31. Mr. Hooker also was responsible for having replacement dogs available during the course of the contract so as not to cause delay in the use of the dog hunting technique in the event that a dog was killed or lost.
32. The Hog Contract required that Mr. Hooker and his employees submit to monitoring by WSRC Health Protection personnel after trapping in specified areas.
33. The Hog Contract stated as follows:

"This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract."

Hog Contract, Sec. I. 7, Indefinite Quantity (FAR 52.216-22) (Oct 1955)

34. On October 1, 1998, the parties modified the Hog Contract to reflect that the first option was being exercised and that the contract term was extended until September 30, 1999.

35. On September 4, 1999, the parties entered into a modification effective October 1, 1999, which extended the Hog Contract to "October 31, 1999 or until a new contract is awarded." Modification No. 4.

36. The Hog Contract contained a provision stating that the total duration of this contract, including the exercise of any options . . . shall not exceed 36 months or three years. Sec. I.8.c.

37. Hooker submitted a proposal in response to solicitation for the new contract (RFP R8-36-99-09) on or about September 3, 1999.

38. Gabard wrote to Hooker on November 24, 1999 requesting a 60 day extension of the offer acceptance period.

39. On January 5, 2000, Mr. Hooker turned in all the Government property assigned to him, except for six panels and two gates that were missing from the hog traps and submitted a final invoice for trapped hogs.

III. The Beaver Contract

40. On January 22, 1999, the Forest Service awarded Mr. Hooker a requirements contract, Contract No. 53-4660-9-06 (the Beaver Contract), to trap beavers.

41. The purpose of the contract was to remove problem beavers whose activities had flooded timber sites, and blocked culverts.

42. The contractor was also responsible for clearing beaver dams and debris from the blocked culverts.

43. In his technical proposal for the Beaver Contract, Mr. Hooker listed himself, Mr. Cromer and Mr. Eller, Sr. as the project personnel for this contract.

44. Mr. Hooker bid \$45 per beaver and \$18 per hour of culvert cleaning for the base period from the date of contract award to December 31, 1999.

45. Mr. Hooker also bid \$45 per beaver and \$18 per hour of culvert cleaning for Option Period I.

46. The Beaver Contract provided as follows:

Estimated quantities are intended as a good faith estimate of the quantities to be ordered. However, the Government is not obligated to order any work to be performed under the resulting contract for either the base period or the option period. Reference FAR Clause 52.216-21 "Requirements". Contract Schedule, Sec. B. Requirements (FAR 52.216-22) (Oct. 1995).

47. Each task order under the Beaver Contract was to include "maps showing where the work was to be performed." Contract Schedule, Sec.

B.

48. The Beaver Contract also contained a requirements clause B similar to the requirements clause in the Hog Contract B that provided as follows:

This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities or supplies

or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as estimated or maximum in the Schedule, that fact shall not constitute the basis for an equitable price adjustment. Beaver Contract, Sec. I.7.

49. The Beaver Contract provided that no toxicological hazards are associated with beaver trapping at SRS; however, normal environmental hazards such as snakes and uncertain footing do exist. Tech. Spec. C.4.

50. The Beaver Contract limited Mr. Hooker to trapping only in areas directed by Forest Service personnel. Tech Spec. A, Beaver Contract.

51. Specifically, the Beaver Contract provided that "selective trapping shall be conducted only in critical areas identified by the Savannah River Institute personnel" and that the contractor will only trap the areas designated by the Contracting Officer's Representative (COR), Inspectors or Contracting Officer. Tech Spec. A, Beaver Contract.

IV. Mr. Hooker's Work History

52. Mr. Hooker worked at SRS from June 1976 to March 2000.

53. Mr. Hooker primarily worked as a pipe fitter and plumber in the F- and H- Area tank farms where the nuclear waste from the chemical separations facilities was stored.

54. Mr. Hooker worked in nuclear facilities at SRS after he left the tank farms, including the Tritium facility and L-Reactor, which was being rebuilt.

55. For his work at the Tritium facility, Mr. Hooker had to dress out in a plastic suit with an air hose and he had to be cut out of the suit when he finished working.

56. Mr. Hooker left SRS to work for Georgia Power at Plant Vogtle, a nuclear power generation facility, and Turkey Point, a nuclear generation facility in Florida.

57. Mr. Hooker was trained as a radiation worker when he worked at SRS.

58. Mr. Hooker was familiar with radiation signs, including Soil Contamination Area, Underground Radioactive Material, Radiological Buffer Zone, Radiation Area, High Radiation Area, and Contamination Areas, from his work with WSRC because he had seen them inside the fenced-in areas.

59. Mr. Hooker wore a dosimeter for his work with WSRC; the only time he was ever told that he had a high reading was in 1977, when he was an apprentice in H-Area tank farm.

60. Mr. Hooker's clothes from the 1977 incident at H-Area tank farm were contaminated and had to be buried.

61. The Beaver Contract and the Hog Contract were not the first contracts Mr. Hooker had with the Forest Service at SRS.

62. His first contracts with the Forest Service for hog control and beaver trapping began on February 10, 1992.

V. Mr. Cromer's Work History

63. Andy Cromer worked with Mr. Hooker trapping beavers when Georgia Bowhunters Supply was first awarded the beaver contract.
64. Mr. Hooker and Mr. Cromer were partners in Georgia Bowhunter Supply until 1997.
65. Mr. Cromer continued to assist Mr. Hooker when Mr. Hooker needed help with the Hog Contract and the Beaver Contract after 1997.
66. Mr. Cromer also worked as an electrician in nuclear facilities at SRS, including the F-Area tank farm and the Naval Fuel Facility, both of which are nuclear facilities.
67. Mr. Cromer started working at SRS in 1985 or 1986 for Miller Electric and Bechtel.
68. Mr. Cromer took General Employee Training (GET) and Radiation (RAD) Worker training for his work as an electrician at SRS.
69. Mr. Cromer learned about the different radiation control signs and what was going on at SRS, "so you won't get into anything you shouldn't" from his GET training.
70. Mr. Cromer learned about working around radiation, specifically about time, distance and shielding, from RAD Worker training.
71. Mr. Cromer took RAD Worker training several times; the course was three or four days and had a walk-through test at the end.
72. Mr. Cromer was RAD Worker certified until 1993.

VI. The Administration of the Beaver and Hog Contracts

73. Homer Gabard was the Forest Service's Contracting Officer for the Hog and Beaver Contracts.

74. Frankie Brooks, a Forest Service wildlife technician, was the Contracting Officer's Representative (COR).

75. Ms. Brooks worked on a day-to-day basis on Mr. Hooker's contracts with Forest Service; her responsibilities included directing Mr. Hooker and his employees to specific sites to trap beavers and clean culverts when needed.

76. Ms. Brooks also told Mr. Hooker where to trap problem hogs.

77. The Forest Service had established a list of beaver trapping sites.

78. Because Mr. Hooker's contract did not specify particular hog trapping sites, Ms. Brooks would direct Mr. Hooker to trap in areas where hogs had done damage.

79. On February 22, 1999, Mr. Hooker trapped at a beaver trapping site on Four Mile Branch at Road 4.

80. WSRC required a work clearance permit for work at this beaver trapping site.

81. Ms. Brooks was with Mr. Hooker on February 22, 1999 when he went into the Four Mile Creek/Road 4 site on a work permit issued by WSRC.

82. An additional work clearance permit was issued for the same site a month or two after the first one.

83. Mr. Hooker never used the second work clearance permit.

84. Mr. Hooker asked Homer Gabard, for an increase in his contract price for any further trapping at the Four Mile Creek/Road 4 site.
85. Mr. Gabard would not agree to pay Mr. Hooker additional money.
86. Frankie Brooks Documented Hooker's request for more money in her Contract Daily Diary, dated May 27, 1999.
87. Margaret Yeaton is the current contracting officer for the Forest Service.
88. In 1999, Jack Mayer, PhD, a wildlife ecologist employed by WSRC, was studying the wild hog population and conducting research on the hogs that Mr. Hooker's agents, the Ellers, had trapped.
89. According to the Hog Contract, Mr. Hooker was required to deliver the whole carcass of a trapped hog to the Forest Service work center cooler and to record data about the hog, i.e., weight, age, sex, reproductive condition (pregnant) and location trapped.
90. Dr. Mayer examined the hogs in the cooler for a comprehensive study of the wild hog population at SRS.
91. Ms. Brooks noted in her COR diary on December 17, 1998 that Goldman Eller had put hog fetuses in the Forest Service Cooler and had logged them in for payments.
92. Ms. Brooks told Mr. Eller that he would not be paid for the 6 fetuses.

93. Mr. Gabard sent Mr. Hooker a letter on June 30, 1999 putting him on notice that he was in default on the Hog Contract, because "some actions taken in performance of this contract . . . have not been proper or in compliance with the contract and some of the actions could be considered to be illegal."

94. The actions delineated in the letter were entering fetal pigs on the Wild Hog Data Table in an attempt to receive payment for those fetal pigs; attempting to receive payment for 31 domestic pigs; removing hogs and pigs from the cooler before the COR could verify the hogs/pigs were in the cooler; leaving hogs in the woods until they begin to rot; entering hogs in the Data Table without bringing them to the cooler.

95. Mr. Gabard wrote that he was concerned that hogs and pigs were being removed from the cooler and then returned to the cooler so payment would be made for the same animal twice.

96. Mr. Gabard concluded that Mr. Hooker was not personally involved in the misconduct and, therefore, he did not terminate the contract for default.

97. Mr. Gabard informed Mr. Hooker that \$1,320 would be deducted from his June invoice for the 24 domestic pigs for which he already had been paid or that funds would be deducted from subsequent invoices if the amount of the June invoice was insufficient.

98. Mr. Gabard informed Mr. Hooker that, in the future, all hogs, pigs and beavers would be marked with spray paint at the cooler and that he

would not be paid for any animal removed from the cooler before the COR or inspector issued a receipt for the animal.

99. Mr. Hooker's employees working on the beaver and hogs contracts were required to keep the dispatcher notified of the compartment in which they were working.

100. Hooker trapped 256 beaver in 1999 broken down as to site number where trapped.

101. After Mr. Gabard barred the Ellers from the site, Mr. Hooker continued to perform both the beaver and the hog contracts.

102. Mr. Hooker had sent a note to Ms. Brooks on May 6, 1999, apologizing for not giving the beaver contract his full attention.

103. On November 29, 1999, Mr. Gabard informed Mr. Hooker that the Forest Service would not extend the term of the Beaver Contract at the end of the base period and would not exercise its option.

104. The Beaver Contract expired on December 31, 1999.

105. Jim Segar, a Forest Service employee, trapped beavers and cleaned culverts after Mr. Hooker's contract expired.

106. Mr. Segar trapped 44 beaver in 2000 and 28 in 2001.

107. On June 30, 1999, Mr. Gabard informed Mr. Hooker that the Forest Service would not extend the Hog contract for Option Period II (October 1, 1999 B September 30, 2000) and that the Forest Service intended to issue a new contract.

108. On October 29, 1999, the Forest Service extended contraband passes for Mr. Hooker and his employee from October 31, 1999 to December 31, 1999.
109. Mr. Hooker never hunted hogs after November 30, 1999.
110. Mr. Hooker turned in all of his equipment for the hog contract on January 5, 2000, except for six panels and two gates from the hog traps.
111. Mr. Gabard sent Mr. Hooker a letter informing him that his final invoice under the hog contract would not be paid until he responded to Mr. Gabard about Government equipment for the hog contract that had not been returned.
112. In January 6, 2000, Mr. Hooker wrote a letter to the Center for Disease Control requesting a determination regarding whether or not he had been exposed to hazardous substances during his work on the beaver and hog trapping contracts.
113. The CDC referred Mr. Hooker's letter to the National Institute for Occupational Safety and Health (NIOSH).
114. Before a NIOSH visit on March 20, 2000, WSRC's Safety and Industrial Hygiene office investigated Mr. Hooker's concerns.
115. NIOSH conducted an investigation at SRS from March 20 to March 22, 2000.
116. NIOSH wrote Mr. Hooker that, based upon the assumption that his employees had each accidentally ingested 10 grams of soil per year, the maximum dose to a beaver trapper would be 2 millirems per year or about

one fourth the amount of exposure from one chest X-ray and 1/150 of the amount humans receive from natural sources.

