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THE WIZARD OF ID—By Parker and Hart



UPFRONT

Supreme Court Ruling is Partial Victory

The U.S. Supreme Court, on June 26, ruled that pesticide registration data containing trade secrets, submitted to the EPA, is indeed property and that a large portion of this data is protected by the Fifth Amendment. This ruling came in a case originally brought by Monsanto against the EPA in Federal District Court in which the Company challenged the constitutionality of certain provisions of FIFRA. The lower court found in our favor and the EPA appealed that ruling to the Supreme Court. While the Supreme Court did uphold the constitutionality of the FIFRA provisions we challenged, it made clear that our data submitted to the EPA between 1972 and 1978 cannot be taken without recognition of our rights as owners and that we must be compensated for any trade secrets that are used or disclosed by EPA. Data submitted before October of 1972 or after September of 1978 are given protection by provisions of FIFRA as amended in 1978.

EPA May Review Lasso Registration

A trade publication has said that the U.S. EPA may conduct a special review of alachlor, the active ingredient in Lasso herbicide, because of studies showing that rats and mice fed extremely large amounts of alachlor developed tumors. In a June 11 news release, Monsanto's Will Carpenter said that if the review is done, "The agency will evaluate the risks and benefits of the product. We believe that the results of any such evaluation will demonstrate that the enormous benefits to farmers and consumers far outweigh any risks suggested in laboratory tests and that the agency will continue the product's registration."

Nitro Trial Underway

On June 18 in the U.S. District Court in Charleston, W. Va., the trial began in the first test case involving seven of some 170 former Monsanto workers suing the company for more than \$700 million for alleged health harm from workplace exposure to dioxin and other chemicals. The trial is likely to last several months. The plaintiffs are presenting their case first, so for the next few months, the media will report mostly their side of the story. When the company takes over, it will present a very solid scientific defense.

The case is important both because of its financial size and because it is the first in which a federal court will be asked to rule on the human health effects of dioxin.

Monsanto Communicates Position on Agent Orange Settlement

Monsanto's position on the out-of-court Agent Orange settlement received widespread dissemination in employee communications and the national news media. President and Chief Operating Officer R. J. Mahoney, addressing the expense of a long trial, the negative media attention, and the potential damage to Monsanto's reputation as a concerned, sensitive, socially-responsible company, stressed that the settlement "should not be taken as a signal to others that it is 'open season' on Monsanto." The full text of Mr. Mahoney's comments, as it appeared in the St. Louis Post-Dispatch, is attached to the back of this report.

Monsanto Helps Launch Clean Sites, Inc.

On May 31, after 10 months of planning, Chairman Louis Fernandez joined other industry and environmental leaders in announcing the creation of Clean Sites, Inc., the new, non-profit company intended to clean up abandoned hazardous waste sites. Dr. Fernandez was instrumental in establishing Clean Sites, which has been endorsed by the EPA and whose efforts will supplement those of EPA. Other chemical organizations active from the beginning in creating Clean Sites include DuPont, Exxon Chemical and CMA. Dr. Fernandez will serve on the new company's nine-member board of directors. Clean Sites' first task is to hire staff and get organized. Which waste sites it will tackle first, and how Monsanto will participate in its activities are questions yet to be answered. A fact sheet on Clean Sites is at the back of this report.

Public Compensation a Major Emerging Issue

Indications are that the subject of public compensation will remain on the front burner throughout 1984 at the federal and state levels, with a growing number of hearings scheduled at both levels. On the national scene, Tom Evans and Bill McCarville

provide Monsanto oversight on this issue through CMA's Public Compensation Committee, the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM).

At the state level, government affairs representatives report that public compensation is an issue in at least seven states: New Jersey, California, Massachusetts, Minnesota, New York, Delaware and Illinois.

PRODUCTS/ENVIRONMENT

Superfund Sites Update

Through the first four months of this year, Monsanto has received 20 "Potentially Responsible Party" (PRP) notifications, with four being "Non-National Priority List" sites. The most recent notification of a PRP site: Sheridan Disposal Services in Fort Bend County, Texas. Monsanto involvement consists of 21,000 gallons of tank-car-cleaning and resin wastes. MFI is involved in PRP organization. The site is not, at present, on the national priority list.

Woburn, Mass. -- EPA Region I has advised Monsanto that the Stauffer Chemical Phase II report should be available for review by late July or early August. EPA's notification is in response to our earlier indicated desire to review the report, following Stauffer's decision not to accept our offer of limited involvement in the Phase II study.

Chem-Dyne, Hamilton, Ohio -- The court has ordered EPA to provide either a dollar or cleanup scope basis for settlement by August 1. Monsanto discussions with other defendants contributed to a more positive approach to settlement among various groups of principal responsible parties (PRP's).

