

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WILLIAM R. GAFFEY,	)	CAUSE No. 91-1938-C-7/JCH
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PETER MONTAGUE, et al	)	
	)	
Defendants.	)	
_____	)	

DEFENDANTS' NOVEMBER 4, 1993 DISCOVERY REQUEST

Defendants Peter Montague and Environmental Research Foundation request that plaintiff William R. Gaffey respond to this discovery request within thirty days as required by the Federal Rules of Civil Procedure. This discovery request combines requests for admissions, interrogatories, and requests for inspection of documents and other things.

I.

DEFINITIONS AND INSTRUCTIONS

Please interpret each of the following discovery requests in accordance with the following special definitions and instructions, as supplemented by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and jurisprudence thereunder:

1. "Produce" means to produce any and all originals and any and all non-identical copies of the same document described in its or their most complete form, including, without

limitation, any and all surviving portions thereof, and including any and all annexes, appendices, tabs, exhibits, indexes, cover sheets, transmittal letters, or other documents found attached to or in the same file with the same document or documents, including, without limitation, whenever available the file identification and identification of the system of records in which each document and any and all copies are found. Wherever you are asked to produce affidavits or trial or deposition transcripts, also produce any and all exhibits thereto.

2. The words "document" or "record" shall have the same interpretation as "documents or other things" within the meaning of Fed. R. Civ. P. 34, and shall also include all drafts, alterations, modifications, changes or amendments thereof.

3. The term "person" or "persons" includes not only natural persons, but also all forms or organizations including without limitation unincorporated associations, partnerships, corporations, joint ventures, proprietorships, firms, syndicates, and all subsidiaries, affiliates, divisions, departments, branches or other units thereof.

4. The term "communication" refers to any written or oral transmission of information, belief or opinion, including any correspondence, letters, telegraphs, telexes, notes, memoranda, reports, circulars, press releases, discussions or conversations.

5. The connectives "and" and "or" shall be construed either disjunctively or conjunctively or both as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. This Request is a continuing one. If, after producing the requested documents, you obtain or become aware of any further documents responsive to this Request, you are required to produce to the defendants those additional documents, including documents prepared subsequent to the date of this Request.

7. Where words or terms are not defined, they shall be given their common and accustomed meaning within the context stated.

8. The words "dioxin" or "dioxins" mean any or all of the congeners, homologues, or isomers of the mono- through polychlorinated classes of dibenzo-p-dioxins or dibenzofurans.

9. As to any document withheld from production under this document request because of a claim of privilege, identify in your response or concurrently therewith in a separate log:

- (a). the title of the document;
- (b). the author of the document;
- (c). the date of the document;
- (d). the general subject matter of the document;
- (e). the privilege or privileges claimed;
- (f). all facts necessary to establish that the document is in fact privileged; and

(g). whether you will submit each document to the Court for a determination as to the validity of the claim of privilege.

10. The phrase "Zack/Gaffey study" shall encompass not only the final published report of the purported study exhibited hereto as EXHIBIT B, but also all underlying records thereof.

11. The phrase "Zack/Suskind study" shall encompass not only the final published report of the purported study exhibited hereto as EXHIBIT C, but also all underlying records thereof.

12. The phrase "Suskind/Hertzberg study" shall encompass not only the final published report of the purported study exhibited hereto as EXHIBIT D, but also all underlying records thereof.

13. The phrase "Nitro worker studies" shall encompass not only the Zack/Gaffey study, the Zack/Suskind study, and the Suskind/Hertzberg study, but also any or all studies, investigations, examinations, or other means of acquiring information at any time regarding the health of the same groups of workers discussed in EXHIBITS B through D inclusive or any member or members of those groups or regarding possible association of health effects among those workers with chemicals in their work place.

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II.

REQUESTS TO ADMIT FACTS

Defendants Peter Montague and Environmental Research Foundation request plaintiff William R. Gaffey, within 30 days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility that may be interposed at the trial:

A. That each of the following documents, exhibited with this request, is: [i] authentic under Rule 901 or Rule 902 of the Federal Rules of evidence; [ii] is genuine under Rule 1003 of the Federal Rules of Evidence; and [iii] is not subject to objection as hearsay under Rule 802 of the Federal Rules of Evidence;

<u>Exhibit</u>	<u>Description</u>
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A	Rachel's Hazardous Waste News # 171
B	Zack/Gaffey, "A mortality study of workers employed at the Monsanto Company Plant in Nitro, West Virginia"
C	Zack/Suskind, "The mortality experience of workers exposed to tetrachlorodibenzodioxin in a trichlorophenol process accident"
D	Suskind/Hertzberg, "Human health effects of 2,4,5-T and its toxic contaminants"
E	Monsanto October 9, 1980 press release, "Study fails to link Agent Orange to deaths of industrial workers"
F	Marcie E. Strauss, August 14, 1984 memo to A.M. Ford, D. King, M. Pleska, P. Potterfield, transmitting attached "verbatim and critique of the Zack/Gaffey all plant mortality study"
G	U.S. Environmental Protection Agency, National Dioxin Study, "Tier 1 and 2 Accomplishments," January 1986. Excerpts, Nitro plant dioxin survey