117. NIOSH concluded “we find no basis for a substantial health risk due to exposure to radioactivity”.

118. NIOSH examined the water quality standards for SRS streams and found only rarely did samples on site at SRS approach concentrations that would trigger concern that water quality standards were being exceeded.

119. NIOSH also stated that, based on the available environmental data and our medical findings, “we conclude that beaver and pig trapping at SRS has not been associated with harmful exposure to radioactive or toxic environmental contaminants.”

DEPOSITION OF WILLIAM D. HOOKER - 12/8/05

WILLIAM D. HOOKER, d/b/a GEORGIA BOWHUNTERS SUPPLY V. THE UNITED STATES

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CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

SHARON DEHART, COURT REPORTER
P. O. Box 2474
Aiken, SC 29802
Phone: 803-648-9434

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- (1) Q. Okay. And I'm sorry, I am listening to you,
 (2) but I really - I want you guys to have time to see the
 (3) Site and I just - I want to get to the question that I'm
 (4) trying - I'm working on the contraband pass. And I know
 (5) this story from that day because I've read over your -
 (6) read all your stuff.
 (7) A. That's fine. That's fine.
 (8) Q. But I just want to work on the contraband pass
 (9) for just a second. So that took place on December 9th of
 (10) 1999. So at that point, do you remember when you got
 (11) that contraband pass? You got that contraband pass when
 (12) your extension was granted?
 (13) A. I think so, that particular one. The one that
 (14) was wrong was the new one. And like I said, I kept a bow
 (15) with me a lot of times, but when I'm in the parking lot
 (16) out there when I worked for Westinghouse, I didn't carry
 (17) a gun with me at all.
 (18) Q. Okay.
 (19) A. I could shoot the hogs in the pen in the traps
 (20) with the bow.
 (21) Q. Is a bow - do you need a contraband pass for a
 (22) bow?
 (23) A. I had one.
 (24) Q. Okay, you had one for the bow, just not one for
 (25) a gun?

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- (1) A. Right.
 (2) Q. Okay.
 (3) A. But you just can't run through the woods with a
 (4) bow and arrow.
 (5) Q. Right.
 (6) A. I mean I don't know if you know or -
 (7) Q. They're huge, right?
 (8) A. Well, they're a lot more clumsy.
 (9) Q. Right. Okay, so - all right, then the last -
 (10) I think the last area I want to talk about is - well,
 (11) let me ask you this. So you told Homer at that point in
 (12) time that your contraband pass was wrong?
 (13) A. Right.
 (14) Q. Did you ask him to fix it?
 (15) A. No.
 (16) Q. No, okay. All right, the last hog, or the last
 (17) record we have of a hog that you killed was November 30th
 (18) of 1999. Did you ever hunt after that to your knowledge
 (19) or recollection?
 (20) A. November 30th?
 (21) Q. Um-hum [yes].
 (22) A. I don't believe I did.
 (23) Q. Do you know why?
 (24) A. I think I'd had enough of Westinghouse deer
 (25) hunts, cutting the trees down; Wackenhut riding around

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- (1) checking the traps, and they would be messing with the
 (2) traps. I'd get phone calls from Wackenhut saying the
 (3) hogs was in a trap, or -
 (4) Q. So you were just tired of it?
 (5) A. I'd had enough of the BS, I promise you.
 (6) Q. Okay, Do you - are you - do you remember
 (7) when you first became aware of when you found out that
 (8) the Forest Service was not going to award the contracts
 (9) for which you did the dog demo?
 (10) A. I can't recall. But what I did, I had wrote
 (11) Congressman Norwood. I wrote him a letter in 2000, and a
 (12) man named Hussey, James Hussey, had started an
 (13) Congressional investigation for me, 13033.
 (14) Q. Right.
 (15) A. And then, in 2002 - well, I did receive a
 (16) letter saying I was awarded contracts in 2001, 2002 and
 (17) 2003.
 (18) Q. From who?
 (19) A. Congressman Charlie Norwood. I've got a copy
 (20) of it if you need it.
 (21) Q. You do?
 (22) A. Oh, yeah.
 (23) Q. Okay. Yeah, that'd be great if you could
 (24) produce that. I don't know that Mr. Norwood's office has
 (25) authority to do that, but I'd like to see the letters.

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- (1) MS. NICHOLS: Well, wait a minute.
 (2) MS. WILLIAMS: Yeah, your attorney has to
 (3) determine if she's willing to agree with that. So,
 (4) I'll make the request for production and you can let
 (5) me know.
 (6) MS. NICHOLS: Thank you. I don't know, this is
 (7) new information.
 (8) Q. [Ms. Williams] Did you - let me just - last
 (9) couple of questions. Did you wear any personal
 (10) protective equipment when you were cleaning culverts?
 (11) A. If you consider hip boots or waders, chest
 (12) waders, protection. But they - like I say, a lot of
 (13) time, they leaked.
 (14) Q. Yeah, I've actually worn some before. What
 (15) about gloves?
 (16) A. I have wore gloves when it was real, real cold,
 (17) and I - a couple of times, I had used rubber gloves.
 (18) Q. Why did you have to use rubber gloves?
 (19) A. Because the water's cold.
 (20) Q. Oh, okay. What about personal protective
 (21) equipment while you were trapping beaver?
 (22) A. Nothing other than what's specified in the
 (23) contract.
 (24) Q. Okay. Do you recall cleaning culverts after
 (25) July of 1999?

*Low water levels won't cover
wire and inlet pipe*

BEAVER TRAPPING SITES FY-92--FY-93

W.D. HOOKER---JOHN CROMER CONTRACTOR

SITE NUMBER AND LOCATION

GRID

SITE 1---BEHIND SUB-STATION (2G) OFF ROAD F	N5-W1 - <i>Hugh's Spot,</i>
SITE 2---LEIGH ROAD	S3-W4 <i>NO - drainage</i>
SITE 3---BUSH BRABUM ROAD (TURTLE STUDY AREA)	S7-E1 - <i>Culvert under Rd</i>
SITE 4---WILLIAMS ROAD	S2-W4 - <i>low water level</i>
SITE 5---OLD DUNBARTON ROAD AT TRESSLE (SREL SET ASIDE)	S5-E3 - <i>low water level</i>
SITE 6---PARKS CHURCH ROAD	S4-W4 - <i>low water level</i>
SITE 7---BANNANA ROAD (CULVERTS ALONG POWERLING)	S4-W4 <i>low water level</i> S4-W5
SITE 8---FIRE POND ROAD F	N2-E2 -
SITE 9---POWER LINE FROM K-REACTOR (PEN BRANCH)	S3-W2 <i>low water level</i>
SITE 10---ROAD B PAST RAILROAD YARD TOWARD PAR POND	S2-E6 <i>low water level</i>
SITE 11---FIRE POND #1 ROAD F PAST Z AREA	N3-E1 <i>no problems with water now</i>
SITE 12---MEYERS MILL (SREL SET ASIDE)	S5-E2 <i>no</i>
SITE 13---ROAD H	N1-E4 <i>no</i>
SITE 14---MILL CREEK (SREL SET ASIDE) JOEL SNODGRASS TO DO FISH STUDY BEFORE AND AFTER TRAPPING. CONTACT GARY MURPHY, GREEN FRINGED ORCHID AT SITE).	N6-E2 <i>no</i>
SITE 15---HWY. 278 NEAR BARRICADE 3 (SREL SET ASIDE)	N8-E8 <i>no</i>
SITE 16---RISHER POND ROAD (CULVERTS ALONG POWERLINE)	S5-W5 <i>no</i>
SITE 17---NORTH BY-PASS AT RAILROAD	S2-W7 <i>no</i>
SITE 18---K TO L WATERLINE	S3-W1 <i>no</i>
SITE 19---BEAVER POND ON STEED POND ROAD	N4-W6
SITE 20---TNX	S3-W7 <i>no</i>
SITE 21---CYPRESS BRIDGE ROAD	S9-E1 . <i>X</i>

SITE 22---FOUR MILE DELTA--CONTACT MIKE REED (SREL)

S6-W7 *no*

SITE 23---ROBBINS STATION

S7-W2 *no - Low water level*

SITE 24---400-D POWERHOUSE--(DAVID COLE)

S4-W7 *drainage ditch*

SITE 25--- H.P. MONITOR STATION #52

N2-W1 *- Canal from Parea*

SITE 26---MILL CREEK OFF NAVY SITE ROAD

N5-E3 *no*

SITE 27---WOODWARD ROAD AT MILL CREEK

N2-E3 *low water level*

SITE 28---STEEL CREEK BAY (BOBBY KENNEMER)
TRAP AT CULVERT ONLY

S6-E1 *no*

SITE 29---INDIAN GRAVE BRANCH---K-OUTFALL

S3-W3 *no*

SITE 30---FOURMILE BRANCH BELOW H AREA ON POWERLINE

N2-W2 *low water level*

SITE 31---POND ON PROPERTY LINE NORTH OF LAURA WEEKS ROAD

N7-E9

SITE 32---WHERE INDIAN GRAVE AND K-CANAL MEET

S3-W3 *no*

SITE 33---WATER GAP -- JUST BEFORE ROCK ROAD

S8-W2 *no*

SITE 34---BAY BY FOREST STATION TRAIL

W3-N7 *no*

SITE 35---C AREA OUTFALL

W3-S1 *no*

SITE 36---P AREA OUTFALL

E3-S2 *no*

SITE 37--- PEN BRANCH DELTA

S7-W4 *no*

SITE 38---MEMORIAL BEACH ROAD

N8-E2 *no*

SITE 39---ROAD C--BETWEEN LANDFILL AND BRIDGE

N3-W4 *drainage ditch*

SITE 40---ACROSS FROM H-AREA (HP-52)

W1-N2 *no*

SITE 41---PATTERSON MILL ROAD AT CREEK (CULVERT)

E8-S4 *no*

The Hog Contract

6. On October 29, 1997 Hooker was awarded contract #53-4660-8-04 by the United States Department of Agriculture Forest Service to control the wild hog population on the Savannah River Site by trapping and the use of trained dogs. This contract was further modified as of October 1, 1999.

A. THE WITHHELD PAYMENTS

7. On June 30, 1999 the then contracting officer, Homer Gabard, issued a letter withholding payments totaling \$1,320.00 due to non-conformance to contract specifications, and further refused to pay for hogs itemized in subsequent invoices. Specifically, the contracting officer advised that domestic pigs were brought to the cooler as substitutes for wild hogs, claiming that the animals had dull rounded hooves from standing on hard surfaced floors, extra teats, the absence of parasites, and other factors indicating the hogs were domestic, not feral hogs. The contracting officer failed to note whether Wackenhut security had noticed hogs being transported into the Savannah River Site.

8. The contract language does not define feral, but according to *The New Shorter Oxford English Dictionary*, feral is defined as "forming or belonging to a wild population ultimately descended from individuals which escaped from captivity or domestication".

9. Plaintiff Hooker states these hogs were dispatched while on the SRS property, were running wild, and were within the definition of wild or feral hogs under the contract.

10. Hooker is informed and believes that this deduction as well as the unpaid subsequent invoices constituted a breach of the terms of the hog contract.

B. USFS BARRED TWO OF HOOKER'S EMPLOYEES FROM THE SRS SITE

11. On June 30, 1999, the Contracting Officer, Homer Gabard, presented Hooker with a letter stating that as a result of the alleged dispatching of domestic pigs; two of Hooker's employees, Michael E. Eller and Goldman E. Eller were barred from working on the contract or any other contract at the Savannah River Site forever. I

12. As a consequence of losing these two employees, who owned the dogs required to be used under the contract; Hooker was unable to perform the contract and had to purchase dogs and other equipment to complete the contract, as well as hire new employees.

13. The response to Hooker's Request for Equitable Adjustment states that Wackenhut Services, Inc., who provide security for the site, determined that Michael Eller and Goldman Eller were involved in defrauding the government and as a result were denied access to the site. Further, the government states that under the contract (H.6, Compliance with Area Regulations) USFS had the right to require the contractor to remove an employee.

14. Michael Eller subsequently was awarded the hog contract in November, 2001 (43-4568-2-2018); and in March, 2003 (43-3468-3-2100); the contractor's response to the REA states that a review of the case determined inconclusive evidence against Mr. Eller.

15. Hooker is informed and believes that the removal of these employees constituted a breach of the contract terms and requests this court award him damages in an amount to compensate him for the purchase of dogs and equipment and lost employee time.