Seymour, Ind. -- The Justice Department reversed its position (page three - March EPS issue) and did not grant 60-day stays as requested by PRP's. However, expectations are that the government will not pursue active litigation in the immediate future with the extent of cleanup required still remaining to be defined. Monsanto and other PRP's reached agreement to engage a consultant to monitor and stay current with the EPA cleanup assessment study.

DMEH Industrial Health Lab Receives Accreditation

DMEH's Industrial Health chemistry group's laboratory in the St. Louis Research Center has received accreditation by the American Industrial Health Association (AIHA). The laboratory provides analytical support to non-routine special projects associated with Monsanto's industrial hygiene program. Chromatographic analysis of samples related to high hazard evaluations, employee complaints, unknown workplace contaminants and OSHA inspections are the main thrust of the laboratory.

Product Highlights

Asbestos: OSHA has issued its proposed standard for asbestos. It covers the possibility of including exposure levels geared to two different levels -- .2 and .5 fibers per cubic centimeter. Monsanto submitted its comments on the proposed standard by May 25 due date, and for a hearing scheduled for June 19. Issuance of the proposed standard follows the Agency's earlier request of the Federal Fifth Circuit Court for an emergency temporary standard which was denied.

Formaldehyde: OSHA continues to be placed under pressure to react to formaldehyde concerns. However, the agency indicates that it has no intention, at this point, of yielding to the pressures.

Benzene: OSHA's final draft of a proposed benzene regulation is nearing completion and is expected to be issued within the next several months.

Fuhremann Chairs ACS Pesticide Risk Session

Tom Fuhremann chaired a recent American Chemical Society symposium session on risk determination for agricultural workers from dermal exposure to pesticides. The ACS symposium on this subject is an area in which Monsanto has been developing data for assessing risks associated with its herbicides. Tom's selection to chair one of the symposium sessions was in recognition of his industry leadership role in this area.

State Consumer Programs Heighten Waste Disposal Awareness

Several states, among them Ohio, Maryland and Florida, are taking the initiative in launching consumer awareness programs aimed at the proper and safe disposal of hazardous substances by home users. Objective of the programs is to minimize the environmental impact of potentially hazardous substances used around the home and garden. More information on these programs is available from Bill Westendorf, St. Louis, 694-2193.

Water Quality Report Available

The Association of State and Interstate Water Pollution Control Administrators, in cooperation with the EPA, has issued a report entitled, "America's Clean Water," following a two-year study supported by a grant from the EPA. The report summarizes water quality of streams and lakes, discusses gains made in treatment and summarizes state programs. A copy of the report is available from operating company DEO's or C. D. Malloch, G3WG, St. Louis.

Ground Water Protection Positions Defined

The EPA defended its ground water protection strategy in recent testimony before a House Subcommittee. The agency's position is that states can, and should, have primary responsibility for ground water protection. Other testifiers expressed their concern that there was not appropriate quality/quantity relationships addressed in EPA's proposed strategy. The chemical industry restated its earlier comments on the agency's proposed policy with a CMA representative testifying that EPA's strategy "will not result in comprehensive ground water management, will not recognize the primacy of the states management role, does not adequately address the many valuable uses of ground water, and does not realistically consider present sources of pollution." The general consensus is that ground water legislation is probably a year away from passage by Congress.

EMPLOYEES/PLANTS

Hazard Communication Guidelines in Effect

The recently-issued Hazard Communication (right-to-know) Program Manual provides all plant locations with corporate policy guidelines for compliance to the new OSHA standard when it becomes effective. Design of this manual was also made with ultimate compliance to state laws in mind. The policy guidelines cover relevant information to be included on Monsanto labels to insure compliance to all state right-to-know laws as well as the Federal Hazard Communication Standard. Guideline instructions also are provided for revising all Material Safety Data Sheets to comply with the new OSHA standard.

Use Care in Submitting Regulatory Information

EPS's Mort Mullins cautions plant personnel and others who must submit information to regulatory agencies in support of permit application, periodic reporting or for other reasons to be factual and accurate, but not to volunteer information that is not sought. Unfortunately, business information claimed as "confidential" may wind up in public reading rooms of the regulatory agencies. Mort says that telling the regulators more than they want to know "can provide a competitor with a surprisingly complete process description of your plant."

Environmental Seminar Held for Brussels Employees

Approximately 250 Brussels office employees participated in a recent in-house seminar designed to broaden awareness of Monsanto's commitment to environmentally-safe manufacture, distribution and marketing of products. The two-hour program was well-received. Reaching a wider audience of Monsanto Europe-Africa employees with this kind of awareness program is being considered.

