

United States of America
Before the U.S. Department of Labor

Cate Jenkins, Ph.D., Chemist
U. S. Environmental Protection Agency

COMPLAINANT

v.

William K. Reilly, Administrator
U. S. Environmental Protection Agency

RESPONDENT

Case No. 88 SWD-2

November 13, 1991

AMENDED COMPLAINT AND SUPPLEMENTAL PLEADINGS:

**Retaliation for Statements Concerning
Monsanto Corporation's Dioxin Fraud
and EPA's Criminal Investigation Thereof**

Dr. Cate Jenkins is amending her whistleblower complaint under the RCRA statute yet again to include new retaliatory acts by the Respondent, the U. S. Environmental Protection Agency (EPA). These retaliatory acts were motivated by statements by the Complainant (Dr. Jenkins) regarding EPA's criminal investigation of Monsanto Corporation's dioxin standard. The EPA is seeking to protect Monsanto from adverse publicity.

On October 29, 1991, Mr. Petruska, the Complainant's supervisor, delivered a final evaluation of the Complainant's job performance for the past year. This performance evaluation was rated as only "fully successful," rather than the "exceeds expectations" ranking received by the Complainant for the past several consecutive years. The reason for this lower job evaluation was explained by Mr. Petruska On October 16, 1991. Mr. Petruska stated several times that he was giving a lower job evaluation because the Complainant had made public statements regarding EPA's conduct of a criminal investigation of fraud by Monsanto Corporation.

The October 29 "fully successful" evaluation will result in the Complainant not receiving her annual cash award for "continued superior performance" for at least two years; reversing the precedent of the awards she has received for several years. This lower job evaluation will also jeopardize the Complainant's opportunity for good assignments and reduce her opportunity for promotion or obtaining other jobs in the federal sector.

These current pleadings address the retaliatory nature of EPA demanding compliance with this EPA policy by the Complainant, while other EPA officials are confirming in several public forums the existence of a criminal investigation of Monsanto's dioxin studies. In addition, these pleadings document the deliberate failure of the Complainant's supervisor to follow federal personnel policies in determining Complainant's work output to be evaluated against this alleged EPA policy; a deliberate contrivance to find some aspect of Complainant's work output to "downgrade." Further, Mr. Petruska did not have the authority to interpret whether or not the Complainant actually had disobeyed the EPA policy.

May 28, 1991 Pleadings, Retaliation of Including EPA Policy on Communications in Complainant's Performance Standards

On May 28, 1991, the Complainant supplemented her whistleblower complaint to include the retaliation of including "adherence to EPA policies on communicating with the public" as a criteria for ranking her job performance. As detailed in the May 28 supplemental pleadings, including this criteria constituted deliberate entrapment, apparent from the fact that the Complainant was only informed on April 29, 1991 that there was such an EPA policy purporting to prohibit statements to the public about EPA criminal investigations. This "policy" was imposed on the Complainant through performance standard process without proper notice and opportunity for comment. The Complainant attempted to redress this retaliation by discussions and memoranda to her supervisor without success. The May 28 pleadings further document that the Complainant's division director stated on March 20, 1991 that even he had never seen any EPA policy prohibiting communications on criminal investigations, and that Mr. Petruska had not circulated this "policy" to the branch as he had claimed.

Unilateral Imposition of Communication Ban Regarding EPA's Criminal Investigation of Fraud by Monsanto upon Complainant

On October 29, 1991, the Complainant's job performance evaluation was downgraded for the past year because she communicated to the public that there

was an active criminal investigation of Monsanto's conduct of its epidemiologic. This is in stark contrast to the sanctioned public communications by other EPA officials regarding the Monsanto criminal investigation, statements by Monsanto Corporation itself regarding the investigation, and the copious press coverage of the fraudulent Monsanto's dioxin studies prior to EPA opening a formal criminal investigation (the point at which the EPA policy might take effect).

On May 30, 1991, Ms. Sylvia Lowrance, the Director of the Office of Solid Waste (the EPA program office in which the Complainant works), wrote to Congressman Carroll Hubbard about the criminal investigation of Monsanto, specifically mentioning the fact that the Complainant had been instructed to provide evidence in this investigation. On June 3, 1991, Mr. Hubbard forwarded this letter from EPA to Mr. John Lyons, a Vietnam veteran. It is ludicrous that the Complainant's supervisor then downgraded the Complainant's performance several months later for a similar communication about the Monsanto investigation. In addition, EPA representatives other than the Complainant have made other definitive statements to the press confirming the criminal investigation of Monsanto on many occasions (see *Science*, February 8, 1991, page 626, the *Stars and Stripes*, etc.).

Monsanto Corporation itself has confirmed to the press on several occasions that a criminal investigation of its dioxin studies was underway. In December 1990, the *St. Louis Dispatch*, United Press International, *Chemical Week*, and the *Stars and Stripes* (a national veterans' publication) carried statements by Monsanto acknowledging the criminal investigation, and statements that Monsanto itself was requesting an EPA audit of its studies in order to obtain justification. (See the attached letter from Monsanto to EPA requesting an audit of its studies, and the Monsanto briefing in the U.S. Court of Appeals describing the EPA criminal investigation.)

Failure to Evaluate Complainant's Performance According to Federal Personnel Policies: Contrivance to find Work Output to Downgrade

The Complainant's supervisor, Mr. Petruska, was forced to disobey established federal personnel procedures in order to downgrade her performance evaluation. Complainant's finalized performance standards were only delivered on April 29, 1991. It is established personnel policy, both at EPA, and in the official Federal Personnel Manual, that an employee's job performance should only be evaluated for that period for which final performance standards are in place. This was confirmed by Mr. Carlton Cox in EPA's Office of Human Resources, after consultation with his supervisor, Mr. Chuck Smith, on October 21, 1991.

In other words, Mr. Petruska made the Complainant's performance standards retroactive so that he could find some work output to which to apply the "follows EPA communication policies" criteria. The only work products to which this criteria applied were Complainant's November 15, 1990 and January 24, 1991 submissions of evidence to EPA's National Enforcement Investigations Center.

Mr. Petruska was obviously aware of the fact that the January 14, 1991 draft performance standards had no effect, since he did not provide a midyear performance evaluation for the Complainant. (The "sign-off" portion of the final performance standards is blank, indicating that Mr. Petruska is not attempting to lie about providing a midyear review.) Furthermore, Mr. Petruska failed to give the Complainant an opportunity to rate her own performance prior to his final evaluation, which is also written, established EPA policy.

There were no assigned duties performed by the Complainant after April 29, 1991, the date her final performance standards were provided, under the "critical job element" that had as a criteria following the EPA communication policies. Thus, if Mr. Petruska had followed established personnel policies, the critical job element to which the EPA communication policy applied would have been dropped. The overall evaluation of the Complainant's performance would have been rated as "exceeds expectations."

On October 21, Mr. Cox of the Human Resources office offered to meet with Mr. Petruska and the Complainant in order to help straighten out the matter. On October 28, however, Mr. Petruska stated that he had spoken with Mr. Cox, and that no meeting had been suggested. The Complainant asked if Mr. Petruska would refuse to participate in such a meeting. Mr. Petruska said that he would not refuse. Before a meeting could be set up, however, Mr. Petruska slipped a finalized copy of the Complainant's standards under her door, a "done deal." on October 29.

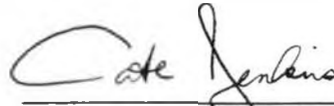
Lack of Authority for Complainant's Supervisor to Determine Whether EPA Communications Policy Followed

Mr. Petruska does not have the proper authority to determine whether the EPA policy on communications concerning criminal violations had been violated by the Complainant. On April 30, 1991, the Complainant requested the EPA Office of Criminal Enforcement Counsel whether the clause in the EPA policy on the public's right-to-know took precedence, particularly in light of the fact that extensive publicity had already occurred. On April 30, 1991 Mr. Petruska admitted

to the Complainant that he did not have the proper expertise to make such a determination, and that he would wait for a reply to the Complainant's inquiry. No reply has been received. Mr. Petruska also admitted that EPA policies could not be imposed on employees without their consent, stating as an example the EPA policy on prohibiting tape recordings. (An audio recording of these admissions by Mr. Petruska was made.)

Thus, Mr. Petruska's unilateral interpretation that the Complainant had disobeyed this policy, and subsequent downgrading of her job evaluation, is again demonstrated to be retaliatory. This retaliation is motivated by protecting the private interests of Monsanto Corporation, and not the health of U.S. citizens.