C. THE LOST CONTRABAND PASS

16. At all times during the contract term, Hooker and his employees were required to obtain a contraband pass from the Department of Energy through the contracting officer(Section C.E.1) Contractors were not permitted to use firearms without securing this contraband pass.

17. For a period of over six weeks in 1999, the contracting officer "lost" the paperwork for Hooker's contraband pass; thereby preventing Hooker from obtaining a gun permit to dispatch hogs under the contract. As the contract is a requirements contract, this prevented Hooker from performing under the contract during this time.

18. Hooker is informed and believes that this constituted a breach of the contract and he should be compensated for his lost income during this breach.

D. CONTRACT READJUSTMENT FOR HUNTING IN CONTAMINATED AREAS

19. Hooker and his employees hunted throughout the entire SRS property; and at no time were they warned about contaminated areas.

20. Prior to the disciplinary actions taken by the Contracting Officer on June 30, 1999; Hooker and his employees became aware that they had been working in contaminated areas such as Par Pond and requested an adjustment in the contract price.

21. The Contracting Officer refused to discuss any adjustment to the price and instituted the previously stated actions against Hooker and his employees.

22. The response to Hooker's REA points to the report of December 27, 2000 from the National Institute of Occupational Safety and Health (NIOSH) as stating that "based on the available environmental data and our medical findings, we conclude that beaver and pig trapping at SRS has not been associated with harmful exposure to radioactive or toxic environmental contaminants". This response fails to relate NIOSH's findings relative to Par Pond; i.e. the potential for exposure to radioactive cesium-137 dust generated during pig trapping in the Par Pond area during a time when the water level had been substantially reduced in order to repair the dam. The NIOSH findings were

"Though there is historic data concerning the concentration of cesium-137 in the dust and vegetation that was uncovered during the Par Pond drawdown, it is not possible to determine whether you and your employees were exposed to radiation in amounts that would be harmful. There are two reasons for our inability to make that determination. First, the guidance for worker exposure is based on continuous exposure over 2,000 working hours (1 work year). The exposure that you and your employees may have encountered was intermittent but based on the information that you provided, did not approach 2,000 hours per year. Second, *since the water in Par Pond has been restored to its normal levels it is not possible to conduct any monitoring of radioactive dust in that area since it is once again under water.* (emphasis supplied)"

23. Hooker is informed and believes that there should have been a readjustment to the contract price in light of the possible exposure to contamination in Par Pond.

D. FAILURE TO EXERCISE THE OPTION

24. Hooker and USFS entered into a modification of contract (Amendment/Modification No. 04) effective October 1, 1999.

25. This modification extended the contract to October 31, 1999, or *until a new contract is awarded*. (Emphasis supplied)

26. Hooker was informed that new contract language would be inserted for the third option period. Hooker was invited by the contracting officer to modify his proposal for this option period. Hooker did so, but received no response.

27. In its response to Hooker's Request for Equitable Adjustment, the contracting officer states that a decision was made to perform the service with USFS employees, but this was never communicated to Hooker. A new contract was not awarded until November, 2001 (See para. 14).

28. Hooker is informed and believes that the hog contract was extended under the above modification to November, 2001 and the USFS breached the contract by discontinuing Hooker's performance without notice.

29. Hooker has been damaged in the amount of the maximum contract price, or \$55,000.00.

BAD FAITH

30. Paragraphs 1 through 29 are realleged as if herein rewritten.

31. As previously alleged, the contracting officer Homer Gabard took the following actions against Hooker:

- (a) Withheld payments and refused to pay invoices for hogs deemed "domestic";
- (b) Barred Hooker's two employees from SRS *forever*, but one year later awarded the same hog contract to one of these employees, Michael Eller;

(c) Lost Hooker's contraband pass for six weeks, preventing him from carrying a firearm on SRS property to dispatch hogs pursuant to the contract;

(d) Failed to respond to Hooker's proposal subsequent to the modification; failed to award a new contract for over a year; preventing Hooker from performing under the modification; and

(e) Awarded the hog contract to Hooker's former employee who was alleged to have defrauded the government.

32. Hooker believes that these actions were taken in bad faith; and with a specific intent to injure him economically, and punish him for his concerns about the negligence of the Forest Service.

34. Plaintiff further believes that under 28 U.S.C. §2412(b), he is entitled to attorney's fees to compensate him for the defendant's bad faith.

WHEREFORE, having stated his amended complaint, Hooker requests that this Court award him damages as follows:

A. A sum to compensate Hooker for loss of employees, dogs and equipment purchased to perform under the contract;

B. A sum to compensate Hooker for withheld payments and unpaid invoices;

C. A sum to compensate Hooker for the breach of contract subject to the modification and until the new contract was awarded in the amount of \$55,000.00;

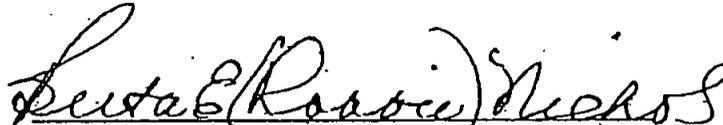
D. A price adjustment per hog under the contract due to the contamination of the work environment;

E. Attorney's fees;

F. Punitive damages;

G. And such other and further relief as this Court may allow.

Respectfully submitted,



Berta E. (Robbie) Nichols, Attorney for Plaintiff
Post Office Box 7925
Hilton Head Isl., South Carolina 29938
(843) 686-5884 (Facsimile (843) 842-3933

July 2, 2004

Mr. Homer Gabard
Contracting Officer
USFS SRI
Post Office Box 700
New Ellenton, SC 29809

REQUEST FOR EQUITABLE ADJUSTMENT
Claim for Contract #53-5660-9-04

This claim is filed for adjustment of the Hog Contract 53-4660-8-04 awarded October 29, 1997 as modified October 1, 1999, with Georgia Bowhunters Supply Co. and William D. Hooker ("Hooker"). This claim is made for option period 2; from October 1, 1999 through October 1, 2000.

1. The Contracting Officer wrongly withheld payment from contractor's invoices for hogs brought to the cooler under the contract, claiming they were "domestic". These hogs were dispatched while on the SRS property, running wild, and were within the definition of wild hogs under the contract. Contracting Officer further deducted payment for these hogs from Hooker's invoices, and refused to pay for hogs itemized in subsequent invoices.

2. On June 30, 1999, the Contracting Officer presented Hooker with a letter stating that Hooker's two employees, Michael E. Eller and Goldman E. Eller, were barred from working on the contract or any other contract at the Savannah River Site forever.¹ Having approved the resumes of these two employees, there was no authority under the contract to bar them. As a consequence of losing these two employees, who owned dogs, Hooker was unable to perform under the contract and was then required to purchase dogs and other equipment to complete the contract, as well as hire new employees. Further, the Contracting Officer gave Hooker only fifteen days to comply with this directive, which was unreasonable under the circumstances and impossible to perform; effectively shutting down Hooker's performance under the contract.

3. The Contracting Officer lost the resume of Hooker's new employee; and "lost" Hooker's paperwork for a contraband pass for a period of six weeks in 1999; thereby preventing Hooker from hunting hogs on the SRS property as he had no gun permit. Thereafter, the Contracting Officer required Hooker to demonstrate hog killing, using only a pocketknife. In the process, one of Hooker's dogs was badly injured and required medical treatment at additional cost to Hooker.

4. Hooker was wrongfully charged for traps and equipment claimed missing or damaged by the Contracting Officer. As there was never a prior inventory taken

¹ This same Michael Eller, barred forever from the SRS, was a successful bidder in a subsequent hog contract with the USFS in November, 2003.

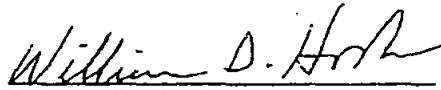
of these traps, it is believed that any deduction for damaged or missing traps was wrongful.

5. Georgia Bowhunters' employees hunted the entire SRS property; and at no time were they warned about contaminated areas. Prior to the disciplinary actions taken by the Contracting Officer on June 30, 1999, Hooker and his employees became aware that they had been working in contaminated areas such as Par Pond and requested more money for the contract. The Contracting Officer refused to discuss any adjustment and instead instituted the previously stated actions against Hooker and his employees.

6. Prior to the contract option period beginning October 1, 1999, Hooker was told that new contract language would be added to the contract. The current contract was extended approximately while the new contract was completed. When Hooker presented a bid for the new contract, there was no response. To date, Hooker has never received a response to this bid.

Having stated a claim for equitable adjustment of Contract #53-5660-8-04, Georgia Bowhunters d/b/a William D. Hooker, requests an adjustment in the contract in the amount of \$90,000.00, representing loss of the option period, wrongfully withheld payments, and damages resulting from the barring of his employees; purchase and upkeep of dogs, equipment purchases and wrongful deductions.

I am requesting that the Contracting Officer render a decision within 60 days pursuant to Section I.21(d)(3)(e) of the contract.


William D. Hooker

Date: April 7, 2004



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute for Occupational
Safety and Health
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati OH 45226-1998
December 27, 2000
HETA 2000-0117

William D. Hooker
Georgia Bowhunters Supply
5330 Columbia Road
Grovetown, Georgia 30813

Dear Mr. Hooker:

The purpose of this letter is to report the results of the National Institute for Occupational and Health (NIOSH) investigation which was conducted in response to your request for a Health Hazard Evaluation (HHE) in which you expressed concern that you and your employees may have been exposed to harmful chemicals, some of which may have been radioactive, while you (as owner of Georgia Bowhunters Supply) were trapping beaver and wild hogs under contract to the U.S. Forest Service at the Department of Energy (DOE) Savannah River Site (SRS).

In response to your request we reviewed all the material that you supplied that gave rise to your concerns. We also contacted officials at both the DOE and U.S. Forest Service to discuss the nature of your request and asked them to supply additional information.

After a thorough evaluation of the information that you furnished, we decided that a visit to the SRS would help us to determine whether you and your employees were exposed to any health hazards as a consequence of your work. That visit took place March 20 - 22, 2000. During that visit we met with you and some of your employees to discuss the health concerns that were expressed. At that meeting each person was given an opportunity to meet privately with Dr. Singal, the NIOSH physician, to discuss any health problems and questions that were thought to be related to working at SRS.

Since a large part of our evaluation centered on determining the scope of the problem, we also met with individuals from the U.S. Forest Service and the U.S. DOE who had knowledge of the areas entered by you and your employees. As you know the SRS covers approximately 350 sq. miles, and you and your staff were required to be in numerous locations throughout that area to trap beaver and feral pigs. In order to properly address the issues raised in your request it was necessary to determine several things.

First, were there any areas that you and your employees visited more frequently than others?

Second, we needed to determine if there were certain areas at SRS that were more likely to result in exposure to harmful chemicals or to radioactive materials than other locations.

Third, did the areas in which you and your staff spend the greatest amount of time coincide with areas that might be more heavily contaminated than others?

Fourth, and finally, was there any medical evidence that either you or your employees experienced any adverse health effects that could be related to your work?

Information provided by you and U. S. Forest Service staff was used to answer the first question. Based on that information we determined that over the life of the Georgia Bowhunters contracts with the U.S. Forest Service the majority of the beaver which were trapped came from a relatively small number of areas on the SRS. The attached Table lists those areas and the number of beaver which were trapped there (Table 1).

We then contacted the DOE and staff of the Bechtel Corporation (SRS) to obtain any data that they had concerning chemicals found in the streams and ponds associated with the areas described in Table 1. The Department of Energy (DOE SRS) responded to our request by providing data concerning each of the chemicals it is required by the US Environmental Protection Agency (EPA) to monitor. The data that they provided covered all of the years in which you actively trapped at SRS and consisted of approximately 60,000 individual measurements of both chemical substances and radioactive materials. While I reviewed the chemical monitoring data, Mr. Flora, a Certified Health Physicist, reviewed the data concerning the radioactive materials.

Findings Concerning Exposure to Radioactive Materials

Many organizations and researchers have explored the relationship between radiation dose and adverse human health effects. For example, a dose of 600,000 millirems received over a short period of time will cause radiation sickness and death within 60 days. A dose of 50,000 millirems will cause radiation sickness but most people will completely recover. Doses of 1,000 – 5,000 millirems, as a consequence of a nuclear accident, for example, are sufficient to initiate emergency actions to prevent prolonged exposure.