Plant Water Quality Discharge Data in Review

A corporate review of water quality discharge data by all plants is underway. Criteria used in the review, being conducted by Tom Hoogheem, include only data collected since January 1, 1982. Data collection guidelines: It must be representative of plant operations; it must have been collected using approved EPA sampling and analytical procedures; it must have had adequate quality control and assurance, and there must have been a sufficient quantity of data. The quantity question will be judged on the basis of a certain number of data sets, depending on the situation and the discharge. Where data gaps exist, corporate will make recommendations to each plant so that it can budget to fulfill the gaps for 1985. A target date of July 1, 1984 was set to allow operating companies and their plants to have their programs developed.

Krummrich Plant Slated for Superfund Inspection

Ecology and Environment, Inc., has notified the Krummrich plant that it has been contracted by the Region V EPA office to conduct a plant inspection under CERCLA. The EPA contractor will review areas identified by the plant in the submission of its 1980 CERCLA report.

OSHA Delays Issuing Revised Medical Records Standard

OSHA has indicated that it may not reissue a revised Access to Medical Records Standard until after the November election. This would seem to indicate that the agency has not accepted a court decision that the rule is a regulation, and not a standard. The agency is considering revising its proposal so that it may reintroduce it as a standard to force the court to reconsider its original decision.

Krummrich Receives Air Operating Permit

The State of Illinois EPA office approved Monsanto's Air Operating Permit for the Krummrich plant's Department 247 Santoflex operation. The permit runs for three years with expiration June 30, 1987.

Maleic Anhydride Operating Permit Received by Pensacola

The Florida Department of Environmental Regulation has issued a final operating permit for the Pensacola plant's maleic anhydride facility. The term of the permit is five years. Relief from the conditions of the previous permit was obtained in several areas, including elimination of the VOC monitoring requirement.

Kuala Lumpur Plant Implementing Waste Water Program

The Kuala Lumpur plant has developed a comprehensive program to identify and characterize all of its wastewater streams. Indications are that the biological treatment plant will be capable of treating the effluent from the acid treatment process, the dilute acid stream, and the septic tank overflows.

EPA-PCB Inspection at Trenton Plant

An EPA-PCB enforcement inspection was held at the Trenton plant recently. Only seven minor points were noted and the inspector was generally complimentary of the plant's PCB records and compliance activities.

Corporate PCB Inventory Completed

The corporate inventory of all Monsanto U.S. sites has been completed. This information, required by TSCA for each site, is compiled annually to provide a reading on Monsanto's PCB disposal activities for the past year. Details of the inventory have been given to the DEOs.

PCB Verdict in Bad Axe, Michigan

A jury of six women in Bad Axe, Michigan awarded \$810,000 to a rural Michigan farm family for economic loss and health effects alleged to have resulted from the use of PCBs in a sealant used to coat the insides of two dairy silos. Three additional Michigan silo-related cases have been consolidated for trial purposes. That trial is currently scheduled to commence next fall. Hundreds of PCB-coated silos exist throughout the Midwest. Monsanto is considering whether to appeal the Bad Axe verdict.

LAWS/REGULATIONS

Environmental Legislative Reauthorization Lags

Congressional activity on national issues is expected to peak in the coming months as members of the House and Senate posture themselves for favorable media attention before the November elections. Environmental legislation is receiving considerable attention from Congress. However, nearly every piece of major environmental legislation remains to be reauthorized. One example: the size of the Superfund (CERCLA) funding task and taxation method continues to be debated. Studies by CMA, OMB, EPA and the Department of Commerce, all come to the conclusion that the task is beyond the scope of the present \$1.6 billion fund and more likely to be in the \$8 to \$16 billion range for 1,400 to 2,200 sites.

In other legislative highlights:

- Testimony on Senate amendments to the CAA and mark-up of S768 by the Environment and Public Works Committee have been completed. However, the general consensus at this time continues to be that there will be no final CAA legislation this year.
- On June 26, the House passed H.R. 3282, the Water Quality Renewal Act of 1984 by a vote of 405 yeas to 11 nays. The bill contains 57 sections, a few of which are of benefit to Monsanto (deadline extensions, ten year permit, and certain water quality/procedure studies). However, the bill does contain newly strengthened criminal and administrative penalty sections, post-BAT requirements and new water quality criteria provisions not viewed in Monsanto's best interest. The bill now goes to the Senate for their consideration. The Senate is considering its own, different water bill (S.431). It includes a pretreatment amendment introduced by Senator Symms in late June. The possibility of a conference passed bill in 1984 still seems doubtful.
- Senate staffs are currently developing amendments for TSCA in the following areas:
 - Increased data requirements for premanufacturing notices.
 - Less discretion regarding protection of confidential information.
 - Mandated control of chemicals based on hazard assessments.
 - Authorization of negotiated testing.

