

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

FRENCES E. KEMNER, et. al.,

Plaintiffs,

VS.

NO. 80-L-970

MONSANTO COMPANY,

Defendant.

REPORT OF PROCEEDINGS

Before the HON. RICHARD P. GOLDENHERSH

JURY TRIAL

April 12, 1985

APPEARANCES:

Mr. Rex Orr & Mr. Jerome Seigfreid
On Bhalf of the Plaintiffs;

Mr. John L. Musgrave
Mr. Josep Nassif
On Bhalf of the Defendant.

Agnes C. Hackmann, CSR, RPR
Official Court Reporter

I N D E X

WITNESS

PAGE

PHOCION PARK

Examination (Cont'd.) by Mr. Carr

2

EXHIBITS

IDENTIFIED

ADMITTED

Plaintiff's Exhibit No. 1292

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Plaintiff's Exhibit No. 1293

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Plaintiff's Exhibit No. 1294

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Plaintiff's Exhibit No. 1295

121

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Plaintiff's Exhibit No. 1296

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Plaintiff's Exhibit No. 1297

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1 BE IT REMEMBERED AND CERTIFIED THAT heretobefore,
2 on to wit: Friday, April 12, 1985, being one of the regular
3 judicial days of this Court, the matter as hereinbefore set
4 forth came on for hearing before the HONORABLE RICHARD P.
5 GOLDENHERSH, Circuit Judge in and for the Twentieth Judicial
6 Circuit, St. Clair County, Illinois, and the following was
7 had of record, to wit:

8 PHOCION PARK,

9 resumed the stand, having previously been duly sworn, and
10 testified:

11 EXAMINATION (Cont'd.)

12 BY MR. CARR:

13 Q Mr. Park, we were at the close of the day discussing
14 the meeting that you had on May 11, May 22 in which you were
15 determining whether or not the EPA should be notified as to
16 any possible toxic substances that might be in your 2,4
17 dichlorophenol and with regard to that, if you would refer to
18 Plaintiff's Exhibit -- do you have those Plaintiff's Exhibits
19 up there?

20 A No, I don't. I have none here now.

21 Q I need to dig them out then. There is 1288 which we
22 will be working with and 1275, 1290. I think that is possibly
23 all. And we were discussing the Exhibit 1290, which for the
24 jury they are not numbered. It has got the four names and the

initials of Jim Wilson in the upper righthand corner. In about the middle of the page there is a statement, is there not,

"2,3,7 trichlorodibenzo dioxin nearly as bad as 2,3,7,8 tetra?"

Do you see that, sir?

A I see that handwritten, yes.

Q And you understand 2,3,7 trichlorodibenzo dioxin to be that dioxin which has three chlorine molecules attached to the dioxin. Do you not, sir?

A I do believe I understand that, yes.

Q And the statement is comparing the toxicity of the tridioxin to the 2,3,7,8 tetradioxin. Is he not, sir?

A He appears to be. I guess.

Q And whoever writing this, Dr. Wilson or whoever is doing this writing is certainly writing something down that would be important for you all to know if you determine or making a determination as to whether or not the 2,4 dichloro-phenol might be safe. Isn't that correct, sir?

A That is a conclusion that was in the mind of the author, Mr. Carr. This is not my notes.

Q Could you answer my question, please, sir?

A I don't know.

Q Do you not consider that if your product contains trichlorophenol, that is what would be in this column described as CL3, if your product contains that, that would be along with

1 tetra 2,3,7,8, that is something that would be of concern,
2 wouldn't it, sir?

3 A That would be up to a toxicologist.

4 Q Excuse me. You are serving on that committee and you
5 are considering those and we went through this. You wrote the
6 memos. You considered toxicity, did you not, at that time,
7 sir?

8 A I serve on the committee for the purpose of interpre-
9 ting the law to which we are subject. I am not a toxicologist
10 and never pretend to be. We have toxicologists that do serve
11 with that committee or support the committee.

12 Q Mr. Park, when you sit on that committee do you con-
13 sider whether or not these products are substantial risks to
14 those people that use them, are exposed to them?

15 A We certainly consider the question of whether a given
16 product would present a substantial risk of injury to health
17 or environment.

18 Q And is it important to you to know what toxic sub-
19 stances, when you are serving on that committee, are in that
20 product?

21 A That would certainly be -- the toxicity of the product?

22 Q Is that important to you to know what the toxic sub-
23 stances are in your product, Mr. Park?

24 A The important thing is the toxicity of the product we

1 are dealing with.

2 Q Could you answer that question that I asked you?

3 MR. MUSGRAVE: Object. He has, Your Honor. He asked
4 him whether toxicity was important and he explained that
5 toxicity was important.

6 THE COURT: Overruled. Wait a second, Mr. Park.
7 I don't believe he has answered the question. Objection is
8 overruled.

9 A (By the Witness) What is important is the toxicity
10 of the product.

11 Q (By Mr. Carr) Could you answer the question that I
12 posed to you? The Court has instructed you to answer.

13 A I thought I had answered the question.

14 Q I know you thought that, Mr. Park, but you haven't.
15 The Court has ordered you to answer that question. Your
16 counsel objected saying that you had answered. The Court over-
17 ruled the objection. I know you understand that to mean that
18 your counsel is wrong in the judgment of the Court and that you
19 must answer the question as I gave it to you. Would you please
20 do so?

21 A I will do my best to answer your question, Mr. Carr.
22 What is important to the committee is the toxicity of the pro-
23 duct in question.

24 MR. CARR: Your Honor, would you direct the witness

1 to answer the question.

2 THE COURT: Okay. Mr. Park, that is the answer that
3 I said was not responsive to the question. Now, I will allow
4 the Court Reporter to read the question back once and answer
5 that question, please.

6 (Question read.)

7 A (By the Witness) I am having difficulty because of
8 the constraints you have placed on my answer. You won't allow
9 me to give the answer I feel is appropriate. I guess I would
10 have to answer that that is less important than the toxicity
11 of the entire product under concern including whatever con-
12 stituents it may contain.

13 Q (By Mr. Carr) Is it important that you know what toxic
14 substances are in your product when you attempt to make a
15 determination as to whether or not your product is in fact
16 toxic and whether or not it imposes a substantial risk to the
17 public and whether or not you should notify the EPA that your
18 product contains toxic substances?

19 A When our product contains toxic substances at a suffi-
20 ciently high concentration that they impact the toxicity of the
21 product itself, then it is important to know that.

22 Q And then it is important to know whether or not what
23 levels of the tridioxin is in the product, is it not, sir?

24 A You are asking me to speak now to toxicity --

1 Q Yes, I am, Mr. Park.

2 A -- of a substance that I am not familiar with.

3 Q Please answer that question.

4 A I don't know.

5 Q You don't know whether it is important?

6 A It depends on the toxicity of the tri.

7 Q That is correct. I certainly agree with you one
8 hundred per cent. It does depend on the toxicity of the tri-
9 chlorophenol dioxin, doesn't it, sir?

10 A Yes.

11 Q And in exercising your judgment in deciding whether
12 or not you should notify the EPA, is it important to you to
13 know whether or not these dioxins listed here from the mono
14 to the octa are toxic and the extent of their toxicity. Isn't
15 that correct, sir?

16 A And the concentration.

17 Q And the concentration to be sure. Those things are
18 important, aren't they, sir?

19 A If they are toxic, yes.

20 Q Yes. That is what I said. I posed it is important
21 to know whether or not these things are toxic. Isn't that
22 correct, sir? That is what I have been asking you for the
23 last five minutes.

24 A I thought you were asking me if the tri was toxic or

not and I just have to say --

Q Now, Mr. Park, you know good and well I didn't ask you that. What I asked you was whether or not it is important that you should know whether or not trichlorodibenzo-p-dioxin is toxic. That is all I asked. I didn't ask you whether or not it was toxic, did I, sir? I just asked you whether or not it is important that you in functioning on this committee should know whether or not the substances that go into your product and go out in the public, whether or not they are toxic. That is what I have asked you.

A I have got to respond that it is important that I know what our toxicologists tell me is important.

Q And what he tells you is important is the toxicity of the substances that go into your product. Isn't that correct?

A If he considers that to be sufficiently toxic and of a sufficiently high concentration that it affects the toxicity of the product in a significant degree, then he may consider that so important that he should make it known.

Q And on your committee you understand that to be his function, don't you, sir? Isn't that correct, sir?

A The function of the medical department representative is to bring toxicity information to us.

Q Surely. You cannot function without that being done. If you are sitting on that committee in determining whether or

1 not to notify the EPA, you have to know whether or not the
2 substances that go into your product are toxic. Don't you,
3 sir?

4 A What is considered important to the toxicologist --
5 I think you are asking me to state what is considered important
6 to our toxicologist and I am just not in a position to do that.

7 Q That is not what I am asking you, Mr. Park. You are
8 serving -- Your Honor, is it necessary that I reestablish
9 everything that I established yesterday with this witness?
10 Mr. Park, assume, if you would, that yesterday you responded
11 to similar questions that it is important in the functioning
12 of your duty as a member of this committee that you know and
13 be advised as to the toxicity of the substances that go into
14 your product and that we discussed that at some length including
15 the toxicity of 2,3,7,8 and including the effect of 2,3,7,8
16 upon the systems of man and you responded as to what you knew
17 about it. Assume that we did all these things and let's not
18 spar anymore on whether or not you need to know the toxicity
19 of the substances in exercising your functions. Would you
20 direct the witness, Your Honor, to assume that we established
21 those yesterday?

22 THE COURT: You are to assume that, Mr. Park. You
23 may continue, Mr. Carr.

24 Q (By Mr. Carr) Now, Mr. Park, when you sat at the

1 meeting on May 11 and May 22, did your toxicologist discuss
2 with you the fact as it is written on this piece of paper that
3 2,3,7 trichlorodibenzo-p-dioxin is nearly as bad as 2,3,7,8
4 tetra?

5 A I cannot remember that at all.

6 Q All right. Did he discuss with you whether or not the
7 octa dioxin is toxic?

8 A Mr. Carr, this meeting was five years ago. I cannot
9 remember the specific discussion.

10 Q I understand that and if you can't remember, simply
11 say you don't remember.

12 A That is why we record it in the minutes so we will
13 have a record.

14 Q You didn't record in your minutes though anything as
15 to -- and these, of course, are notes of individual members.
16 They are not your minutes. They are not recorded there any-
17 thing except the toxicity of 2,3,7,8 and the toxicity of
18 2,3,7 dioxin. Isn't that correct, sir? I'm sorry. There is
19 another notation that 2,7 dichloro, that would be the one with
20 the two chlorine atoms, is much less toxic, but still and that
21 is blank and monochloro is practically non-toxic.

22 MR. MUSGRAVE: Are you reading from the notes or the
23 minutes, Mr. Carr?

24 MR. CARR: From the notes, 1290.

1 MR. MUSGRAVE: Just so you get it clear.

2 Q (By Mr. Carr) And he is discussing, this note, 1290,
3 is discussing, when he says mono he says CL1. You understand
4 that, don't you, sir? Let me give you 1135 so you don't need
5 to strain your eyes. Now, you can look at that and this is
6 just illustrative of table 3 that is on here now. He is dis-
7 cussing, when this note refers to monochloro he is talking
8 about that which is in the first column, CL1 is he not, sir?

9 A (By the Witness) I really don't know. I don't know
10 who authored these notes. I don't know what he is referring
11 to.

12 Q Mr. Park, I didn't ask you that. These notes are
13 obviously Jim Wilson's notes. I don't care whether you know
14 the author. It is sufficient that it is one of the five people
15 that attended that meeting and you said it is not yours and
16 the note refers to -- it tells about what Callis would recommend
17 that you disclose the 2,4,6 content to Fallek-Lancro. "Corey
18 agreed. Park generally agreed, but said it should be low-key."
19 Corey recommended something else. So, there are four people
20 identified by the author of this document. Four of the five
21 people is discussed. The only person not discussed is Jim
22 Wilson who I am representing to you is the author of this
23 document. But it is not material. What is important is the
24 person that wrote this talking about monochloro, you understand

1 monochloro to be the one that has the one chlorine molecule
2 attached to the dioxin particle. Don't you, sir?

3 A. You are asking me to add to the notes of some author-
4 less piece of paper. I will not add to it.

5 Q I am not asking you to add.

6 MR. MUSGRAVE: You are, Mr. Carr. I object. He is
7 asking him to assume what the author of this document meant by
8 that. That is exactly what you are asking. I object.

9 THE COURT: Objection is overruled. Mr. Park, you
10 have to answer the question as it is put to you.

11 A (By the Witness) All right. I don't know what -- it
12 could have been monochlorobenzene. I am not a chemist. It is
13 my understanding there are other products. There are some
14 products that have the prefix, if you will, monochloro.

15 Q (By Mr. Carr) Would there be any reason for you to be
16 discussing benzene when you are at a meeting determining
17 whether or not you should notify the EPA about a chlorinated
18 phenol such as 2,4 dichlorophenol?

19 A A meeting five years ago? Perhaps there could be. I
20 don't know what the author intended when he said monochloro.

21 Q I am not asking you that. I am asking you whether or
22 not you know that monochloro is referred to when you are dis-
23 cussing dioxin referring to that which has the one dioxin
24 particle -- molecule?

1 A I don't know what this author referred to.

2 Q I am not asking you that, sir. Mr. Park, you under-
3 stand what I am asking you? I am asking you whether or not
4 you understand monochloro? Not what this author says, but
5 whether or not you know that monochloro is referring to that
6 dioxin -- does refer to dioxins that have the one chlorine
7 molecule attached thereto?

8 A In this context, I will say I do not. If you wish to
9 ask me do I understand that monochlorodibenzo paradioxin --

10 Q Mr. Park, please, if you don't know say you don't know.
11 That is all I am asking you, Mr. Park. If you don't know say
12 it and we will pass onto the next one.

13 A I did say that a moment ago, Mr. Carr.

14 Q And do you know whether or not 2,7 dichlorophenol
15 represents or is commonly referred to as to that dioxin that
16 has two chlorine molecules?

17 A I think you named two different substances.

18 MR. MUSGRAVE: 2,7 dichlorophenol.

19 MR. CARR: 2,7 dichlorodibenzo-p-dioxin and it is
20 abbreviated here, 2,7 dichloro.

21 A (By the Witness) I don't know what the author meant
22 when he wrote that.

23 Q (By Mr. Carr) Well, do you see just faintly the
24 quotation or ditto marks right behind the dichloro?

1 A I see the little mark on the sheet.

2 Q Two little marks, don't you, sir? Barely legible on
3 the copy that you have given us.

4 A Perhaps.

5 Q And could you interpret that just barely, possibly
6 since you are discussing dioxin in your context that that just
7 might possibly refer to 2,7 dichlorodibenzo-p-dioxin?

8 A I don't know.

9 Q All right. And what about the 2,3,7 dichlorodibenzo-
10 p-dioxin? Is there any doubt in your mind as to what is repre-
11 sented there, Mr. Park?

12 A There is doubt simply because I am not a chemist. I
13 am not a toxicologist and I am uncomfortable talking on this
14 subject.

15 Q I didn't ask you that, Mr. Park.

16 A However, I guess I wish the column heading on this other
17 exhibit that you have up here had the word spelled out. But I
18 guess I would say that CL3 could mean trichlorodibenzodioxin.

19 Q Now, to help you refresh your memory, would you turn to
20 the memo that you wrote on May 14, 1979? The one that you gave
21 us yesterday afternoon about 1:30. The last paragraph on that
22 page and did not you write at that time and sign at that time,
23 Mr. Park, "It was mentioned that the product (93% 2,4-dichloro-
24 phenol) may contain mono, di, tri and tetrachlorodibenzo dioxins

1 in trace amounts." Did you write that, sir?

2 A Yes.

3 Q Now, does that refresh your recollection? The fact
4 that you did indeed discuss and when you used the phrase mono
5 at that time, what did you mean by that, Mr. Park?

6 A That would have meant the mono or mono would replace
7 the letters tetra in that subsequent word.

8 Q And you understand and when you, of course, use words,
9 you don't use words that you don't understand the meaning of,
10 do you, sir? You are an educated man and you know that you do
11 not use words that you don't know the meaning of. Don't you,
12 sir?

13 A In these minutes which express the conclusion of the
14 committee --

15 Q Would you answer that question?

16 A I will sometimes use words given to me by toxicologists
17 which I do not fully understand the meaning.

18 Q I didn't ask you if you fully understood it. I asked
19 you if you know the meaning of monochlorodibenzo dioxin.

20 MR. MUSGRAVE: That wasn't your question, Mr. Carr.
21 You asked him if he ever used words he didn't understand and he
22 answered your question.

23 THE COURT: Overruled.

24 Q (By Mr. Carr) Mr. Park, what do you understand mono-

chlorodibenzodioxin to mean?

A (By the Witness). To mean -- bear with me because I am a lawyer trying to speak in chemistry terms.

Q Mr. Park, you have said that fifty times already. That does not exempt you from using knowledge that God gave you and you learned in the twenty years you worked at Monsanto. It is no defense, Mr. Park.

A I am trying to answer you now, Mr. Carr. (Whereupon the witness and Mr. Carr and Mr. Musgrave spoke at the same time which caused their remarks to be unintelligible and not reported in this record.)