Respectfully submitted,

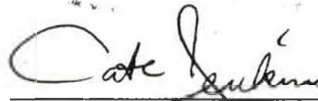


Cate Jenkins, Ph.D.
Waterside Parcel Box No. 102
Waterside Mall
Washington, DC 20024
(202) 260-4792

Dated: November 13, 1991

CERTIFICATE OF SERVICE

I hereby certify that a copy of "AMENDED COMPLAINT AND SUPPLEMENTAL PLEADINGS: Retaliation for Statements Concerning Monsanto Corporation's Dioxin Fraud and EPA's Criminal Investigation Thereof" was provided to the following parties on November 13, 1991 in the following manner:



Cate Jenkins, Ph.D.
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BY CERTIFIED MAIL

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U.S. Environmental Protection Agency
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Washington, DC 20460

BY REGULAR MAIL:

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Office of the Administrative Law
Judges
U.S. Department of Labor
1111 20th Street, NW
Washington, DC 20036



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 30 1991

JUN 01 1991

COPY

SOLID WASTE AND EMERGENCY RESPONSE

Honorable Carroll Hubbard
House of Representatives
Washington, D.C. 20515

Dear Mr. Hubbard:

Thank you for your letter of May 6, 1991, regarding John Lyons's concerns about exposure to dioxin.

The memorandum Mr. Lyons referred to was written by Cate Jenkins, a chemist in the Environmental Protection Agency's (EPA's) Regulatory Development Branch. Ms. Jenkins claimed to have information concerning certain data submitted to EPA by the Monsanto Corporation. EPA directed her to provide this information to John West and Kevin Guarino, whom she mentioned in her letter. The memorandum of January 24, 1991, that Mr. Lyons sent you was part of this information transmittal. However, the allegations and conclusions are Ms. Jenkins's personal conclusions, not EPA's.

EPA is currently reassessing the toxicological data on dioxin compounds to make sure that we are using the most accurate information in developing regulations and taking other actions that involve dioxin compounds (e.g., site cleanups).

The Department of Veterans Affairs has revised certain policies to allow veterans compensation for Agent Orange exposures that result in soft tissue sarcoma. You may wish to have your staff contact the Secretary of Veterans Affairs for the latest information in this area.

Thank you for sharing Mr. Lyons's concerns with us.

Sincerely yours,

Sylvia K. Lowrance, Director
Office of Solid Waste



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CARROLL HUBBARD
CONGRESSMAN
1ST DISTRICT, KENTUCKY

2288 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3115

Congress of the United States

House of Representatives

Washington, DC 20515

June 3, 1991

REGIONAL WHIP
COMMITTEES:
BANKING, FINANCE AND
URBAN AFFAIRS
MERCHANT MARINE
AND FISHERIES
CHAIRMAN, SUBCOMMITTEE ON
GENERAL OVERSIGHT
AND INVESTIGATIONS OF THE
BANKING COMMITTEE

John L. Lyons
139 Walnut Court
Benton, KY 42025

Dear John:

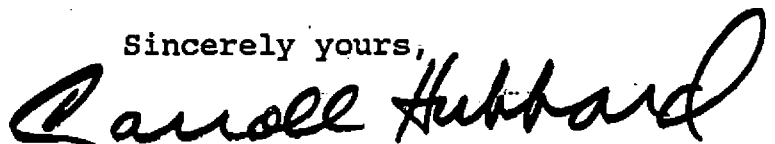
I want to share with you a copy of the response I have recently received from Sylvia K. Lowrance, Director of the Office of Solid Waste with the U.S. Environmental Protection Agency.

John, I am hopeful that the response adequately answers all your questions concerning this important matter. However, if you believe I can be of further assistance to you, please contact me again.

Thank you for providing me with the opportunity to be of assistance to you.

With best wishes for you, I am

Sincerely yours,



Carroll Hubbard
Member of Congress

CH/jl
Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

DATE: April 30, 1991

SUBJECT: EPA Policy on Communications Regarding the Criminal Investigation of Monsanto's Dioxin Studies

FROM: Cate Jenkins, Ph.D. *C. Jenkins*
Regulatory Development Branch
Characterization and Assessment Division (OS 332)

TO: Richard Emory
Office of Criminal Enforcement Counsel
OECM (LE 134 X)

I am requesting a determination from you whether or not I have violated the constitution rights of any person in my communicating with the public over the Monsanto investigation. Your office is responsible for interpreting the 1989 EPA policy regarding stating that there should be no confirmation to the public whether or not a criminal investigation was in fact underway, in order to protect the constitution rights of persons who are accused.

My immediate need for this determination stems from the fact that my supervisor, Mr. Michael Petruska, first made me aware of the existence of this policy yesterday. Mr. Petruska also informed me that this policy was the one which had been incorporated by reference as a criteria for evaluating my job performance.

The criminal investigation subject to communications with the public is that of the dioxin health studies conducted by Monsanto Corporation. On November 15, 1990, Mr. Kevin Guarino (NEIC) first requested that I not discuss the existence of the criminal investigation with the public. Mr. Guarino did not inform me of the existence of any EPA policy on this matter at this time, but merely said he was making a request, and that he had no authority to enforce such a request.

I informed Mr. Guarino essentially that not communicating with the

¹ My superiors have been aware that I have communicated with the public regarding the Monsanto investigation, but have not told me that I was violating any EPA policy in so doing, or that I was incorrectly following any other procedures.



public would serve no purpose, since the matter of the fraudulent Monsanto dioxin studies, and the investigation of same, was already a matter of public debate. I provided ample examples to Mr. Guarino on November 15 establishing that further public discussion of the Monsanto investigation would not cause any greater public revelations than had already occurred. For example, prior to the opening of any criminal investigation, my February 23, 1990 memorandum discussing the probability of fraud by Monsanto received wide press coverage. Furthermore, over the previous years, there had been extensive press coverage of the fraudulent dioxin studies by Monsanto during the course of a civil proceeding. Testimony by Monsanto officials admitting to the invalidity of their own studies had been widely circulated and commented upon by the press. Furthermore, I informed Mr. Guarino that my upcoming meeting with him, and the controversy over allowing official time for this meeting, had already become a matter of open record in another civil proceeding. Also, I had addressed a Vietnam veterans' group the prior weekend regarding the upcoming meeting on the Monsanto matter.

In addition, it is apparent that the EPA policy does not apply to Monsanto Corporation. This is because the policy clearly states that its purpose is to protect the constitutional right of persons. Monsanto is a public corporation, not defined as a person, and therefore not having rights under the amendments to the U.S. constitution.

Furthermore, I have evidence that NEIC is also at this time informing the press that a criminal investigation of Monsanto is underway. This fact supports my contention not only that there is no need to deny whether or not an investigation exists, but that EPA has waived the communication policy.

There is also an immediate health need for the public to be aware of the ongoing criminal investigation of the Monsanto studies; another justification for waiving the EPA policy regarding communications. Industry is continuing to utilize these studies as a basis for justifying exposing humans to higher levels of dioxins. The public should be properly alerted, so as to question the validity of these studies.

cc: Mike Petruska, Chief, RDB, CAD
David Bussard, Director, CAD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MICHAEL F. RYAN, et al., :

Plaintiffs, :

79 CV 747

- against - :

DOW CHEMICAL COMPANY, MONSANTO
COMPANY, HERCULES INCORPORATED,
T H AGRICULTURE & NUTRITION
COMPANY, INC., DIAMOND SHAMROCK
CHEMICALS COMPANY, UNIROYAL
INC., and THOMPSON CHEMICALS
CORPORATION, :

Defendants. :
-----X

In re :

"AGENT ORANGE" :

MDL No. 381

Product Liability Litigation :
-----X

SHIRLEY IVY, et al., :

Plaintiffs, :

CV 89-3361 (JBW)

- against - :

DIAMOND SHAMROCK CHEMICALS
COMPANY, et al., :

Defendants. :
-----X

RONALD L. HARTMAN, et al., :

Plaintiffs, :

CV 90-3928 (JBW)

- against - :

DIAMOND SHAMROCK CHEMICALS
COMPANY, et al., :

Defendants. :
-----X

AFFIDAVIT OF JAMES H. SENGER

ST. LOUIS COUNTY)
) ss.:
STATE OF MISSOURI)

JAMES H. SENGGER, being duly sworn, deposes and
says:

1. I am a former Vice-President of the Environmental Policy Staff of Monsanto Company ("Monsanto"), a defendant in the above-captioned actions. Until I retired in June 1991, I had been employed by Monsanto in various positions continuously for nearly 40 years. As Vice President of Monsanto's Environmental Policy Staff, I was responsible for the determination and implementation of the company's environmental policy. Additionally, Monsanto's medical and health sciences department, including its epidemiology group, reported directly to me.

2. I make this affidavit on the basis of personal knowledge in further support of defendants' motion to dismiss Ivy and Hartman, and in response to the affidavit of Catherine L. Jenkins, sworn to on September 2, 1991 ("Jenkins Affidavit") and submitted by the Ivy plaintiffs in further reply on their motion to remand.

3. This affidavit is addressed solely to that part of the Jenkins Affidavit (¶¶ 391-400) that charges (1) that two epidemiologic studies sponsored by Monsanto of

Monsanto plant workers exposed to dioxin were fraudulently conducted; and (2) that the reported conclusions of those studies -- i.e., that among those workers there was no statistically significant excess of cancer incidence or mortality associated with dioxin -- are therefore invalid.