In addition to manmade sources of radiation (such as nuclear power and weapons facilities) there are many natural sources of radiation. The average annual dose of radiation from natural sources is about 300 millirems. Exposure from a typical chest X-ray is about 8 millirems.

In comparison to these doses, the DOE estimated that in 1998 a maximally exposed person at SRS and its surrounding area would have received an annual dose of 0.19 millirems as a result of the activities at SRS.

Using data provided by DOE SRS that describes the amount of radiation in the streams in which you trapped the greatest number of beaver, Mr. Flora has estimated the internal dose of ionizing radiation that you and your employees would have received if each of you had accidentally ingested 10 grams (about 1/3 ounce) of contaminated soil per year. This represents a worse case example assuming that the building of castor mounds resulted in accidental ingestion of soil from contaminated streams. Ten grams is the amount used by the EPA to establish guidelines for human exposure in their Federal Guidance Report 11, published in 1988. Based on that assumption, you or any one of your employees would have received a maximum of 2 millirems of radiation per year, or about one fourth of the amount you would have received if you had received one chest X-ray and 1/150 of the amount that humans receive from natural sources.

In addition to the data reviewed by Mr. Flora, Dr. Singal reviewed radiation dosimetry information that was available for six trappers who had worked at SRS. Four of those trappers participated in interviews with Dr. Singal. One of the six left SRS prior to 1992 (when you were awarded the first trapping contract). The other five had whole body counting conducted for cesium-137 (a uranium fission product) beginning in 1992. Four workers had urine assays conducted to determine whether their bodies contained

any plutonium, uranium, or strontium. All of these whole body counts and urine assays were negative. Based on the results of the environmental monitoring data reviewed by Mr. Flora and the biological monitoring data reviewed by Dr. Singal, we find no basis for a substantial health risk due to exposure to radioactive materials during beaver trapping

Findings Concerning Exposure to Non-radioactive Substances

SRS staff are required by the U.S. EPA and others to periodically monitor the water quality of the Savannah River and the quality of the waters flowing into the Savannah River for a large number of chemicals. SRS is required to report those results to the U.S. EPA. The goal of that monitoring is to ensure that the water that ultimately flows into the Savannah River meets Federal criteria for drinking water sources. SRS staff also monitor concentrations of radioactive and non-radioactive chemicals in the sediments of those waters. Based on the data supplied by SRS we determined that only rarely did any samples on site at SRS approach concentrations that would trigger concern that the water quality standards were being exceeded. In addition, none of the samples ever had concentration that would have resulted in exposures that are known to cause adverse health effects among workers in more traditional workplaces as a result of either long-term or short-term exposures. For example, the amount of 1,1,1-trichloroethylene found in wells at the southern end of trapping sites 19 and 43 (Areas A and M) was 5 micrograms per liter of water, which is the upper limit for drinking water in the U. S. We assumed that you immersed both of your hands in water that contained 5 micrograms of trichloroethylene per liter of water, and that each time your hands were in the water you absorbed 5 micrograms of trichloroethylene through your skin. If you immersed your hands in that water 100 times a day then the total amount of trichloroethylene you could have absorbed would have been 500 micrograms. This theoretical absorbed dose can be compared to the amount that a worker would absorb if he was exposed to trichloroethylene at a concentration of 100 parts per million (ppm) (the current OSHA standard) for an 8-hour work day. (100 ppm is equivalent to about 530 micrograms) During an 8-hr work shift, a worker exposed at this concentration would inhale approximately 5,300 micrograms of trichloroethylene, or more than 10 times the amount that you would have absorbed through your skin using the above "worst case" scenario.

The OSHA standard for trichloroethylene of 100 ppm is based on the prevention of acute effects on workers' memory and manual dexterity. There is no data to support the development of skin lesions or other health problems among people exposed to trichloroethylene in amounts as small as 5 micrograms per liter of water.

While I have used trichloroethylene as an example, the same situation exists for the other contaminants in the SRS waters, including metals such as chromium and lead and pesticides that may have entered the SRS waters. In general, the concentrations of those contaminants are several orders of magnitude below the amounts known to cause health problems in workers exposed to them for 8 hours a day, 5 days a week, 52 weeks a year, for as long as 45 years.

The fact that we would not expect to find adverse health effects at exposures similar to those you encountered is bolstered by the findings of Dr. Singal. I have summarized Dr. Singal's findings below, but his complete report is included as an attachment to this letter.

Findings Concerning the Medical Evaluation

Dr. Singal conducted in-person medical interviews of you and seven members of your staff to explore any health concerns that you had. Dr. Singal also photographed areas of the skin which were cause for concern. The camera that Dr. Singal used was a digital camera equipped for use by dermatologists. The photographs were then reviewed by Dr. Boris Lusniak, a NIOSH dermatologist certified by the American Board of Dermatology. An eighth employee was interviewed by phone.

In summary, Dr. Singal noted that seven of the nine interviewees reported a health problem that began during or after their work as a trapper at SRS. Those health problems included a variety of dermatologic (skin), neurologic (nervous system), ophthalmologic (eye), musculoskeletal (muscle and joint), endocrine, respiratory (lung), gastrointestinal, cardiac (heart), and urinary tract, symptoms and diagnoses. In some cases, the circumstances or characteristics of the health problems suggested that they had a cause other than chemical or radiation exposure at SRS. These conditions included age-related decreased near-vision acuity, allergies, and certain heart, gastrointestinal, and urinary tract problems. Four workers interviewed by Dr. Singal reported experiencing joint pain. Two of those workers reported that they had occasional elbow pain. In one case the joint pain began at least two years after the person last worked as a trapper at SRS. Two people, including one with elbow pain, reported pain in both knees. One person also reported generalized joint pains. Two trappers reported recurrent headaches, right-sided in both cases. In one person, they began at an uncertain time after he stopped trapping a few years ago, and in the other person, they began a few years ago, while he was still trapping. In both cases, the headaches continued to recur as of the time of the interviews.

Six people reported at least one skin problem. One person reported a rash on the forehead that resolved in two weeks and which did not return. Another had healed leg lesions that he described as pustular and said they had been diagnosed as "Staph" infections. He also described a recurring hand rash, as well as rashes on his arms and legs that occurred when he immersed his arms in a stream or pond or got his legs wet. The arm and leg rashes would resolve within a day; none were present at the time of the interview. The other four workers had a variety of skin lesions. Based on the digital photos, the NIOSH dermatologist identified probable or possible actinic keratoses in two people. Other probable or possible skin conditions, none of which are known to be caused by chemical or radiation exposures, included seborrheic keratoses, dermatofibromas, progressive pigmented purpuric dermatosis, and rosacea.

Two trappers provided medical records from their own health care providers. In neither case did the records contain medical findings specifically indicative of a health effect related to environmental chemical or radiation exposure. The available information did not demonstrate either the presence or absence of any environmental chemical exposure.

While Dr. Singal found no pattern of health effects that suggested exposure to industrial chemicals or ionizing radiation, this does not rule out the possibility that sporadic or recurrent low-dose exposures might have caused transient health effects that would have had a very short duration and would not necessarily result in persistent, overt health effects. The environmental data, however, provided no evidence of such exposures.

Based on our investigation we conclude that beaver trapping at the SRS was not associated with any health problems due to either chemical or radiation exposure.

Feral pig trapping

Workers employed by Georgia Bow Hunters Supply also operated under a contract with the U.S. Forest Service to trap and kill feral pigs. A major concern of you and your employees was the potential for exposure to radioactive cesium-137 dust generated during pig trapping in the PAR Pond area during a time when the water level had been substantially reduced in order to repair the dam at PAR Pond. Well before the NIOSH investigation, repairs to that dam had been completed and the water level restored to its normal depth. Though there is historic data concerning the concentration of cesium-137 in the dust and vegetation that was uncovered during the PAR Pond draw down, it is not possible to determine whether you and your employees were exposed to radiation in amounts that would be harmful. There are two reasons for our inability to make that determination. First, the guidance for worker exposure is based on continuous exposure over 2,000 working hours (1 work year). The exposure that you and your employees may have encountered was intermittent but based on the information that you provided, did not approach 2,000 hours per year. Second, since the water in PAR Pond has been restored to its normal levels it is not possible to conduct any monitoring of radioactive dust in that area since it is once again under water.

In addition, data provided by DOE staff concerning radioactivity in pig and beaver carcasses did not reveal any animals that were contaminated to an extent that would cause concern about their handling or even the limited ingestion of their meat (see the Savannah River Site Environmental Report for 1998, pages 100 - 104)

Based on the available environmental data and our medical findings, we conclude that beaver and pig trapping at SRS has not been associated with harmful exposure to radioactive or toxic environmental contaminants.

I will note that during our visit to the SRS we came to understand an issue involving communications between the Forest Service personnel and DOE and DOE contract personnel at SRS. This issue centered on a lack of understanding between Forest Service personnel and SRS staff as to what is involved in the trapping of beaver, particularly the fact that beaver trapping necessarily involves the disturbance of sediments in order to build castor mounds. Work Clearance Permits (WCPs) were issued to the trappers by the U.S. Forest Service and Westinghouse Environmental Section. The WCPs were issued by Westinghouse staff without a full understanding that the work would involve disturbing contaminated soil during the placement of beaver traps.

This is particularly noteworthy since a good deal of the trapping took place in areas which were posted as "soil contamination" areas. This posting, particularly in the Steed Pond area took place during the life of the final contract that had been awarded to Georgia Bow Hunters Supply and served as one of the reasons that the Health Hazard Evaluation request was made.

During our investigation we determined that the Forest Service had no knowledge that this area had been posted and that SRS/Westinghouse staff had an incomplete understanding of the beaver trapping process. We discussed this with both the Forest Service and SRS staff and recommended improved communication between those two agencies regarding any future beaver trapping that might be conducted. It is my understanding that as a result of our recommendations, the Forest Service and SRS have reviewed their procedures and have made changes to prevent similar problems from occurring in the future.

Page 6-William D. Hooker

Since this letter constitutes our final report copies will also be sent to each of the workers who trapped beaver for you under the Forest Service contract. Copies of this letter will also be provided to the appropriate DOE and Forest Service Staff.

Sincerely yours,



Lawrence F. Mazzuckelli

Toxicologist

Hazard Evaluation and Technical
Assistance Branch

Division of Surveillance, Hazard
Evaluations, and Field Studies

cc:

Diane Saylor, Department of Energy
Beth LeMaster, U.S. Forest Service

Table 1. Summary of Principal Trapping Sites at SRS

Rank	Location	Forest Service Area	Total beaver 1992-1999
1	Pen Branch Delta area	37	491
2	TNX Culvert area	20	324
3	K to L Waterline area	18	164
4	Four Mile Delta	22	146
5	Robbins Station	23	123
6	400D Power House	24	119
7	Leigh Road	2	109
8	Banana Road	7	.08
9	Road F Sub Station	1	107
10	Meyers Mill SREL Set aside	12	105
11	combined sites	43, 19	105
12	combined sites	48, 53	107
		TOTAL	2,008

Medical Report, HETA 2000-0117
December 1, 2000

Mitchell Singal, MD, MPH

Methods

The requester provided a list of 15 men who had worked for him trapping beaver or hogs at SRS. Two of the men did not have addresses listed; one no longer lived in the area, and the other had worked for the requester for only a month. We sent a letter to each of the other 13 inviting them to meet with us at our hotel during the evening of the first day of the site visit, where they could learn about the HHE and have the opportunity to talk privately to the NIOSH medical officer.

I interviewed the trappers, obtained medical records where appropriate, and photographed skin lesions with a digital camera equipped with a skin photography attachment. I subsequently reviewed the photos with a NIOSH dermatologist and sent participants a letter conveying the dermatologist's interpretation and advice for follow-up. I also obtained occupational medical and radiation dosimetry information on those trappers who were also employed at SRS.

Results

I interviewed the requester and seven of his employees at the hotel. Another employee called and was interviewed by phone. The nine interviewed trappers ranged in age from 24 to 73 years; seven were under 50. Their time working as a trapper at SRS ranged from 4 months to 8 years, with a median of 3 years. Two trapped only beavers, two trapped only hogs, and the other five trapped both. Besides trapping, the interviewees' past and present occupations included military service, mechanic, electrician, plumber, security officer, and planner. Five have worked at SRS, four of them during the period that the requester held the trapping contracts.

