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July 12, 1993

Via Fax
Konrad Cailteux, Esq
(212) 310-8007

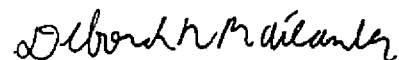
Re: Nevada Power Company v. Monsanto Company, et al.
USDC, District of Nevada Case CV-S-89-555-LDG (LRL)

Dear Konrad,

Enclosed are the references to dioxin and furan documents mentioned in the Bair/Bickerstaff memos and related documents which you and Paul discussed during this afternoon's phone conference. Footnote 2 to our response brief lists several documents which Westinghouse has provided in response to Nevada Power's motion for default. The footnote refers to documents some of which to our knowledge have not been produced. For example, we have not seen any dioxin-furan health hazard training documents. Please let us know the bates numbers of these documents if they have been provided, or alternatively when they will be provided.

Sincerely,

BRADLEY & MERRELL



DEBORAH N. MAILANDER

DNM:bms

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11 Attorneys for Plaintiff
NEVADA POWER COMPANY
12 a Nevada corporation

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DISTRICT OF NEVADA

13
14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 NEVADA POWER COMPANY, etc.,)
17)
Plaintiff,)
18)
vs.)
19)
MONSANTO COMPANY, etc., et al.,)
20)
Defendants.)

CASE CV-S-89-555-LDG (LRL)
RESPONSE OF PLAINTIFF
NEVADA POWER COMPANY TO
MARCH 22, 1993 MOTION OF
WESTINGHOUSE ELECTRIC
CORPORATION FOR PROTECTIVE
ORDER

21
22 Plaintiff Nevada Power Company ("Nevada Power") replies to the
23 "Motion of Westinghouse Electric Corporation for Protective Order"
24 (hereafter, "Westinghouse motion"), served March 22, 1993".¹ The
25

26 ¹ The Westinghouse Motion incorporates major portions of
Westinghouse's "response to Nevada Power Company's motion for entry
27 of default against defendant Westinghouse Electric Corporation for
malicious destruction of 'smoking gun' evidence to prevent its
disclosure in litigation," and of Westinghouse's "response [sic]
28 Westinghouse Electric Corporation's response to plaintiff's March 22,

1 page 1. EXHIBIT "4" was not before the Texas Court, but clearly
2 carries the proof beyond mere planning into actual destruction of
3 evidence. . . .

4 See id. (Westinghouse Industrial Hygiene staff "are currently
5 discarding documents").

6 Thus, Nevada Power has presented a prima facie case of
7 evidence destruction, shifting to Westinghouse the burden of
8 proving that the evidence was not destroyed. As only one example
9 of the importance to this case of the Westinghouse evidence slated
10 for destruction, those documents specifically included "dioxin-
11 furan health hazard training" procedures and guidelines issued by
12 Westinghouse for protection of its own workers, documents extremely
13 relevant to Nevada Power's causes of action sounding in failure to
14 warn and in fraud by omission. EXHIBIT "1" at page 5.²

15 The lengths to which Westinghouse will go in order to
16 keep such evidence away from Nevada Power is illustrated by the
17 troubling omission of the dioxin-furan procedure document --
18 specifically identified as a tabbed appendix to the "smoking gun"

21 ² See also Appendix 1 in support of Westinghouse Electric
22 Corporation's response to Nevada Power Company's motion for entry of
23 default, pages WIH 0127 (Westinghouse attorney notes describing at
24 least two file cabinet drawers that contained information on
25 dioxins) (top drawer contained "literature file re dioxins, training
26 books;" third drawer contained "various doc's re training in handling
27 of various chemicals (dioxin, etc.)); health hazard"); WIH 0249
28 (drawer contained "training manuals -- 'dioxin/furan health haz.
training"); WIH 0280 (22-page document at issue included as "Tab 7 --
Procedure doc -- 'dioxin-furan,..."); WIH 0314 (2nd file drawer in
cabinet contained "Literature references on chemical substances,
i.e., . . . dioxin"); WIH 0320 ("File: i.e., dioxin/furan health
hazard training" next to "File PCB: i.e., investigation & control of
contamination from transformer incidents"); and WIH 0361 (safe
practice data sheet D-5 for "dioxins").

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MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 12, 1993

TO: Konrad CailHeux

FAX #:

PHONE #:

FROM: Deb Mailander

CLIENT/MATTER: Nevada Power v. Monsanto

CLIENT/MATTER NO.: 11927.2

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