4. The studies in issue, however, were peer-reviewed, and their conclusions were and are valid. Jenkins' allegations of fraud are unfounded and false. The fraud charge derives not from any competent epidemiologic analysis by Jenkins (a chemist, not an epidemiologist), nor indeed from analysis by any qualified epidemiologist or scientist. Rather the fraud allegations have been lifted from and largely parrot the same charges made by a plaintiffs' attorney in another litigation against Monsanto, Kemner v. Monsanto Co., No. 80-L-970 (Cir. Ct., St. Clair Cty., Ill.).

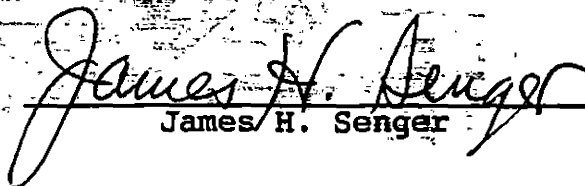
5. Kemner is an action for personal injury and property damage brought by 65 residents of Sturgeon, Missouri. Plaintiffs therein alleged they were exposed to and injured by a trace amount of dioxin released in a rail car spill of a Monsanto product, orthochlorophenol. Their attorney, without benefit of expert testimony on the point, unscientifically manipulated certain study data to attack the validity of several epidemiologic studies of Monsanto's Nitro

West Virginia plant workers, including the two studies attacked by Jenkins as fraudulent. After three and one-half years of trial, the jury found that no plaintiff had suffered bodily injury, but awarded \$1.00 to each plaintiff for economic loss and \$16.25 million in general punitive damages. On Monsanto's appeal, the Appellate Court of Illinois reversed the award both of punitive damages and for economic loss. Kemner v. Monsanto Co., 217 Ill. App. 3d 188, 576 N.E.2d 1146 (1991).

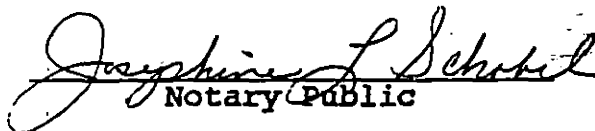
6. The Kemner plaintiffs' charges of fraud, and alleged bases for the same, were set forth in plaintiffs' brief in opposition to Monsanto's appeal. This inflammatory and inaccurate information -- the unscientific work product of plaintiffs' attorney -- was passed to Jenkins. She recycled the charges, passing them to officials of her employer, the Environmental Protection Agency ("EPA"). Although Jenkins' fraud charges do not reflect the EPA's official position, they provoked a preliminary criminal investigation of those studies by the EPA.

7. Even before news of the EPA investigation first surfaced in 1990, I had requested on Monsanto's behalf, in a letter to the EPA dated October 1, 1990, that the EPA through the auspices of the National Institute of

Occupational Safety and Health conduct a full scientific audit of the epidemiologic studies in issue. I further requested that the government publish the results of that audit in a peer-reviewed journal. A copy of my letter to the EPA is annexed hereto as an Exhibit. To my knowledge, no such government audit has been completed. Monsanto is confident, however, that the challenged studies will withstand scientific scrutiny and that the requested audit will confirm the conclusions reached by the scientists who originally conducted those studies.


James H. Senger

Sworn to before me this
31st day of October, 1991.


Notary Public

JOSEPHINE L. SCHOBEL
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. MAR. 28, 1993

JOSEPHINE L. SCHOBEL
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. MAR. 28, 1993

Monsanto

JAMES H. SENTER
Vice President

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-6873

October 1, 1990

Mr. Donald Clay
Assistant Administrator for Solid Waste
and Emergency Response
Office of Solid Waste and Emergency Response
U. S. Environmental Protection Agency
Waterside Mall
401 M Street, SW
Washington, DC 20460

RE: Monsanto Company Sponsored Health Studies

Dear Mr. Clay:

Earlier this year, an EPA employee on your staff, acting in her private capacity but utilizing the format of an intra-agency memorandum, forwarded to the EPA's Science Advisory Board accusations raised in an appellate brief filed in a private lawsuit involving Monsanto Company. The untrue allegations repeated in that memorandum referenced two health studies sponsored by Monsanto to examine any impact of possible exposure to dioxin in employees involved in the production of herbicides at Monsanto's Nitro, West Virginia plant. The allegations charged that the study results had deliberately under-reported cancer mortality. The gross inaccuracies of these charges have been the subject of prior correspondence to the Agency by myself and by Monsanto's Chairman, Richard Mahoney. Notwithstanding our efforts to correct the record, these baseless charges have been widely repeated in newspaper accounts and even before a Congressional Subcommittee where the charges were portrayed as fact, thus giving the incorrect impression that it is the government's view that the studies are misleading. Monsanto recognizes that the Agency did issue a corrective statement indicating that the employee was acting in her individual capacity, not as an Agency employee in preparing the memorandum, and that her memorandum does not reflect the Agency's official position. However, that statement has not remedied the problems caused by continual references to the accusations repeated in the memorandum which was prepared on Agency stationery.

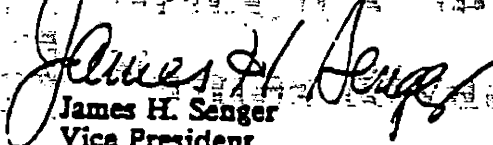
In view of the inability of Monsanto to halt or correct the many erroneous reports with respect to these two studies and in view of the extreme prejudice being suffered by Monsanto and the individual scientists associated with the studies, Monsanto is compelled to request, in the strongest sense possible, that the United States Environmental Protection Agency, through the auspices of NIOSH, perform a complete audit on the two mortality studies (authored by Zack/Suskind and Zack/Gaffey) referenced within the memorandum. Monsanto is confident that the audit will confirm the conclusions reached by the original scientists. The impartial action urged herein would serve to put an end to this false controversy. Absent such government action, Monsanto will continue to suffer damage to its reputation.

Given the Company's science-based focus, preservation of Monsanto's reputation for performing accurate world-class research is of critical importance to our business and research operations. Furthermore, since NIOSH is in the process of issuing study results based, in part, upon the same

population involved in the two studies sponsored by Monsanto, it should be important for the government to remove any stigma improperly attached to NIOSH's work as a result of the earlier charges raised against the predecessor studies. In connection with NIOSH's Dioxin Registry Program, Monsanto has previously furnished NIOSH with complete data sets regarding the mortality experience of the Company's Nitro, West Virginia work force. It is believed that Dr. Marilyn Fingerhut at NIOSH has all the data necessary to perform an impartial, independent audit. If Monsanto can provide further assistance to facilitate completion of an audit, via furnishing any additional data, it would be happy to do so.

I wish to stress that Monsanto believes the charges raised against the two studies are utterly without merit, but that Monsanto's own ability to counter these charges has been impaired by the incorrect impression created in the media that your Agency has challenged the validity of these studies. This erroneous impression is perhaps best resolved via direct government involvement in performing an independent audit of the two studies followed with a publication by the government in a peer-reviewed journal of the results of that audit. If you have other alternatives besides the suggested audit to respond to this situation, please feel free to contact my office. We look forward to receiving the commitment of the government to proceed with this work.

Sincerely,


James H. Senger
Vice President
Environmental Policy Staff

DFS:ddo/13

cc - Raymond C. Loehr, Ph.D.
Chair, Executive Committee
Science Advisory Board
Office of the Administrator
U.S. Environmental Protection Agency
Waterside Mall
402 M Street, SW
Washington, DC 20460

Donald G. Barnes, Ph.D.
Director, Science Advisory Board
Office of the Administrator
U.S. Environmental Protection Agency
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Washington, DC 20460

Marilyn A. Fingerhut, Ph.D.
Chief Industrywide Studies Branch
NIOSH
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, OH 45226-1998

excitement on the last day of the meeting. Instead of direct measures of receptor binding, they used a handy surrogate: the increased activity of the cytochrome P450 enzyme system, widely considered the most sensitive response to dioxin in all species. No toxic effects are known to occur at levels below those required for enzyme induction.

After reviewing data on the necessary dose for enzyme induction in all species, Gallo, Birnbaum, Scheuplein, and others took turns at the blackboard, trying to calculate what the "safe" level in humans might be. Their rough, back-of-the-envelope calculation: 1 to 3 picograms per kilogram per day—several hundred times higher than current U.S. standards and in the same ballpark as those set by some European countries, which arrived there by an entirely different method.

Not so fast, says Maryland's Silbergeld, who cautions against "replacing one stupid model with another." For one, a receptor-based model does not necessarily predict a

"hockey stick" curve, nor does receptor binding necessarily imply a "safe" dose, says Silbergeld, who thinks her colleagues are underestimating the intricacies of receptor theory. Nor is she convinced "that the result [of the new model] will be that different from EPA's current figure. As a scientist, I object to the EPA model. But [its predictions] may be very, very close, for totally irrelevant reasons."