H William Gaffey, April 23, 1990 letter to Peter Montague
I Peter Montague, April 29, 1990 letter to William Gaffey
J Correspondence between David F. Snively (Monsanto) and Carol Van Strum, re: table of Nitro mortality (three letters with attachments)
K William Gaffey, May 11, 1990 letter to Peter Montague, with attached testimony of George Roush from Kemner
L Monnye R. Gross, July 5, 1990 letter to Peter Montague
M Peter Montague, July 18, 1990 letter to Monnye Gross
N Monnye R. Gross, July 31, 1990 letter to Peter Montague
O Peter Montague, August 8, 1990 letter to Monnye R. Gross
P James J. Collins, Monsanto Epidemiology Director, June 1, 1990 letter to Marilyn Fingerhut, NIOSH, with attached tables 1 and 4
Q Package of news clips and Monsanto letters to U.S. EPA received by Peter Montague from EPA in response to FOIA request
R Marcie Strauss, May 4, 1987 letter to Marilyn Fingerhut, NIOSH, transmitting computer tape

B. That each of the following statements is true:

1. The Zack/Suskind study included the statement, "An analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes will be the subject of a future paper."

2. Dr. Raymond Suskind and Judith Zack intended to produce a paper on "chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes."

3. The data collection and analysis were in fact conducted for the "analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes" referred to by Drs. Suskind and Zack.

4. The data collection and analysis were never performed for the "analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes" referred to by Drs. Suskind and Zack.

5. The study published as the Zack/Gaffey study is not the study described in the Zack/Suskind study as an "analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes."

6. The study published as the Zack/Gaffey study is in fact the study described in the Zack/Suskind study as an "analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes."

7. Monsanto identified Dr. Raymond Suskind, not plaintiff William R. Gaffey, as co- author of the "Zack/Gaffey" study in a 1980 press release, EXHIBIT E hereto.

8. Judith Zack and Dr. Raymond Suskind conducted and wrote the study published as the Zack/Gaffey study.

9. Dr. Raymond Suskind withdrew his name from what became the Zack/Gaffey study prior to its publication.

10. Plaintiff William R. Gaffey was named as co-author of the Zack/Gaffey study only after Dr. Raymond Suskind withdrew his name from it.

11. Prior to his name being substituted for Dr. Raymond Suskind's as co-author, William R. Gaffey was not involved in the conduct or writing of the study published as the Zack/Gaffey study, but subsequently misrepresented the same study to the scientific community as being the work of Judith Zack and himself.

12. William R. Gaffey actively participated in the design, research, data analysis, writing, and editing of the Zack/Gaffey study.

13. Plaintiff William R. Gaffey was aware of the progress of both the Zack/Suskind and Zack/Gaffey studies from their initial proposal stages through their publication.

14. Plaintiff William R. Gaffey participated in the study design of both the Zack/Suskind and Zack/Gaffey studies.

15. During the time that the Zack/Gaffey study was being conducted, plaintiff William R. Gaffey's employer, Monsanto Company, had an incentive to misrepresent the hazards of dioxin in order to avoid government regulation of its products and to avoid liability in the class action lawsuit brought by Vietnam War veterans who had been exposed to dioxin-contaminated Agent Orange.

16. By publishing the Zack/Gaffey study, plaintiff William R. Gaffey intended that the readers of that study report would rely upon the report as a sound scientific investigation of the association of dioxin exposure with human health effects.

17. Members of the scientific community, government regulators, and the courts in fact relied upon the Zack/Gaffey study as a sound scientific investigation of the association of dioxin exposure with human health effects, giving weight to the hypothesis that dioxin does not cause human health effects other than chloracne.

18. At the time the Zack/Gaffey study was published, plaintiff William R. Gaffey knew that the entire Nitro, West Virginia plant owned by Monsanto had been contaminated as a result of the 1949 reactor vessel explosion in the trichlorophenol manufacturing process.

19. At the time the Zack/Gaffey study was published, plaintiff William R. Gaffey knew that there was no scientific basis for excluding any Nitro worker from the study group of workers exposed to dioxin.

20. At the time the Zack/Gaffey study was published, plaintiff William R. Gaffey knew that he lacked sufficient information to represent that Nitro plant workers excluded from the Zack/Gaffey exposed cohort had not in fact also been exposed to dioxin.

21. Proper classification of study subjects is essential to the validity of epidemiologic studies.

22. Misclassification of exposure in an epidemiologic study will bias the study in the negative direction.

23. The researchers who conducted the Zack/Gaffey study lacked both spatial and temporal criteria for classifying workers as exposed or unexposed to dioxin.

24. The Zack/Gaffey study misclassified as unexposed workers who had in fact been exposed to dioxin.

25. The results of the Zack/Gaffey study are inconsistent with the results of the NIOSH studies that encompassed dioxin-exposed workers at the Nitro, West Virginia plant studied by Zack and Gaffey.

26. The misclassification of workers as "unexposed" to dioxin in the Zack/Gaffey study was deliberately made by its authors in order to conceal the fact that workers at Monsanto Company's plant in Nitro, West Virginia suffered from an elevated incidence of certain medical conditions, including certain rare types of cancer.

27. The Zack/Gaffey study is scientifically invalid.

28. The Zack/Gaffey study is fraudulent.

III.

INTERROGATORIES

Defendants Peter Montague and Environmental Research Foundation request plaintiff William R. Gaffey within 30 days after

service of this discovery request to respond in writing under oath to the following interrogatories:

1. Separately state each fact supporting each contention [i] made in your complaint as amended and [ii] that you intend to make at trial, separately identifying, for each separately stated fact, all evidence tending to establish its accuracy, being specific as to: [a] the author, date, recipient(s), title, and all present custodian(s) (including name and address) for each supporting document or other thing; [b] the name and address of each witness to be called at trial to establish the fact; and [c] the name and, if known to you, the last known address of all persons with knowledge regarding the same fact.