Seven of the nine interviewees reported a health problem that began during or after their work as a trapper at SRS. These included a variety of dermatologic (skin), neurologic, ophthalmologic (eye), musculoskeletal (muscle and joint), endocrine, respiratory (lung), gastrointestinal, cardiac (heart), and urinary tract symptoms and diagnoses. In some cases, the circumstances or characteristics of the health problems suggested that they had a cause other than chemical or radiation exposure at SRS. These conditions included presbyopia (age-related decreased near-vision acuity), allergies, and certain heart, gastrointestinal, and urinary tract problems. Of the remaining non-dermatologic symptoms, two were reported by more than one person: joint pain and headaches. Of the four people with joint pain, two had occasional elbow pain, in one case beginning at least two years after last working as a trapper at SRS. Two people, including one with elbow pain, reported bilateral knee pain. One person had generalized joint pains. Two trappers reported recurrent headaches, right-sided in both cases. In one person, they began at an uncertain time after he stopped trapping a few years ago, and in the other person, they began a

few years ago, while he was still trapping. In both cases, the headaches continued to recur as of the time of the interviews.

Six people reported at least one skin problem. One person reported a rash on the forehead that resolved in two weeks and didn't recur. Another had healed leg lesions that he described as pustular and said were diagnosed as "Staph" infections. He also described a recurring hand rash, as well as rashes on his arms and legs that occurred when he immersed his arms in a stream or pond or got his legs wet. The arm and leg rashes would resolve within a day; none were present at the time of the interview. The other four workers had a variety of skin lesions. Based on the digital photos, the NIOSH dermatologist identified probable or possible actinic keratoses in two people. One person had an area, on a forearm, of what appeared to be post-inflammatory hyperpigmentation. He also had discrete areas of post-inflammatory hyperpigmentation elsewhere, apparently secondary to folliculitis. Other probable or possible skin conditions, none of which are known to be caused by chemical or radiation exposures, included seborrheic keratoses, dermatofibromas, progressive pigmented purpuric dermatosis, and rosacea.

Two trappers provided medical records from their own health care providers. In neither case do the records contain medical findings specifically indicative of a health effect related to environmental chemical or radiation exposure. The Westinghouse-operated SRS medical facilities had information on four trappers, three of whom had participated in the NIOSH interviews. The medical records contained mostly routine employee or retiree medical exams; one person had been examined (and cleared) for respirator use within the preceding two years. None of the four trappers were in job categories that involved medical surveillance for lead or other metals. The available information did not demonstrate either the presence or absence of any environmental chemical exposure.

Radiation dosimetry information was available for six trappers who had worked at SRS, four of whom participated in the NIOSH interviews. One of the six left SRS prior to 1992 (when the requester got his first trapping contract). The other five had whole body counts for cesium-137 (a uranium fission product) since 1992, and four had urine assays for plutonium, uranium, and strontium. All of these whole body counts and urine assays were negative. Two people had "miscellaneous low doses" of external radiation, but these exposures must have occurred as a result of their SRS jobs since the employees presumably didn't wear dosimeters while trapping. Another person had a calculated external tritium dose of 1 millirem, a low dose that presumably could represent exposure either in a process area or in a non-process location contaminated with tritium.

Discussion

Actinic keratoses, which can develop into squamous cell skin cancer, are caused by ultraviolet radiation, a non-ionizing type of radiation that is a component of sunlight [Epstein, et al. 1999]. Post-inflammatory hyperpigmentation can be secondary to chronic dermatitis or folliculitis. Chronic dermatitis can be caused by irritant or allergenic substances [Wigger-Alberti et al. 1999]. Various substances associated with plants can cause dermatitis, and even minor skin trauma

involving plants, insects, and other arthropods can lead to various skin lesions [Marks and DeLeo 1992, Zug and Marks 1999, Ancona 1999]. Folliculitis can be caused by direct skin contact with industrial oils, tars, and related substances [Fowler 1999]. Continually wet skin might increase the likelihood of folliculitis [Hirschmann 1990].

Although we found no pattern of health effects that suggested exposure to industrial chemicals or ionizing radiation, this does not rule out sporadic or recurrent low-dose exposures since such exposures would not necessarily result in persistent, overt health effects. The radiation dosimetry information, though limited, provides some evidence that, on the whole, trapping activities have not resulted in substantial occupational radiation exposures.

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*WE Hooker*Larry Elliott,
CDC00/06/00 *A*

In the past Beaver Contracts (1992 - 1999) that I have performed worked under for SRI state that there is no toxicological hazards associated with beaver trapping at SRS. I found that not to be the case on March 1999 when I trapped beavers at site #25 (HP Station #52) for SRI. See CD for the list of hazards chemicals that have been dumped/released into that stream from the process areas over a period of years. These chemicals have settled in the mud or sediment per the report I have been reading. Myself and other trappers have had our hands in working in with out any regards being take to our health. See the enclosed picture of the sediment in the trapper's hand.

I believe some of the other 52 sites unknowing to me have also exposed us to unknown chemical or contamination hazard. All these sites may not have chemicals in the mud/sediment or been posted as Soil Contamination Area. I cannot tell you which ones are clean and which ones are not. Hopefully DOE/SRI can tell you. See photo labeled M-Area Hazardous Waste Site. This is shown as Site #13 3-700 Area behind motor pool on my list of places to trap. I would like to know what chemicals hazards we have been exposed to and is there any health hazards associated with these chemicals.

I am requesting a list of the hazardous chemicals that may or may not have been dumped/released into these 53 different sites that myself and my employees have worked in without the proper type of safety equipment since February 10-1992 to July 21-99.

I am requesting that the DOE/SRI provide medical evaluation for all employees we were exposed to hazards chemicals and contamination that are in the mud or sediment that we worked in prior to July 21-99

In September of 1999 I requested from the CDC a copy of the 1400 page report titled The Savannah River Site Dose Reconstruction Project Phase II. See chapter 12.1 for some idea of what is in Steed Pond. We trapped this site for years without knowing we could be in endangering ourselves.

It is now posted as a Soil Contamination Areas. There's a posting every 50' and is now barricade off. We trapped this area for years without any posting ever being up or barricade off. I would like to know what we been exposed to in this area?

See attached pictures labeled Steed Pond.

No personal protection of any kind other than specified by the contract. The equipment we used has not ever being checked by Radcon, no NCPS were ever issued stating safety requirements or the chemicals that have been dumped into the water to later settle in the mud or sediment where we made our sets as documented in the CDC report. We used our bare hands to reach down and get a big pile of mud to make our castor sets. Castor that's the only thing the SRI allowed us to have off these beavers was the beaver castor and it was to be used to attract beavers. We used it to make castor mounds sets the same way the beavers do with the mud or sediments from the bottom of the creeks, basins, pond, ditches.

We may or may not have been exposed/contaminated over the years who would know?

What is correct path forward now?

Our tools, trucks, homes may or may not have been contaminated over the years who knows?

Myself and the worker's maybe have chemicals in their systems again who knows?

What about chemical that are insoluble (MSDS Sheets) with water in these sites but that settles in the mud or sediment as mentioned in chapter 12.1 that we have had our bare hands in over the years.

These chemicals could enter our bodies thru absorption through our skin due to us not knowing to have to wear gloves on up to our arm pits. This is what I was required to wear by Radcon when trapping site #25 (HF station 52) in March of 1999. Mine you that this stream is at the most 2' wide and about one foot deep with out beaver activity. But there is (3) 36" culverts located at this site and all of them have been stopped up at times. With mud and sediment from that stream bed. All this mud and sediment just goes down stream to next trapping site:

* I do feel that there is health concerns that need to be addressed due to SRI neglecting to contact the proper departments at SRS and finding out what's in each trapping site prior to sending trappers into these sites from February-1992 to July-21-1999.

* I do feel that it is the responsibility of the DOE/SRI to fined out if these workers need to have any testing performed for the different types chemicals that may be in there systems.

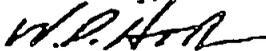
* I do feel that it is the responsibility of the DOE/SRI to pay for any damages to these workers because the SRI neglecting to contact the proper departments at SRS prior to letting us work these 53 sites for the last 7 years.

Theres just to many studies concerning SRS ground water, surface water and the environment going on to just say we don't know. somebody knows whats in these 53 sites we have been working in for the last 7 years. And I am asking you to find out what is in the 53 sites and if it is harmful to myself and the workers I have allowed to work in these site over a 7 years period with out wearing the proper safety equipment.

I have enclosed a copy of the statement that is in all my contracts stating that there is no toxicological hazards associated with beaver trapping at SRS. Also a few picture's on the trapper's making a set using the mud /sediment.

These are my concerns and request and I would like to have these concerns answered ASAP. The Contracting Officer is Homer Garbard his phone work number is 1-803-725-0239. My home number is 1-706-869-8226.

Sincerely,


W. D. Hooker

**DOE REGION 3 RADIOLOGICAL ASSISTANCE PROGRAM (RAP)
TEAM DEPLOYMENT**

September 6, 2001

Background

At 2004 hours on September 5, 2001, the Emergency Services Director for Columbia County (GA) sent an electronic mail message to Georgia Emergency Management Agency (GEMA) officials requesting assistance with a situation involving a private landowner that had posted his property with "Caution - Radioactive Material" signs. The property owner was formerly subcontracted by the US Forest Service to trap beavers and hogs at the Savannah River Site (SRS). The property owner claimed that his property was contaminated due to his beaver and hog trapping contract work at the SRS. Based on this allegation, he has posted "Caution - Radioactive Material" signs throughout his property.

GEMA forwarded the electronic mail message to the Georgia Department of Natural Resources (GADNR) for response at 0909 hours on September 6, 2001. At approximately 1030 on September 6, 2001, the acting DOE Region 3 Regional Response Coordinator (RRC) returned a telephone call to a GADNR representative. The GADNR representative explained the situation and requested assistance from the DOE Region 3 Radiological Assistance Program (RAP) to survey the property.

At 1109 hours on September 6, 2001, the Emergency Duty Officer (EDO) in the Savannah River Site Operations Center (SRSOC) convened a conference call with the following personnel:

- acting RRC
- DOE RAP Team Leader
- Westinghouse Savannah River Company (WSRC) RAP Team Captain
- DOE Radiation Protection and Emergency Management Division Director
- WSRC Radiological Protection Department Manager
- WSRC Radiological Protection Department Deputy Manager
- WSRC Communications Specialist

Conference members were briefed on the situation and discussed the appropriate course of action. At 1200 hours, the on-call RAP team (Team C) was activated by pager.

At 1221 hours, another conference call was convened to discuss final arrangements for deployment and coordination between DOE RAP personnel and the GADNR representatives. During this conference call, DOE requested that the property owner sign a release form allowing access to his property. The release was prepared by the Emergency Services Director for Columbia County (GA) and signed by the property owner.

The EDO and the acting RRC initiated notifications in accordance with SRSOC 302-3, *Radiological Assistance*, and RPIP-Q18-102, *DOE-SR RAP Coordinator*, respectively.

Response

At 1330 hours on September 6, 2001, the RAP team deployed from SRS with standard radiation and contamination survey instruments. The RAP team was also augmented with industrial hygiene (IH) personnel and equipment based on previous experience with this individual and his situation. The RAP team consisted of the following personnel:

W. H. Frazer	DOE RAP Team Leader
G. G. Tunno	WSRC RAP Team Captain
R. L. Ford	DOE RAP Public Information Officer
J. D. Gall	RAP Team Member
D. F. McLane	RAP Team Member
T. L. Henson	RAP Team Member
D. F. Dye	RAP Team Member
R. S. Smith	RAP Team Member
S. D. Jahn	Industrial Hygienist
K. H. Layton	Industrial Hygienist

The DOE Headquarters Watch Office was notified of the RAP team deployment at 1330 hours. At 1415 hours, the RAP team arrived at the predetermined staging area on the north side of I-20 at the Grovetown exit. The RAP team joined with representatives from GADNR, Columbia County Emergency Services, and the Columbia County Sheriff's office.