Working with EPA scientists, Gallo is now setting out to refine the risk number for dioxin. George Lucier and his colleagues at NIEHS are doing the same. The idea is to build a conceptual model of cellular responses to dioxin and then turn that over to mathematicians to develop a predictive tool to estimate dioxin's risks—not just for cancer but for any toxic endpoint. William Farland, who runs the dioxin risk assessment effort at EPA, expects a "straw man" model to be complete in about a year. The next step would be to see if it passes muster with the

scientific community—and if it in fact offers an advantage over the status quo. "This is an improvement, not a cure-all," warns Lucier.

Once the model is complete, perhaps the biggest question, in terms of dioxin's danger, is the background exposure of the general population, which comes chiefly from the diet but also from environmental sources. If background exposure is comfortably below the practical "threshold" needed for receptor activation (point-B in the figure), then there may indeed be a safe dose. But if background exposure is higher, near the "threshold" (point-A), "then there is no margin for additional exposure," says Moore. Background exposure is now estimated to be about 1 picogram per kilogram per day—slightly below the rough "safe" number the Banbury group came up with—which may not leave much room for additional exposure.

At this juncture, EPA officials are enthusiastically embracing the new scientific approach. Don Barnes, a dioxin expert and executive director of EPA's Scientific Advisory Board, talks of "a real breakthrough: sea change in our view of dioxin." In fact, the topic is deemed important enough that special briefing is planned for EPA administrator William Reilly and top agency officials.

But how far is EPA likely to go if a modeling exercise does reveal that dioxin is less risky than the agencies now calculate. Gough of OTA, for one, thinks that the answer is not very far. "Dioxin is the most potent carcinogen ever tested. If they back off this one, they will open the door to every chemical manufacturer in the world" who chemical acts in the same way. "That door they will reluctantly open," Gallo contends that the door will open just a crack. There are less than a dozen carcinogens known to work the way dioxin does. And predicts that the new receptor-based model will cut both ways: some carcinogens will turn out to be far riskier than predicted; others, like dioxin, less risky.

Moore agrees that change will not be easy. "For issues this emotional, you have to be purer than Caesar's wife anytime you propose to change the status quo. It would have to be a fair degree of support within the scientific community for it to come to pass, especially if the potential change is a 'relaxing' of the number."

Eric Bretthauer, EPA's assistant administrator for research and development, cedes that "the agency hasn't traditionally relaxed numbers." But, he says, "I think there is a willingness at the policy level to take it on. My view is we have to be open to changes in science, whatever their effect on regulatory policy." He adds, however, "the science has to be very clear."

■ LESLIE ROH

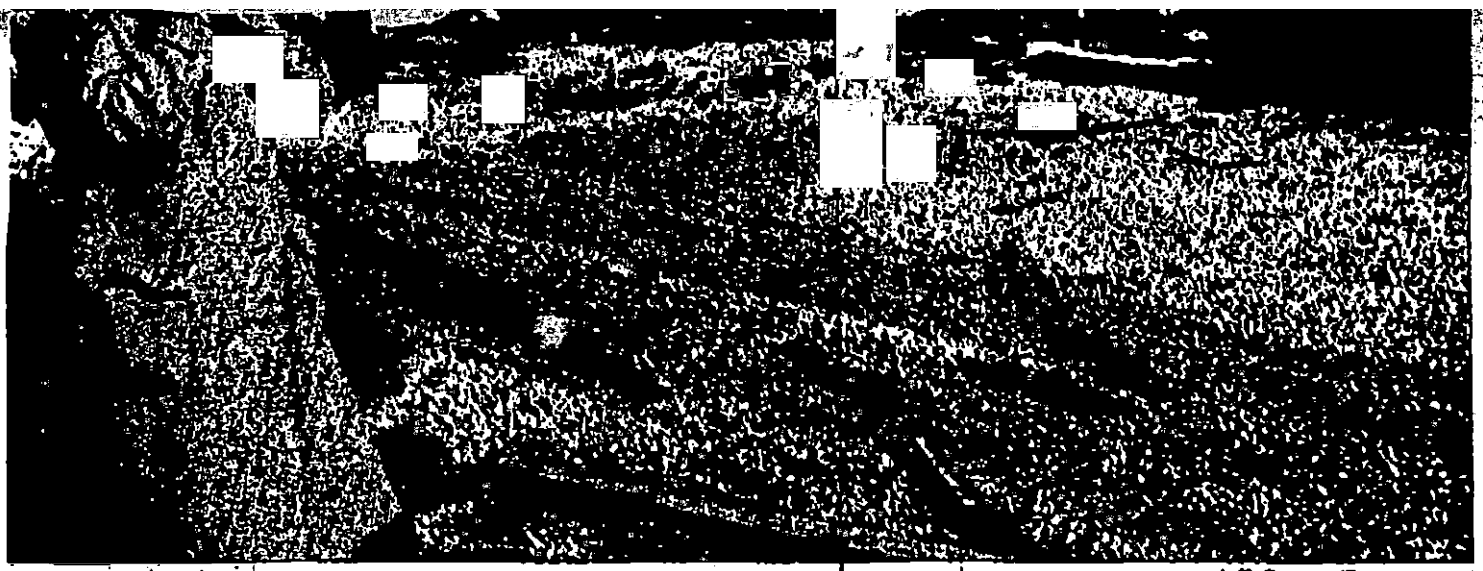
Monsanto Studies Under Fire

The Environmental Protection Agency has launched a criminal investigation to determine whether Monsanto Corp. of St. Louis falsified three epidemiologic studies of its workers, which showed no increased health risks from dioxin other than the skin disease chloracne. The investigation, which EPA is mandated to conduct in response to a petition requesting it from the activist group Greenpeace USA, should resolve, once and for all, the allegations that have been swirling around these studies for almost a year. EPA officials would not confirm or deny the existence of the investigation, but *Science* obtained internal agency memos discussing it.

The EPA has not notified Monsanto that it is under investigation, but says Dan Bishop, the company's director of communications, "We hope there is one, we welcome it. It is the only way to put this matter to rest." In fact, the company wrote to EPA twice over the past few months, begging the agency to perform a scientific audit of the studies. Bishop calls the fraud allegations "bald-faced lies."

The main charges are that Monsanto epidemiologists misclassified exposed workers as unexposed in their control group and that they omitted workers who had died of two cancers that have been linked to dioxin exposure in other epidemiologic studies. The charges first came to light last February when a plaintiff's lawyer in *Kemner v. Monsanto*, a case involving a tank-car accident, reviewed the studies, decided they were fraudulent, and alerted the press to the alleged cover-up. That brought in Greenpeace, and also Cate Jenkins, a chemist in EPA's regulatory branch. She has since made the Monsanto studies something of a personal crusade, petitioning EPA's Science Advisory Board to audit these and other studies, and meanwhile sending numerous copies of her memos to various environmental groups, Vietnam veterans organizations, and her friends on Capitol Hill. Jenkins maintains that Monsanto's studies have directly affected how EPA regulates dioxin. Other agency officials deny that, saying that EPA's current—and very stringent—standard for dioxin exposure is based on animal studies.

Everyone *Science* spoke with who is familiar with the Monsanto studies agrees that they are flawed, but probably not as the result of criminal intent. The scientific questions about the studies may now be moot, however, as all but six of the Monsanto workers in the three studies have been carefully reexamined as part of a larger federal study just published, which suggests that high dioxin doses can cause human cancer (see box on page 625). The other questions may be tougher to resolve. When EPA completes its investigation, the agency will report to the Justice Department and recommend either that they prosecute or close the case. ■ L.R.



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L.T. Spence/Post-Dispatch

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See STORM, Page 15

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See BEL-AIRE, Page 10

Britain's New Premier Names Rivals To Cabinet

Compiled From News Services
LONDON — Prime Minister John Major welcomed his defeated rivals into his Cabinet on Wednesday and called for a nation in which all may prosper according to "their talent, their application and their good fortune."
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Major, at 47 the youngest prime minister of the century, had displayed both talent and tenacity in overcoming childhood poverty and rising rapidly through the government.
It was his fortune to be the popular choice of a party torn by rebellion against his patron, Margaret Thatcher.
Hours after saying farewell to her, Major announced a new Cabinet line-
See MAJOR, Page 12

Greenpeace, Chemist Challenge Monsanto On Dioxin Findings

By William H. Frelvogel
Post-Dispatch Washington Bureau
WASHINGTON — Greenpeace and a whistle-blower at the Environmental Protection Agency are accusing Monsanto Co. of fraudulently understating the health risks of dioxin.
Both the international environmental organization and the EPA chemist called upon the agency to conduct an independent evaluation of what they say are flawed Monsanto studies indicating that dioxin has little health effect on humans.

The EPA chemist, Cate Jenkins, also urged a criminal investigation of the firm, alleging that it covered up evidence of dioxin's ill effects.
A Monsanto spokesman said Wednesday that there appeared to be a criminal inquiry under way and so declined to comment on Jenkins' charges.
But the company said that Greenpeace's allegations were untrue and that the firm stood by the studies. He noted that Monsanto sent a letter to
See DIOXIN, Page 10

The Stars and Stripe

The National Veteran

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Our 114th Year

NUMBER 49

WASHINGTON, D.C., MONDAY, 10 DECEMBER 1990

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EPA Probing Alleged Manipulation Of Dioxin Health Studies

Washington, DC (UPI)—The Environmental Protection Agency is investigating charges that a chemical company improperly manipulated scientific studies to minimize the possible health threat posed by dioxin, officials confirmed 29 Nov.