2. Itemize each element of your claim for damages, separately identifying for each element all proof of causation by each defendant thereof to the exclusion of causation by others who made similar statements regarding the plaintiff, specifically stating all facts comprising your proof of causation and valuation of damages, identifying all supporting documents or other things by the author, date, recipient(s), title, and all present custodian(s) (including name and address) for each supporting document or other thing; [b] the name and address of each witness to be called at trial to establish each separately stated fact; and [c] the name and, if known to you, the last known address of all persons with knowledge regarding the same fact.

3. As specifically as is reasonably possible, identify each record of the Nitro worker studies that was ever in your possession, custody, or control and is no longer, stating for each such record: [i] so much of its authorship, recipients, date, and contents as is reconstructible from other records or from recollection; [ii] the circumstances under which it left your possession, custody, or control; [iii] whether to your knowledge the record still exists and if so the present custodian; [iv] all custodians of the record at any time including names and addresses thereof; and [v] if destroyed, the date destroyed, the name, title, and employer of the person who destroyed the record, the reasons for doing so; and [vi] specific identification of each document discussing or in any way referring to such destruction.

IV.

REQUESTS FOR INSPECTION AND COPYING

Defendants Peter Montague and Environmental Research Foundation request plaintiff William R. Gaffey to respond within 30 days from service of this discovery request to the following requests:

A. That plaintiff produce and permit defendants to inspect and to copy each of the following documents or other things:

1. All documents identified in response to Interrogatories 1 through 3 above, as well as those identified in response to any previous interrogatories propounded in this case by defendants.

2. All records of the Nitro worker studies.
3. All records discussing or referring in any way to any or all of the Nitro worker studies.
4. All records discussing or referring in any way to data used in any of the Nitro worker studies that was later found or alleged by anyone to be missing.
5. All documents you, your agents, or attorneys, show, receive from, or review with any and all deponents as part of preparing each such person for testifying, whether the testimony is or was given during a deposition, trial, or written affidavit in this matter, all to be produced at or before the relevant deposition(s).
6. Any and all records in your possession, custody, or control of material prior affidavits, testimonies, or depositions (all including all exhibits) of:
 - (a). Any and all persons listed as potential witnesses, whether fact or expert witnesses, by any party to this litigation;
 - (b). Any and all persons identified by any party in a discovery response in this litigation as having knowledge of any specified subject;
 - (c). Any and all persons whose depositions are taken as part of these proceedings; and
 - (d). Any and all persons whose affidavits are offered by any party as evidence in any phase of these proceedings.

7. Any and all material records in your possession, custody, or control of prior affidavits, testimonies, or depositions (all including all exhibits) of:

- (a). Judith Zack;
- (b). Dr. Raymond Suskind;
- (c). William R. Gaffey;
- (d). Dr. Alistair Hay;
- (e). Dr. Ellen Silbergeld;
- (f). George Roush;
- (g). Mary Gaffey;
- (h). Marcie Strauss; and
- (i). Jan Yung.

8. The Complaint and all filings produced or prepared by Monsanto, all exhibits marked for trial (whether or not they were used at trial or merely identified as trial exhibits), all documents provided by Monsanto to the opposing parties, all documents identified by Monsanto as responsive to any discovery request, transcripts of all depositions taken by the plaintiffs, as well as all trial transcripts in the case of James M. Adkins v. Monsanto Company, Civil No. 81-2098 (U.S.D.C. S.D. W.Va) and other cases consolidated therewith.

9. All records of contamination of Monsanto's Nitro, West Virginia plant resulting from the reactor vessel explosion in the trichlorophenol manufacturing process in 1949.

10. All communications among William R. Gaffey, Monsanto, Dr. Michael Gough, Resources for the Future, King & Spalding (or any of them) discussing or referring in any way to any or all of the Nitro studies.

11. All records discussing or referring in any way to Monsanto's 1980 press release on the Zack/Suskind and Zack/Gaffey studies, EXHIBIT E hereto, including without limitation:

(a). All drafts, news clippings, etc. of that press release;

(b). All materials assembled for preparation of the press release;

12. All records discussing or referring to any involvement of plaintiff William R. Gaffey in any or all of the Nitro worker studies.

13. All drafts of the Zack/Gaffey study, whether William R. Gaffey is named as author or not.

14. All drafts of protocols, study plans, rationales, and proposals for the Zack/Gaffey study.

15. All records revealing, discussing, or referring in any way to William R. Gaffey's role and/or actions in any or all of the Nitro studies.

16. All communications among Dr. Raymond Suskind, Judith Zack, Gaffey, and Mary Gaffey, or any of them with others, discussing or referring in any way to the study, or underlying research, that was published as the Zack/Gaffey study.

17. All records discussing or referring in any way to the Zack/Gaffey study.

18. All records discussing or referring in any way to the decision to name William R. Gaffey as co-author of the Zack/Gaffey study instead of Dr. Raymond Suskind.

19. All communications between William R. Gaffey and Marcie Strauss discussing or referring in any way to the Zack/Gaffey study and/or Strauss's project that resulted in her "Verbatim & Critique," EXHIBIT F hereto.

20. All communications between Marcie Strauss and each addressee and recipient of her "Verbatim & Critique" indicated in EXHIBIT F.