MR. MUSGRAVE: I object, Your Honor, to counsel saying it is no defense. This gentleman is trying to answer the questions within his knowledge and Mr. Carr is badgering him and belittling him and it is totally improper here. The man is simply trying to answer the questions.

MR. CARR: The man is doing his best not to answer the questions.

MR. MUSGRAVE: I object to that, Mr. Carr.

THE COURT: I am afraid, Mr. Carr, you are right.

Your objection is overruled. Now, please answer responsively to the question, Mr. Park.

Q I conceived this. I'll be in those matters.

1 A (By the Witness) I am trying to. I am just explaining
2 I may make an error or two here.

3 THE COURT: Well, everyone is subject to errors,
4 Mr. Park. Just go ahead and answer the question as best you
5 can responsive directly to the question that is posed directly
6 to you, sir.

7 A (By the Witness) Okay. Recalling some instruction or
8 information that I have been given on this, I believe a dioxin
9 consists of two chemical rings. They are six sided things that
10 are joined together by some other atoms. And around the out-
11 side of these two rings there can be or I guess in a chloro-
12 dioxin there would be chemical atoms coming off. And as I
13 recall, the mono would mean one chlorine atom on the entire
14 ring. Deux or do or di would mean two chlorine atoms. The
15 tri would mean three chlorine atoms. The tetra would mean
16 four and so on.

17 Q (By Mr. Carr) And you understood then at that meeting,
18 indeed your recollection is now refreshed, that you did discuss
19 those various dioxins, didn't you, sir?

20 A I don't recall discussing all the various dioxins off
21 the top of my head, Mr. Carr.

22 Q Well, when you read this memo, did it refresh your
23 recollection that you discussed whether or not the 2,4 dichloro-
24 phenol contained these things in trace amounts?

1 A We would have discussed these four here.

2 Q And my question that led up to this, on this board the
3 CL1 stands for mono. You understand that, don't you, sir?
4 You have seen exhibits like this.

5 A Yes.

6 Q You have seen a number of things which break down
7 these various dioxins into the eight sectors, haven't you,
8 sir, over these past twenty years?

9 A I am sure I have seen some.

10 Q And CL1 stands for mono then, doesn't it, sir?

11 A Yes.

12 Q And CL2 stands for di?

13 A I would think so.

14 Q And CL3 stands for tri?

15 A Yes.

16 Q And CL4 stands for tetra?

17 A I would think so.

18 Q Now, at that meeting did you discuss as near as you
19 can remember the various toxicities of these various dioxin
20 components?

21 A I suspect that we did, but, I'm sorry, I just cannot
22 recall that discussion.

23 Q Well, it would have been important for you members of
24 that committee to know at what levels your products contained

these various substances that are toxic relatively so speaking.
Isn't that correct, sir?

A Well not if they were not considered toxic.

Q Well, you have to certainly consider them to know whether or not they are or are not toxic, don't you, sir?

A I'm sorry. I misunderstood you. I thought you said we considered their toxicity.

Q Yes. Toxicity can go all the way from very little toxicity to very great toxicity like 2,3,7,8, can't it, sir?

A I recall that 2,3,7,8 --

Q My question is, sir, toxicity can go all the way from very little to a great deal so that the utmost caution should be used at all times when you can possibly expose to 2,3,7,8 TCDD. That is my question.

A Certainly toxicity -- are you speaking of dioxin?

Q Yes, I am.

A It is my understanding that the toxicity of these various types of dioxin can vary from extremely low to what is considered the most toxic and that is 2,3,7,8.

Q And it is important that you in functioning on this committee know, that your group as a whole know, first of all, what dioxins are in the product and, secondly, the various toxicities of those dioxins. Isn't that important, sir?

A From my perspective, I would say that since exposure

1 to anyone or the environment will be to the product as a
2 whole including all its constituents, the most critical thing
3 is the toxicity of the product including its constituents.

4 Q Again, that is not responsive to my question. The
5 witness insists --

6 A I'm sorry, Mr. Carr. I am trying to be responsive.

7 Q The witness insists on adding his view to my question
8 rather than the answer that is appropriate.

9 A You didn't let me finish.

10 Q Would you direct the witness to answer the question.

11 THE COURT: You are so directed, Mr. Park. Answer
12 the question that was posed to you.

13 A (By the Witness) It is not important to know the
14 presence of chemicals of such a low toxicity that they have
15 no bearing on the toxicity of the entire product.

16 Q (By Mr. Carr) And is that then true for tetrachloro-
17 dibenzo in what you call trace amounts?

18 A It could be, depending upon the product use.

19 Q Well, assume that there is exposure to your product.
20 Would you please assume that and let's get that out of this
21 question. Let's get that factor aside. Assume there is
22 exposure. Give no weight at all to the question or give very
23 little weight to the question of exposure. Just assume that
24 the mere fact that it goes out of the plant, goes into commerce

constitutes exposure. Will you assume that, please, sir?

Sir, will you do that?

A: I will assume it.

Q: And put exposure out of it. Now, is it important that you know these facts about the levels of tetra, for instance, in your product?

A: If the level of tetras were sufficiently low, I don't think it would be important.

Q: Well, it is important that you know what the level is before you can even begin to determine whether or not it is sufficiently low. Isn't that correct, sir?

A: I don't think that would always be the case.

THE COURT: I'm sorry. I didn't hear your answer.

A: (By the Witness) I don't think that would always be the case.

Q: (By Mr. Carr) You mean to say you don't need to know -- we don't need to go through this half a tank car of cyanide again, do we, Mr. Park? You mean to say it is not important that you know at what level 2,3,7,8 TCDD is in your product when you are functioning on this committee?

A: I merely responded that I don't know that it is always the case that it must be known.

Q: In what circumstance could you possibly imagine that it would not be important that you know how much of a toxic

1 substance like 2,3,7,8 is in your product when it is given that
2 everybody is going to be exposed to it? On what possible basis
3 could you say that it would not be important to know how much
4 of that poison is in your product?

5 A If the concentrations were so low it could have no
6 toxicity in the product as a whole.

7 Q You have to know the concentration to know that it is
8 that low, don't you, Mr. Park?

9 A But if it is that low, you don't need to know it.

10 Q You have to know it, don't you, Mr. Park, before you
11 can decide whether or not it is so low that it won't hurt
12 anybody? Don't you have to know the concentration, sir?

13 A Mr. Carr, I just said -- you asked my opinion. My
14 opinion was you don't need to know if it is sufficiently low.

15 Q You are automatically saying that you do know that it
16 is sufficiently low. In order for you to make a judgment as
17 to the toxicity of your chemical, you have to know how much
18 in the amount of toxic substances in that chemical. Don't you,
19 sir? Whether it is one millionth, one billionth, or one per
20 cent or 90 per cent, you got to know, or one trillionth, you
21 got to know the level that it exists in your product, don't
22 you, sir?

23 MR. MUSGRAVE: Mr. Carr, are you talking about Mr.
24 Park having to know or Monsanto --

1 MR. CARR: I am talking about this committee when
2 it makes its determination as to whether or not to notify the
3 EPA.

4 MR. MUSGRAVE: That may be the problem that Mr. Park
5 is having, that he thinks you are talking about him, sir, as
6 a lawyer as opposed to the toxicologist or a doctor.

7 A (By the Witness) I think another reason, another
8 basis on which one might not need to know that is when the
9 given product itself is toxic.

10 MR. CARR: Your Honor, would you direct the witness --

11 A (By the Witness) I'm --

12 THE COURT: I don't believe that was responsive. I
13 am directing you to answer the question as posed to you.

14 A (By the Witness) I did answer. I will answer again.
15 I don't feel that it is an absolute necessity that that be
16 known and I was explaining why.

17 Q (By Mr. Carr) Mr. Park, a toxic substance that is
18 toxic by itself has its toxicity added to it when it has con-
19 taminates that are more toxic than it. Isn't that correct,
20 sir?

21 A I don't know what the chemical reaction would be, Mr.
22 Carr.

23 Q Oh, can't you add? If a substance is toxic by itself
24 and if you put a toxic substance in it that is more toxic than

1 that, hundreds of thousands of times more toxic than that,
2 doesn't that add to the toxicity of your product?

3 A Now, you are asking me a hypothetical question.

4 Q I am asking you that you said it is not important to
5 know it when the substance itself is toxic. You gave that as
6 an example where you don't need to know the level of the toxic
7 substances that contaminate your product and I am suggesting
8 to you that example is no good. It won't wash. Isn't that
9 correct, Mr. Park?

10 A No.

11 Q All right. Then let's go a step at a time. Doesn't
12 adding poison, a greater, a more intense, hundreds of thousands
13 of times more intense poison to a poison add to the toxicity
14 of that poison to which it is added?

15 A If it is added in a sufficient amount.

16 Q And you have to know that amount, sir, to make that
17 determination, whether or not it is sufficient, don't you, sir?

18 A You don't if the product to which it is added is already
19 considered to be so toxic or caustic or whatever that it is
20 handled in a very, very careful manner.

21 Q Well now you are talking about exposure again, aren't
22 you? I gave you the predicate, Mr. Park, that you got to assume
23 that everybody is exposed to it. It is going to be out in the
24 public and people are going to be exposed to it. Don't give me

1 this business about handling.

2 MR. MUSGRAVE: Object to that, Your Honor. He talked
3 about an assumption about six questions ago.

4 THE COURT: Overruled. I think it went to the line
5 of questioning as an assumption.

6 MR. MUSGRAVE: Well, how is the witness supposed to
7 read his mind, Your Honor?

8 THE COURT: I don't think it took mind reading. I
9 think it was perfectly clear in the context of the assumption
10 as given to this witness and the subsequent line of questions
11 and we are still on the same line of questions. Overruled.

12 Q (By Mr. Carr) Would you answer that question, Mr.
13 Park?

14 A (By the Witness) Would you repeat the question?

15 Q No, I won't repeat the question, Mr. Park.

16 A Okay. Then I guess I have to say I don't know.

17 Q And have you always exercised -- has this committee
18 always exercised its function without knowing the level of
19 additional toxic substances that are being added to your pro-
20 duct? So far as you know and you last exercised your function
21 as far as I know on January 25, 1985.

22 A It is unusual in a way to be considering the ingredients
23 of the product.

24 Q Your Honor, the witness is not answering my question.

1 A I am trying to answer the question, Your Honor. Would
2 you allow me to finish, please, Mr. Carr?

3 Q No, I won't. I would like for this case to be finished
4 someday and it won't if you decide that you want to answer the
5 questions that you want to answer and don't answer the ques-
6 tions that I want to ask you. It will never end.

7 A I am answering just exactly what you asked me, Mr.
8 Carr.

9 MR. MUSGRAVE: Just a minute. I object to counsel
10 not permitting the witness to answer the question with what
11 he believes is the appropriate explanation to the question as
12 phrased.

13 THE COURT: Overruled. I don't think it was respon-
14 sive.

15 MR. MUSGRAVE: I think he is entitled to do that.

16 THE COURT: Not if the answer is not responsive and
17 in my determination, it was not responsive to the question.
18 Objection is overruled. Mr. Park, will you please answer the
19 question as posed.

20 A (By the Witness) Most of our 8E considerations deal
21 with new health effects resulting from toxicity studies as to
22 whether is this new information. If it is, is the information
23 sufficiently significant that it could represent a substantial
24 risk of injury to health and the environment. Only a very few

1 have dealt with ingredients of chemicals. So I wanted to
2 explain why I would answer that it is unusual to consider
3 ingredients.

4 Q (By Mr. Carr) Mr. Park, I didn't ask you for an
5 explanation.

6 A Okay. It is unusual to consider ingredients in the
7 product.

8 Q That isn't responsive to my question. My question is,
9 does your committee function this way that you pay no attention
10 to the concentration of these toxic substances that may go
11 into your chemical when you determine whether or not you should
12 notify the EPA?

13 A No. That is incorrect. When it is appropriate, we
14 would consider that.

15 Q When is it appropriate, sir?

16 A Whenever the toxicologists feel it is appropriate.

17 Q And did he feel it was appropriate in 1979?

18 MR. MUSGRAVE: With regard to what, Mr. Carr? That
19 is vague and indefinite.

20 Q (By Mr. Carr) Whatever he is talking about. I am
21 going with the witness now. Whatever he is talking about. If
22 he is vague, then I am vague. Did you consider the level of
23 the toxic substances that was in 2,4 dichlorophenol when you
24 decided in June of 1979 not to notify the EPA?

1 A (By the Witness) It isn't clear -- it isn't really
2 clear the specifics of what was considered in the minutes of
3 the meeting. The toxicity of the whole product I think was
4 considered. I see that a reference was made to the long
5 experience in manufacturing and use of the product with no
6 known adverse effects.

7 Q Do you also see the paragraph where you considered
8 the possible level of dioxin in the product, Mr. Park?

9 A Yes.

10 Q Mr. Park, you did consider the level of concentration
11 of dioxin in the product, didn't you, sir?

12 A Considered the presence in the product.

13 Q And you considered the levels also, did you not, sir?

14 A I would say so, yes.

15 Q And, Mr. Park, as a matter of fact you knew at the
16 time you had this meeting that your product, 2,4 dichlorophenol,
17 contained dioxins at the level of 5 parts per million. Didn't
18 you, sir?

19 A I would have to refresh myself. Is that in the notes
20 here somewhere?

21 Q Do you remember that it had 5 parts per million?

22 A Not off the top of my head, Mr. Carr.

23 Q Now, let me hand you your notes then. Would you mark
24 this exhibit, please?

(Plaintiff's Exhibit No. 1292
was marked for identification.)

Q Handing you now what has been marked Plaintiff's Exhibit 1292 which is your memo of May 14, 1979, but this time it was delivered to us yesterday afternoon and it has your notes attached to it. Look at your notes, please. I will offer that exhibit into evidence if it please the Court. You recognize the attachment as your notes, don't you, sir?

A Give me just a moment here.

Q Do you recognize the attachment as your notes, sir, because it was represented to us that it was your notes?

A May I ask you a question first?

Q No. You will answer that question, please, Mr. Park. Are those your notes?

A I can hear you, Mr. Carr.

Q Well, I'm sorry, Mr. Park.

A Right. I would say these are my notes.

MR. CARR: Offer that exhibit into evidence if it please the Court.

MR. MUSGRAVE: Same objection as previously. It deals with chlorophenol, with 2,4 dichlorophenol.

THE COURT: Okay. Your objection is noted.

MR. MUSGRAVE: And the other objections that have been --

1 THE COURT: I'm sorry. I didn't hear you.

2 MR. MUSGRAVE: And the other objections that have
3 been made to these documents previously.

4 THE COURT: Fine. It is admitted over objection.

5 Q (By Mr. Carr) Do you have in your handwritten notes,
6 Mr. Park, the statement that prior to process change this
7 product contained up to 5 parts per million of dioxin? The
8 first page of your notes. Bottom of the page of the document
9 that has been numbered by Monsanto as C03522.

10 A (By the Witness) Okay. I do see this, Mr. Carr.

11 Q And that is your handwritten note, isn't it, sir, that
12 this product contains 5 parts per million of dioxin on the
13 one to the four trichloro?

14 MR. MUSGRAVE: Well, I object to that, Your Honor.

15 MR. CARR: Does it say that --

16 MR. MUSGRAVE: Why don't you read what it says, Mr.
17 Carr?

18 Q (By Mr. Carr) Does it say it contains up to 5 parts
19 per million dioxin?

20 A (By the Witness) What it says here --

21 THE COURT: I don't have a copy of the note here.

22 MR. CARR: I only have two, Your Honor.

23 THE COURT: If you bring it up then I could rule on
24 the objection because I don't have a copy of the exhibit.

Objection is overruled. Thank you.

A (By the Witness) The statement says, "Prior to this time -- "

Q (By Mr. Carr) My question is, does it say that, Mr. Park?

A No, it does not, Mr. Carr.

Q What does it say then, Mr. Park?

A It says, "Prior to this time product contained up to 1-4 per cent trichloro, 5PPM dioxin."

Q What does 5PPM dioxin mean, Mr. Park?

A It means that the product contained amounts up to or less than 5PPM dioxin.

Q What does 5PPM dioxin mean, Mr. Park?

A 5 parts per million of, I guess, of the total dioxin spectrum.

Q Now, Mr. Park, you let this product go out and you did not notify the EPA, did you, sir, that it contained 5 parts per million of dioxin?

MR. MUSGRAVE: Object, Your Honor. That is a mis-characterization of the prior testimony. No testimony that this product contained 5PPM of dioxins.

THE COURT: Overruled.

A (By the Witness) You are going beyond my knowledge. I am familiar -- you are going beyond the 8E thing here. The

1 conclusion of the group that considered --

2 Q (By Mr. Carr) Mr. Park, my question is your product
3 that is not what you made, but Monsanto shipped out product
4 in commerce that contained up to 5 parts per million of dioxin
5 and you did not notify the EPA of that fact. Isn't that
6 correct, Mr. Park?

7 A The 8E deliberation does not consider --

8 Q Your Honor, would you direct the witness to answer
9 that question?

10 THE COURT: Mr. Park, you have to answer the question
11 as posed to you. Answer the question.

12 A (By the Witness) We did not notify the EPA about the
13 dioxin content at this time.

14 Q (By Mr. Carr) Mr. Park, have you ever notified the
15 EPA of the dioxin content?

16 A I don't know.

17 Q Then why did you add "at this time" because if you ever
18 notified them I haven't seen the document and your company is
19 under orders to produce all those documents to me. Now, Mr.
20 Park, if they had been notified you were serving on the
21 committee that had the responsibility of making the determina-
22 tion to notify them. Isn't that correct, sir?