Disclosure of the EPA probe came as Greenpeace, the international environmental group, released a report detailing alleged irregularities in studies sponsored by Monsanto Co., a maker of pesticides and other chemical products.

Greenpeace also filed a petition with the EPA urging the agency to tighten its controls on dioxin. The petition maintained the EPA heavily relied on the Monsanto studies in setting its regulatory policies, but agency officials said that was not the case.

The petition cited "credible concerns that the agency's existing (dioxin) human effects data base is polluted by incorrect information, that the human health effects of (dioxin) may be far worse than originally believed, and that the polluted data has led the agency to 'go soft' on (dioxin)."

In its report, Greenpeace said the EPA's Office of Criminal Enforcement had begun preliminary inquiries into possible manipulation of three key dioxin studies sponsored by Monsanto.

Asked about the Greenpeace report, an EPA official who asked not to be identified said: "There is an investigation underway." The official declined to elaborate on the specifics of the investigation.

Glynn Young, a spokesman for Monsanto, said the company had not been notified of any EPA investigation and that it stood by the studies as sound and unbiased. At the same time, he said Monsanto had asked the EPA to review the studies again in light of the allegations.

Young said the allegations against the studies arose from litigation against Monsanto in which Greenpeace was an active participant. He characterized the Greenpeace report as a "rehash" of issues raised in court.

The Monsanto studies have been cited by some scientists as challenging federal policies that generally categorize dioxin as a highly toxic agent to humans.

Those critics say while laboratory animal studies suggest high toxicity, harmful effects have not been verified in exposed humans.

Dioxin is a by-product in the manufacture of certain pesticides and herbicides, most notably Agent Orange, the defoliant widely used during the Vietnam War. It also is generated in incineration and the bleaching of wood pulp for white paper products.

The three Monsanto studies at issue examined health effects among workers at the company's herbicide plant in Nitro, WV, who were exposed to dioxin during routine operations from 1955 to 1977 as well as in a 1949 industrial accident that released larger amounts of the contaminant.

The studies, published from 1980 to 1983, are important because they represent one of the most comprehensive assessments of dioxin's health impact on humans.

The Monsanto studies found no conclusive evidence of serious health effects—such as cancer or liver damage—due to dioxin exposure. As with other studies, the Monsanto reports suggest the only

Purple Heart



Joseph R. Hays, left, national center vice commander of the Military Order of the Purple Heart (MOPH), presents Rep. Christopher Smith (R-NJ), a member of the House Veterans' Affairs Committee, with a commemorative copy of the MOPH's book, "Legacy of the Purple Heart." (UPI Photo)

consistent ailment among exposed workers was chloracne, a severe form of skin lesions.

Among other allegations, the Greenpeace report suggested the Monsanto studies were manipulated in that:

• Disease rates among dioxin-exposed workers were compared to illness in a "control" group of workers who supposedly were not exposed, but actually were. As a result, the report said, differences

EPA Probing, Pg. 15

GAO: VA Home Loan Program May Lose \$2.5 Million

By Darla Haugen

A rash of housing foreclosures expected to result from a slumping

million outstanding home loans were being serviced by the program. These loans had an estimated face value of \$152 billion, 640 million of which were insured

happened in places like Houston, Oklahoma City and Denver," he added. "Now it looks like the problem is going to move into the Northeast and the Midwest, where a general recession is likely to be felt most."

While some business believe

he said.

But now, the program is plummeting into the red. The present crisis, the VFW spokesman said, can be blamed on two factors: the ailing economy and the Reagan administration-mandated VA divestment from its home loan portfolio in the early 1980s.

"Without a strong portfolio, the program became unfit for the difficult financial times which were on the way," he said.

A spokesman for the American

was sacked by the Reagan administration, and the fact that it will be incurring further losses really comes as no surprise to us."

This notwithstanding, the GAO report indicated that foreclosures actually dropped from 49,000 in Fiscal Year (FY) 1988 to 43,000 in FY 1989.

"This was the first year the VA experienced a lessening of home loan foreclosures since 1980," the report said.

Some legislative changes

percent fee from everyone, under new law veterans will be required to pay from zero to 1.875 percent of the home's down payment to receive a loan. This, according to the House Subcommittee staffer, is expected to reduce the number of loan defaults and subsequently reduce foreclosures in the long run.

The law also created "The

ultimately make the older Loan Guarantee Fund still more reliant on congressional appropriations since new loan origination fees will be deposited in the new fund. "While the future losses don't count against us," the House Appropriations aide said, "it means less money will be available for the VA--and the government generally--in the future."★

EPA Probing

From 1

in disease rates between the two groups were muted.

▲ Dioxin-exposed workers were arbitrarily placed into different groups that were studied separately. The groups were so small in number that it became virtually impossible to detect statistically significant increases in disease among exposed workers compared to the unexposed.

▲ Some cases of cancer and heart disease among dioxin-exposed workers inexplicably were excluded from some studies.

Greenpeace said its report, entitled "Science for Sale," was based on independent analysis of the Monsanto studies, internal Monsanto memos and the sworn testimony of Monsanto employees and consultants.

EPA officials said that, as with other chemicals, the agency largely developed its dioxin policies on the basis of laboratory animal studies in which relatively low doses of dioxin caused cancer, birth defects and liver, kidney and nerve damage.

Those health effects have not been observed in studies of Vietnam veterans exposed to Agent Orange nor in forestry workers with long-term occupational exposure to Agent Orange nor in forestry workers with long-term occupational exposure to dioxin-contaminated herbicides.

The EPA has acknowledged the uncertainty about dioxin's impact on human health, but the agency has decided to err on the side of caution and has pushed the paper industry and others to reduce dioxin contamination.★

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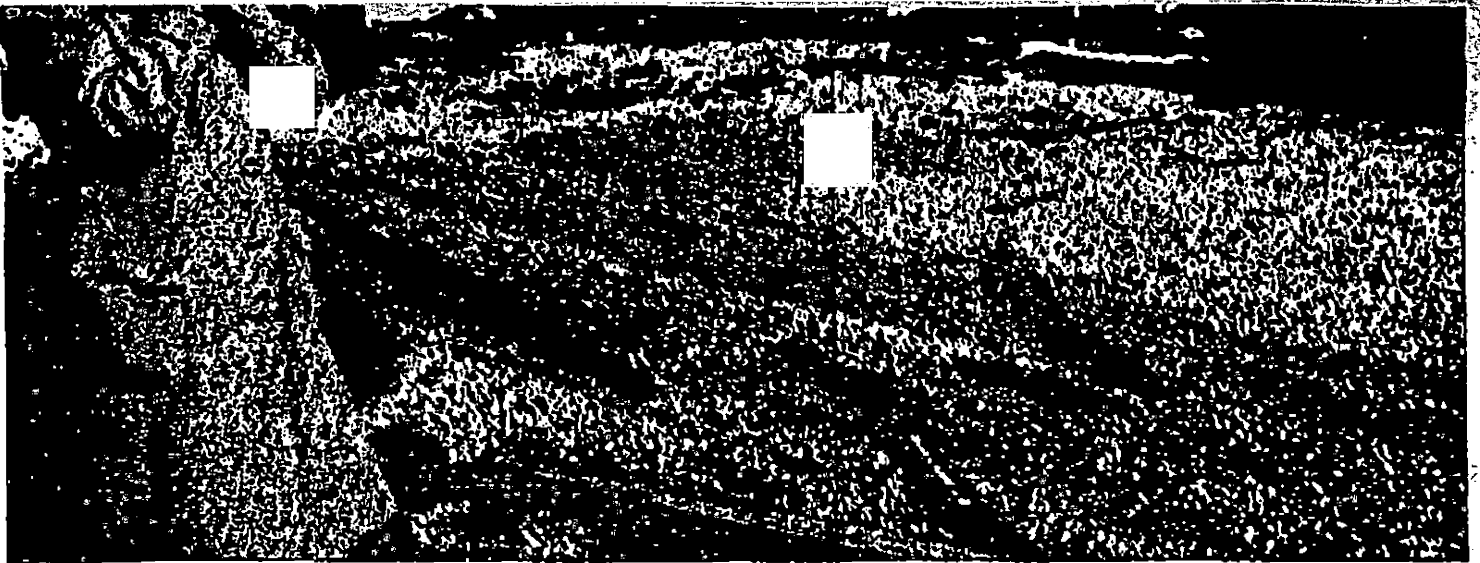
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L.T. Spence/Post-Dispatch

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By William H. Freivogel

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But the company said that Greenpeace's allegations were untrue and that the firm stood by the studies. He noted that Monsanto sent a letter to

See DIOXIN, Page 16

Groups attack dioxin studies, ask MPCA to revoke permits

By Dana Rabinoff
Staff Writer

Four environmental groups urged the Minnesota Pollution Control Agency Thursday to revoke permits that they contend were based on fraudulent studies of dioxin, a toxic chemical waste, by two major chemical manufacturers.