21. All drafts of Strauss's "Verbatim & Critique," including all records used in its preparation.

22. All records in Monsanto's possession, custody, or control discussing or referring in any way to Strauss's "Verbatim & Critique."

23. All records discussing or referring in any way to the table and handwritten notes titled, "Table 9 Observed and Expected Number of Deaths during 1955-1977 by Cause and 2,4,5-T Exposure Category Showing Proportional Mortality Ratios (PMRs) (Not Including Deaths from TCP Incident)," EXHIBIT J hereto.

24. All records of communications between Monsanto and officials of the National Institute for Occupational Safety &

Health (hereafter "NIOSH") discussing or referring in any way to the Zack/Gaffey study.

25. All records discussing or referring in any way to EPA dioxin sampling at the Nitro plant.

26. All records discussing or referring in any way to Monsanto destruction of EPA samples from Nitro.

27. All records of communications between Monsanto and EPA discussing or referring in any way to dioxin sampling at Nitro conducted by EPA, Monsanto, or any other entity.

28. All records discussing or referring in any way to Monsanto sampling and analyses for dioxin at the Nitro plant, including but not limited to sample plans, protocols, sampling records, chain-of-custody records, analytical methodology, raw analytical data, and analytical results.

29. All communications with NIOSH discussing, transmitting, or referring in any way to dioxin contamination, sampling, and analyses at the Nitro plant.

30. All communications among Mary Gaffey, William R. Gaffey, Dr. Raymond Suskind, Judith Zack, Marcie Strauss, Jan Yung, George Roush, or any other persons discussing or referring in any way to Nitro worker studies.

31. All records discussing or referring in any way to the decision not to use chloracne as a surrogate for exposure in the Zack/Gaffey study.

32. All records -- including but not limited to drafts, raw data, protocols, and communications -- discussing or referring in any way to the study described in Zack/Suskind as "an analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes."

33. All records of communication among Monsanto, William R. Gaffey, NIOSH, or any of them discussing or referring in any way to any of the Nitro worker studies or related studies conducted by NIOSH, including without limitation all records of Monsanto internal communications regarding the NIOSH studies.

34. All records of communications between or among Monsanto and any or all of the other companies whose present and former workers exposed to dioxin were or are still being studied by NIOSH.

35. All documents discussing or referring in any way to allegations of fraud or scientific inadequacy in any or all of the Nitro worker studies.

36. All records discussing or referring in any way to the presentation of the Zack/Gaffey study at the 1981 International Dioxin Symposium, including any copies of materials presented.

37. All records of communications with the U.S. Air Force or members, employees, or contractors thereof discussing or referring in any way to the Nitro studies.

38. All communications between Monsanto and the U.S. EPA discussing or referring in any way to the Nitro worker studies.

39. All communications among Monsanto, Dr. Raymond Suskind, the American Medical Association or any member thereof, or any of them discussing or referring in any way to the Nitro studies.

40. All records discussing or referring in any way to efforts by Dr. Raymond Suskind or Monsanto, or any of Monsanto's officers, staff, employees, agents, or contractors, to influence the position of the American Medical Association (or of any body affiliated therewith) on the hazards of dioxin.

41. All records discussing or referring in any way to the study described in the Zack/Suskind study as "An analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes."

42. All records discussing or referring in any way to the decision not to publish the study described in the Zack/Suskind study as "an analysis of the chloracne cases and exposures not associated with this accident but with the normal TCP/2,4,5-T production processes."

43. All communications between or among William R. Gaffey, Judith Zack, Dr. Raymond Suskind, and any Monsanto personnel including Mary Gaffey discussing or referring in any way to authorship of the Zack/Gaffey study.

44. Copies of all protocols, study plans, study proposals, research materials, and drafts of the Zack/Suskind and Zack/Gaffey studies.

45. All protocols, study plans, study proposals, research materials, and drafts of all other Nitro worker studies, whether or not such studies were completed or published.

46. All records discussing or referring in any way to William R. Gaffey's demand for retraction from Peter Montague.

47. All records discussing or referring in any way to actual or contemplated demands for retractions by Monsanto or any author of any of the Nitro worker studies, addressed to authors/writers, publications, or media other than defendants Peter Montague and Environmental Research Foundation, whether or not such demands were actually made.

48. All records discussing or referring in any way to allegations of fraud or scientific inadequacy made by any person or organization attributed to any or all of the authors of the Nitro worker studies.

49. All records discussing or referring in any way to any retraction made by any person or organization referred to in the request immediately preceding.

50. Copies of all such retractions printed or broadcast.

51. Copies of all published papers authored or co-authored by William R. Gaffey.

52. Copies of all unpublished papers (reports, summaries, surveys, etc.) discussing or referring in any way to dioxin authored or co-authored by William R. Gaffey.

53. William R. Gaffey's most current curriculum vitae.

54. Mary Gaffey's most current curriculum vitae.

55. All records (including audio or video recordings, press clippings, personal communications, etc.) discussing or referring in any way both to William R. Gaffey's character or integrity and to the article by Peter Montague in Hazardous Waste News # 171.

56. All letters of commendation or other documents lauding the work of William R. Gaffey regarding any of the Nitro worker studies.

57. William R. Gaffey's Monsanto Company personnel file and/or any documents known to have been placed in it at any time that are no longer in that file.