23 A That is correct.

24 Q And you have no knowledge that the EPA has ever been

1 notified. Isn't that correct, sir?

2 A I would have knowledge of 8E notifications.

3 Q And that is what I am talking about.

4 A Our company has personnel that have a great deal of
5 contact with EPA.

6 Q The question is, do you have any knowledge, Mr. Park,
7 that the EPA was ever notified of the 5 parts per million,
8 up to 5 parts per million contamination the 2,4 dichlorophenol
9 had?

10 A I can't recall off the top of my head.

11 Q Mr. Park, do you consider that 5 parts per million of
12 dioxins is a trace amount?

13 A I think so.

14 Q And, therefore, your judgment trace amounts need not
15 be reported to the EPA. Is that correct, sir?

16 A When they do not represent a substantial risk of injury.

17 Q Would you answer that question, please, sir?

18 A That is correct.

19 Q And does the rest of your committee so far as you know
20 share this view?

21 A The committee varies from meeting to meeting, but those
22 present at this meeting did share that view.

23 Q Well, at any of the meetings that have been had talking
24 about 2,4 dichlorophenol or Santophen or orthochlorophenol crude

1 or parachlorophenol, did any committee at anytime that you
2 served on it ever determine that the EPA should be notified
3 when the product contains in many instances over 5 parts per
4 million? Were they ever notified, sir?

5 MR. MUSGRAVE: What product are you talking about,
6 Mr. Carr?

7 MR. CARR: I enumerated those, counsel.

8 MR. MUSGRAVE: Not in that question you didn't.

9 THE COURT: I believe he did. Overruled.

10 A (By the Witness) We have notified the EPA in two
11 instances, but they did not relate to product ingredients.
12 They related to health effects determined in toxicity studies.

13 Q (By Mr. Carr) My question is, did you ever notify
14 -- did the committee on which you served ever notify the EPA
15 that these products, parachlorophenol, 2,4 dichlorophenol,
16 orthochlorophenol, Santophen, contained levels of dioxin up
17 to 5 parts per million?

18 MR. MUSGRAVE: Object to that. There is no evidence
19 to that effect, Your Honor.

20 THE COURT: Overruled.

21 A (By the Witness) I do not recall. I would have to
22 review the minutes of those meetings.

23 Q (By Mr. Carr) Mr. Park, were you not contacted, there
24 has been a lot of motions for discovery been going on for these

1 last three months and we have been getting documents in
2 dribbles day after day. Now, have you not been a part of
3 searching for documents that would be responsive to my request
4 for production in this area?

5 A No, I haven't.

6 Q Have you not examined your files for such documents?
7 Sir?

8 A These last few months?

9 Q Yes.

10 A No.

11 MR. CARR: Your Honor, may we approach the bench?

12 THE COURT: Yes, you may.

13 Q (By Mr. Carr) Have your files been examined by any-
14 body?

15 MR. MUSGRAVE: Right question, Mr. Carr.

16 A (By the Witness) I am not sure.

17 MR. CARR: May we approach the bench, Your Honor?

18 THE COURT: Yes, you may.

19 (The following proceedings were
20 had at the bench outside the
21 hearing of the jury.)

22 MR. CARR: I would like to have an in-camera examina-
23 tion of this man relative to his files and the contents and
24 what discovery has taken place.

1 THE COURT: I am not quite sure what you mean. Do
2 you mean to bring him back or his files back or both?

3 MR. CARR: I would like to examine him about his
4 files and what has been discovered from his files, what was
5 gone through in his files, who did it and when they did it to
6 determine whether or not discovery of his files have been
7 complete before I continue on with the cross-examination of
8 him. I would think it would be more appropriate that it be
9 done outside the presence of the jury.

10 THE COURT: What is your position?

11 MR. MUSGRAVE: My position is that as directed by
12 the Court -- this would be something for Mr. Nassif. Mr. Carr
13 is moving for an in-camera examination of Mr. Park to determine
14 whether his files have been reviewed in connection with deter-
15 mining if everything has been produced out of his files and I
16 believe you have been through his files yourself.

17 MR. NASSIF: I have. They were pulled.

18 MR. CARR: Your Honor, I have never gotten an
19 affidavit of compliance from Mr. Heineman. He has been under
20 a court order to give it and I have never got such an affidavit.

21 MR. NASSIF: You want me to respond to that, Your
22 Honor.

23 THE COURT: If you want.

24 MR. CARR: I want your representation that we have

1 all the possible files that could relate to TSCA notification.

2 MR. NASSIF: Yes.

3 MR. CARR: Then I won't need anything further.

4 THE COURT: Okay.

5 (The following proceedings were
6 had in the presence and hearing
7 of the jury.)

8 Q (By Mr. Carr) Now, Mr. Park, one of your attorneys
9 has represented to us that he has gone through your files and
10 given us everything that would relate to this subject. Now,
11 have we got everything then to your knowledge, sir?

12 A (By the Witness) I don't know from my personal know-
13 ledge, sir.

14 Q Well, would you accept your attorney's representation?

15 A Yes.

16 Q Did you go through and pull out these notes yourself?
17 Your handwritten notes. Did you furnish those to Mr. Nassif
18 and Mr. Musgrave, Mr. Heineman, Mr. Cornfeld, Mr. Tice and
19 Mr. Ryder? The handwritten notes.

20 A Yes, I understand. I am trying to think back here.
21 I think I furnished the files to them.

22 Q Did you go back after you furnished the files and go
23 through your notes and pull out these handwritten notes that
24 we got yesterday?

1 A I don't recall doing that.

2 Q Mr. Park, then if what your attorney said --

3 THE COURT: Gentlemen, could you approach the bench
4 for a minute, please?

5 (The following proceedings were
6 had at the bench outside the
7 hearing of the jury.)

8 THE COURT: If I remember correctly, either you or
9 Nassif told me when these were submitted that he pulled those
10 out of his file in preparation for his testimony today and
11 furnished them.

12 MR. MUSGRAVE: Let's ask Joe.

13 THE COURT: Yeah. As I said, I don't remember. I
14 have been allowing both of you to participate in those motions.
15 I don't remember who said what.

16 MR. MUSGRAVE: I haven't participated in the discovery
17 motions.

18 THE COURT: Right. If I remember correctly, you
19 told me when those notes were given to me for in-camera inspec-
20 tion that he pulled them out of his file and gave them to you
21 in preparation for his testimony.

22 MR. NASSIF: That's right, Your Honor. I will tell
23 you he gave them to me. Did I give them to you yesterday? I
24 gave them to you the same day I got them from him.

1 THE COURT: You gave me two sets of notes.

2 MR. CARR: What good is it?

3 MR. NASSIF: He handed me a file. I went through a
4 file. I pulled the stuff out. I showed him I was taking them
5 out of his file. He was right there.

6 THE COURT: In answer to your question, you gave me
7 two sets of notes and I don't remember which ones.

8 MR. NASSIF: They were in the ones that you just
9 ruled on yesterday.

10 THE COURT: You gave them to me yesterday morning
11 and I don't remember.

12 MR. NASSIF: Yes. I got them at the same time. He
13 told me -- I said open it up. I went through it with him.

14 MR. CARR: Then all you have done is go through the
15 files that he has given you.

16 MR. NASSIF: No. I had his secretary pull the files.
17 He was in Arizona. When he was in Arizona I had his 8E files
18 pulled and we gave him copies and we produced them to the Judge
19 in-camera about a week ago.

20 THE COURT: Something like that.

21 MR. NASSIF: Okay. Then when he came back I was
22 given the impression, I was given the understanding from his
23 secretary in his absence that we had his files. When he came
24 back, I said, I raised the issue I told you about the other day.

1 I said, "We don't have handwritten notes of your 8E meetings.
2 Did you keep those?" And he said, "Yes. They are in another
3 file." He brought that file in with him and that is why I
4 produced them yesterday. I had reviewed previously what were
5 supposed to be all of his 8E files.

6 MR. CARR: All I have got if I remember are these
7 notes.

8 THE COURT: There were two sets of notes.

9 MR. NASSIF: There are four sets. The first note
10 that you got was a handwritten note, but not on an 8E meeting.
11 It was a handwritten note following the Sturgeon spill of that
12 February 9, 1979. Remember? That was the first one, Rex.
13 And then I gave to you yesterday, I think it was yesterday
14 morning, four sets of the minutes with four sets of the notes
15 attached.

16 THE COURT: Now, wasn't there a submission of notes
17 before that, too?

18 MR. NASSIF: They weren't notes of Phocion Park,
19 except for that one handwritten note which was not an 8E note.

20 THE COURT: Well, perhaps it was these other notes.

21 MR. NASSIF: Yes. I gave Jerry one handwritten note
22 of Mr. Park that related to the tetrathal meeting that we
23 didn't ask for a ruling. So, Rex, you have his minutes from
24 the five meetings on dioxin and all his handwritten notes to

1 the extent that there are any handwritten notes and I certify
2 that I did myself personally in his presence.

3 MR. CARR: I will accept that. The man's memory
4 isn't that good.

5 THE COURT: Okay. Fine.

6 (The following proceedings were
7 had in the hearing and presence
8 of the jury.)

9 Q (By Mr. Carr) Mr. Park, I take it then that if it is
10 not in your files it doesn't exist.

11 A (By the Witness) I don't understand the context of
12 your question.

13 Q Notification or memos relating that you are notifying
14 the EPA about the presence of dioxin in Monsanto products.
15 If they are not in your file, they do not exist. Is that
16 correct?

17 A If it was pursuant to an 8E meeting, it would be in my
18 files.

19 Q And is the answer to my question that they don't exist
20 then?

21 A What does not exist?

22 Q Notification of the EPA under Section 8E that toxic
23 substances such as dioxin were present in your chlorinated
24 phenols.

1 MR. MUSGRAVE: You say toxic substances such as
2 dioxin, are you talking about dioxins or are you talking about
3 everything? Have they ever notified EPA under 8E if there is
4 some problem with some chemical? Because that is what your
5 question encompasses, Mr. Carr.

6 MR. CARR: Could you answer that question, please,
7 sir?

8 MR. MUSGRAVE: Well, I object to the question as
9 being overly broad and including chemicals that have nothing
10 to do with this lawsuit.

11 MR. CARR: I precisely said chlorinated phenols.

12 MR. MUSGRAVE: You did not, Mr. Carr.

13 THE COURT: Overruled.

14 A (By the Witness) My files on the, what is it, the
15 four meetings I guess concerning chlorinated phenols would
16 contain any record of notification to the EPA with respect to
17 the 8E meeting and, therefore, with respect to the 8E meeting
18 there would be nothing that existed outside of those files.

19 Q (By Mr. Carr) And if it is not there, then it does
20 not exist. Isn't that correct, Mr. Park?

21 A I can't say that it doesn't exist, Mr. Carr.

22 Q I thought you just got through saying in other lan-
23 guage, but I wanted it a little more precise that if it is not
24 in those files, that it would be in those files and not outside

1 those files.

2 A Any record of EPA contact pursuant to the 8E meeting
3 would be in my files.

4 Q And if they are not in those files, then they do not
5 exist. Isn't that correct?

6 A I can't say that. I can say to the best of my know-
7 ledge that no EPA contact was made.

8 Q Do you understand the contradiction between the two
9 things that you have just said, Mr. Park?

10 A Would you explain that?

11 Q Do you realize that you are saying two contrary, con-
12 tradictory things?

13 A I don't believe I am, Mr. Carr. You asked me if some-
14 thing exists.

15 Q Is it true that if there were any notification to the
16 EPA of an 8E finding that there was dioxin in your chlorinated
17 phenols, is it true that a copy or a record of such notifica-
18 tion would be in your files?

19 A It certainly should be.

20 Q Should be. Where else would they be?

21 A It should be in my files.

22 Q And if they are not in your files, then is it true
23 that so far as you know they do not exist?

24 A A record of notification to the EPA pursuant to 8E?

1 Q That is correct.

2 A Then to the best of my knowledge, it would not exist.

3 Q All right. Mr. Park, then the EPA has never been
4 notified to the best of your knowledge of the fact that dioxin
5 is in your product of chlorinated phenols. Is that correct,
6 sir?

7 A I cannot go that far.

8 Q Sir?

9 A I said no. I cannot answer affirmatively to that
10 question because you did not limit it to 8E.

11 Q Under 8E.

12 A Under 8E, the answer would be yes.

13 Q Now, Mr. Park, you have suggested that perhaps one
14 reason for not notifying the EPA was because of the fact that
15 you believe the product when it is put to use, there wouldn't
16 be any exposure. Is that correct, sir?

17 MR. MUSGRAVE: Your Honor, we have been down this
18 repeatedly. I object to the repetitive nature of the cross-
19 examination of this witness about this topic. You know, we
20 have now been on it for probably the better part of three
21 quarters of the day and it is the same questions phrased in
22 different fashions. It is just all repeat testimony. Object
23 to it.

24 THE COURT: Objection is overruled.

1 A (By the Witness) What is considered important at any
2 SE meeting is whether there is evidence of a substantial risk
3 of injury to the health or environment.

4 MR. CARR: Your Honor, would you direct the witness
5 to answer my question?

6 THE COURT: Mr. Park, that is not responsive. Please
7 answer the question that has been posed to you.

8 A (By the Witness) I am trying to see if I remember
9 correctly, Mr. Carr. Your question was, did we consider the
10 toxicity of the ingredients?

11 Q (By Mr. Carr) Your Honor -- Agnes, could you read the
12 question to him one time?

13 (Question read.)

14 A That could be considered, yes.

15 Q Now, you do agree that -- I want you to assume, if
16 you would, that there has been testimony that dioxins can cause
17 serious health effects upon human beings, cancer and the long
18 list of things that we have read to you before. You do agree
19 that those are serious health effects, don't you, sir? If in
20 fact it is true.

21 A I don't understand the medical terms there, Mr. Carr.

22 Q You don't understand the word "liver damage"?

23 A I do understand that.

24 Q Is that a serious health effect?

1 A I would consider it a serious health effect.

2 Q Do you understand what porphyria is?

3 A I'm sorry. I don't.

4 Q Do you know whether it is or is not a serious health
5 effect?

6 A No, I don't.

7 Q Do you know what "cardio-vascular disorders" means?

8 A I think I do, yes.

9 Q Is that a serious health effect?

10 A Yes, sir.

11 Q Do you know what cancer means?

12 A Yes, I do.

13 Q Is that a serious health effect?

14 A Yes, it is.

15 Q Do you know what polyneuropathy means?

16 A I am not sure.

17 Q You are not sure and you have been sitting on this
18 committee and you have been discussing what dioxin does to
19 people and considering the health effects of dioxin and you
20 don't know what neuropathy means. You know what poly means.

21 A Yes, sir.

22 Q And you know what neuro means, don't you, Mr. Park?

23 A It would relate to the nerves.

24 Q That's right, Mr. Park. And you know what pathy means.

1 It means disease. You know that, too, don't you, sir? Patho-
2 logical, P-A-T-H, disease. So, polyneuropathy means many
3 nerve diseases, doesn't it, sir? Now, is that a serious health
4 effect?

5 A That would be a serious health effect.

6 Q Then you also understand that if dioxin can cause
7 serious health effects that you may not consider exposure.
8 You know that, too, don't you, sir?

9 A I don't know that I do.

10 Q I hand you now what has been marked Plaintiff's
11 Exhibit, I'm sorry, Monsanto's Exhibit 881 and ask you, do you
12 recognize that? And ask leave to pass copies to the jury.

13 THE COURT: Any objection?

14 MR. MUSGRAVE: The same objection I made previously
15 about cross-examining this man with regard to the law. The
16 law is the province of the Court and also object to the rele-
17 vancy of the application of this law to the entire issue,
18 Your Honor.

19 THE COURT: Objection is overruled on both points.
20 Those being the only objections, you may pass them to the jury.

21 A (By the Witness) This appears to be an excerpt from
22 a --

23 Q (By Mr. Carr) I haven't asked you a question.

24 A I'm sorry. I thought you did.

1 Q I will give the entire exhibit, Monsanto Exhibit 881.
2 You may read it, if you like. Do you recognize that as part
3 of the EPA comment published in the Federal Register on March
4 16, 1978, that is to be used in conjunction with the Act
5 itself. Do you not, sir?

6 A Yes.

7 Q And the column that we have in front of us is what
8 constitutes substantial risks. You recognize that, don't you,
9 sir? You see it headed that way, sir? You see what consti-
10 tutes substantial risks?

11 A Yes. When you said --

12 Q You see that, sir?

13 A I see that, but that is not part of the statute. Nor
14 is it a regulation.

15 Q Mr. Park, did I say that it was part of the statute?
16 I said it is the comment, it is the interpretation of the EPA
17 that was published in the Federal Register that goes with the
18 Act and that you use in determining what you do under the Act.
19 Isn't that correct, sir?

20 A That's right, although our primary reference is to the
21 Act itself.

22 Q I understand that. Do you understand what I said is
23 to take away from that? Isn't this something that you probably
24 had a part to preparing part of making up Monsanto Exhibit 881

1 that you understand goes along with the Act; that you are
2 obligated to use that in making determinations under that
3 Toxic Substances Control Act. You know that, don't you,
4 Mr. Park?