The team arrived at the property on Columbia Road at 1430 hours. All individuals entering the property were asked to place their names on an attendance roster by the property owner. At 1450 hours, the property owner guided the GADNR officials, DOE RAP Team Leader, and RAP Team Captain on a tour of the areas he would like to have surveyed. The general property and areas surveyed are shown in the attached photographs. These areas, located on Columbia Road and Meadowlark Lane, consisted of miscellaneous sheds containing equipment used to trap beavers at SRS, a discharge pipe from the home's washing machine, a truck washing area, and a dog pen. There was a large volume of construction debris in the area. These areas were surveyed for radiation, alpha and beta/gamma contamination, and mercury vapor. In all cases, there were no detectable readings above background. A soil sample was taken below the washing machine discharge pipe. The soil sample was analyzed at SRS and measured 21.88 pCi/g alpha and 46.83 pCi/g beta/gamma, which is typical of the background activity in the area. Smear surveys were taken on the washing machine discharge pipe and on waders that were used at the SRS. Both results were < 20 dpm/100 cm² alpha and < 200 dpm/100 cm² beta/gamma. The attached Radiation Survey Logsheet provides the details of the survey. In addition to the surveys, the RAP team took possession of a radioactive material label that the property owner found while trapping beavers at SRS. The 1993 label, originating in SRS' H Area Tank Farm (241-H), was radiologically clean.

While the RAP team was conducting surveys at the residence, the DOE RAP Public Information Officer (PIO) spoke at length with the property owner about his concerns for the health of his family, coworkers, and himself and the safety of his property. The DOE RAP PIO also spoke at length with an onscene reporter from the Augusta Chronicle about the DOE response to the request for assistance, the RAP team's findings (negative), and the mission of RAP in general. The DOE RAP PIO refused to comment on the property owner's allegations, citing ongoing litigation between him and DOE.

At 1640 hours, the RAP team completed the requested surveys and was released by GADNR. The RAP team redeployed and arrived onsite at 1730 hours. The EDO and the acting RRC initiated all closeout notifications in accordance with SRSOC 302-3, *Radiological Assistance*, and RPIP-Q18-102, *DOE-SR RAP Coordinator*, respectively.

DOE Region 3 received very positive feedback via electronic mail message from GADNR regarding the response. GADNR stated that the response was timely and appropriate and that the RAP personnel were very professional and competent. Based on the published news story in the Augusta Chronicle on Friday, September 7, the reporter did not quote or paraphrase the conversation with the DOE RAP PIO.

Lessons Learned/Issues

- Consult with the DOE SR Office of Chief Counsel regarding the policy for release of individual RAP team member names to non-government officials (i.e., private citizens, and media) during a response.
- Remind the RRC, DOE RAP Team Leader, and SRSOC personnel of the requirement for and importance of keeping complete and accurate logs of all actions performed during radiological assistance operations.
- Provide senior DOE SR Management with a refresher briefing on RAP, particularly the mission and the roles and responsibilities of RAP personnel.
- Revise SRSOC 302-3 and RPIP-Q18-102 to incorporate a conference call with senior DOE SR management prior to commitment of DOE Region 3 RAP resources for non-emergency requests for radiological assistance.
- Brief DOE HQ (SO-42) and Region 3 state personnel on the change in the RAP deployment process for non-emergency requests for assistance.

OSR 4-17A # (rev 06-26-2001)
 Stores: 26-9082.01

Long Form - Radiation Survey Logsheet

Page 1 Of 14

RWP No. N/A Date 09-06-01 Time 1430 Facility N/A Building No. N/A Level/Room N/A Survey No. 01 - RAP - 0906

Purpose
 Survey private residence property on 5330 Columbia Rd. and Meadowlark Ln., Columbia County, GA.

Radiological Posting Clean Area RBA CA HCA HRA VHRA JRAM ARA SCA URMA

Comments/Additional Information
 Radiation and direct probe contamination surveys were performed on the grounds, in sheds, shops, and on miscellaneous tools.
 Equipment, material, and debris on the subject property. Soil samples were obtained beneath a PVC discharge pipe from the home's washing machine. A smear survey of waders used at SRS by the subject property's owner was obtained. A smear survey of the PVC discharge pipe was obtained. The attached photographs provide the specific information.

All radiation readings were at background. There was no detectable alpha or beta/gamma contamination found during probe surveys.

The results of the smear survey of the PVC discharge pipe: < 20 dpm/100 cm² alpha and < 200 dpm/100 cm² beta/gamma (Page 5)

The results of the smear survey of the waders: < 20 dpm/100 cm² alpha and < 200 dpm/100 cm² beta/gamma (Page 7)

The results of the PVC discharge pipe soil sample: 21.88 pCi/g alpha and 46.3 pCi/g beta/gamma (both background) (Page 5)

Additional L12/110 S/N 6270

Laboratory Counters		Air Samplers					Air Sample Data					
Model	Serial	Model	Serial	Sample No.	Sample Volume: ft ³	Initial Probe		Final Probe		Airborne Radioactivity (DAC)		
						α	β γ	α	β γ	α	β γ	T' (μCi/cc)
29-29	A598	1	N/A	1	N/A	1	N/A	1	N/A	1	N/A	N/A
		2		2		2		2		2		
		3		3		3		3		3		
		4		4		4		4		4		
		5		5		5		5		5		

Reviewed By (print name) C. G. Tunno Signature *[Signature]* Date 9/7/01

Radiation Survey Continuation Sheet

OSR 4-17B # (rev 04-08-99)

Transferable Contamination dpm/100cm²

α	β	T
N/A	N/A	N/A

Comments and Additional Information

Left side of Archery Shop



Debris unloaded from truck after beaver trapping at SRS

No detectable radiation above background within this area. No detectable contamination found on items within this area. The items included, but was not limited to sinks, truck tool box, plywood, water cooler, oven, glass door, old icebox, bike, jeans (2) and shirts (3).

DOE S1
11

Initials BJT Page 4 of 14
 Survey No. 0908

Radiation Survey Continuation Sheet

Comments and Additional Information

Interior of Archery Shop



Freezer containing sample of minnows collected at SRS during beaver trapping operation.

Cooler containing beaver traps

No detectable radiation above background within this area. No detectable contamination found on items within this area. The items included, but was not limited to, traps, knives, archery equipment, miscellaneous tools, benches, tables, cabinets, etc.

OSR 4-17B # (rev 04-08-99)

Transferable Contamination dpm/100cm²

	α	β Y	T
	N/A	N/A	N/A

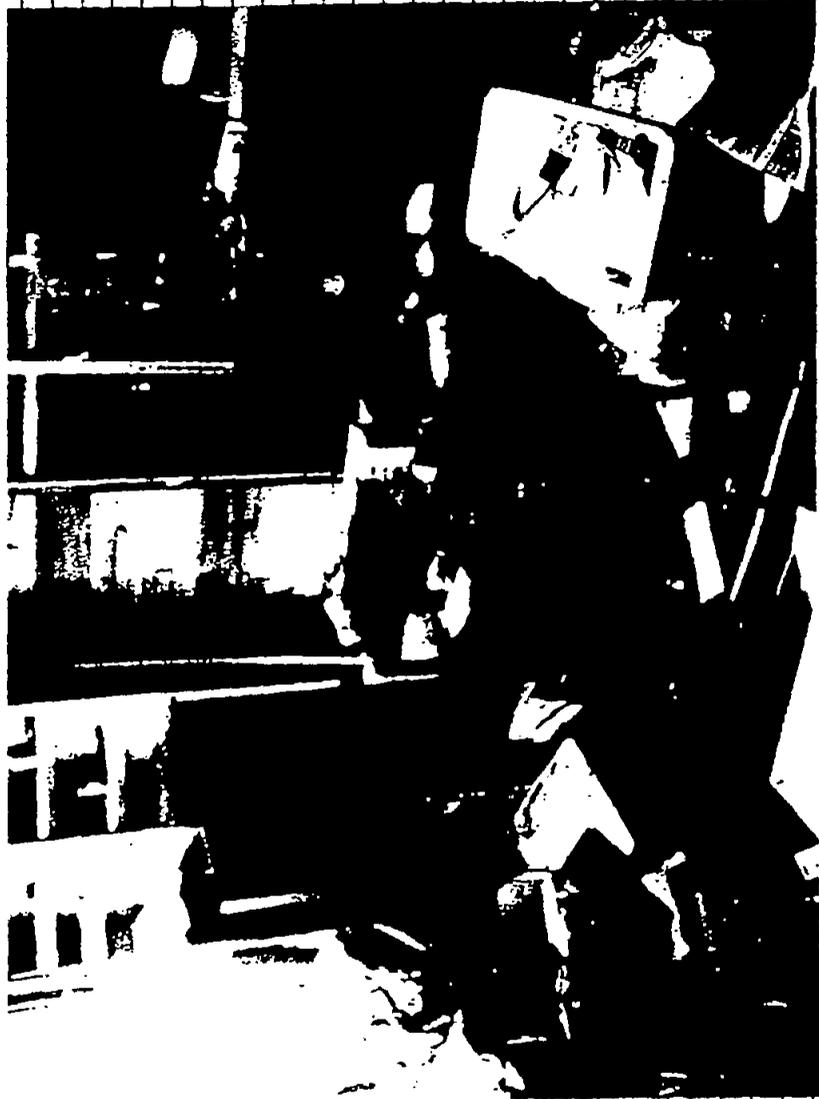
DOE S1
12

Retention 75 years

Radiation Survey Continuation Sheet

Initials *Det*
 Survey No. 0906
 Page 5 of 14

OSR 4-17B # (rev 04-08-99)

	Transferrable Contamination dpm/100cm ²						
α	β _Y	T	Comments and Additional Information				
N/A	N/A	N/A	Interior of Archery Shop				
							
No detectable radiation above background within this area. No detectable contamination found on items within this area. The items included, but was not limited to, traps, knives, archery equipment, miscellaneous tools, benches, tables, cabinets, etc.							
DOE 913							

Radiation Survey Continuation Sheet

Initials *SLD*
 Survey No. 0906

Page 6 of 14

OSR 4-17B # (rev 04-08-99)

Comments and Additional Information

Transferrable Contamination (cpm/100cm ²)	
	T
α	N/A
βγ	N/A
	N/A

_____ Washing Machine Discharge Pipe



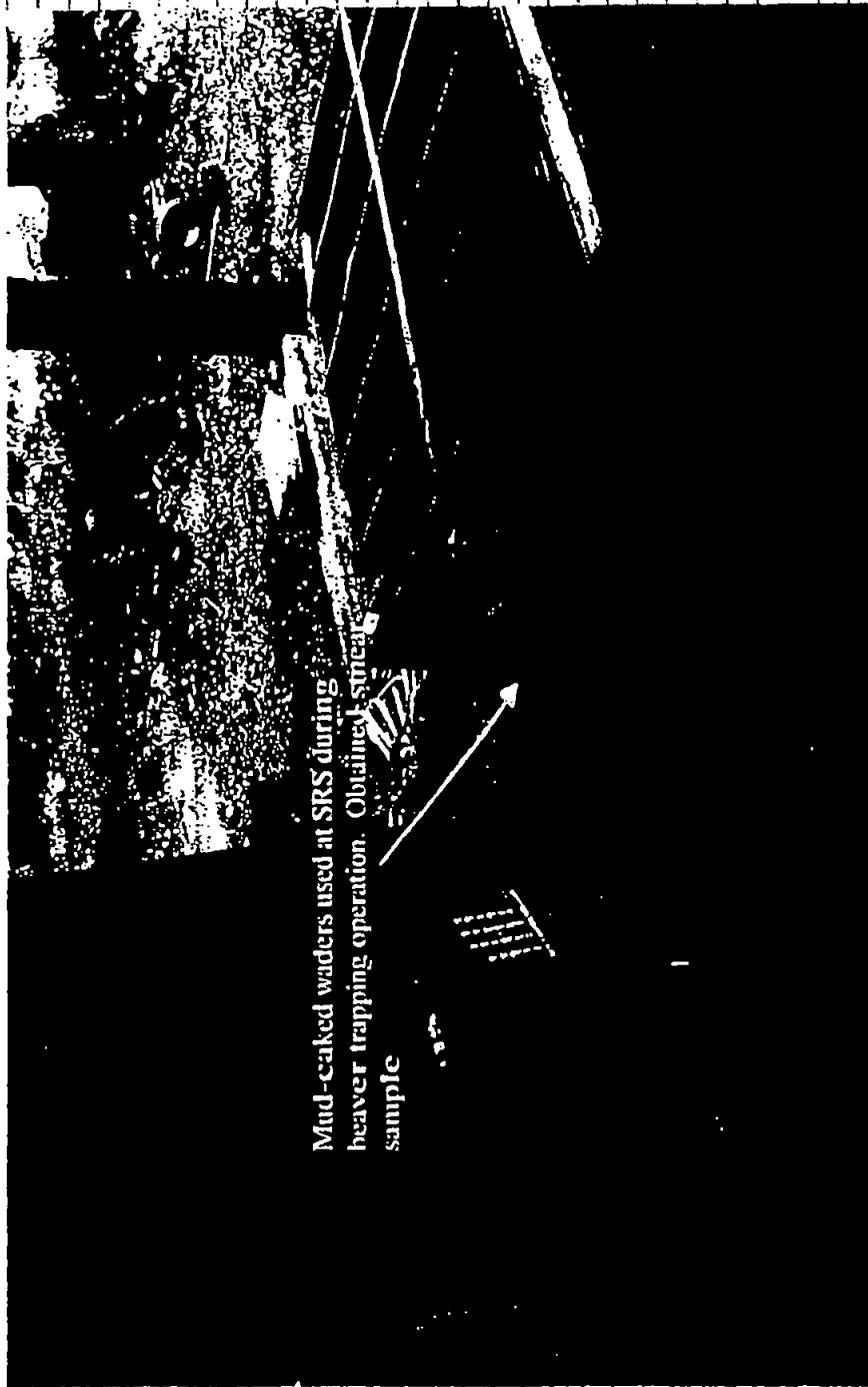
DOE \$1
14

Retention 75 years

Radiation Survey Continuation Sheet

Comments and Additional Information

Boat Shed



OSR 4-178 # (rev 04-08-99)

Transferrable Contamination dpm/100cm²

α	β	T
N/A	N/A	N/A

DOE S1
16

No detectable radiation above background within this area. No detectable contamination found on items within this area.
No detectable contamination above background found on waders.