58. William R. Gaffey's income tax returns and financial statements for the five calendar years preceding institution of this action, as well as all similar records prepared subsequent to the filing of this lawsuit.

59. Any and all copies, drafts, etc. of the "retraction and clarification" prepared by plaintiff William R. Gaffey but never provided, as referenced in EXHIBIT M hereto.

60. All records of communications between George Roush and plaintiff William R. Gaffey referred to in EXHIBIT K hereto.

61. Any and all records of the Strauss memo, EXHIBIT F hereto.

62. All Monsanto records discussing or referring to the Strauss memo, EXHIBIT F hereto.

63. All records of communications between George Roush and plaintiff William R. Gaffey discussing or referring in any way to the Kemner case, to the Sturgeon, Missouri spill of orthochlorophenol, or to the Nitro worker cases consolidated with Adkins, supra.

64. All records of communications between Monsanto officials or agents and EPA officials discussing or referring in any way to Dr. Cate Jenkins' allegations of falsification of dioxin health studies performed for Monsanto Company.

65. All records discussing or referring in any way to the U.S. Environmental Protection Agency's criminal investigation of Monsanto's failure to report dioxin contamination of its products and allegations of fraud or scientific inadequacy in the Nitro worker studies, including without limitation any records provided to EPA for that investigation.

66. All communications between Monsanto and NIOSH regarding the Nitro worker studies and NIOSH's own investigation of dioxin-exposed workers, including without limitation those referred to in EXHIBIT P hereto.

67. All records discussing or referring in any way to NIOSH's investigation of dioxin-exposed workers.

68. All records cited on the tables attached to the Collins letter, EXHIBIT P hereto, as well as a complete copy of the Collins letter with all tables and attachments.

69. All peer reviews of the Nitro worker studies.

70. All internal (Monsanto or Kettering) reviews or comments on the Nitro worker studies at any stage of their conduct.

71. All attachments and materials, including computer tapes or printouts thereof that accompanied the Strauss June 4, 1987 letter to Dr. Marilyn Fingerhut, EXHIBIT R hereto.

72. All records referenced in but not attached to the Strauss June 4, 1987 letter to Dr. Marilyn Fingerhut, EXHIBIT R hereto.

73. A copy of the same document(s) used as Plaintiff's EXHIBIT 62 in the Boggess litigation,¹ (July, 1954 Suskind, et al Toxicological Report).

74. A copy of the same document(s) used as Plaintiff's EXHIBIT 338 in the Boggess litigation, supra (toxicological tests).

75. A copy of the same document(s) used as Plaintiff's EXHIBIT 59 in the Boggess litigation, supra (Suskind discussion of human experiments).

¹ Boggess v. Monsanto Company, Civil No's. 81-2098-265, et seq. (U.S.D.C. S.D. W.Va.) (case consolidated with Adkins, supra.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was on this day mailed to attorneys for Plaintiff, Richard A. Wunderlich and Daniel D. Zegura, 8182 Maryland Avenue, Suite 400, Clayton, Missouri 63105.

Dated November 4, 1993

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76. A copy of the same document(s) used as Plaintiff's EXHIBIT 64 in the Boggess litigation, supra (environmental survey of Monsanto Nitro plant).

77. Copies of any and all transcripts of testimonies or depositions of Max Galloway in the Boggess litigation, supra.

88. Copies of the same document(s) used as Plaintiff's EXHIBIT 43 in the Boggess litigation, supra (records of Monsanto meetings: with Von Oettel August 4, 1960; 4/21/60 Emmett Kelly memo to Suskind re: meeting with Von Oettel; 5/2/60 Suskind memo to Emmett Kelly re: meeting with Von Oettel; 6/30/60 Von Oettel letter to Suskind; 7/13/60 Suskind letter to Von Oettel).

89. Copies of the same document(s) used as Defendant's EXHIBIT 396 in the Boggess litigation, supra (Roush 12/24/76 letter to Suskind re: conduct of follow-up studies at Nitro; Suskind to Roush 6/9/78 letter defining 37 "heavily involved" workers).

90. Any and all records discussing or referring in any way to the need for conducting any of the Nitro worker studies prior to their completion.

91. Any and all Monsanto internal investigations (including consultant reports) into or studies of whether any or all of the Nitro worker studies are [i] scientifically valid or [ii] fraudulent.

B. That plaintiff allow the requested inspection and copying to take place at the offices of Evans & Dixon commencing at the hour of 9:00 a.m. on or before December 4, 1993.

DATED: November 4, 1993

Respectfully submitted,

EVANS & DIXON

By _____

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EVANS & DIXON
1200 Saint Louis Place
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ATTORNEYS FOR DEFENDANTS

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ATTACHMENT A

I.

DEFINITIONS AND INSTRUCTIONS

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corporations, joint ventures, proprietorships, firms, syndicates, and all subsidiaries, affiliates, divisions, departments, branches or other units thereof.

4. The term "communication" refers to any written or oral transmission of information, belief or opinion, including any correspondence, letters, telegraphs, telexes, notes, memoranda, reports, circulars, press releases, discussions or conversations.

5. The connectives "and" and "or" shall be construed either disjunctively or conjunctively or both as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. Where words or terms are not defined, they shall be given their common and accustomed meaning within the context stated.

7. The words "dioxin" or "dioxins" mean any or all of the congeners, homologues, or isomers of the mono- through polychlorinated classes of dibenzo-p-dioxins or dibenzofurans.