5 A Obviously, I do, Mr. Carr. But I am drawing a dis-
6 tinction though. It does not go along with the Act. We make
7 use of it.

8 Q I understand that, Mr. Park. It is what you are
9 supposed to do. You are supposed to make use of it in order
10 to interpret the law in order to help you decide what you
11 should or should not notify the EPA about. Isn't that correct,
12 sir?

13 A We do make use of it. It is, as you know, it is not
14 a regulation. It is not enforceable.

15 Q Your Honor, would you direct the witness to answer
16 that question?

17 THE COURT: Answer the question, Mr. Park.

18 A (By the Witness) Yes. We make such use of it as is
19 deemed appropriate.

20 Q (By Mr. Carr) Could you answer my question, please,
21 Mr. Park?

22 A I thought I just did.

23 THE COURT: Overruled. I don't think so. Answer the
24 question, Mr. Park.

1 A (By the Witness) We do make use of it.

2 Q (By Mr. Carr) Yes, but you said -- you added something.
3 What you deem appropriate. I don't accept that, Mr. Park.
4 Would you read the question back to him that I asked him?

5 MR. MUSGRAVE: Well, I object to counsel's not
6 accepting it, Your Honor. It is a properly legitimate answer.

7 THE COURT: Well, no, it is not in view of the
8 question that was asked. Your objection is overruled. Please
9 read the question back once.

10 (Question read.)

11 A (By the Witness) If you are compelling me to say
12 either this has the same weight as the statute or not, I have
13 to say it does not.

14 Q (By Mr. Carr) Mr. Park, will you listen to that
15 question again?

16 A Yes, sir.

17 Q Do you understand that I asked you whether or not it
18 had the same weight as the statute? What do you believe that
19 I asked you?

20 A I would be glad to explain what I --

21 Q Mr. Park, I want you to answer that question. Then
22 if you want to make an explanation, you can explain all day
23 long once you answer the question. I am not barring you from
24 making explanation. You can give any explanation you want, but

1 first answer the question.

2 A Thank you, Mr. Carr. Yes, we do make use of this in
3 interpreting the statute. Now, let me explain. When this
4 interpretive statement by the EPA was adopted, the EPA recog-
5 nized that the statute itself was brief and the EPA inten-
6 tionally adopted what they called an interpretive statement,
7 if you will, a policy and not a rule or regulation because the
8 EPA went a little bit beyond what they felt the statute would
9 require and they did not want to go through hearings on this
10 question, did not want to go through a possible challenge of
11 EPA exceeding its authority. So, this interpretive statement
12 or statement of policy or whatever does not have the force of
13 law. It is an aid which we use, but many companies have taken
14 issue with different parts of it. There is a portion here,
15 for example that deals with what is called bio-accumulation
16 in fish. This is in the environment when a substance might
17 tend to accumulate in different organisms. The formula used
18 by the EPA it was felt was incorrect. They may have subse-
19 quently changed that. I am not sure, but a number of people
20 commented to EPA that this was in error and that people did
21 not intend to follow it. I just point out that this policy
22 statement does not have the force and effect of the statute
23 which is the primary thing with which we are concerned.

24 THE COURT: Mr. Carr, is this a good point for a

short break?

MR. CARR: I would like to ask one question. This does contain the statement, does it not, sir, "The human health effects listed in sub-part A below, for example, are so serious that relatively little weight is given to exposure. The mere fact the implicated chemical is in commerce constitutes sufficient evidence of exposure." That is in the law, is it not, sir?

A (By the Witness) No, it is not.

Q (By Mr. Carr) That is in the statement. I'm sorry. It is not in the law, but it is in their interpretation of what constitutes substantial risk.

A It is in the EPA policy statement.

Q And they are telling you, are they not, that once you ship it out of the plant that is exposure by itself? Sufficient evidence of exposure.

A It says, "Relatively little weight should be given to exposure."

Q What else does it say?

A It goes on to say that, "The fact that the implicated chemical is in commerce constitutes sufficient evidence of exposure."

Q And that means that you don't need to consider any other fact about exposure other than the fact that it leaves

1 the plant. Isn't that correct, sir?

2 A I don't interpret it that way. No, sir.

3 Q Well, we will have a recess and then we will get back
4 to your interpretation.

5 THE COURT: Ladies and gentlemen, we are going to
6 take a short recess at this time. I would remind you and this
7 goes for any other breaks that we take during the day, you are
8 not to discuss this matter among yourselves, with anyone out-
9 side the jury panel, or as yet form any opinions or conclusions
10 about the matters in trial. Court will be in short recess.

11 (Short recess taken.)

12 MR. MUSGRAVE: Can we approach the bench, Your Honor?

13 THE COURT: While you are standing, why not?

14 (The following proceedings were
15 had at the bench outside the
16 hearing of the jury.)

17 MR. MUSGRAVE: I would anticipate that Mr. Carr in-
18 tends now to conduct an examination of this witness as to the
19 application of the statute, Section 8E that has been mentioned
20 here and the evidence or the policy that supports it and get
21 into what it means. An attempt to apply this witness's inter-
22 pretations of the situations as to whether or not Monsanto fol-
23 lowed it or didn't follow it, was it in violation of the Statute
24 or not in violation of the Statute. I would like to make an

1 objection at this time as to getting into that and pending the
2 Court's ruling would request it be a continuing objection so
3 I don't have to continually object on the ground that this is
4 not a lawsuit that involves whether or not Monsanto has violated
5 Section 8E of TSCA. The interpretation of the Statute is not
6 a topic, a proper subject of examination of the witness. It
7 is a question for the Court and it is totally improper and has
8 no probative value in this lawsuit or weight against prejudi-
9 cial effects that it may have and as I have indicated this is
10 not an issue in this lawsuit whether Monsanto has violated or
11 not violated the Statute.

12 MR. CARR: Your Honor, we are in the punitive part
13 of the case and their action with regard to this Statute has
14 a lot of probative value as to the notices that they have
15 given the plaintiffs in this case, the cover-up that they have
16 undergone. This is part of a broad plan of cover-up. As a
17 matter of fact, the exhibits brought in in question were brought
18 in by Mr. Musgrave. I didn't get into really any attempt to
19 interpret the law until such time as Mr. Musgrave started
20 asking his witness whether or not the rules and regulations
21 and what they meant and Monsanto's attitude toward what was
22 toxic substances and what is not. It has a great deal of
23 importance in this case as to their attitude toward OCP and
24 what the clean-up should have been. It's all -- it would be

1 impossible to separate their action with regard to considering
2 2,4 dichlorophenol as a toxic substance because of its dioxin
3 content or lack of content and their attitude and knowledge
4 about the OCP. And it's all -- one bears on the other. It is
5 intermingled so much it would be impossible to keep it out.

6 MR. MUSGRAVE: Just one quick statement. The record
7 will reflect that he opened up this topic and marked the
8 Statute and cross-examined a witness about whether Monsanto
9 had complied with it or not, which would be Dr. Mieure on his
10 cross-examination. Number two, I would also add that the
11 topics developed here are remote, so remote in time from the
12 occurrence, whether the state of mind of Monsanto is the real
13 issue that they are of no probative value weighed against the
14 other effects that they have.

15 THE COURT: I think it is properly part of the
16 punitive aspect of the case. I think this person, whoever
17 brought it up and it is not really material as to who opened
18 it up. It is properly a matter that can be considered in this
19 aspect of the case. I think it is intricately interwoven with
20 these other aspects that are properly part of the punitive
21 case. And I think that this person as a member of the committee
22 that takes actions or decides not to take action under TCSA
23 and is the attorney on that is the person who can and should
24 be examined on these points on all these bases. I will overrule

1 your objection. I will make it a continuing objection going
2 to this entire line of questioning so that it does not have to
3 be renewed.

4 (The following proceedings were
5 had in the hearing and presence
6 of the jury.)

7 Q (By Mr. Carr) Mr. Park, to get the record straight
8 as to what this is that we are about to discuss, this is part
9 of the Environmental Protection Agency statement of interpre-
10 tation and enforcement policy. Is it not, sir?

11 A (By the Witness) Yes. This is Defendant's Exhibit
12 880. Is that what we are talking about?

13 Q Yes.

14 A Yes.

15 Q And it was published in the Federal Register, was it
16 not, sir?

17 A Yes.

18 Q And those who wish to take issue with it or to argue
19 with it or to say that it should not be enforced, all had an
20 opportunity to reply to that publication, did they not, sir?

21 A No. It is not enforceable, Mr. Carr.

22 Q Excuse me. Could you please answer that question, sir?

23 A I am.

24 MR. MUSGRAVE: You asked him about enforcement and he

answered the question.

Q (By Mr. Carr) I asked whether or not everyone had an opportunity to comment on it prior to its enforcement.

A (By the Witness) A, it is not enforceable. B, an earlier draft as I recall was published. Comments were requested. A number of parties did comment on it. The policy statement was revised and was republished without any further allowance for comments or for challenge or anything else.

Q Did anyone challenge that part of the policy of the EPA dealing with the criteria for exposure?

A I frankly cannot recall offhand.

Q Well, you have the exhibit that has the comments there and you have had an opportunity to review it before you came. You surely reviewed this matter before you came in here today, did you not?

A I did not review all these comments that are shown here.

Q Well, do you have any knowledge that anybody at all has ever challenged the definition of exposure; that matter dealing with exposure?

A This policy statement was not the subject of hearing.

Q Can you answer that question?

A No. There has been no judicial interpretation of the law.

1 Q And no one has ever challenged that, have they, sir?

2 A There is no weight you could challenge.

3 Q Excuse me, sir. Could you answer that question, please?

4 A I am not aware of it.

5 Q All right. Now, what this is, this is published and
6 it does control and is the policy of the EPA and they tell you
7 this is the way they are going to administer this law. Isn't
8 that correct, sir?

9 A No, it is not correct, Mr. Carr. This does not control
10 the law.

11 Q Does it tell you the way they intend to enforce the
12 law?

13 A It is a statement of EPA policy.

14 Q And what other word goes before policy? You didn't
15 read that. It is statement of interpretation and enforcement
16 policy, is it not, sir?

17 A That is in here, yes.

18 Q And this is the way the EPA tells you they intend to
19 enforce and the way they intend to enforce it. Isn't that
20 correct, sir?

21 A Well, they say that the action is -- statement of
22 policy. Over here in the middle column --

23 Q Could you please answer that question, Mr. Park?

24 A They refer to it as a policy statement.

1 Q Would you please direct the witness to answer that
2 question, Your Honor?

3 THE COURT: Mr. Park, you have to answer that ques-
4 tion.

5 A (By the Witness) I have to answer no. They refer to it
6 as a policy statement. I am reading in the middle column,
7 Mr. Carr. I guess the second full paragraph. It says, "Pursuant
8 to some question over the definition and nature of guidance,
9 this document is now described more accurately as a policy
10 statement."

11 Q (By Mr. Carr) And what does it say when they enacted
12 it, the very second paragraph at the top, sir. What does it
13 say under action?

14 A "Action: Statement of interpretation and enforcement
15 policy."

16 Q Thank you, sir. And this policy they told you is in
17 effect as of the date of the publication. Didn't they, sir?

18 A I don't see it, Mr. Carr.

19 Q First column, fourth paragraph of Exhibit 880.

20 A Yes. That is correct.

21 Q And the date of publication was March 16, 1978, wasn't
22 it, sir?

23 A That is correct.

24 Q And this policy, therefore, was in effect at the time

1 of the Sturgeon spill. Wasn't it, sir?

2 A I believe that is correct.

3 Q And it was in effect at the time that you met in May
4 of 1979. Wasn't it, sir?

5 A That is correct.

6 Q And until challenged in court by somebody this does
7 control those who come under the jurisdiction of the Act.
8 Doesn't it, sir?

9 A No, it does not.

10 Q It does not?

11 A No.

12 Q Do you mean to say that you at Monsanto believe that
13 you can refuse to follow this policy?

14 A This policy is not enforceable.

15 Q Could you answer that question, please, sir?

16 A Anyone could decide to follow the law which might be
17 different from the policy.

18 Q Your Honor, would you direct the witness to answer
19 that question.

20 THE COURT: Mr. Park, you have to answer the question
21 as it is posed to you.

22 A (By the Witness) Yes, it is possible.

23 Q (By Mr. Carr) And if you do, you would subject your-
24 self to action on the part of the EPA if they wanted to take

1 action. Couldn't they, sir?

2 A I would think not.

3 MR. MUSGRAVE: I object to that, Your Honor, as being
4 vague and indefinite. It depends upon what action was taken
5 in what context. There is no way that question can be answered.
6 It is pure speculation without facts as to what action might be
7 taken and not to be in accordance with the policy and whether
8 the EPA would decide their policy was or wasn't a proper
9 interpretation of the law and would decide to challenge or not.
10 That is totally speculative and conjecture and an improper
11 question.

12 THE COURT: Overruled. I think it is directed to the
13 capacity of EPA to take action, not whether they would or not.
14 Overruled. Mr. Park, please answer the question.

15 A (By the Witness) Your Honor, I'm sorry, but I can't
16 recall it.

17 THE COURT: I didn't hear your last words.

18 A (By the Witness) I can't recall what the question was.

19 THE COURT: Would you read it back once, please?

20 (Question read.)

21 A (By the Witness) I would think the EPA would not take
22 action so long as we were in compliance with the law.

23 MR. CARR: Your Honor, would you direct the witness
24 to answer the question?

1 THE COURT: Mr. Park, you have had the question
2 read to you. You have to answer it as it is posed to you.

3 A (By the Witness) No.

4 Q (By Mr. Carr) The EPA you don't believe has the
5 capacity to bring action against you if you refuse to follow
6 their policy and the law as they have interpreted it for your
7 guidance.

8 A This would be a discretionary decision by the EPA.

9 Q Well then, they do have the power to prosecute you if
10 you fail to follow the policy they have set down. Isn't that
11 correct, sir?

12 A Conceivably they could attempt to do so.

13 Q Then they could prosecute you for it, couldn't they,
14 sir?

15 A It is conceivable a complaint could be filed.

16 Q And they could prosecute you, couldn't they, if you
17 failed to follow the policy as they set it down, the law as
18 they say it is, the way they have interpreted it? Isn't that
19 correct, sir?

20 A I'm sorry. Maybe I have a semantic difficulty here.
21 But I don't believe they could as long as we were in compliance
22 with the law.

23 Q What you are saying is that you may have decided that
24 their statement was wrong and that you might win the case is

1 what you are saying, aren't you, sir?

2 A If they for some reason decide to file a complaint.

3 Q My question was, they could prosecute you if you
4 failed to follow the law as they have interpreted it and
5 follow the policy as they set it down. Isn't that correct,
6 sir?

7 A I guess that is conceivable.

8 Q Now, have you ever notified the EPA that you do not
9 intend to follow the policy as they have interpreted it?

10 A No.

11 Q To the best of your knowledge, has Monsanto always
12 followed the policy as they have set it down in this document?

13 A I don't know that I can answer that because our
14 primary concern is full compliance with the law.

15 Q And are you attempting to comply with it as it has
16 been interpreted and set down by the EPA?

17 A We give our concern and our attention to the law.

18 Q Would you direct the witness to answer that question,
19 Your Honor?

20 THE COURT: Mr. Park, you have to answer the question
21 as it is posed to you. Please do so.

22 A (By the Witness) In every SE situation we do not
23 refer to the policy because it is not appropriate to every
24 situation.

1 MR. CARR: Your Honor, would you direct the witness
2 to answer the question?

3 THE COURT: Mr. Park, that is not the question that
4 was asked of you. Please answer the question as it was posed.

5 A (By the Witness) Okay. The question was as I recall,
6 do we follow this EPA policy in every instance?

7 MR. CARR: Would you read the question to him again,
8 please?

9 (Question read.)

10 A (By the Witness) I cannot recall an instance in which
11 we acted contrary to this.

12 Q (By Mr. Carr) Would you answer the question, please,
13 Mr. Park?

14 A Yes, where it applies.

15 Q Now, part of this policy that you have been attempting
16 to comply with is the section that we have been -- we have
17 started to discuss. Isn't that correct, sir?

18 A Yes.

19 Q And that section that you have been attempting to
20 comply with is the statement that as far as the human health effects
21 that are listed below, they are so serious that relatively
22 little weight is given to exposure. The mere fact the impli-
23 cated chemical in commerce constitutes sufficient evidence of
24 exposure. Isn't that correct?

1 A That is part of the policy statement.

2 Q That isn't what I asked you though.

3 A I'm sorry.

4 Q Would you read the question that I asked him?

5 (Question read.)

6 A To the extent this would be applicable to a given SE
7 meeting or situation we would -- we would follow it.

8 Q And this -- it is a poor blow-up, but nevertheless it
9 does set out that part of the law or this policy statement
10 that we are now discussing. Isn't that correct, sir?

11 A Yes, that is a sentence from the statement.

12 Q Could we mark this Plaintiff's Exhibit, whatever the
13 number might be?

14 (Plaintiff's Exhibit No. 1293

15 was marked for identification.)

16 MR. CARR: Your Honor, I will offer into evidence
17 Plaintiff's Exhibit 1293.

18 MR. MUSGRAVE: Same objections as previously made
19 at the bench, Your Honor, and also would object to counsel --
20 you want to wait until it is introduced before it is shown to
21 the jury? Thank you.