The Senate initiatives are reasonably consistent with the House amendments introduced late last year. Monsanto and CMA are taking steps in dealing with these congressional concerns.

- The federal Insecticide, Fungicide and Rodenticide Act is generating little enthusiasm among members of Congress for extensive oversight or revision. It is anticipated that the current Act will be reauthorized for one or two years.

Legal Challenges to OSHA Standard Unresolved

As yet, no legal briefs have been entered concerning the challenges to the OSHA Hazard Communication (Right-to-Know) standard in the Appeals Court. The State of Illinois has joined New Jersey, New York and Connecticut as litigants of the challenge to the federal standard. The New Jersey State Chamber of Commerce is considering seeking a stay of the effective date of the state law. Monsanto supports this

challenge as long as the Chamber group does not attempt to broaden the litigation to include the principle of preemption. Monsanto's overall position on this state/federal issue is for expeditious final settlement in the federal court. The states of Arizona, North Carolina, South Carolina and Tennessee are reported to be accepting the federal standard at their state levels.

1985 Budget Increase Proposed by OSHA

A \$5.1 million budget hike to \$217.1 million is being sought by OSHA for its fiscal 1985 budget. The major increase covers statistical activity with little increase in enforcement and state programs and with virtually no increase for standards-setting and technical effort.

EPA Drafts PMN R&D Exemption Rule

EPA is nearing draft completion of a proposed premanufacturing notice (PMN) to cover R&D exemptions and the definitions of possession, control and data on related chemicals. These three issues were withdrawn from EPA's final PMN rule last year because of a CMA petition which showed serious industry burdens as then framed. The new rule being drafted is expected to closely follow the CMA suggestions on the three issues.

The R&D exemption is particularly important to Monsanto. Current Research Center policy on dealing with new substances is expected to satisfy most, if not all, of the EPA requirements. Pilot plant operations will likely require more recordkeeping. Following the availability of EPA's draft for public comment, the proposed rule is expected to be published later this year.

More PMN Data Demanded by EPA

EPA continues to make liberal use of its authority to demand more PMN data under TSCA Section 5(e) authority. Recently, four Monsanto PMN's were caught in the 5(e) web, requiring numerous telephone discussions and several meetings with the agency. So far, our arguments have been successful, or we have agreed that additional testing is appropriate.

TSCA Import Rule Modified with Key Brokers

The Monsanto procedure for TSCA certification of imported chemicals (page nine, March EPS issue) was rejected by two of our key import brokers. The brokers were concerned that the Monsanto procedure, which involves our certification to the brokers for subsequent broker certification to customers, places too much regulatory liability on them. We have modified our procedure for these brokers by providing them with Monsanto facsimile certifications for use with their customers.

EPA Challenges Confidentiality Claims

More than 600 health and safety studies have been submitted to EPA by Monsanto under requirements of TSCA Section 4 (d) rules. Only a few of these submissions have claims of confidentiality, either for percentage components of formulation, process information or non-pertinent information such as on chemicals other than those covered in the rule. The Agency has challenged four of our confidentiality claims as being unauthorized and have required that we substantiate. We are substantiating our claims and believe that we can easily support our position of confidentiality in three of the four cases.

Australia Formalizing Toxic Substances Control

The Australian government is developing a premanufacturing notice (PMN) procedure to formalize voluntary toxic substances control. Indications are that Australia will develop their requirements more along the lines of the European 6th amendment than TSCA. Monsanto supports this approach. While the European system requires PMN testing, this disadvantage is offset by liberal exemptions and other advantages. The issue of protection of confidential information in Australia, however, is not resolved and is receiving the active attention of Monsanto.

Update: EPA/OSHA Relationship - Section 9, TSCA

Tom Evans and Ron Condray are jointly co-chairing an industry ad hoc committee to oversee the continuing relationship program between the EPA and OSHA concerning EPA's apparent interest in regulating materials in the workplace (Section 9, TSCA). EPA has stated that it would prefer to continue an informal relationship with OSHA, sharing the regulatory initiatives on a cooperative basis. OSHA management, on the other hand, feels very strongly that if they are pushed by EPA in this area, they will require that EPA formally use Section 9 of TSCA which gives OSHA the opportunity to accept or reject EPA's assessment and preclude EPA from regulating. The Monsanto and CMA position is that regulation in the workplace should be left with OSHA, not EPA.

EPA Discloses Intentions on Water Quality Permits

At a recent CMA Biomonitoring Seminar, EPA speakers stated that the agency intends to move slowly and cautiously toward implementing the water quality-based approach and toxicity limits. . Expectations are that it could be as long as two years before the chemical industry would start seeing toxicity limits put into permits. EPA states the limits may be incorporated in a few permits in the next few years, to see how the process works.