Radiation Survey Continuation Sheet

Initials SS
 Survey No. 0909

Page 9 of 14

OSR 4-17B # (rev 04-08-99)

Transferrable Contamination dpm/100cm ²	α	β Y	T	Comments and Additional Information
N/A	N/A	N/A	N/A	<p style="text-align: center;">Truck Washing Area</p>  <p style="text-align: center;">Truck used at SRS during beaver trapping operation washed in this area.</p>
				No detectable radiation above background within this area. No detectable contamination found on truck washing area or on wash water run-off area.

DOE S1
17

Radiation Survey Continuation Sheet

Initials *AS*
Survey No. 0906

Page 10 of 14

OSR 4-17B # (rev 04-08-99)

Transferable Contamination dpm/100cm ²	T	Comments and Additional Information
g	T	
N/A	N/A	
py	N/A	
N/A	N/A	
		Dog Pen
		
		No detectable radiation above background within this area. No detectable contamination found on items within this area.

DOE S1
18

Radiation Survey Continuation Sheet

Initials *BT*
 Survey No. 0906 Page 12 of 14

OSR 4-17B # (rev 04-08-99)

Transferable Contamination α β γ T

N/A N/A N/A N/A

Comments and Additional Information

Interior of Horse Barn



No detectable radiation above background within this area. No detectable contamination found on items within this area. Items included, but was not limited to, a radial arm saw, chair, buckets, circular saw, and construction debris.

DOT 51
20

Retention 75 years

Radiation Survey Continuation Sheet

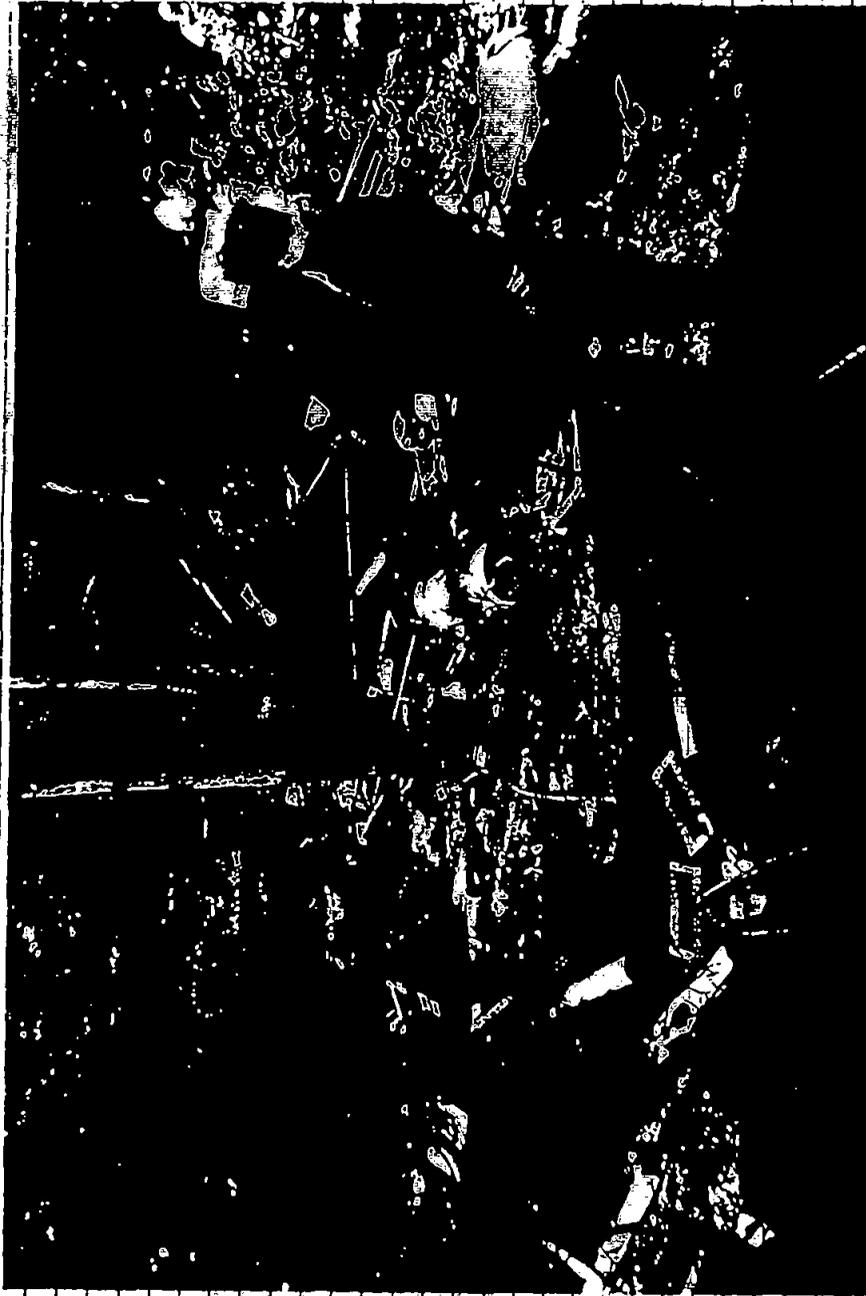
OSR 4-17B # (rev 04-08-99)

Initials *BB*
 Survey No. 0906

Page 14 of 14

Comments and Additional Information

Exterior of Horse Barn



Transferable Contamination dpm/100cm ²	T	β	γ	T
α	N/A	N/A	N/A	N/A
No detectable radiation above background within this area. No detectable contamination found on items within this area. Items in this area included, but was not limited to: construction debris, drum, post-hole digger.				

DOE 04 22

Retention 75 years

JUL 30 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear

SUBJECT: Employee Concern No. SR2000-02-003, Alleged Exposure to Hazardous Substances on Beaver Contract

This letter is in response to your concern regarding possible exposure to hazardous substances as a result of work on your subcontract with the United States Forest Service, Savannah River (USFS-SR). An investigation into your allegations was conducted by this office. Upon completion, the report of investigation was reviewed by representatives of the Department of Energy (DOE) Savannah River Operations Office (SR), Assistant Manager for Health, Safety, and Technical Support and the Assistant Manager for Environment, Science, and Technology.

The investigation into this concern involved DOE-SR, USFS-SR, Westinghouse Savannah River Company (WSRC), and Bechtel Savannah River, Incorporated (BSRI) personnel, who conducted a review of data and procedures relevant to the issue of potential radiological and chemical exposure, as well as the process used by the USFS-SR to identify potential hazards and ensure safe working conditions for its subcontractors. Your allegations could not be substantiated.

In the 1980's, the issuance of dosimeters to remote workers with access to the general site, including site waste streams and pathways, was discontinued, based on a review that showed null or extremely small doses to this group of employees. Since monitoring is not required if the dose from external sources is not likely to exceed 100 mrem in a year, it is appropriate to conclude that beaver/hog trappers were not likely to receive dose from this exposure pathway.

Whole body count and in vitro bioassay data on you from 1995-2000 indicate no intake of radionuclides, e.g., gamma emitters, plutonium, strontium, and uranium. The most feasible exposure pathway for internal dose to beaver/hog trappers is absorption of tritium through the skin. An analysis by WSRC of potential dose resulted in a dose estimate of <70 mrem per year, which is below the value requiring a bioassay program for occupational workers in accordance with Title 10, Code of Federal Regulations, Part 835. It is, therefore, not likely that the beaver/hog trappers received internal dose.

SA-357

Based on the review of the radiological survey data and results of the electronic review of environmental monitoring data in relation to the 53 beaver trapping sites and general areas in which hog trapping was known to take place, it is not likely that the beaver/hog trapping activities resulted in the spread of contamination to the beaver/hog trappers or the equipment used in these activities.

This investigation, therefore, supports the WSRC conclusions regarding radiological exposure that:

- There is no likely potential for external or internal dose to the beaver/hog trappers due to the beaver/hog trapping operations.
- There is no likely potential for the spread of contamination due to the beaver/hog trapping operations in excess of transferable contamination levels used for uncontrolled release.

Using an evaluation process known as "benchmarking," designed to determine the impact to human health from chemical or radiological contaminants, WSRC conducted a search from available data records, looking for "exceedances" of the benchmark concentration level in the water or sediment. Although that data review identified individual exceedances in (1) inorganic metals, specifically lead and cadmium, in Steel Creek surface water and (2) lead, PCBs, pesticides, and benzopyrene in D Area/TNX soils and sediment, the evaluation of all the data points results in a conclusion that contaminants at these low concentrations would not increase the likelihood of adverse health effects.

In addition, WSRC conducted an analysis to determine the actual exposure duration for the typical trapping location. Using these calculations for actual exposure duration compared to the benchmarking duration, WSRC concluded that the risk to the beaver/hog trappers was lower than that for the acceptable risk used in the benchmarking process. WSRC also determined that, based on OSHA standards, there are no requirements that industrial hygiene would place on employees that would currently enter and perform similar tasks in these locations.

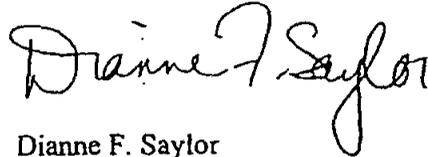
This investigation, therefore, supports the WSRC conclusions regarding chemical exposure that:

- There is no likely increased risk in the potential for health effects to the beaver/hog trappers involved in trapping operations.
- There is no likely increased risk of health effects from any of the exposures to chemical contaminants in the sediment and/or water of the site streams.

In addition, an evaluation was conducted of the process used by USFS-SR to identify hazards and ensure safe working conditions for subcontractors. A process does, in fact, exist for USFS-SR personnel to (1) respond to a "customer" request for trapping at a specific site, (2) identify the potential hazards through the Site Use Permit process, and (3) ensure worker safety through the issuance and implementation of a WCP.

This office will, therefore, consider this matter closed. Thank you for identifying an area of concern at the Savannah River Site. Any questions you have regarding your concern may be directed to me at (803) 725-3745.

Sincerely,



Dianne F. Saylor
Employee Concerns Specialist

ECO:DFS:dfs

bcc:

Roger Rollins, SD
Clyde Terrell, RPD
Ben Gould, EQMD
Beth LeMaster, USFS-SR
ECO Rdg File
Mgr's Rdg File
SR2000-02-003

United States
Department of
Agriculture
Forest Service

FOREST SERVICE CONTRACT
OMB CLEARANCE NUMBER 05050005

CONTRACT NO.