22 MR. CARR: Your welcome.

23 MR. MUSGRAVE: I object to counsel taking out of
24 context one sentence from a policy of many pages for purposes

1 of emphasis because it is misleading and not representative,
2 out of context of what was intended by the one sentence or two
3 sentences that he has taken out.

4 THE COURT: Your objection is overruled on both
5 points. It is admitted over objection.

6 Q (By Mr. Carr) Now, Mr. Park, this statement that you
7 have attempted to comply with provides that the -- and we have
8 no quarrel with that meaning. That meaning is clear, isn't it,
9 sir?

10 A (By the Witness) I don't feel it is clear, Mr. Carr.

11 Q Well, do we have a problem with the --

12 A It is inconsistent in its wording.

13 Q Do you understand what the words "mere fact" mean, sir?

14 A Of course, I do, Mr. Carr.

15 Q And "the implicated chemical". That is the chemical
16 that we are talking about that is contaminated with dioxins.
17 There is no quarrel about the meaning of that word, is there, sir?

18 A I think that is unclear in the context of the policy.

19 Q Well, it is unclear as to what the words "implicated
20 chemical" mean. Is that what you are saying, Mr. Park?

21 A That is what I said, Mr. Carr.

22 Q Mr. Park, and have you always, you being the one to
23 interpret this law for this committee for Monsanto since 1977,
24 since 1978 when it was published, have you always believed that

1 it is unclear as to what the words "implicated chemical" mean?

2 A I think there is a feeling among environmental lawyers
3 in general that this is an unclear policy.

4 Q Have you always believed that it is unclear as to
5 what "implicated chemical" means?

6 A Except insofar as it applies to toxicity studies of
7 a given chemical.

8 Q You think this only applies to studies as to whether
9 or not a chemical is toxic?

10 A I feel --

11 Q Is that what you are saying, Mr. Park?

12 A I feel that this policy statement was directed --

13 (Whereupon Mr. Carr and Mr. Musgrave
14 spoke at the same time which caused
15 their remarks to be unintelligible
16 and not reported in this record.)

17 MR. CARR: I asked if what I said is what he is
18 saying. Is that what you are saying, Mr. Park?

19 A (By the Witness) I think it is primarily directed
20 toward toxicity studies.

21 Q (By Mr. Carr) Well now, you said primarily, but I
22 didn't say primarily. Are you saying that this policy state-
23 ment that we are discussing and the implicated chemical only
24 is talking about toxicity studies of the chemical itself and

1 not the manufacture of the chemical and sending it out into
2 commerce.

3 A I think this wording here is directed toward toxicity
4 studies of a given chemical or a chemical that is implicated
5 by epidemiological studies.

6 Q And the chemical to be implicated then in Monsanto's
7 judgment has to be one that has been studied through an
8 epidemiological study. Is that what you are saying?

9 A That is right. A chemical that has been --

10 Q Where in the EPA policy does it say that the implicated
11 chemical has to be one that has been sent out in the public
12 and a large enough group of people that it can cause damage
13 or not damage to and then, only then the industry has to pay
14 attention to the TCSA law? Where does the EPA statement say
15 that? Where does the law say that?

16 A I don't think it says that exactly.

17 Q Did you ever read a court decision that says this
18 applies only in the case where the chemical has been studied
19 with an epidemiological study?

20 A There are implications in the policy --

21 Q Is that what you are saying, sir?

22 A There are implications in the policy itself.

23 Q Is that what you are saying, sir?

24 A Yes. There are implications in the policy.

1 Q And, Mr. Park, what you are saying then, has there ever
2 been an epidemiological study undertaken with 2,4 dichlorophenol
3 that contains 5 parts per million of dioxin to your knowledge?

4 A I am not aware of one.

5 Q Then a chemical in your judgment that contains 5 parts
6 per million of dioxin is not subject to this law. Is that
7 correct, sir?

8 A I would not say that.

9 Q You would not say that. Then it is subject to the law,
10 isn't it, sir?

11 A All chemical substances are subject to the Toxic
12 Substances Control Act.

13 Q Indeed it is. And when the implicated chemical is one
14 that contains toxic substances it is covered by the law.
15 Isn't it, Mr. Park?

16 A The word implicated is a funny word. It is not in
17 the law.

18 Q It is not very funny. Implicated simply means the
19 chemical that is involved in or implicated with these terrible
20 health effects. That is what it means.

21 A And that is why we get back to studies, Mr. Carr.
22 The studies that implicate --

23 Q Is there any question but what the words "implicated
24 chemical" means and refers to that chemical substance that can

1 cause these injurious health effects? Any question about that,
2 sir?

3 A Well, the policy, of course --

4 Q Now, Mr. Park, is there any question about that in
5 your mind, but that that is what that word means, those two
6 words mean?

7 A The two words "implicated chemical" --

8 Q Means a chemical that contains in its substances, part
9 of its chemical make-up are contaminates that can cause the
10 serious human health effects.

11 A In the policy the "implicated chemical" I feel is one
12 that has been implicated as causing new previously unknown
13 health effects through -- I think Section 6 of the policy gets
14 that pretty clearly.

15 Q Mr. Park, is what you are saying then that since the
16 health effects of dioxin is pretty well known and they are not
17 new, they have been known since at least 1949 when the Monsanto
18 workers were exposed to it in an accident that took place at
19 Nitro, West Virginia, and prior to that time for that matter,
20 since those health effects have been known since then they are
21 not new and, therefore, the fact that the health effect of TCDD
22 is known and, therefore, it is in your chemicals, that you do
23 not have to tell the EPA that the toxic substance is in the
24 chemical. Is that what you are saying, sir?

1 A No.

2 Q I didn't think you were saying that because you don't
3 mean that, do you, sir? And we established yesterday, did we
4 not, sir, that if this chemical has in it a contaminate that
5 you didn't know about and the EPA didn't know about and that
6 that chemical is one that can cause the serious health effects,
7 it is covered by the Act, isn't it, sir?

8 A I'm sorry, but, of course, there are exclusions in the
9 Act. It might or might not be.

10 Q Oh, Mr. Park, didn't we establish it yesterday when we
11 went through the business of cyanide in the tank? Don't you
12 recall that, Mr. Park?

13 A I don't recall establishing that the Act would cover
14 the type of situation you have described.

15 Q Then Monsanto's position is that it need not report
16 anything to the EPA that any of its chemicals contain dioxin.
17 Is that correct, sir? No matter what the level.

18 A I would not say that that is Monsanto's position.

19 Q Well, is it Monsanto's position that they are obligated
20 to report to the EPA that it contains dioxin? Which is it?
21 It has got to be one or the other.

22 A It would depend upon the circumstances, Mr. Carr.

23 Q It depends upon whether or not the implicated chemical
24 is in commerce, doesn't it, sir?

1 A And here you get back --

2 Q Isn't that correct, sir?

3 A Well, there are other factors.

4 Q What other factor is there involved in it, sir? Would
5 you tell me that?

6 A Yes, I am trying to answer you, Mr. Carr. There are
7 three criteria that must be met. The first is that the che-
8 mical must be produced by the party considering notification.

9 Q We met that.

10 A And be produced for commercial purposes.

11 Q Sure. We got that. Monsanto produces it.

12 A The second is that there must be evidence that the
13 chemical presents a substantial risk of injury to health or
14 the environment.

15 Q We have got that, don't we, sir?

16 A No.

17 Q Well, here is where we --

18 A Let me finish, Mr. Carr. And third, the EPA must not
19 already be aware of the information. There are three criteria
20 that must be met. If the three criteria are met, then there
21 is a reporting obligation to the EPA.

22 Q All right. Now, Monsanto produces the chemical.
23 Correct?

24 A Are we talking specifically now about a --

1 Q 2,4 dichlorophenol, orthochlorophenol crude, Santophen.

2 A Yes.

3 Q All right. And you are aware of the fact that there
4 is testimony in this case because I asked you to assume it
5 yesterday that there was testimony that these things result
6 from exposure to this chemical and you agreed yesterday that
7 those are serious health effects. So that is covered, isn't
8 it, sir?

9 A What is covered, Mr. Carr?

10 Q That dioxin can cause serious health effects in human
11 beings and we went through it just this morning that these are
12 serious health effects.

13 MR. MUSGRAVE: Object, Your Honor. It is incorrect,
14 Mr. Carr. You are misleading the witness because the witness
15 is talking about the chemical and you are talking about dioxin.
16 He is talking about the substance, the product, and you are
17 talking about dioxin. You are misleading him and you know it.
18 I object.

19 THE COURT: Overruled.

20 A (By the Witness) Okay. My answer frankly very clearly
21 is that the chlorophenol does not present a substantial risk
22 of injury to health or the environment.

23 Q (By Mr. Carr) Well, the chlorophenol by itself.

24 A With its constituents. With its contaminants.

1 Q No matter how much dioxin is in it, it doesn't pose a
2 health risk. Is that what you are saying?

3 A No. I am saying --

4 Q Is that what you are saying, sir?

5 A I did not say that, Mr. Carr.

6 Q All right. Then it does depend upon its contaminate,
7 doesn't it, sir? The level of its contaminate.

8 A I am not saying that. I am saying that the chlorophenol
9 that was produced in 1979 did not present a substantial risk
10 of injury to health or the environment.

11 Q All of the chlorophenol produced didn't, sir?

12 A In terms of the 8E.

13 Q In terms of 8E. Do you know whether or not all the
14 chlorophenol had dioxin in it or not, sir? Do you know that,
15 sir?

16 A Whether all of it had dioxin in it or not.

17 Q That's right.

18 A I believe there were trace amounts.

19 Q And those trace amounts varied from batch to batch,
20 didn't they, sir, from up to 5 parts per million by your own
21 handwritten note. Isn't that correct, sir?

22 A They apparently did vary from batch to batch. I'm
23 sorry. Let me pull out the other note.

24 MR. CARR: Your Honor, it's past noon and I can wait

1 until 1:30 for the answer to that question.

2 A (By the Witness) 5ppm dioxin, yes.

3 THE COURT: Thank you. Ladies and gentlemen, we
4 will break for lunch at this time. The admonishments that I
5 have given you earlier will apply during this lunch break and
6 we will resume again at 1:30. Court is in recess.

7 (Luncheon recess taken.)

8 Q (By Mr. Carr) Mr. Park, I believe we were discussing
9 the section of the EPA policy dealing with the implicated
10 chemical and I would like to ask you now whether or not any
11 dispute or any vagueness in your mind about what the word
12 "constitutes" or rather what the phrase "in commerce" means?

13 A (By the Witness) No. That is defined in the statute.

14 Q And it means that when it leaves the plant on its way
15 to a customer it is in commerce, isn't it, sir?

16 A Certainly.

17 Q Yes. Now, that doesn't mean to the ultimate user of
18 the product. That is if it is something that is going to be
19 taken by another chemical company or by a drug company and
20 made into another product or further refined. It is not refer-
21 ing just to that. It means any product that leaves your
22 company's premises and sold to somebody else is in commerce,
23 isn't it, sir?

24 A Yes. The statute says that, I think, for commercial

1 purposes means any product that is produced and put into
2 commerce.

3 THE COURT: I didn't hear the last phrase.

4 A (By the Witness) I'm sorry. Any product that is
5 produced and goes into commerce.

6 THE COURT: Thank you.

7 Q (By Mr. Carr) And, of course, what we are defining
8 "in commerce" is that which leaves your plant on its way to
9 somebody else. When it leaves the control of your plant and
10 it's on its way to an ultimate customer, the customer that you
11 sold it to, it is in commerce, isn't it, sir?

12 A (By the Witness) I would say that would be in commerce.

13 Q And if you assume that the tank car in question in
14 this case contained orthochlorophenol crude that was manufac-
15 tured by Monsanto and sold to a chemical company in the western
16 part of the country, when it left your plant in that tank car
17 on the way to that chemical company it was in commerce, wasn't
18 it, sir?

19 A Certainly.

20 Q And the same thing holds true for 2,4 dichlorophenol
21 that is sold to those people that use it whether they use it
22 for oil well additives or for lawn weeds is in commerce as the
23 time it leaves the plant. Isn't that correct, sir?

24 A Yes.

1 Q Even though it is not yet made into Weed-B-Gon or
2 2,4 D. And the same thing holds true for Santophen even though
3 it's not yet made into Lysol. It is in commerce, isn't it,
4 sir? When it leaves the plant.

5 A Enroute to a customer?

6 Q Yes.

7 A Yes.

8 Q All right. So there is no dispute about that. The
9 next phrase, "constitutes"; you know what constitutes -- there
10 is no quarrel about what that means, is there? Consists of;
11 is. No quarrel with that meaning, is there, sir?

12 A I don't think so.

13 Q And "sufficient evidence". That means enough proof,
14 doesn't it, sir?

15 A Yes.

16 Q And "of exposure" means that people are going to be
17 exposed to it in the state that it is in at that time and in
18 the state -- well, that's far enough. Just in the state that
19 it is in at the time that it leaves the plant. Isn't that
20 correct, sir?

21 A I don't know about that, Mr. Carr.

22 Q Well, Mr. Park, isn't that what it says? When it is
23 placed in commerce, that is when it leaves the plant, that is
24 adequate proof of exposure. Isn't that what it says?

1 A Mr. Carr, I feel that pulling one sentence out of --

2 Q Excuse me. Your Honor, would you direct the witness
3 so that we might not spend forever on this subject, direct
4 the witness to answer the question.

5 THE COURT: Please answer the question as it is
6 directly posed to you, Mr. Park.

7 A (By the Witness) Will you repeat the question, please?

8 Q (By Mr. Carr) No, Mr. Park, I won't repeat the ques-
9 tion. You know what I said. You know exactly what I said.

10 A I don't remember what you said, Mr. Carr, or I would
11 not have asked you to repeat it. I am concerned that we are
12 getting off on a wrong track.

13 Q Mr. Park, we may be off the track that you want us on.

14 A No. No.

15 Q But you are not asking the questions. I am asking the
16 questions and I am going on a particular point. I want to
17 establish a particular point. The point I want to establish
18 and I am asking you, sir, when it leaves the plant it is in
19 commerce, isn't it, sir?

20 A We have covered that, yes.

21 MR. MUSGRAVE: That's been covered now about four
22 times.

23 THE COURT: No. It has been asked and answered once.

24 Q (By Mr. Carr) And the leaving of the plant is adequate

1 evidence, is adequate proof that someone is going to be exposed
2 to it. Isn't that what that says?

3 A (By the Witness) I can agree with you that that sen-
4 tence is in the policy. I think you are misconstruing it, Mr.
5 Carr.

6 Q I know the sentence is in the policy, Mr. Park. What
7 I am asking you, whether or not what this means is, when it
8 leaves the plant, when it leaves your gates that that is all
9 the proof you need to show that someone is going to be exposed
10 to it.

11 A I think you are misinterpreting the policy by taking
12 one sentence out of context.

13 Q I am asking you, sir, whether or not this phrase means
14 as I stated it to you.

15 A I don't think it relates to a single tank car.

16 Q Mr. Park, the chemical goes in a tank car. Doesn't it,
17 sir?

18 A It can -- a chemical can be placed in a tank car.

19 Q And if you only make one tank carevery five hundred
20 years that contains 2,4 dichlorophenol or orthochlorophenol and
21 that tank car contains a toxic substance that can imperil or
22 represents a substantial hazard to someone's health, it is
23 relevant and it is the chemical we are talking about. Isn't it,
24 sir?

1 A I don't know. We are talking about Section 8E of TSCA.

2 Q Now, Mr. Park, you told me it is not sufficient for
3 one tank car and I am asking you, it doesn't make any difference
4 how much it is. It could be a bottle, couldn't it, sir?

5 A I am not talking quantity. I'm saying I think the --

6 Q Now, Mr. Park, since we are not talking quantity, we
7 are talking about the chemical manufactured by Monsanto.
8 Aren't we, sir?

9 A We could be.

10 Q In this case.

11 A All right. Yes.

12 Q And it is in commerce, isn't it, sir?

13 A Yes.

14 Q It is shipped from the plant, isn't it, sir? And if
15 it is shipped from the plant, this statement says the mere
16 fact that it is shipped from the plant is all the proof you
17 need to show that someone is going to be exposed to it. Isn't
18 that what that says, sir?

19 MR. MUSGRAVE: Object. Mischaracterization of what
20 it says. Clear mischaracterization of what it says. It says
21 implicated chemical.

22 THE COURT: Overruled. Answer the question, please,
23 Mr. Park.

24 A (By the Witness) No, it doesn't.

1 Q (By Mr. Carr) And the way you have been interpreting
2 this law then, you do not agree that this law says and Monsanto
3 is not following, if I stated the way this law reads and what
4 it means, is it a fair statement to say that Monsanto has not
5 been following that particular interpretation that I have
6 placed on it?

7 A No. That's incorrect.

8 Q Then you have been following it.

9 A We follow --

10 Q Have you been following it with the interpretation
11 that I placed on it that the moment it leaves the plant, that's
12 all the proof you need that somebody is going to be exposed
13 to it? Has Monsanto been following that interpretation?