The MPCA permits allow the operation of large garbage incinerators and paper mills that the environmentalists contend could be emitting dioxin. They charged that the industry studies were manipulated to conclude that there is no association between human exposure to dioxin

and adverse health effects.

The studies were conducted or financed by Monsanto Co. of St. Louis and BASF Corp. of New Jersey.

MPCA Commissioner Gerald Willet told the environmentalists yesterday that his agency shares their concerns about dioxin. He said the MPCA treats dioxin "as by far the most toxic chemical we regulate."

However, Willet said the MPCA has not used the industry studies in developing its dioxin-control regulations. Rather, he said, it relies on studies by the U.S. Environmental Protection Agency (EPA) that fo-

cused on dioxin's effect on laboratory animals.

"Our permits reflect our philosophy that where conflicting information exists, the safest course is to go with the data that lead to the most protection of human health," Willet said.

He met yesterday in St. Paul with representatives of the four groups: Grassroots USA, Clean Water Action, Dakota County Citizens Against Burning and Citizens Concerned over the Foshich Expansion, which is based in Cloquet, Minn.

Grassroots and Clean Water Action are national groups that have been

active in Minnesota. The Dakota County group was formed to fight the county's proposal to build a large incinerator, and the Cloquet group was formed recently to challenge plans by Potlatch Corp. to expand its pulp mill operations greatly in the northwestern Minnesota city.

The four groups contended that the incinerator and the mill, as well as similar plants elsewhere in Minnesota, could emit dioxin.

Grassroots petitioned the EPA yesterday to implement a national strategy to eliminate major sources of dioxin. The environmental group asked that the MPCA support the

petition, but Willet declined to commit the agency. He said, however, that he would consider such support.

In Washington, D.C., the EPA said it is looking into Grassroots' charges.

John D'Argo, of the Chicago office of Grassroots, said the rally at the MPCA was among seven held around the nation yesterday to call attention to dioxin.

The environmentalists noted that the MPCA recently backed off from a permit standard for Minnesota rivers and lakes that would have required major changes by paper mills in particular. The MPCA staff was convinced by testimony produced by Boise Cascade Corp., which operates a mill in International Falls, Minn., that there was a lot of uncertainty about dioxin and that the EPA might overstate its toxicity.

UPI Wire & Journal of Commerce Wire Stories on Monsanto fraud

[Via Greenbase]

[2] 30-Nov-90 0:58 EST

(Editors: Repeating earlier story)

EPA probing alleged manipulation of dioxin health studies
By GEORGE LOBSENZ

WASHINGTON (UPI) - The Environmental Protection Agency is investigating charges that a chemical company improperly manipulated scientific studies to minimize the possible health threat posed by dioxin, officials confirmed.

Disclosure of the EPA probe came as Greenpeace, the international environmental group, released a report Thursday detailing alleged irregularities in studies sponsored by Monsanto Co., a maker of pesticides and other chemical products.

Greenpeace also filed a petition with the EPA urging the agency to tighten its controls on dioxin. The petition maintained the EPA heavily relied on the Monsanto studies in setting its regulatory policies, but agency officials said that was not the case.

The petition cited "credible concerns that the agency's existing (dioxin) human effects data base is polluted by incorrect information, that the human health effects of (dioxin) may be far worse than originally believed, and that the polluted data has led the agency to 'go soft' on (dioxin)."

In its report, Greenpeace said the EPA's Office of Criminal Enforcement had begun preliminary inquiries into possible manipulation of three key dioxin studies sponsored by Monsanto.

Asked about the Greenpeace report, an EPA official who asked not to be identified said: "There is an investigation under way." The official declined to elaborate on the specifics of the investigation. Glynn Young, a spokesman for Monsanto, said the company had not been notified of any EPA investigation and that it stood by the studies as sound and unbiased. At the same time, he said Monsanto had asked the EPA to review the studies again in light of the allegations.

Young said the allegations against the studies arose from litigation against Monsanto in which Greenpeace was an active participant. He characterized the Greenpeace report as a "rehash" of issues raised in court.

The Monsanto studies have been cited by some scientists in challenging federal policies that generally categorize dioxin as a highly toxic agent to humans. Those critics say while laboratory animal studies suggest high toxicity, harmful effects have not been verified in exposed humans.

Dioxin is a by-product in the manufacture of certain pesticides and herbicides, most notably Agent Orange, the defoliant widely used during the Vietnam War. It also is generated in incineration and the bleaching of wood pulp for white paper products.

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amounts of the contaminant.

The studies, published from 1980 to 1983, are important because they represent one of the most comprehensive assessments of dioxin's health impact on humans.

The Monsanto studies found no conclusive evidence of serious health effects - such as cancer or liver damage - due to dioxin exposure. As with other studies, the Monsanto reports suggest the only consistent ailment among exposed workers was chloracne, a severe form of skin lesions.

Among other allegations, the Greenpeace report suggested the Monsanto studies were manipulated in that:

- Disease rates among dioxin-exposed workers were compared with illness in a "control" group of workers who supposedly were not exposed, but actually were. As a result, the report said, differences in disease rates between the two groups were muted.

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Greenpeace said its report, entitled "Science for Sale," was based on independent analysis of the Monsanto studies, internal Monsanto memos and the sworn testimony of Monsanto employees and consultants. EPA officials said that, as with other chemicals, the agency largely developed its dioxin policies on the basis of laboratory animal studies in which relatively low doses of dioxin caused cancer, birth defects and liver, kidney and nerve damage.

Those health effects have not been observed in studies of Vietnam veterans exposed to Agent Orange nor in forestry workers with long-term occupational exposure to dioxin-contaminated herbicides.

The EPA has acknowledged the uncertainty about dioxin's impact on human health, but the agency has decided to err on the side of caution and has pushed the paper industry and others to reduce dioxin contamination.

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Charles Laszewski, "EPA to probe alleged problems with Monsanto dioxin studies; Greenpeace says reports falsified," in "The Journal of Commerce," Pacific Edition, November 30, 1990, pp. 7A.

EPA to probe alleged problems with Monsanto dioxin studies; Greenpeace says reports falsified

The U.S. Environmental Protection Agency confirmed Wednesday it was investigating whether Monsanto Corp. manipulated and falsified studies of workers exposed to dioxin to make the chemical appear less harmful to humans.

The environmental group Greenpeace, in a report, claimed that three studies done by the company in the early 1980s, and relied upon by the EPA, falsely concluded there was no apparent link between dioxin and the deaths of employees at the company's Nitro, W.V., herbicide plant.

Dan Bishop, director of Monsanto corporate communications in St. Louis, said he was unaware of that investigation, but his company asked the EPA in October to do an audit of the studies.

"I'm delighted to hear it and welcome it," he said of the EPA investigation. "I think that is the only way we can put it to rest. I wish they had started yesterday. We deeply resent these accusations. We stand on the record with those three studies."

But Greenpeace's Joe Thornton, who wrote the report on dioxin, was just as adamant about the Monsanto studies and another one done by the giant German chemical company BASF. Both studied employees who either worked routinely with dioxin-contaminated products or were exposed to it through accidents.

"These are politically motivated and untrue," Mr. Thornton said of the dioxin studies.

Gwen Brown, an EPA spokeswoman, said the agency had not seen the Greenpeace report and would not be able to comment. She confirmed there was an investigation under way by the agency's office of criminal investigation into Monsanto's handling of the studies.

The problem is that industries have used the studies to claim that no deaths have occurred because of dioxin exposure, Mr. Thornton said. Also, the studies have been used to convince EPA not to aggressively ban dioxin from the environment, he said.

The EPA has from time to time said it was going to downgrade the health risk of dioxin, although it has never followed through because of objections from its science advisory board. The result has been constant uncertainty on just how dangerous dioxin, which is now present in most humans, might be to health.

Earlier this year, the Minnesota Pollution Control Agency backed off from a stringent dioxin standard for state rivers and lakes that would have required major changes by paper mills in particular. The agency staff was convinced by testimony produced by Boise Cascade that there was lot of uncertainty about dioxin and the EPA might be re-evaluating its toxicity.

But, Mr. Thornton said, Greenpeace's evidence of false studies, combined with numerous other studies that indicate dioxin may cause heart disease, lymphatic cancers and neurological effects, verifies the animal studies that for years have shown dioxin to be one of the most toxic chemicals known. Even minute amounts have caused cancer in lab animals.

Greenpeace was expected to deliver a petition Thursday to the EPA in Washington demanding that the agency stop relying on the Monsanto studies, revise all policy decisions based on it and establish a national dioxin program to eliminate all major sources of dioxins, Mr. Thornton said. That would require phasing out the use of chlorine in pulp and paper mills, prohibit [sic] chlorine in any form in incinerators and eventually eliminating all uses of pure chlorine in industry, he said.

Mr. Thornton said the Monsanto studies included people who were not routinely exposed to dioxin, which diluted the results. Testimony by the researchers in a Missouri court against Monsanto verified many of the study's problems, he said.