53-4660-8-04

PROJECT: WILD HOG CONTROL

LOCATION: SAVANNAH RIVER NATURAL RESOURCE MANAGEMENT AND RESEARCH INSTITUTE

CONTRACTOR: GA BOWHUNTER SUPPLY CO.
3623 PEACH ORCHARD ROAD
AUGUSTA, GA 30906

(706)792-9422

AWARDING OFFICE: USDA FOREST SERVICE
P.O. BOX 710
NEW ELLENTON, SC 29809

SA-360

SOLICITATION, OFFER AND AWARD

Page 1 of 2 Pages

1. This contract is a rated order under DPAS 15 CFR 350. RATING:

2. CONTRACT NO. 53-4660-8-04	3. SOLICITATION NO. R8 36-98-01	4. TYPE OF SOLICITATION [] SEALED BID (IPB) [X] NEGOTIATED (RFP)
5. DATE ISSUED September 9, 1997	6. REQUISITION/PURCHASE REQ. NO.	
7. ISSUED BY CODE USDA FOREST SERVICE - SRI BLDG 750-G 1-MILE INSIDE AIKEN BARRICADE AIKEN, SC 29802	8. ADDRESS OFFER TO (If other than Item 7) USDA FS-SAVANNAH RIVER INSTITUTE P.O. BOX 710 NEW ELLENTON, SC 29809-0710	

NOTE: In sealed bid solicitations, "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 0 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in Item 7, until 2:00 P.M. local time on 10/09/97. CAUTION-LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION | A. NAME: | B. TELEPHONE NO. (Include Area Code)
CALL: | Homer R. Gabard | (NO COLLECT CALLS) 803-725-0239

X SEC	11. TABLE OF CONTENTS DESCRIPTION	PAGE(S)
	PART I - THE SCHEDULE	
A	SOLICITATION/CONTRACT FORM	
B	SUPPLIES OR SERVICES AND PRICES/COSTS	
C	DESCRIPTION/SPECIFICATIONS/WORK STATEMENT	
D	PACKAGING AND MARKING	
E	INSPECTION AND ACCEPTANCE	
F	DELIVERIES OR PERFORMANCE	
G	CONTRACT ADMINISTRATION DATA	
H	SPECIAL CONTRACT REQUIREMENTS	
	PART II - CONTRACT CLAUSES	
I	CONTRACT CLAUSES	
	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS	
J	LIST OF ATTACHMENTS	
	PART IV - REPRESENTATIONS AND INSTRUCTIONS	
K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
L	INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS	
M	EVALUATION FACTORS FOR AWARD	

OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provision at 52.214-16, Minimum Bid Acceptance Period.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except-- (1) For additional penalties due on or before January 22, 1992, such penalties shall not exceed \$2,500; (2) After January 22, 1992, the additional penalty shall not exceed \$5,000; (3) The additional penalty shall never be less than \$25; and

(4) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1. (B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a) (5) (iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a) (7) (iii) (A) of this clause. (C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein. (D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments. (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

I.21 DISPUTES (FAR 52.233-1) (OCT 1995) ALTERNATE I
(DEC 1991)

(a) This contract is subject to the Contracts Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or related to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d) (2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) Contractors shall provide the certification specified in subparagraph (d) (2) (iii) of this clause when submitting any claim:

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using:

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly

authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.22 PROTECTION OF GOVERNMENT BUILDINGS,
EQUIPMENT, AND VEGETATION
(FAR 52.237-2) (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

ORIGINAL

FILED
JUN 17 2003
U.S. COURT OF
FEDERAL CLAIMS

ECF

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM D. HOOKER, d/b/a)
 GEORGIA BOWHUNTERS SUPPLY)
)
 Plaintiff)
)
 vs)
)
 THE UNITED STATES,)
)
 Defendant)

No. **03-1501C**

COMPLAINT

Jurisdiction

1. This complaint is brought under the Contract Disputes Act. 41 U.S.C. §609(a)(1)(2002). The Court of Federal Claims has jurisdiction over claims based on any express or implied contract pursuant to 28 U.S.C. §1491(a)(1)(1994).
2. William D. Hooker (Hooker) brings this action for equitable adjustment for four contracts with the United States Department of Agriculture Forest Service as follows: Contract number 53-4660-8-04 dated October 30, 1997; number 53-4660-9-06 dated January 29, 1999; 43-4660-3-0134; and 53-4660-4-14 (dates unknown).
3. Eight Requests for Equitable Adjustment dated between October 1, 2000 and October 27, 2000 and an additional seven requests dated between April 1 and April 15, 2002 were denied by the contracting officer, Homer R. Gabard, in a letter dated July 29, 2002.

Background

SA-365

154-03-1501(13)
Completed

4. During the period from February, 1992 through 2000, Hooker was a contractor with the U.S.D.A. Forest Service, performing under two contracts; one for hog control and the other for beaver trapping and culvert cleaning at the Savannah River Site which is managed by Westinghouse.

Hog Contract

5. Contract number 43-4660-8-0027 for hog control and dated October 30, 1997 had a base period of 12 months, with two option periods of October 1, 1998 to September 30, 1999 and October 1, 1999 to September 30, 2000.
6. Hooker performed satisfactorily under this contract from its inception.
7. On June 30, 1999 the contracting officer, Homer Gabard, wrote to Hooker alleging Hooker's default of the contract.
8. These allegations concerned two of Hooker's employees, Goldman E. Eller and Michael E. Eller, complaining of inappropriate documentation of hogs and complaining that domestic pigs had been brought to the SRI cooler.
9. The contracting officer gave Hooker fifteen days to correct problems or default the hog contract.
10. The contracting officer also forever barred both Michael and Goldman Eller from working on this or any other contract with the Forest Service.
11. The contracting officer was not within his authority under H.16(f) under the contract to bar these employees, but this same contracting officer has subsequently awarded contracts to Michael Eller. Hooker was effectively deprived of these two employees.

12. The contracting officer was not within his authority under the contract to make the determination that pigs killed under the contract were wild or domestic.
13. The contracting officer then deducted the sum of \$1,320.00 from future payments for so called domestic pigs trapped on the SRS site, and demanded that Hooker find new replacement personnel within fifteen days.
14. This deduction was arbitrary and in violation of the terms of the contract as the contract does not define the difference between "wild" and "domestic" hogs.
15. Unstated in the contract, Hooker and employees were required to obtain contraband passes from Wackenhut Security for the firearms used to dispatch the hogs. On 7/9/99, Hooker produced the information required by Wackenhut for contraband pass. This paperwork was lost for six weeks, and then held without issuing the pass.
16. Hooker called the contracting officer about the contraband pass on 11/10/99 with no response.
17. On 11/29/99 and 11/30/99 Hooker was required to put on a "hog hunt" using his dogs for the new hog contract. He was not allowed a gun because the contraband pass had still not been issued. Hooker was required to kill a 300 lb. boar using only his pocket knife, which was not only dangerous but contrary to the hog contract. Hooker also hunted the following day with only a knife.

18. Hooker was effectively prevented from performing under the hog contract which requires a firearm to be used in dispatching hogs.
19. Hooker claims an equitable adjustment and contract damages because of the USFS actions in preventing him from fulfilling the terms of the contract.
20. Hooker claims damages in the amount of \$20,000.00 as an adjustment because of the breach of contract by the contracting officer, as well as the sum of \$30,000.00 for the balance of the contract.
21. Hooker claims damages in an unspecified amount for the contracting officer's unreasonable delay in responding to the Requests for Equitable Adjustment.
22. Total damages are estimated at \$50,000.00, plus interest from the date of denial.

Beaver and Culvert Cleaning Contract

23. Contract #53-4660-9-06 involved killing of beaver by trapping on the SRS site and also cleaning of culverts at the Savannah River Natural Resource Management and Research Institute. The contract price as negotiated was \$51,300.00 a year, beginning February 1, 1999 and ending December 31, 1999 with an option period for one year, and an additional option period for one more year at \$51,300.00.
24. This contract required Hooker to trap 700 beaver at sites 1 through 53 as directed by the Contracting Officer's Representative and perform 1100 hours

of culvert maintenance. Unit price per beaver was \$45.00 and hourly rate for culvert cleaning was \$18.00.

25. The general specifications for this contract specifically stated that no toxicological hazards are associated with trapping beavers at SRS; however, normal environmental and physical hazards such as snakes and uncertain footing do exist. No specific statement involved the culvert cleaning.
26. On or about February 22, 1999, Hooker learned that the beaver trapping he had performed under the contract now required a work clearance permit and protective equipment, waders, gloves, etc. Hooker made inquiries as to what substances were in the water he and his men had been trapping in without protection since the beginning of the contract term in October, 1997.
27. These inquiries produced no answers, but on further investigation Hooker found that the ponds he had worked in unprotected since the beginning of the contract had been posted as contaminated, but the signage had not been maintained
 - a) From October, 1997 until February, 1999 USFS failed to notify Hooker of the contamination of the ponds he and his employees worked in; and only after February, 1999 required protective equipment.

- b) If Hooker had known that he and his employees would be working in contaminated areas without protection, his bid of \$55.00 per hog would have been increased to \$110.00 per hog .
- c) If Hooker had known that he and his employees would be working barehanded in contaminated culverts without protection, his bid of \$18.00 per hour would have been increased to \$50.00 per hour.
28. The USDA Forest Service contract stated no toxicological hazards, but subsequent to the contract formation, one site that Hooker had previously worked in was posted and barricaded. Hooker would have worn protective gear if this situation was disclosed. Instead, he put his employees and himself at risk.
29. Subsequent to Hooker's discovery of the contamination, and questioning as to what substances were in the ponds, USFS failed to renew the contract as to the option.
30. Hooker now has emotional difficulties because of fear of past exposure to contaminants.
31. Hooker has been damaged in the amount of \$80,700.00 for the initial contract and \$80,700.00 for the option year.
32. Hooker has been damaged in an unspecified amount for the emotional damages caused by defendant's breach of contract.

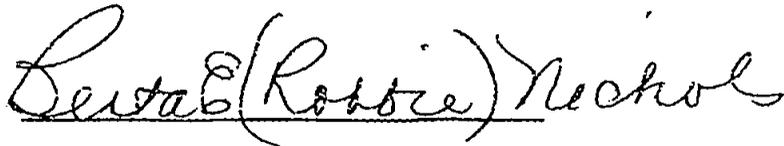
Contracting Officer's Delay in Issuing Decision

33. Hooker has suffered damages because the Contracting Officer unreasonably delayed consideration of the Requests for Equitable Adjustment.
34. Hooker filed eight Requests for Equitable Adjustment between October 1 and October 27, 2000.
35. No response was received until July 10, 2001 when Hooker made an inquiry to the Department of Energy. Mark W. Frie, Deputy Assistant Secretary for Project Completion, Office of Environmental Management reported that the contracting officer, Homer Gabard had assured him that a response would be received on or before July 31, 2001.
36. No response was received.
37. The Contracting Officer, Homer Gabard, did not reply to these requests until February 13, 2002, when he "hoped to provide a response" by February 28, 2002 or certainly no later than March 31, 2002.
38. No response was forthcoming.
39. Hooker filed seven Requests for Equitable Adjustment between April 1 and April 15, 2002.
40. No response was received until the denial of all requests dated July 29, 2002.
41. Hooker has been damaged in the Contracting Officer's unreasonable delay in responding to the Requests for Equitable Adjustment and requests this Court to allow him interest under the Contracts Disputes Act to the date of filing of the Requests pursuant to 41 U.S.C. §611.

NOW THEREFORE, the plaintiff requests that this Court award him the following damages under the contracts:

- A. The sum of \$50,000.00 as damages in Hog Contract number 43-4660-8-0027;
- B. The sum of \$170,400.00 as damages in Beaver and Culvert Cleaning contract 53-4660-9-06;
- C. Reformation and damages from Contract 53-4660-8-04;
- D. Interest at the statutory rate from date of filing of Requests.

Respectfully submitted,



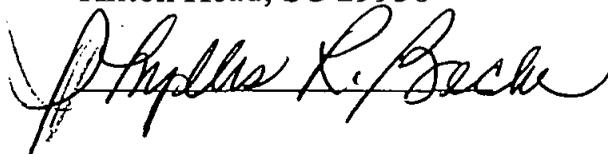
Berta E. (Robbie) Nichols, Attorney for Plaintiff
Post Office Box 7925
Hilton Head Isl., South Carolina 29938
(843) 686-5884 (Facsimile (843) 842-3933

June 9, 2003

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 16th day of July, 2008,
I caused copies of the "Supplemental Appendix of Defendant-Appellee" to be
sent by first class mail, postage prepaid addressed as follows:

Berta E. Nichols
Post Office Box 7925
Hilton Head, SC 29938

A handwritten signature in black ink, appearing to read "Phillip R. Backe". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.