14 A Would you allow me to describe to you what we --

15 Q I will not, Mr. Park. I want you to answer that ques-
16 tion.

17 MR. MUSGRAVE: Object to the question as being
18 vague as with regard to what leaves the plant.

19 THE COURT: Overruled. It is not at all vague.

20 A (By the Witness) I don't understand your question
21 then.

22 MR. CARR: Read the question to him.

23 (Question read.)

24 A (By the Witness) If I am required to answer either

yes or no, I will have to answer no.

Q (By Mr. Carr) Your answer is no.

A I would like to explain.

Q Now, Mr. Park, Monsanto has placed on this particular phrase its judgment that consideration of the use to which this product is going to be put, whether or not it is going to be diluted by further customers or by further use; Monsanto has been considering that, haven't they, sir, in interpreting whether or not a notification is required by Section 8E? Isn't that correct, sir?

A I have a little difficulty. Your question now was, do we consider dilution of the product by the customer --

MR. CARR: Would you read the question to him, please?

(Question read.)

MR. MUSGRAVE: Object. It's vague; this phrase.

THE COURT: Overruled. It's not at all vague. Mr. Park, please answer the question.

A (By the Witness) This phrase applies to health studies.

Q (By Mr. Carr) Your Honor, would you direct the witness to answer the question?

THE COURT: Mr. Park, answer the question.

A (By the Witness) No. No. If I have to answer, no. Yes, sir.

1 Q (By Mr. Carr) Then you don't consider the use to
2 which the product is going to be put. Is that correct, sir?
3 You do follow this rule that the moment it leaves the plant
4 someone is exposed to it. Is that correct, sir?

5 A You have asked me two questions. Would you read them
6 back, ma'am, in order, please?

7 THE COURT: Wait a second. Can you rephrase that?
8 I think you have asked two questions.

9 MR. CARR: All right, Your Honor. Then you follow
10 the interpretation that when it leaves the plant someone is
11 exposed. Is that correct, sir?

12 MR. MUSGRAVE: Object. It's been asked and answered.

13 THE WITNESS: I believe it has been answered.

14 THE COURT: No, I don't think so. Overruled.

15 A (By the Witness) If you will not allow me to explain
16 how we interpret --

17 Q (By Mr. Carr) Mr. Musgrave will give you that oppor-
18 tunity, Mr. Park.

19 A Okay.

20 Q Right now I would like to have my question answered.

21 A If you require me to just go yes or no, I have to say
22 no.

23 Q Then you consider what may happen to it after it leaves
24 the plant. Don't you, sir?

1 A Yes.

2 Q Now, is there anything in this phrase or in the law
3 as you see it or as you read it, or in the interpretation the
4 EPA puts on it, that permits you to consider the use to which
5 it is going to be put in determining whether or not there is
6 going to be an exposure?

7 A Certainly.

8 Q And will you point that out, please, sir? Point out
9 the section where that appears.

10 A It's on the law itself.

11 Q Point that out, please.

12 A Let me read it here.

13 MR. MUSGRAVE: Do you need a copy of the statute,
14 Mr. Park?

15 A (By the Witness) Yes. That's what I'm --

16 Q (By Mr. Carr) If you have the Monsanto Exhibit 881,
17 you have a copy of it there. It is attached to it.

18 MR. MUSGRAVE: No, that's not the statute.

19 MR. CARR: There is attached to Monsanto Exhibit 881
20 the section of the statute.

21 THE WITNESS: I do have it.

22 MR. MUSGRAVE: Is that all that you need, Mr. Park?

23 THE WITNESS: I think so.

24 MR. MUSGRAVE: I think so.

1 A (By the Witness) The statute reads, "Any person who
2 manufactures, processes or distributes in commerce a chemical
3 substance or mixture and who obtains information which reason-
4 ably supports the conclusion that such a substance or mixture
5 presents a substantial risk of injury to health or the environ-
6 ment shall immediately inform the administrator of such infor-
7 mation unless such person has actual knowledge that the
8 administrator has been adequately informed of such information."

9 Q (By Mr. Carr) Now, is there a statement in there,
10 Mr. Park --

11 MR. MUSGRAVE: Are you going to let him finish his
12 question -- his answer?

13 MR. CARR: I asked him to point out the section of
14 the law that he says allows him to ignore what this says.

15 THE WITNESS: It's not --

16 MR. CARR: Is there any other section of the law
17 that you rely upon to tell you that you need not pay any atten-
18 tion to the policy as published in the Federal Register of the
19 UDA that when it leaves the plant that is sufficient evidence
20 of exposure?

21 MR. MUSGRAVE: Object. Counsel --

22 MR. CARR: Or any other section of the law.

23 MR. MUSGRAVE: Object. Counsel assumes in his ques-
24 tion that that is not following the policy of the EPA because

of his interpretation. Object. That's an improper question.

THE COURT: Overruled. Proper cross-examination.

A (By the Witness) The law requires that we consider every factor --

Q (By Mr. Carr) Excuse me. Is there any other section, Mr. Park, is what I am asking you. You have pointed out one section. Is there any other provision in the law that you believe exempts you from considering the chemical as being exposed to people once it is placed in commerce?

MR. MUSGRAVE: That wasn't your question, Mr. Carr. You asked him if there was a section that he relied upon that said he could look at exposure. That wasn't your question, Mr. Carr. Now, you are turning it all around again. Object to the question.

THE COURT: Overruled.

A (By the Witness) I have pointed to the law as a requirement that we consider every factor.

Q (By Mr. Carr) And the EPA in interpreting the factors that you are to consider has said, has it not, if it is going to have substantial injurious effects to the health of people, then you must decide, you must determine that there is exposure the moment it leaves the plant? Isn't that correct, sir? Isn't that what the EPA has said here?

A No.

Q What did the EPA say here then? What does this phrase mean, sir, if it doesn't mean that?

A What it means, Mr. Carr, is that either as a result of toxicity studies or the study of population, epidemiological studies. If it becomes evident that a given chemical or a mixture or a small number of chemicals are causing human health effects so serious, and some are listed here, and this is new knowledge, it was not known before, that that information should be reported. Those health effects, as it is stated there, those health effects should be reported.

Q Mr. Park, you are talking about toxicity and health effects which we discussed at length this morning. I am talking about if those things are present, assume what you say has already been shown, that it is a new health effect, that you didn't know before it was in the chemical, that it is in there and all these epidemiological studies have been done and the scientists said yes, it can be a health effect. What is there in the law that exempts you from concluding that you must report to the EPA the moment it leaves your plant that it is going to be exposed? What is there in the law that permits you to ignore this policy of the EPA?

A Presence of a contaminate in trace amounts is not a human health effect.

Q And what you are saying then, if I understand you

1 correctly, that there has to be a health effect and if there
2 is a health effect, then this applies. Is that what you are
3 saying?

4 A I am saying this applies to human health effects; new
5 human health effects.

6 Q Right. So, if there are human health effects, then
7 you have to consider that the moment it leaves the plant some-
8 body is going to be exposed to that. Is that correct, sir?

9 A This sentence applies --

10 Q Would you answer that question, please, sir?

11 A You are rephrasing that sentence, Mr. Carr.

12 Q I am asking you whether or not this sentence applies
13 to the moment you find out that there is going to be health
14 effects from exposure to that chemical.

15 A You know, I could maybe even broaden what you are
16 saying. I --

17 Q I am not asking you that, Mr. Park.

18 A Okay.

19 Q I am asking you simply to say, yes, this sentence does
20 apply if there is going to be human health effects or you can
21 say, no, it is not going to apply if there is going to be human
22 health effects.

23 A It does not apply if they are going to be. It applies
24 when you have knowledge.

1 Q All right.

2 A New knowledge of new human health effects.

3 Q All right then. Once you have knowledge that there
4 are going to be serious health effects as pointed out in the
5 statute, then there doesn't have to be any evidence of expo-
6 sure other than the fact that it leaves the plant. Isn't
7 that correct, Mr. Park?

8 A Well, I guess to read the sentence completely, it
9 says, "Relatively little weight to be given to exposure."
10 But this is not directed toward a single --

11 Q Your Honor, would you direct the witness to answer
12 the question.

13 THE COURT: Mr. Park, please answer the question
14 as posed. I don't believe that was responsive.

15 A (By the Witness) I'm sorry. I have forgotten the
16 sense of the question. Could you repeat it, please?

17 THE COURT: Agnes, could you read it back just once,
18 please?

19 (Question read.)

20 A (By the Witness) The statute doesn't mention human
21 health effects. The policy is directed toward new human
22 effects, health effects, that have just become known to the
23 notifier and not yet known to the EPA. The question simply
24 doesn't make sense to me, Your Honor.

1 THE COURT: Mr. Carr.

2 Q (By Mr. Carr) Mr. Park, if the EPA does not know
3 that your chemical contains in it substances that can cause
4 serious harm to people exposed to it, then they don't know
5 it. Do they, sir? If you haven't told them that your chem-
6 ical contained a toxic like 2,3,7,8 TCDD, they don't know
7 that. Do they, sir? Unless you tell them.

8 A (By the Witness) No. They may well know it. The
9 EPA, of course, has very capable research laboratories and
10 they know a great deal.

11 Q Do you know that they know that Monsanto is producing
12 2,4 dichlorophenol that contains 2,3,7,8 TCDD and other harm-
13 ful dioxins?

14 A I would suspect that they are very well aware that
15 chlorophenols contain dioxin. Yes.

16 Q You believe and you know that, sir?

17 A Well, certainly at the time of the Sturgeon spill the
18 EPA was aware then, if not before and I suspect they were before
19 that chlorophenolic products might contain small amounts of
20 dioxin.

21 Q Does the fact that and you are aware, of course, that
22 at that time Monsanto took the position that this was a freak
23 occurrence because they claim that the pipes froze up in that
24 very bad winter they had and a worker went out and rapped on

1 the pipes and that is the reason that the dioxin got into the
2 orthochlorophenol crude. You are aware of the fact that that
3 is the position Mr. Heineman has taken in this Court Room in
4 front of this jury and has taken elsewhere that that is how
5 the dioxin got in that one tank car.

6 MR. MUSGRAVE: Object.

7 MR. CARR: You are aware of that, aren't you, sir?

8 MR. MUSGRAVE: Object. That is a mischaracteriza-
9 tion and --

10 THE WITNESS: I am not aware of that, no.

11 THE COURT: Overruled. It is a proper characteriza-
12 tion.

13 Q (By Mr. Carr) That is not the equivalent to saying
14 that the EPA knows that your chlorinated phenols, the 2,4
15 dichlorophenol and the Santophen contains dioxin in harmful
16 levels, is it, sir, if it was a freak accident?

17 A (By the Witness) I would suspect that the EPA is aware
18 that pentachlorinated phenol, that many products contain
19 dioxin.

20 Q That isn't what I asked you, sir. I asked you a
21 specific question. Whether or not that freak accident is
22 equivalent to saying the EPA knows that all of your chlorinated
23 phenols contain dioxin routinely in harmful levels?

24 A I am not aware of what is going on in this Court Room

1 or elsewhere.

2 MR. CARR: Your Honor, I ask you to direct the
3 witness to answer.

4 THE COURT: Mr. Park, please answer the question.

5 A (By the Witness) Yes. I guess the two are different
6 things. I would feel --

7 Q (By Mr. Carr) They are not equivalent. Are they,
8 sir? And that is all I am asking you to say; whether it is
9 or is not equivalent. Is that correct, sir?

10 A That the EPA knowledge of dioxin concentrations in
11 chlorinated phenolic compounds is not the same as, what you
12 say, freezing of pipes at the Monsanto facility. I agree
13 that they are not the same.

14 Q And you do understand that Dow produces and has pro-
15 duced for many years products that are free of detectable
16 dioxins. You are aware of that, aren't you, sir?

17 MR. MUSGRAVE: Object to that, Your Honor. That is
18 a generalized, vague statement. "Many products" and there is
19 no evidence to support that generalized, vague statement.
20 It's totally improper. Request that the jury be instructed
21 to disregard it. It is also irrelevant and immaterial.

22 THE COURT: Overruled.

23 A (By the Witness) I am not aware of that.

24 Q (By Mr. Carr) Are you aware that your management

1 when they learned of the report of dioxin in the OCP professed
2 surprise that dioxin in these levels were in -- in detectable
3 levels were in the products. Are you aware of that, sir?

4 A I don't remember that.

5 Q You don't remember that. Are you aware of the fact
6 that because they said they were surprised that your manage-
7 ment ordered an investigation and analysis to take place on
8 all the chlorinated phenol produced by Monsanto and that this
9 exhibit which I have shown you before, 1135B, was published,
10 put out by Monsanto for your confidential in-house knowledge
11 as to the level of dioxins in the products? Did you know that,
12 sir?

13 A Mr. Carr, I may have. I read many things and I can
14 recall very few specifics after a year or two.

15 Q Well now, Mr. Park, if Monsanto didn't know that the
16 dioxin was in their product, how do you expect the EPA would
17 know that Monsanto is producing products that contain dioxin
18 levels in parts per million?

19 MR. MUSGRAVE: Object to the use of the vague term,
20 "Monsanto didn't know dioxin." It is contrary to the testi-
21 mony and the evidence that has been here in the Court Room,
22 Your Honor. Surprise with regard to tetras. Mr. Carr knows
23 that very well with regard to OCP crude.

24 THE COURT: Overruled.

1 A (By the Witness) It's my understanding that part of
2 this is from a little contact with EPA people and I guess
3 reading EPA documents from time to time, but that the EPA
4 chemists, people in their laboratories, do have pretty good
5 familiarity with different chemical processes.

6 Q (By Mr. Carr) They have to, Mr. Park, in order to
7 interpret the things that you send them.

8 A And they --

9 MR. MUSGRAVE: Mr. Carr, could the witness finish
10 his answer, please?

11 A (By the Witness) And they have determined that cer-
12 tain processes, I can't list them all right here, can generate
13 dioxin and that some products, therefore, can contain trace
14 amounts of dioxin.

15 Q (By Mr. Carr) It is a chemically known fact that if
16 you have a dirty manufacturing process you can contaminate the
17 product with dioxins. Now, that is a known fact. That's in
18 the chemistry books.

19 MR. MUSGRAVE: Object to that.

20 MR. CARR: It is a known fact from 1976 that your
21 product, because you use caustic in producing it, did indeed
22 create dioxin at harmful levels. That is also known. Now,
23 Mr. Park, what makes you think that EPA knew that Monsanto
24 was thusly producing dioxin if Monsanto has never notified

1 them?

2 **MR. MUSGRAVE:** Object to counsel's speech in making
3 a statement with regard to production of dioxins at harmful
4 levels. Request that it be stricken and the jury be instructed
5 to disregard it.

6 **THE COURT:** Overruled. It's not a speech. It's a
7 proper question.

8 **A (By the Witness)** There were not harmful levels of
9 dioxin in the product to the best of my knowledge.

10 **Q (By Mr. Carr)** And you have been relying on that,
11 haven't you, Mr. Park, in every TSCA meeting you have ever
12 had? Haven't you, sir? Without ever knowing the levels.

13 **A** That's false, Mr. Carr.

14 **Q** All right, Mr. Park. Back to my question. Did you at
15 Monsanto in functioning in your committee ever notify the EPA
16 that dioxins at whatever the levels were were contained in
17 your product?

18 **MR. MUSGRAVE:** Object.

19 **MR. CARR:** 2,4 dichlorophenol, Santophen or ortho-
20 chlorophenol crude or parachlorophenol.

21 **MR. MUSGRAVE:** Object. It's been asked and answered.

22 **THE COURT:** It has been asked and answered.

23 **Q (By Mr. Carr)** Well then, your answer is that you
24 never notified them, if I understand you correctly.

1 MR. MUSGRAVE: Object. That's been asked and
2 answered, Mr. Carr. The Court sustained my objection.

3 MR. CARR: Your Honor, I want to establish that as
4 a predicate to my next question.

5 THE COURT: Go ahead, Mr. Carr.

6 Q (By Mr. Carr) I am correct in the statement that
7 Monsanto has never notified the EPA. We established that this
8 morning.

9 MR. MUSGRAVE: Under 8E, Mr. Carr.

10 Q (By Mr. Carr) Under 8E.

11 MR. MUSGRAVE: To this witness's knowledge.

12 Q (By Mr. Carr) Isn't that correct, Mr. Park?

13 A (By the Witness) About dioxin content?

14 Q Yes.

15 A Yes, to the best of my knowledge.

16 Q Now, you do know that the EPA depends upon -- let me
17 back up a minute. EPA is a governmental agency that has a
18 certain amount of funds to do its job. It is responsible for
19 the entire breadth of the environment in the entire United
20 States, isn't it, sir?

21 A It has broad responsibility.

22 Q And it is impossible for it to go into every chemical
23 plant and every drug plant and every steel plant and every plant
24 that may produce things that could harm humans and the environment.

1 It's literally impossible for the EPA to police each plant,
2 isn't it?

3 A No, it's not. They do a fine job.

4 Q And what they do, Mr. Park, they rely upon your
5 reporting to them, don't they, sir?

6 MR. MUSGRAVE: Object, Your Honor, to calling upon
7 this witness now to state conclusions as to what EPA does and
8 relies upon.

9 THE COURT: Overruled.

10 A (By the Witness) The EPA personnel come into many of
11 our plants as well as others and take samples and analyze those
12 samples. They blanket the country.

13 Q (By Mr. Carr) Have they come to the Krummrich Plant
14 and taken samples from the Krummrich Plant, Mr. Park? In
15 Sauget, Illinois?