###

Groups attack dioxin studies, ask MPCA to revoke permits

By Dean Robinson
Staff Writer

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Ecology is for life, not just jobs

Nov. 30, 1990

Edmonton Journal

BODIAN KIPLING

Washington

Not long ago air pollution was blamed on killer trees. Seriously. Former U.S. president Ronald Reagan's chief of staff, Donald Regan, claimed that trees fouled the air. Smokestacks, car exhausts, industrial fumes, he tried to make us believe, have caused no problems. Trees were the villains.

That kind of crazy talk has been muted in the White House though given half a chance John Sununu, President Bush's Donak Regan, would soon revive it. A month ago he failed, by a mere whisker, to kill the Clean Air Act that Canadians hope will clean up acid rain.

Sununu is not alone. Many dinosaurs roam along the Potomac. The struggle for a cleaner environment can never stop because one person's pollution is another person's profit.

For example. Because herbicides are very profitable, chemical industry giants such as Monsanto and BSAF now stand accused — not by any court but by a private organization — of promoting scientifically fraudulent studies minimizing dangers associated with their use.

This particularly nasty case involves

dioxin, a byproduct of herbicides, papermaking, waste incineration and several other industrial processes. Dioxin is one of the most toxic synthetic chemicals known to science.

Greenpeace, the aggressive environmental advocacy organization, petitioned the U.S. Environmental Protection Agency on Thursday to "revoke all past decisions based on these studies." Greenpeace says new scientific evidence shows dioxin to be far more toxic to humans than previously thought.

Reputable scientists have disagreed about dioxin for years and are not likely to reach common ground just to please Greenpeace. But corporate profits are not the only reason for the impasse. Scientific reputations are at stake. The U.S. government could be liable for billions of dollars in damages if the courts found that dioxin gave people cancer while federal regulators winked at scientific fraud.

No, the issue of environmental responsibility is not going to be settled. But not all is bleak. People are beginning to realize the economic cost of pollution is too serious to be left to conventional economists.

Slowly but surely, an emerging academic discipline offers some hope. Call it "ecological economy" — a method of factoring

all expected costs into business or policy decisions.

For example, we no longer build smelly pulp mills in cities because it costs too much to clean up. The same logic applies to most business decisions. That's ecological economics.

It is a reasonable assumption that global warming, poisons in ground water, the ozone hole, oil pollution, and acid rain are corrosive — destroying before our eyes architectural jewels such as Prague and Cracow, would not be as severe had the link between the ecology and economy been acknowledged 30 or 50 years ago.

Instead, like John Sununu of the word keep saying: Money is money. If push comes to shove, the White House has said repeatedly, concerns about the economy will top environmental considerations.

But we can wake up even the brain-dead in politics. Rattle them roughly enough until they see that ecological economics can work — that the cost-benefit analysis of any major economic decision must include probable cost of ecological consequences.

With local national governments everywhere will wake up in time.

Bodian Kipling is a Canadian freelance writer living in Washington D.C.

From the editorial page
Anne Notnes

1705-954-9021

United States of America
Before the U.S. Department of Labor

Cate Jenkins, Ph.D., Chemist
U. S. Environmental Protection Agency

COMPLAINANT

v .

William K. Reilly, Administrator
U. S. Environmental Protection Agency

RESPONDENT

Case No. 88 SWD-2

May 28, 1991

AMENDED COMPLAINT AND SUPPLEMENTAL PLEADINGS

The Complainant, Dr. Cate Jenkins, is supplementing the record in the above mentioned case to include new retaliatory actions by the Respondent, the U.S. Environmental Protection Agency (EPA). These supplemental pleadings document the continuing retaliation against the Complainant for her efforts to control dioxin exposures, which were first brought to the Department of Labor (DOL) on April 11, 1988. As of this date, the DOL has failed to provide the Complainant with a hearing,* the only vehicle that could prevent further retaliation and redress the past adverse personnel actions.

The recent retaliatory acts, subject to these pleadings, entail the imposition of new, retroactive, entrapping, and highly retaliatory clauses upon the Complainant through her job performance standards, upon which her employment conditions are based. On April 29, 1991, Complainant's supervisor, Mr. Michael Petruska, first provided a signed, effective copy of Complainant's official performance standards. The two new clauses in question are as follows:

* Currently, the Secretary of Labor has on her desk for review the issue as to whether federal employees are protected under the environmental statute whistleblower provisions. Review of this issue should have been completed in the early fall of 1989. Failure to do so has left the Complainant in the adverse situation described herein and in previous pleadings.

First, a clause prohibits Complainant from deviating from inapplicable (and probably illegal) EPA policies regarding communication with the public. As a result of this entrapping clause, prior communications with the public about the Monsanto criminal investigation will be used to downgrade her job performance evaluation, and possibly to support termination of her employment. (This clause was also inserted into the Complainant's performance standards as a mechanism to spare Monsanto from adverse publicity.)

The second retaliatory clause forces the Complainant into the impossible task of tailoring technical and scientific judgements for new hazardous waste listings to an available budget. This clause does not simply limit the scope or certainty of her scientific and technical assessments to the available budget. The second clause was added after the performance standards Complainant had helped draft in the fall of 1990, and was totally unknown to the Complainant until April 29, 1991. Mr. Petruska's spurious excuse for not telling the Complainant of the existence of the second clause in her standards was that since the Complainant had in the past refused to sign her standards, it was not necessary to make her aware of the provisions or provide an opportunity for comment (audio recordings are available).

The retaliatory nature of the two clauses is explained below. The motivation for the two retaliatory clauses is also discussed.

RETALIATORY CLAUSE ON ADHERENCE TO EPA POLICIES ON PUBLIC COMMUNICATIONS

The retroactive clause in the Complainant's performance standards regarding adherence to previously unidentified EPA policies on public communications is a strategy to give the Complainant an unsatisfactory rating based on her unwitting failure to adhere to it. An unsatisfactory performance rating could be used to justify an onerous intensive supervisory period on Complainant, or even justify termination of Complainant's employment. The clause was inserted into the Complainant's standards in a surreptitious manner, with no notice of the meaning of the clause, designed to entrap the Complainant.

This clause on adherence to EPA communication policies is motivated by a desire by EPA to protect Monsanto Corporation from adverse publicity. On February 23, 1990, Complainant first brought to EPA's attention fraudulent dioxin health studies performed by Monsanto on its workers. In the ensuing months, Complainant worked with EPA's National Enforcement Investigation Center (NEIC) to assist in a criminal investigation of Monsanto's conduct of these

studies.* Complainant's February 23, 1990 memorandum (prior to the initiation of an official EPA investigation) and subsequent materials prepared by the Complainant to support the investigation were also subject of press coverage. Such adverse press coverage has been shown to directly effect the economic health of corporations in the past. The retaliatory motivations for including this clause in the Complainant's standards is also indicated by the fact that no other staff member, even those participating in criminal investigations, has this or a similar clause in their performance standards.

The Complainant's superiors failed to provide notice of the existence or applicability of the EPA policy on communications before the period where the Complainant was to be held liable for adhering to it. This constitutes entrapment. On April 29, 1991, Mr. Petruska first informed the Complainant that the clause "follows all EPA policies regarding communicating with the public" referred to an hereto unknown EPA policy on criminal investigations. EPA employees were not to confirm or deny whether EPA was pursuing a criminal investigation. The Complainant was unaware that the clause in her performance standards ("follows EPA procedures on communications with the public") referred to criminal investigations. At the time she reviewed the draft standards in the fall of 1990, she assumed that the clause referred to obtaining the proper written concurrences for certain categories of correspondence with the public. Because the clause was moved to a more prominent position in the final version of the performance standards provided on April 29, 1990, the Complainant was prompted to ask Mr. Petruska to what he referred.

Mr. Petruska stated that the clause referred to the EPA policy on not confirming or denying the existence of a criminal investigation, namely that being conducted against Monsanto. Mr. Petruska assured the Complainant that he was aware of no other EPA policy regarding communications with the public, and this particular policy on criminal investigations was the only policy to which the clause in the performance standards referred. Mr. Petruska claimed that he had provided earlier notice of this policy to the Complainant, saying he had distributed a copy to every staff member in the first month of 1991. This is untrue, since neither the Complainant nor other staff member received such a policy any time over the past year.

Further proof of the intent to entrap the Complainant is seen by the fact that Mr. Petruska never took any opportunity to notify the Complainant that she had not adhered to EPA policies after she distributed her November 15, 1990 and January 24, 1991 memoranda which referenced the EPA criminal investigation against Monsanto. This would have been the appropriate

* The previous refusal of Complainant's supervisor to allow her to even participate in the Monsanto investigation as part of her duties was subject to an amended whistleblower complaint filed with the Secretary of Labor in September, 1990.

time for a supervisor to bring to the Complainant's attention her failure to follow the alleged EPA policy.