8. The phrase "Zack/Gaffey study" shall encompass not only the final published report of the purported study exhibited hereto as EXHIBIT B, but also all underlying records thereof.

9. The phrase "Zack/Suskind study" shall encompass not only the final published report of the purported study exhibited hereto as EXHIBIT C, but also all underlying records thereof.

10. The phrase "Suskind/Hertzberg study" shall encompass not only the final published report of the purported study exhib-

ited hereto as EXHIBIT D, but also all underlying records thereof.

11. The phrase "Nitro worker studies" shall encompass not only the Zack/Gaffey study, the Zack/Suskind study, and the Suskind/Hertzberg study, but also any or all studies, investigations, examinations, or other means of acquiring information at any time regarding the health of the same groups of workers discussed in EXHIBITS B through D inclusive or any member or members of those groups or regarding possible association of health effects among those workers with chemicals in their work place.

II.

RECORDS TO BE PRODUCED

1. All records of the Nitro worker studies.
2. All records discussing or referring in any way to any or all of the Nitro worker studies.
3. All records discussing or referring in any way to data used in any of the Nitro worker studies that was later found or alleged by anyone to be missing.
4. All documents you, your agents, or attorneys, show, receive from, or review with any and all deponents as part of preparing each such person for testifying, whether the testimony is to be or was given during a deposition, trial, or written affidavit in this matter, all to be produced at or before the relevant deposition(s).

5. Any and all records in your possession, custody, or control of material prior affidavits, testimonies, or depositions (all including all exhibits) of:

(a). Any and all persons listed as potential witnesses, whether fact or expert witnesses, by any party to this litigation (witness lists are to be exchanged by all parties on this date; this subpoena will be supplemented upon receipt).;

(b). Any and all persons identified by any party in a discovery response in this litigation as having knowledge of any specified subject;

(c). Any and all persons whose depositions are taken as part of these proceedings; and

(d). Any and all persons whose affidavits are offered by any party as evidence in any phase of these proceedings.

6. Any and all material records in your possession, custody, or control of prior affidavits, testimonies, or depositions (all including all exhibits) of:

(a). Judith Zack;

(b). Dr. Raymond Suskind;

(c). William R. Gaffey;

(d). Dr. Alistair Hay;

(e). Dr. Ellen Silbergeld;

(f). George Roush;

(g). Mary Gaffey;

(h). Marcie Strauss; and

(i). Jan Yung.

7. The Complaint and all filings produced or prepared by Monsanto, all exhibits marked for trial (whether or not they were used at trial or merely identified as trial exhibits), all documents provided by Monsanto to the opposing parties, all documents identified by Monsanto as responsive to any discovery request, transcripts of all depositions taken by the plaintiffs, as well as all trial transcripts in the case of James M. Adkins v. Monsanto Company, Civil No. 81-2098 (U.S.D.C. S.D. W.Va) and other cases consolidated therewith.

8. All records of contamination of Monsanto's Nitro, West Virginia plant resulting from the reactor vessel explosion in the trichlorophenol manufacturing process in 1949.

9. All communications among William R. Gaffey, Monsanto, Dr. Michael Gough, Resources for the Future, King & Spalding (or any of them) discussing or referring in any way to any or all of the Nitro studies.

10. All records discussing or referring in any way to Monsanto's 1980 press release on the Zack/Suskind and Zack/Gaffey studies, EXHIBIT E hereto, including without limitation:

- (a). All drafts, news clippings, etc. of that press release;
- (b). All materials assembled for preparation of the press release;

11. All records discussing or referring to any involvement of plaintiff William R. Gaffey in any or all of the Nitro worker studies.

12. All drafts of the Zack/Gaffey study, whether William R. Gaffey is named as author or not.

13. All drafts of protocols, study plans, rationales, and proposals for the Zack/Gaffey study.

14. All records revealing, discussing, or referring in any way to William R. Gaffey's role and/or actions in any or all of the Nitro studies.

15. All communications among Dr. Raymond Suskind, Judith Zack, Gaffey, and Mary Gaffey, or any of them with others, discussing or referring in any way to the study, or underlying research, that was published as the Zack/Gaffey study.

16. All records discussing or referring in any way to the Zack/Gaffey study.

17. All records discussing or referring in any way to the decision to name William R. Gaffey as co-author of the Zack/Gaffey study instead of Dr. Raymond Suskind.

18. All communications between William R. Gaffey and Marcie Strauss discussing or referring in any way to the Zack/Gaffey study and/or Strauss's project that resulted in her "Verbatim & Critique," EXHIBIT F hereto.

19. All communications between Marcie Strauss and each addressee and recipient of her "Verbatim & Critique" indicated in EXHIBIT F.

20. All drafts of Strauss's "Verbatim & Critique," including all records used in its preparation.

21. All records in Monsanto's possession, custody, or control discussing or referring in any way to Strauss's "Verbatim & Critique."

22. All records discussing or referring in any way to the table and handwritten notes titled, "Table 9 Observed and Expected Number of Deaths during 1955-1977 by Cause and 2,4,5-T Exposure Category Showing Proportional Mortality Ratios (PMRs) (Not Including Deaths from TCP Incident)," EXHIBIT J hereto.

23. All records of communications between Monsanto and officials of the National Institute for Occupational Safety & Health (hereafter "NIOSH") discussing or referring in any way to the Zack/Gaffey study.