16 A I would have to check the files on that. I am sure
17 EPA personnel have been at the plant. But I can't off the
18 top of my head recall --

19 Q And when has the EPA personnel been at your plant,
20 Mr. Park?

21 A I'd have to think.

22 Q Well, why don't you think?

23 THE COURT: I'm sorry. I can't hear you.

24 A (By the Witness) I'm sorry. I'd have to think a

minute about that as to exactly when. I'm sorry. I'd have to look that up.

Q Do you have any knowledge that they have ever been to the Krummrich Plant at Sauget, Illinois?

A I would certainly think they have been.

Q I know you would think that, Mr. Park. But I am asking you whether or not you have any knowledge and I will remind you that you are under oath, sir.

A I'm sorry. I just cannot recall specifics.

Q You do know OSHA came to the plant and took a sample and perhaps that is what you were thinking about, Mr. Park?

A No. I was trying to recall EPA.

Q Have you ever had any knowledge that EPA ever at any time took a sample other than the sample that you sent them of the OCP reserve sample when it spilled in Sturgeon? Other than that, do you have any knowledge of any time that they have ever taken any of your chlorinated phenols and tested them?

A No.

Q And, Mr. Park, you know that it is a physical impossibility for the EPA to do that otherwise we wouldn't need the law, would we, sir?

A The law is directed toward prompt notification concerning new health effects and many of us feel that it serves a very good purpose.

1 Q Mr. Park, I know you like to say that litany, but
2 that isn't what the law says. The law says that chemicals
3 that can be injurious to the health or to the environment and
4 I am not asking you that question. I am asking you, sir, you
5 know the law puts the burden not on the EPA to come into your
6 company and be a Gestapo and go through your books and check
7 your samples. The law puts the burden on the company to
8 notify the EPA. Isn't that correct, sir?

9 A Section 8E does. That's correct.

10 Q Isn't that correct, sir?

11 A That's right.

12 Q It is not the EPA's obligation to ferret it out, is
13 it, sir?

14 A No.

15 Q And it, therefore, has to depend upon the law; that
16 you will obey the law. Isn't that correct, sir?

17 A Section 8E?

18 Q That's correct.

19 A That's right.

20 Q And if you do not interpret the law -- strike that.

21 Doesn't the EPA have the right to assume that you are going
22 to interpret the law the way they set it out to you unless you
23 notify them in some form or another that you are not going to
24 follow their interpretation?

1 MR. MUSGRAVE: Objection to that question, Your
2 Honor. That is totally improper as to what the EPA has a
3 right to assume, vague people having rights to assume. Vague
4 statements like that, that is totally improper. I object to
5 it.

6 THE COURT: Overruled. It's a proper question.

7 A (By the Witness) I think I'd answer no.

8 Q (By Mr. Carr) They don't have the right to assume that
9 you are going to interpret the law as they tell you it should
10 be interpreted. Is that what you are saying, Mr. Park?

11 A That is correct. Their interpretation is not broad
12 enough for one thing. Doesn't cover every situation.

13 Q It covers every situation where the product leaves
14 the plant, doesn't it, sir?

15 A It's broader than that.

16 Q Does it except any product leaving the plant from its
17 jurisdiction where that chemical has injurious health effects
18 or can have injurious health effects? Does it except, make an
19 exception for any single chemical that meets those qualifica-
20 tions?

21 A There is an exception when any of the three criteria
22 are not met.

23 Q My question, Mr. Park, as you know, is directed to the
24 chemical and I am asking you whether or not there is any

1 exception in the law for the products that are made by Monsanto
2 if they leave Monsanto's possession?

3 A Those would be products in commerce and would be
4 covered by --

5 Q Is there any exceptions?

6 A -- the statute.

7 Q I'm sorry.

8 A Those products that leave the plant in commerce would
9 be products in commerce covered by the Toxic Substances Con-
10 trol Act.

11 Q And doesn't the EPA have the right to assume that you
12 are going to consider that you don't need to worry about
13 exposure if the chemical leaves the plant. Don't they have
14 the right to assume that you are going to follow that law?

15 MR. MUSGRAVE: Same objection.

16 MR. CARR: Their interpretation of the law.

17 THE COURT: Same ruling.

18 A (By the Witness) That's a misinterpretation of the
19 policy.

20 Q (By Mr. Carr) Is there any other interpretation you
21 can place on this and I have asked you for it, Mr. Park, and
22 you didn't give it to me. Now I am asking you again. Does
23 the EPA -- there is no quarrel about what these words convey.
24 The meaning they convey to you. They say that if the chemical

1 is one that is going to cause serious health effects you shall
2 consider that the moment it leaves the plant somebody might be
3 exposed to it. Isn't that exactly what it says?

4 A No, it's not, Mr. Carr.

5 MR. MUSGRAVE: Just a second. I object to that,
6 Your Honor. He started off by saying, "I ask you what inter-
7 pretation you put on this and you wouldn't give me one." Then
8 he went on to another speech. I object to this continual
9 speech making by Mr. Carr of five or six statements that are
10 not questions, ended then by a question that is not even
11 related to the first part of it. It's totally improper. I
12 object to it. I request that the Court instruct the jury to
13 disregard it.

14 THE COURT: Overruled.

15 Q (By Mr. Carr) Would you answer that?

16 A (By the Witness) And I said no, it was not. I have
17 attempted several times and I have completed a couple of times
18 telling you how you are misinterpreting the policy. The human
19 health effects that are mentioned there on that placard in
20 your hand are new human health effects discovered as a result
21 of toxicity studies or other similar studies, epidemiological
22 studies that indicate a new adverse human health effect of a
23 substantial nature on products that are in commerce.

24 Q And if I understand you correctly then, whatever the

1 level of dioxin that you may discover in your product just as
2 the level of cyanide yesterday, whatever the level is since
3 the health effects of dioxin is well known and not new, you do
4 not have to tell the EPA that you are shipping out products
5 that are going to be exposed to people the moment it leaves
6 the plant.

7 A I am saying this wording does not apply to that. It
8 was not intended to apply to product composition.

9 Q My question -- I'm sorry. What?

10 A It was not intended to apply to product composition.
11 It applies to new human health effects.

12 Q It was not intended to apply to the things that go
13 into the product? The composition of the product? Is that
14 what you are saying, sir?

15 A Will you read back what I said? I thought I said it
16 clearly, Mr. Carr.

17 Q Is what you are saying that it doesn't apply to pro-
18 ducts, the composition of the products?

19 A Perhaps it would be useful to look at other parts of
20 this policy.

21 Q Would you answer that question, Mr. Park?

22 A This is directed toward new human health effects.

23 Q Your Honor, would you direct the witness to answer
24 that question?

1 THE COURT: Mr. Park, please answer the last ques-
2 tion as it was posed to you.

3 THE WITNESS: Did I not answer that?

4 THE COURT: I don't believe you did, sir. Please
5 answer.

6 A (By the Witness) I am having difficulty following
7 Mr. Carr's questions, Your Honor. Would you repeat it, please?

8 Q (By Mr. Carr) Would you read the question to him?

9 (Question read.)

10 A Yes. It was intended to apply to new human health
11 effects. They are listed further on down.

12 Q And the composition of the product if it is made up
13 of all kinds of poisons, it doesn't apply. Is that correct?

14 A This portion of the policy was not intended to apply
15 to that in my opinion.

16 Q And you can ship any product out that you want and
17 contain whatever composition of poisons it might contain and
18 you believe that you need not notify the EPA of that.

19 A I am not saying that at all.

20 Q Well, that is what I am asking you, sir.

21 A You did not ask me that.

22 Q Mr. Park, this morning, if I understood you correctly,
23 you said the test for the reporting under the TSCA Section 8E
24 is that it must be produced by a party considering notification

1 for a commercial purpose. Did you not, sir?

2 A Well --

3 Q Didn't you say that this morning, sir?

4 A I don't recall using those exact words. It's roughly
5 -- I think you have them out of order. I would be glad to
6 repeat it.

7 Q No, I really don't need it repeated.

8 A Okay.

9 Q Do you not recall saying that it is a chemical that
10 must be produced by a party for a commercial purpose --

11 A That's right. Yes.

12 Q And these chemicals meet that requirement, doesn't it,
13 sir?

14 A Yes.

15 Q And there must be evidence the chemical presents a
16 substantial injury to health. You said that as well, did you
17 not, sir?

18 A Right.

19 Q And you said that the EPA must not already be aware
20 of the substantial injury to health effect, didn't you, sir?

21 A Or the information that is being considered for
22 reporting.

23 Q And those are the three things that you said is the
24 test. Is that correct, sir?

1 A The three criteria, yes.

2 Q And if I understand you correctly, it is your judgment
3 that the 2,4 dichlorophenol that was the subject of the May
4 meeting does not meet that requirement -- does not meet that
5 test. If I understand you correctly.

6 A That is correct.

7 THE COURT: Did you say that is correct?

8 A (By the Witness) Yes. I'm sorry. That is correct.

9 Q (By Mr. Carr) We took the liberty at the lunch hour
10 of asking Mrs. Hackmann to check her notes to make sure that
11 we would be correct and we put on this board the criteria that
12 you mentioned. Must be produced by a party considering noti-
13 fication for commercial purpose. Must be evidence chemical
14 presents a substantial risk of injury to health. EPA must not
15 already be aware of it. Now, those are the three things. Is
16 that correct, sir?

17 A That's correct.

18 Q Can I mark this as an exhibit, please?

19 (Plaintiff's Exhibit No. 1294
20 was marked for identification.)

21 A Mr. Carr, could I --

22 Q We offer into evidence Plaintiff's Exhibit 1294 if it
23 please the Court.

24 A A slight refinement there --

Q Mr. Park, there is no question pending. Your attorney will have the chance to refine what he wants refined.

A Okay.

THE COURT: Mr. Musgrave, do you have any objection?

MR. MUSGRAVE: I have no objection.

THE COURT: Admitted without objection.

Q (By Mr. Carr) Now, the 2,4 dichlorophenol that contains the dioxin is produced by Monsanto. Correct, sir?

A (By the Witness) That's correct.

Q And I am asking you to assume that this chemical, the dioxin that is found in this chemical is at levels that present substantial risk of injury to health. Will you assume that, please?

A Well, it -- but that's not true, Mr. Carr.

Q Will you direct the witness to assume that is a fact?

MR. MUSGRAVE: Object, Your Honor. He is talking about a hypothetical and there is no evidence with regard to this hypothetical under TSCA reporting.

MR. CARR: There is weeks, months, years of evidence, Mr. Musgrave.

MR. MUSGRAVE: Mr. Carr, you are talking about specific chemicals, specific mixtures.

MR. CARR: I am talking about dioxin.

MR. MUSGRAVE: You are talking about 8E, Mr. Carr.

1 I object to it, Your Honor. It's an improper hypothetical
2 given the framework of the question.

3 THE COURT: Objection is overruled. Mr. Park, you
4 have to assume it. You are ordered to assume it.

5 THE WITNESS: Your Honor, can I -- am I to under-
6 stand that I am being put in the position to say, okay, assume
7 that your client is guilty --

8 THE COURT: No. Mr. Park, that is a total mis-
9 characterization of what you have been asked to assume. You
10 were told to assume, requested to assume what was argued to
11 me and which I have decided it is proper for you to assume is
12 what was stated to you by Mr. Carr. No more and no less and
13 it is absolutely not analogous to what you just stated to me.
14 Now, assume what he told you to assume, sir.

15 THE WITNESS: You are telling me to assume --

16 THE COURT: No. I am ordering you to assume, sir.

17 A (By the Witness) No. I am asking Mr. Carr now. You
18 are asking me to assume that there is evidence that a Monsanto
19 product presents a substantial risk of injury to health or
20 the environment.

21 Q (By Mr. Carr) I am asking you to assume that dioxin
22 in the 2,4 dichlorophenol produced by Monsanto is at such
23 levels as it can cause serious health effects. That is what
24 I am asking you to assume.

1 MR. MUSGRAVE: Well, Your Honor, I hate to keep
 2 interrupting, but if he is going to ask him to assume facts
 3 with regard to an interpretation of 8E, then he must ask him
 4 to assume facts that track the language of the statute, Your
 5 Honor, or it's totally improper and that is exactly where Mr.
 6 Carr is trying to go. And now he is watering down and chang-
 7 ing the language that he is using here and it's totally im-
 8 proper.

9 THE COURT: Would you read back the original request
 10 that he was asked to assume? And that is what you are ordered
 11 to assume.

12 (Question read.)

13 A (By the Witness) I don't believe that to be the case.

14 THE COURT: Mr. Park, you have been ordered to assume
 15 it. Mr. Carr, you may move on.

16 Q (By Mr. Carr) And assuming that to be so, the second
 17 requirement has been met, hasn't it, sir?

18 A (By the Witness) I don't know whether it has or not.
 19 I don't know.

20 MR. CARR: Your Honor, the witness is obviously not
 21 assuming that which the Court ordered him to assume and I am
 22 at a loss how to proceed other than to ask the Court to have
 23 some sanction against the witness, but I am reluctant to do so.

24 THE COURT: Gentlemen, can you approach the bench for

1 a minute?

2 (The following proceedings were
3 had at the bench outside the
4 hearing of the jury.)

5 THE COURT: There is no excuse for a licensed
6 attorney not to follow an order of this Court. I am willing
7 to take a five minute recess and you had better tell your
8 witness, remind him of the contempt powers of this Court if
9 he does not follow the orders of this Court. I think unfor-
10 tunately Mr. Carr's characterization happens to be right and
11 I don't want to hold anyone, especially a fellow attorney,
12 in contempt. But I don't want to be put in a situation where
13 I have no choice. You are experienced competent counsel. I
14 think you better tell him where he is headed. We'll take a
15 five minute recess.

16 MR. MUSGRAVE: Thank you.

17 (The following proceedings were
18 had in the hearing and presence
19 of the jury.)

20 THE COURT: Ladies and gentlemen, we are going to
21 take a short recess at this time. The admonishments I have
22 given you earlier will apply during this recess. Court is in
23 short recess.

24 (Short recess taken.)

THE COURT: Mr. Carr, you may proceed.

1 Q (By Mr. Carr) Yes, Your Honor. Now, Mr. Park, will
2 you now assume as I have asked you to assume earlier that there
3 is evidence that this chemical presents a substantial injury
4 to health? Will you do that, sir?

5 A (By the Witness) A substantial risk of injury to
6 health and the environment?

7 Q Yes.

8 A Okay. On the assumption that this product presents a
9 substantial risk of injury to health and the environment, then
10 criteria number two would have been met.

11 Q Would you read the exact question back to him? Did
12 you assume that which I asked you to assume, Mr. Park, because
13 you modified the language somewhat?

14 A I was trying to track --

15 Q I know. But I want you to answer the question as I
16 gave it to you, sir. Would you read that question back to him
17 again?

18 (Question read.)

19 MR. MUSGRAVE: I'm sorry. I couldn't hear you. This
20 is a different question that he just asked.

21 Q (By Mr. Carr) Doctor, let me ask it again in this
22 fashion. If you assume that dioxin has been found in this
23 chemical at such levels that it presents a risk to the health
24

of human beings, is the second criteria of your three criteria for tests met?

A In my opinion, not yet. Without consideration of how health or the environment would be subject to substantial risk.

Q Well now, I asked you to assume, and that is the reason I am going back to this. I have asked you to assume and the Court has ordered you to assume it does.

MR. MUSGRAVE: You just asked him if in his opinion, Mr. Carr --

Q (By Mr. Carr) I am asking you whether or not this has been met when the dioxin level in that chemical presents a substantial risk of injury to the health of the people.

A (By the Witness) You did, Mr. Carr. I am wrestling with this the best I can. You are not following what I feel is the entire scope of the second criteria. I think there is more to it and so my answer is, no, I think a little more would have to be considered.

Q Now, you are assuming that the dioxin in this chemical is going to injure people. It is a substantial risk to the health. You are assuming that. Aren't you, sir?

A Perhaps I am having difficulty understanding your hypothetical. There must be some method of bringing the toxicity to the people.

Q Now, Mr. Park, we have gone through that already. That

1 is exposure. You are talking about exposure now.

2 A Yes.

3 Q And the EPA says the mere fact that it is in commerce
4 is sufficient evidence of exposure. Doesn't it, sir?

5 A Not as applicable to this type of situation, Mr. Carr.
6 I tried to explain that awhile ago.

7 Q If the people, if the tank car breaks down on the way
8 to wherever it is going, is there going to be exposure, sir?

9 A There should not be if it is properly handled.

10 Q Will there be exposure, sir? If properly handled. Is
11 there anything in EPA that says properly handled? Doesn't it
12 say -- isn't the meaning of it to protect the public against
13 the hazards that are existent in that chemical, sir? Isn't
14 that what it is all about? The entire intent of the Act is to
15 protect us if there is an accidental escape or if it does get
16 involved in products that people are going to be exposed to.
17 Isn't that what it is all about, Mr. Park?

18 A Mr. Carr, you have asked me about three questions right
19 then. I think the first one was --

20 Q Assume if you will that there will be exposure. Will
21 you assume that, please, sir? Assuming that there is exposure
22 is this prerequisite then met when I ask you to assume that
23 dioxin is in the chemical and that that will cause -- presents
24 a substantial risk of injury to the health of the people to

1 whom it will be exposed -- who will be exposed to that.