Other compelling evidence exists that Complainant's superiors were attempting to entrap the Complainant: The Complainant had a conversation with her division director, Mr. David Bussard, on March 20, 1991 regarding the existence of any EPA policy on communications about criminal investigations. Mr. Bussard stated that he had never seen such an EPA policy, although he believed one existed. The Complainant informed Mr. Bussard not only that she had never seen such a policy, but had seen a Department of Justice directive to federal agencies stating that unlike criminal investigations of private citizens, the government was obligated under the law to reveal to the public certain aspects and/or the existence of criminal investigations of corporations. Mr. Bussard acquiesced, and did not follow up the conversation later by supplying the Complainant with a copy of the policy. (An audio recording of this conversation with Mr. Bussard is available.)

On November 14, 1990, there was an ideal opportunity for the Complainant to have been notified of this EPA policy, if it were applicable. It was this occasion which provided the greatest degree of assurance to the Complainant that there was no reason not to speak of the ongoing criminal investigation to the public. Mr. Kevin Guarino, EPA's NEIC investigator on the Monsanto case, after having completed an extensive interview with the Complainant about her evidence, called her up on the telephone. He requested that she not speak of the investigation. She replied that this request was somewhat belated, since she had already referenced the investigation in an open public document, when she amended her whistleblower complaint in September, 1990 over her superiors failure to allow her to participate. Complainant also told Mr. Guarino that she had spoken of the upcoming Monsanto investigation in a speech before the National Coalition of Vietnam Veterans the previous weekend.

The reasons Mr. Guarino gave for not speaking to the public about the investigation were also weak. First, and most importantly, Mr. Guarino did say that his request was based on any EPA policy. He did not allude to an EPA policy in any manner. Second, the rationale Mr. Guarino gave for not speaking to the public was that he might have to speak to "Monsanto executives," and presumably wanted any relationship developed in such a meeting to be smooth and conducive to his personal ends. (The awe with which Mr. Guarino spoke of his future meetings with these Monsanto executives came through loud and clear on the tape recording.) Furthermore, if there were a genuine need to be silent about the investigation had any real importance, then Mr. Guarino should have made the request in September of 1990 when he first contacted the Complainant.

The legality of the EPA policy not to confirm or deny the existence of a criminal investigation is also in question, or the ability of EPA to force its employees to adhere to this policy. The stated purpose of the policy is supposedly to protect the constitutional rights of the accused, as well as to facilitate an investigation. There is no conceivable constitutional right of a person (much

less a corporation such as Monsanto) under the constitution to not being subject to open accusations of crimes. The only constitutional guarantee is to be assumed innocent by the court prior to a trial.* Others are free (under the constitution) to make responsible allegations in any arena.*

Furthermore, no facility of investigation could have been achieved by keeping the existence of a criminal investigation of Monsanto's study secret, since extensive press coverage of the fraudulent studies occurred before the initiation of the investigation. Monsanto itself went on record that in October, 1990, it had itself requested such an investigation. Extensive allegations about the fraudulent Monsanto studies were covered by the press beginning in the early 1980's, when the studies were at issue in suits brought by Monsanto's Nitro, West Virginia employees, then later by a township in Missouri (Kemner, et al. v. Monsanto). Further press coverage of the allegations against Monsanto resulted from Complainant's February 23, 1990 memorandum discussing the fraud, long before an EPA investigation was initiated.

On April 30, 1991, the Complainant requested confirmation from EPA's counsel for enforcement as to whether or not the EPA policy was applicable in this instance, whether it should be waived, and whether it was legal in the first place. No reply has been received.

RETALIATORY CLAUSE IN PERFORMANCE STANDARDS REGARDING TECHNICAL AND SCIENTIFIC ASSESSMENTS

The second retaliatory clause was added after the performance standards Complainant had helped draft in the fall of 1990, and was totally unknown to the Complainant until April 29, 1991. This clause states that in order to obtain an acceptable performance rating, the Complainant must modify her scientific and technical assessments according to the amount of funding available. This highly unethical clause will lead to environmental regulations not based on valid science, but instead pseudo-science not revealed to the public as not being based on true science. If the one scientist on a regulation is silenced by such a clause, then the resulting regulations will not be science.

The Complainant's performance standards state that the effective date of this clause is retroactive to October 1, 1990, but was only provided to the Complainant on April 29, 1991. Mr. Petruska's spurious excuse for not allowing the Complainant to review the existence of this retaliatory clause in her standards was that since the Complainant had in the past refused to sign her standards, it was not necessary to make her aware of the provisions or provide an opportunity for comment (audio recordings are available).

* The recent case brought against Senator Kennedy's nephew is a well known example where allegations were openly made and reported upon by the press, not subject to censure due to some alleged constitutional rights of the accused, or due to the inability to investigate if allegations were public.

The motivation for the clause attempting to control Complainant's scientific and technical assessments on new hazardous waste listing regulations will be demonstrated to have derived directly from her preliminary work to list as hazardous wastes from glycol ether solvents. She demonstrated the very large and continuing use of these solvents (despite industry's 1985 proclamations that substitutes would be used) and their severe, demonstrated reproductive and neurological effects on humans. The Respondent, EPA, is attempting to tailor the scientific and technical assessments of these solvents to what was already known "in house" at EPA in 1985. Mr. Petruska explicitly informed the Complainant that any new glycol ether solvent hazardous waste listing should be based solely on the data available to EPA in 1985, the date when the Environmental Defense Fund sued EPA to have the new hazardous waste listing promulgated.

HISTORY OF EPA'S COMPLICITY WITH THE DIOXIN-PRODUCING INDUSTRIES AND RETALIATION AGAINST THE COMPLAINT FOR HER EFFORTS TO CONTROL DIOXIN EXPOSURES

EPA has a long history of conspiracy with industry to protect it from onerous regulations to control its dioxin emissions, as well a liability for harming human health from past exposures. Beginning in 1979, EPA began the long process to ban the use of dioxin-contaminated 2,4,5-trichlorophenoxy (2,4,5-T) herbicides (one of the ingredients in Agent Orange). The adverse impact on industry from dioxin regulations soon became apparent, and in the 1980's, EPA started covering up the dioxin levels in fish in the Great Lakes. An EPA Region 5 report named Dow Chemical company as the culprit. During a 1983 congressional investigation, it was revealed that EPA Deputy Administer John Hernandez had forced an EPA regional office to delete all references to Dow as well as the health risks from eating Great Lakes fish. Then it was revealed that EPA had concealed a report on the miscarriages in the Oregon women. This set the tone which exists today at EPA; whenever a new regulation is developed which must address dioxin contamination, EPA does all possible to gut it, defer it to a weak ineffective statute (dioxin contaminated pulp mill wastes to TSCA), or promulgate a weak regulation.

The Complainant first ran afoul of certain identifiable dioxin-producing powers and their EPA/congressional allies in 1987 when she sought honest hazardous waste regulations for dioxin-contaminated wastes from wood treating chemicals. The written record shows that the industries involved, the large timber companies and chemical manufacturers, bragged on paper in 1988 about using their congressional influence to remove the Complainant. Beginning in May, 1990, the Complainant stressed the environmental and legal importance of chemical analyses of dioxins in the solvent wastes, by way of meetings and exhaustive issue memoranda. The Complainant stressed the importance of these analyses, whether the scope of the solvents she would address were limited to four solvents, or the utmost importance of these analyses if the solvents included petroleum distillates, known to be contaminated with dioxins. The Complainant was removed from the project in August, 1990. Then, in memoranda describing the funding needs to support regulating Olin Corporation's UDMH wastes, the Complainant noted the likely formation

of dioxins in these wastes by the same chemical mechanism that formed dioxins in pulp and papermill wastes. The Complainant was also removed from this project in August, 1990. The refusal TO allow the Complainant to contribute to a criminal investigation of dioxin fraud by Monsanto also possesses this common "dioxin" thread.

The Complainant alleges that EPA is responsible for implementing a dioxin conspiracy on behalf of the dioxin-producing timber and chemical manufacturing industries.* This conspiracy is directly parallel to that proven to have been implemented by the U.S. Centers for Disease Control (CDC) and the Veterans Administration to deny Vietnam Veterans benefits for Agent Orange-related diseases. The interdependence between the CDC/VA conspiracy and the EPA dioxin conspiracy is aptly exemplified by a memorandum from the Reagan White House. This memorandum expressed the fear that acknowledging cancers in veterans would make denying the existence of dioxin cancers due to hazardous wastes sites impossible.**

The bill will make it far more difficult to stop broader victims compensation schemes involving hazardous wastes and substances. Dioxin - the toxic ingredient in Agent Orange - is a major issue in this area (Love Canal and Times Beach are largely dioxin exposure cases); *we will be in the tenuous position of denying dioxin exposure compensation to private citizens while providing benefits to veterans for often lower levels of exposure.*

Respectfully submitted,



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Dated: May 28, 1991

* See "Exposing the EPA Dioxin Conspiracy," and an article by Dr. Jenkins in the June, 1990 issue of *Pesticides and You*, published by the National Coalition Against the Misuse of Pesticides (NCAMP), Washington, DC.