24. All records discussing or referring in any way to EPA dioxin sampling at the Nitro plant.

25. All records discussing or referring in any way to Monsanto destruction of EPA samples from Nitro.

26. All records of communications between Monsanto and EPA discussing or referring in any way to dioxin sampling at Nitro conducted by EPA, Monsanto, or any other entity.

27. All records discussing or referring in any way to Monsanto sampling and analyses for dioxin at the Nitro plant, including but not limited to sample plans, protocols, sampling records, chain-of-custody records, analytical methodology, raw analytical data, and analytical results.

28. All communications with NIOSH discussing, transmitting, or referring in any way to dioxin contamination, sampling, and analyses at the Nitro plant.

29. All communications among Mary Gaffey, William R. Gaffey, Dr. Raymond Suskind, Judith Zack, Marcie Strauss, Jan Yung, George Roush, or any other persons discussing or referring in any way to Nitro worker studies.

30. All records discussing or referring in any way to the decision not to use chloracne as a surrogate for exposure in the Zack/Gaffey study.

31. All records -- including but not limited to drafts, raw data, protocols, and communications -- discussing or referring in any way to the study described in Zack/Suskind as "an analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes."

32. All records of communication among Monsanto, William R. Gaffey, NIOSH, or any of them discussing or referring in any way to any of the Nitro worker studies or related studies conducted by NIOSH, including without limitation all records of Monsanto internal communications regarding the NIOSH studies.

33. All records of communications between or among Monsanto and any or all of the other companies whose present and former workers exposed to dioxin were or are still being studied by NIOSH.

34. All documents discussing or referring in any way to allegations of fraud or scientific inadequacy in any or all of the Nitro worker studies.

35. All records discussing or referring in any way to the presentation of the Zack/Gaffey study at the 1981 International Dioxin Symposium, including any copies of materials presented.

36. All records of communications with the U.S. Air Force or members, employees, or contractors thereof discussing or referring in any way to the Nitro studies.

37. All communications between Monsanto and the U.S. EPA discussing or referring in any way to the Nitro worker studies.

38. All communications among Monsanto, Dr. Raymond Suskind, the American Medical Association or any member thereof, or any of them discussing or referring in any way to the Nitro studies.

39. All records discussing or referring in any way to efforts by Dr. Raymond Suskind or Monsanto, or any of Monsanto's officers, staff, employees, agents, or contractors, to influence the position of the American Medical Association (or of any body affiliated therewith) on the hazards of dioxin.

40. All records discussing or referring in any way to the study described in the Zack/Suskind study as "An analysis of the chloracne cases and exposures not associated with this accident but rather with the normal TCP/2,4,5-T production processes."

41. All records discussing or referring in any way to the decision not to publish the study described in the Zack/Suskind study as "an analysis of the chloracne cases and exposures not

associated with this accident but with the normal TCP/2,4,5-T production processes."

42. All communications between or among William R. Gaffey, Judith Zack, Dr. Raymond Suskind, and any Monsanto personnel including Mary Gaffey discussing or referring in any way to authorship of the Zack/Gaffey study.

43. Copies of all protocols, study plans, study proposals, research materials, and drafts of the Zack/Suskind and Zack/Gaffey studies.

44. All protocols, study plans, study proposals, research materials, and drafts of all other Nitro worker studies, whether or not such studies were completed or published.

45. All records discussing or referring in any way to William R. Gaffey's demand for retraction from Peter Montague.

46. All records discussing or referring in any way to actual or contemplated demands for retractions by Monsanto or any author of any of the Nitro worker studies, addressed to authors/writers, publications, or media other than defendants Peter Montague and Environmental Research Foundation, whether or not such demands were actually made.

47. All records discussing or referring in any way to allegations of fraud or scientific inadequacy made by any person or organization attributed to any or all of the authors of the Nitro worker studies.

48. All records discussing or referring in any way to any retraction made by any person or organization referred to in the request immediately preceding.

49. Copies of all such retractions printed or broadcast.

50. Copies of all published papers authored or co-authored by William R. Gaffey.

51. Copies of all unpublished papers (reports, summaries, surveys, etc.) discussing or referring in any way to dioxin authored or co-authored by William R. Gaffey.

52. William R. Gaffey's most current curriculum vitae.

53. Mary Gaffey's most current curriculum vitae.

54. All records (including audio or video recordings, press clippings, personal communications, etc.) discussing or referring in any way both to William R. Gaffey's character or integrity and to the article by Peter Montague in Hazardous Waste News # 171.

55. All letters of commendation or other documents lauding the work of William R. Gaffey regarding any of the Nitro worker studies.

56. William R. Gaffey's Monsanto Company personnel file and/or any documents known to have been placed in it at any time that are no longer in that file.

57. William R. Gaffey's income tax returns and financial statements for the five calendar years preceding institution of this action, as well as all similar records prepared subsequent to the filing of this lawsuit.

58. Any and all copies, drafts, etc. of the "retraction and clarification" prepared by plaintiff William R. Gaffey but never provided, as referenced in EXHIBIT M hereto.

59. All records of communications between George Roush and plaintiff William R. Gaffey referred to in EXHIBIT K hereto.

60. Any and all records of the Strauss memo, EXHIBIT F hereto.

61. All Monsanto records discussing or referring to the Strauss memo, EXHIBIT F hereto.

62. All records of communications between George Roush and plaintiff William R. Gaffey discussing or referring in any way to the Kemner case, to the Sturgeon, Missouri spill of orthochlorophenol, or to the Nitro worker cases consolidated with Adkins, supra.

63. All records of communications between Monsanto officials or agents and EPA officials discussing or referring in any way to Dr. Cate Jenkins' allegations of falsification of dioxin health studies performed for Monsanto Company.

64. All records discussing or referring in any way to the U.S. Environmental Protection Agency's criminal investigation of Monsanto's failure to report dioxin contamination of its products and allegations of fraud or scientific inadequacy in the Nitro worker studies, including without limitation any records provided to EPA for that investigation.

65. All communications between Monsanto and NIOSH regarding the Nitro worker studies and NIOSH's own investigation of dioxin-

exposed workers, including without limitation those referred to in EXHIBIT P hereto.

66. All records discussing or referring in any way to NIOSH's investigation of dioxin-exposed workers.

67. All records cited on the tables attached to the Collins letter, EXHIBIT P hereto, as well as a complete copy of the Collins letter with all tables and attachments.

68. All peer reviews of the Nitro worker studies.

69. All internal (Monsanto or Kettering) reviews or comments on the Nitro worker studies at any stage of their conduct.

70. All attachments and materials, including computer tapes or printouts thereof that accompanied the Strauss June 4, 1987 letter to Dr. Marilyn Fingerhut, EXHIBIT R hereto.

71. All records referenced in but not attached to the Strauss June 4, 1987 letter to Dr. Marilyn Fingerhut, EXHIBIT R hereto.

72. A copy of the same document(s) used as Plaintiff's EXHIBIT 62 in the Boggess litigation,¹ (July, 1954 Suskind, et al Toxicological Report).

73. A copy of the same document(s) used as Plaintiff's EXHIBIT 338 in the Boggess litigation, supra (toxicological tests).

¹ Boggess v. Monsanto Company, Civil No's. 81-2098-265, et seq. (U.S.D.C. S.D. W.Va.) (case consolidated with Adkins, supra.

74. A copy of the same document(s) used as Plaintiff's EXHIBIT 59 in the Boggess litigation, supra (Suskind discussion of human experiments).

75. A copy of the same document(s) used as Plaintiff's EXHIBIT 64 in the Boggess litigation, supra (environmental survey of Monsanto Nitro plant).

76. Copies of any and all transcripts of testimonies or depositions of Max Galloway in the Boggess litigation, supra.

77. Copies of the same document(s) used as Plaintiff's EXHIBIT 43 in the Boggess litigation, supra (records of Monsanto meetings: with Von Oettel August 4, 1960; 4/21/60 Emmett Kelly memo to Suskind re: meeting with Von Oettel; 5/2/60 Suskind memo to Emmett Kelly re: meeting with Von Oettel; 6/30/60 Von Oettel letter to Suskind; 7/13/60 Suskind letter to Von Oettel).

78. Copies of the same document(s) used as Defendant's EXHIBIT 396 in the Boggess litigation, supra (Roush 12/24/76 letter to Suskind re: conduct of follow-up studies at Nitro; Suskind to Roush 6/9/78 letter defining 37 "heavily involved" workers).

79. Any and all records discussing or referring in any way to the need for conducting any of the Nitro worker studies prior to their completion.

80 Any and all Monsanto internal investigations (including consultant reports) into or studies of whether any or all of the Nitro worker studies are [i] scientifically valid or [ii] fraudulent.

SCHEDULE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
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- | | |
|---|--|
| A | Rachel's Hazardous Waste News # 171 |
| B | Zack/Gaffey, "A mortality study of workers employed at the Monsanto Company Plant in Nitro, West Virginia" |
| C | Zack/Suskind, "The mortality experience of workers exposed to tetrachlorodibenzodioxin in a trichlorophenol process accident" |
| D | Suskind/Hertzberg, "Human health effects of 2,4,5-T and its toxic contaminants" |
| E | Monsanto October 9, 1980 press release, "Study fails to link Agent Orange to deaths of industrial workers" |
| F | Marcie E. Strauss, August 14, 1984 memo to A.M. Ford, D. King, M. Pleska, P. Potterfield, transmitting attached "verbatim and critique of the Zack/Gaffey all plant mortality study" |
| G | U.S. Environmental Protection Agency, National Dioxin Study, "Tier 1 and 2 Accomplishments," January 1986. Excerpts, Nitro plant dioxin survey |
| H | William Gaffey, April 23, 1990 letter to Peter Montague |
| I | Peter Montague, April 29, 1990 letter to William Gaffey |
| J | Correspondence between David F. Snively (Monsanto) and Carol Van Strum, re: table of Nitro mortality (three letters with attachments) |
| K | William Gaffey, May 11, 1990 letter to Peter Montague, with attached testimony of George Roush from <u>Kemner</u> |
| L | Monnye R. Gross, July 5, 1990 letter to Peter Montague |
| M | Peter Montague, July 18, 1990 letter to Monnye Gross |
| N | Monnye R. Gross, July 31, 1990 letter to Peter Montague |
| O | Peter Montague, August 8, 1990 letter to Monnye R. Gross |
| P | James J. Collins, Monsanto Epidemiology Director, June 1, 1990 letter to Marilyn Fingerhut, NIOSH, with attached tables 1 and 4 |
| Q | Package of news clips and Monsanto letters to U.S. EPA received by Peter Montague from EPA in response to FOIA request |

R Marcie Strauss, May 4, 1987 letter to Marilyn Fingerhut, NIOSH,
transmitting computer tape
c:\users\mac\montague\diarg002.wps