2 A I am to assume exposure --

3 Q Yes.

4 A -- to humans.

5 Q Yes.

6 A And you are saying that this product now is of such
7 a toxicity that it presents a substantial risk of injury.

8 Q That the dioxin in the chemical presents a substantial
9 risk of injury to the people.

10 A If the dioxin content were to be so high?

11 Q That it presents a substantial risk of injury to the
12 people, yes.

13 A And there is exposure of people?

14 Q Yes.

15 A I guess so, and with those assumptions, I would have
16 to answer yes.

17 Q And we have already established that the EPA is not
18 aware of the fact that the 2,4 dichlorophenol contains such
19 levels of dioxin. Haven't we, sir?

20 A Perhaps with someone else, Mr. Carr.

21 Q Will you direct the witness to agree that he just
22 testified before the break that he hasn't notified the EPA and
23 that nobody else has to his knowledge and EPA has never tested
24 any samples?

1 THE COURT: Could you phrase an assumption? Some-
2 thing you would like him to assume.

3 Q (By Mr. Carr) Yes. Will you assume, please, that
4 Monsanto has never advised the EPA that the 2,4 dichlorophenol
5 contains these high levels of dioxin, that the level is at
6 such levels that it may be injurious to the health? Will you
7 assume that, sir?

8 MR. MUSGRAVE: I object to that, Your Honor. Number
9 one, it is not his prior testimony. He has previously testi-
10 fied to his knowledge. There has been no notification under
11 8E with regard to dioxin and 2,4 di and Mr. Carr is now asking
12 him to assume a Monsanto product that has high levels that
13 are injurious to health and that is not in evidence. Those
14 are ultimate conclusions of fact in this case for the jury in
15 any event. It invades the province of the jury. It is an
16 improper hypothetical. It assumes facts not in evidence.

17 THE COURT: Overruled. It does not invade the pro-
18 vince of the jury. It is a proper hypothetical with the
19 inclusion of the notice under 8E and your objection is over-
20 ruled.

21 Q (By Mr. Carr) Then if that is true, Mr. Park, these
22 criteria have been met, haven't they, sir?

23 A (By the Witness) The EPA could have been made aware
24 of it, sir, through some other source.

1 MR. CARR: Your Honor, would you direct the witness
2 to answer the question?

3 THE COURT: You have to answer the question as it
4 is posed to you. I ruled with the inclusion of 8E notice that
5 the assumption that is posed to you is correct and it has to,
6 therefore, be accepted by you. So, answer the question on
7 that basis with that in mind, Mr. Park.

8 A (By the Witness) May I just point out that the EPA --

9 THE COURT: No, sir, you may not. I am directing
10 you to answer the question as it is posed to you.

11 A (By the Witness) Okay. All the criteria may not yet
12 have been met.

13 Q (By Mr. Carr) And did we meet number one?

14 A Yes, we met number one.

15 Q Did we meet number two?

16 A On the basis of the assumptions, yes.

17 Q Did we meet number three?

18 A That is the one that I said may not have been met.

19 MR. CARR: Your Honor, would you direct the witness --

20 MR. MUSGRAVE: He assumed your fact, Mr. Carr. Now
21 you asked him whether it's been met and he said no.

22 MR. CARR: Now he is quarreling with it. He is now
23 saying that it may have been met.

24 MR. MUSGRAVE: You are quarreling with him, Mr. Carr.

1 You are arguing with the witness.

2 THE COURT: Well, I am not really clear. Could the
3 two of you approach the bench for a minute, please?

4 (The following proceedings were
5 had at the bench outside the
6 hearing and presence of the
7 jury.)

8 THE COURT: I may have lost him partway in one of
9 his answers. He said that one and two were met, but not three?

10 MR. MUSGRAVE: Yes. Mr. Carr asked him to assume a
11 fact. He assumed it and then he said is three met and he said
12 no.

13 THE COURT: Okay. I know what went up to that. I
14 just wanted the last. He drops his voice so much I had
15 trouble understanding the last thing that he said. Okay. Why
16 don't you proceed then?

17 (The following proceedings were
18 had in the hearing and presence
19 of the jury.)

20 Q (By Mr. Carr) To your knowledge, Mr. Park, has any-
21 body informed the EPA that your 2,4 dichlorophenol contains
22 these levels of dioxin?

23 MR. MUSGRAVE: Under 8E, Mr. Carr?

24 Q (By Mr. Carr) Under 8E.

1 A (By the Witness) No.

2 Q Then these criteria have been met to your knowledge.

3 Isn't that correct, sir?

4 A Mr. Carr, I was just saying EPA might gain the knowledge
5 through some other source.

6 Q You have any knowledge of that, Mr. Park?

7 A No.

8 Q Then to your knowledge these criteria have been met,
9 haven't they, sir?

10 A I have no knowledge that Monsanto notified them. The
11 EPA does --

12 Q Do you have any knowledge that anybody else has noti-
13 fied them that 2,4 dichlorophenol manufactured by Monsanto had
14 these levels of dioxin in it? Do you have any knowledge that
15 anybody else told them that?

16 A I don't.

17 Q Then these criteria have been met, haven't they, sir?

18 A On the basis of that assumption, I would say yes.

19 Q Now, have you at Monsanto relied upon some outside
20 person telling the EPA that your 2,4 dichlorophenol contains
21 hazardous levels of dioxin?

22 MR. MUSGRAVE: Same objection; assumes facts not in
23 evidence.

24 THE COURT: Same ruling. It is overruled.

A (By the Witness) For what?

Q (By Mr. Carr) For an 8E notification.

A Oh, No, we haven't.

Q Or to give them knowledge that your product contains these high levels of dioxin?

A We have not relied upon someone else to notify the EPA.

Q And you haven't notified them?

A No. The EPA may have generated this information them-

Q (By Mr. Carr) I am not asking for your speculation.

Q Now you are speculating again, aren't you, Mr. Park?

A I have been speculating the whole time.

Q Knowledge of what, Mr. Carr?

Q And you have no knowledge of that which you are speculating about. Isn't that correct, sir?

A That is wrong. I do have some knowledge of the EPA research capabilities.

Q EPA does know that 2,4 dichlorophenol produced by

Monsanto contains hazardous levels of dioxin. Do you have that knowledge? Where is it?

A I have knowledge that the EPA researchers know a great

deal about the different processes in use in the country today.

Q Mr. Park, will you tell me wherein they know this batch

of 2,4 dichlorophenol contained these high levels of hazardous tetrachlorodibenzo dioxin?

A Which batch?

Q (By Mr. Carr) As a matter of fact, Mr. Park, isn't it

1 Q Any batch, sir.

2 MR. MUSGRAVE: Object to counsel's inference that
3 any batch contains high levels. It is vague and indefinite
4 and it is counsel's testimony.

5 THE COURT: Overruled.

6 A (By the Witness) It is my assumption that the EPA is
7 aware they chlorinate --

8 Q (By Mr. Carr) I am not asking for your assumption.
9 Mr. Park, we can go forever on your speculation. I am asking
10 your knowledge, sir.

11 A Knowledge of what, Mr. Carr?

12 THE COURT: Mr. Park, I am directing you to answer
13 the question.

14 THE WITNESS: Did I not answer that last question?

15 THE COURT: No, sir, you did not.

16 MR. MUSGRAVE: Do you have the question in mind,
17 Mr. Park?

18 THE WITNESS: No, I do not. I'm sorry. I am trying
19 to reconstruct it.

20 THE COURT: Can you read it back once, please?

21 (Question read.)

22 A (By the Witness) I don't know that the EPA would have
23 been informed about the exact contents of each batch.

24 Q (By Mr. Carr) As a matter of fact, Mr. Park, isn't it

1 a fair statement that you and others at Monsanto believed that
2 if you would inform the government agencies that there were
3 levels, parts per trillion or quadrillion or whatever, what-
4 ever level that you were afraid that if you informed the
5 government that some how or another this would get out to the
6 public and the press would learn about it and print it up?

7 A Absolutely not.

8 (Plaintiff's Exhibit No. 1295
9 was marked for identification.)

10 Q Handing you what has been marked Plaintiff's Exhibit
11 1295 and ask you if you recognize that as a memo prepared by
12 you at the same time you were considering notification to the
13 EPA as we have just discussed on June 11, 1979?

14 MR. MUSGRAVE: Can I take this down so I can see the
15 witness?

16 MR. CARR: Surely. Does it bear your signature,
17 Mr. Park?

18 A (By the Witness) Yes. This is a copy of my memorandum.
19 It was later than this other event.

20 MR. CARR: Offer this exhibit into evidence if it
21 please the Court.

22 MR. MUSGRAVE: What is the number on it, please?

23 THE COURT: 1295.

24 MR. MUSGRAVE: No objection, Your Honor.

THE COURT: Admitted without objection.

Q (By Mr. Carr) Now, Mr. Park, this memo that you prepared on June 11, '79, did you not say relating to the news media infatuation with dioxin that, "It is a contaminate in some products and in some instances is highly toxic, but this does not mean that an all-out effort should be made to detect extremely low levels of dioxin in a product after it has been determined that any dioxin present is less than the highest non-hazardous level."

A (By the Witness) Yes.

Q And did you not conclude on that page with saying, "I am afraid that disclosure to governmental agencies or the public that a contaminate has been detected in a product at parts per trillion or parts per quadrillion levels far below the non-hazardous level will merely add fuel to the media fires which already burn furiously." Didn't you say that, sir?

A Yes, I did.

Q Now, Mr. Park, has not that been the policy of Monsanto with relation to reporting the existence of TCDD or any other dioxin in your chlorinated phenols from that time to the present time?

A Under 8E?

Q Under any policy, sir?

A It has not. This merely expresses my view.

1 Q Do you know of any single instance when the EPA has
2 been notified from June 11, 1979, to the present time that
3 dioxin is present in its chlorinated phenols at any level?

4 A Off the top of my head, I am not aware of any.

5 Q How far up the corporate ladder did your recommendation
6 as contained in 1295 about public disclosure go? Who is
7 Callis?

8 A This has nothing to do with --

9 Q Who is Callis?

10 A This has nothing to do with reporting whatsoever, Mr.
11 Carr.

12 Q Who is Callis?

13 MR. MUSGRAVE: Well, I would request, Your Honor,
14 that Mr. Carr's statement then before the question, who is
15 Callis, which is a statement and an improper statement be
16 stricken and the jury instructed to disregard it.

17 THE COURT: Overruled.

18 A (By the Witness) Callis at this time I believe was a
19 director of Environmental Operations.

20 Q (By Mr. Carr) And who is W. D. Carpenter?

21 A I believe he was also a director of Environmental
22 Operations.

23 Q Who is G. L. Jessie?

24 A I believe that at the time of the memo he was -- I may

1 be incorrect about some of these. I am trying to think back
2 five years, but I believe he was on the Environmental Policy
3 staff with responsibilities for hazardous waste disposal.

4 Q We know who J. P. Mieure is. Who is W. B. Papageorge?

5 A I believe he was also a director of Environmental
6 Operations.

7 Q And we know who Dr. Roush is and we know who Dr. J. D.
8 Wilson is. Do you know who else besides those and Dr. Paget
9 is mentioned as well. Who else besides those people got a
10 copy of this memo?

11 A I have no idea. You have read the names of those
12 listed on it.

13 Q Do you know of any public disclosure, not just to the
14 governmental agencies, of any public disclosure from that day
15 to the present time in which Monsanto said publicly we have
16 dioxins in our products; in our chlorinated phenols?

17 A I can certainly recall times when we have provided
18 information to the public about dioxin.

19 Q I understand that. I am asking you specifically have
20 you ever told a governmental agency -- I have asked you that
21 before. Have you ever told the public that the products, the
22 chlorinated phenols produced by Monsanto from June 11, 1979,
23 to the present time contain dioxins?

24 A I believe we did inform customers of some products.

1 Q What customers did you inform?

2 A I can't recall right now.

3 Q Is there a single letter that you know of that you sent
4 to a customer? Did you notify the people that made Lysol?

5 A I wouldn't be aware of that, Mr. Carr.

6 Q Then if you are not aware of it, Mr. Park --

7 A I would not be involved in the actual letters.

8 Q Because I am telling you we have never had produced to
9 us such a letter.

10 A I was trying to answer your question.

11 Q My question is, to your knowledge. Do you have any
12 knowledge at any time with one exception, Diamond Shamrock
13 when they wanted to go to Canada and Canada has got a require-
14 ment of either 10 parts per billion or 1 part per billion.
15 Diamond Shamrock then asked you the dioxin content and you
16 informed them at that time. But other than that one exception
17 when they came to you and gave you a direct question from
18 June 11, 1979, to the present time, have you informed any
19 customers?

20 A That really is not in my area of responsibility and I
21 am not aware.

22 Q Then you have no such knowledge?

23 A That is right.

24 Q Do you have any knowledge from June 11, 1979, to the

1 present time that any customer, any governmental agency or
2 the public has been informed that your chlorinated phenols
3 contain dioxin?

4 A I have no personal knowledge.

5 Q Did anybody write a memo back saying we are not going
6 to follow this policy, that we are going to disclose to the
7 governmental agency, we are going to disclose to the public,
8 we are going to disclose to the customer?

9 A This memorandum does not recommend against disclosure
10 at all, Mr. Carr.

11 Q Could you answer that question, please?

12 A But you are implying something --

13 MR. MUSGRAVE: Object to counsel's characterization
14 of this as a policy. This is not a policy. It has not been
15 identified as a policy.

16 A (By the Witness) It is an analytical policy is all.

17 THE COURT: Overruled.

18 A (By the Witness) There is no recommendation against
19 disclosure here, Mr. Carr.

20 Q (By Mr. Carr) I'm sorry.

21 A There was no recommendation against disclosure here,
22 Mr. Carr.

23 Q That is not what I asked you, sir. Mr. Park, you know
24 what I have asked you.

1 A I am so sorry. Would you mind repeating the question,
2 please, sir?

3 Q I will, Mr. Park. Did anybody write a memo suggesting
4 that what you recommended or stating that what you recommended
5 in this memo should not be followed?

6 A I am not aware of a memo, but I am aware that my
7 recommendation was not followed by the company and what I
8 objected to --

9 Q Mr. Park --

10 A Yes.

11 Q You are recommending against disclosure to the govern-
12 mental agencies and to the public and you just stated a moment
13 ago that you don't know that the governmental agencies were
14 ever advised. You don't know of any customer that was ever
15 advised and you don't know of any public disclosure. And you
16 don't know of any memos that came in recommending against it;
17 recommending against that what you said. Isn't that correct,
18 sir? Have I properly stated what you said?

19 MR. MUSGRAVE: Object to the question. It has got
20 about five questions in it and also misstates the witness's
21 prior testimony.

22 THE COURT: Overruled on both points.

23 A (By the Witness) I don't think I said quite that.
24 This has no relationship to chlorophenols or dioxin.

1 Q (By Mr. Carr) Mr. Park, I am not asking you that.

2 A Mr. Carr, let me just answer your question. While I
3 am not aware of any memoranda objecting to what I said, none
4 were necessary. What I suggested was not followed by the
5 company.

6 Q I am not even asking whether or not you believe one
7 was necessary. All I am asking for is a simple fact so that
8 we can deduce from that fact what indeed took place. You said
9 that the company did not follow this policy is what you said.

10 A Did not follow my recommendation.

11 Q Did not follow your recommendation. But I have asked
12 if you have any knowledge of any public disclosure of the
13 dioxins either to the customers, to governmental agencies or
14 to the public and you said you have no such knowledge. So,
15 it would appear that what you said should be done was in fact
16 followed, doesn't it, sir?

17 A No, it doesn't, Mr. Carr.

18 Q You know that dioxin is present. You have seen the
19 memo. You know the dioxin is present in the product. You know
20 that, don't you, sir?

21 A Apparently so.

22 Q And this information to your knowledge until we dis-
23 closed it in this Court Room, to your knowledge was never made
24 public, was it, sir?

1 A I don't know, Mr. Carr.

2 Q As a matter of fact, you know that when OSHA came in
3 and discovered it in a product that was spilled on the track
4 that Monsanto took great pains to deny that it was there even
5 though they knew that it was there. Don't you know that, sir?

6 MR. MUSGRAVE: Object to that, Your Honor. That is
7 counsel's testimony, characterization improperly done.
8 Object and request that it be stricken and the jury instructed
9 to disregard it.

10 THE COURT: Overruled.

11 A (By the Witness) I can't recall the wording of any
12 Monsanto statements about that right now.

13 Q (By Mr. Carr) And you do know that your counsel filed
14 documents under oath in the fall of 1983 denying that dioxin
15 was present in the tank car, the 2,3,7,8 TCDD was present in
16 the tank car that spilled in Sturgeon. You know that. That
17 was four years, nearly five years after the spill. You know
18 that, sir, don't you? Denied under oath that it was in the
19 tank car when they knew it had been sent to Rappe and Rappe
20 had said there was 45 parts per billion 2,3,7,8. They filed
21 documents in this Court swearing under oath that it wasn't
22 true. The lawyers did that. You are aware of that, aren't
23 you, sir?

24 A Mr. Carr, I am not. This is far and away my closest

1 involvement in this matter. I am not aware of other things
2 that went on in connection with the lawsuit.

3 Q And what I am telling you now that your attorneys
4 swore under oath that 2,3,7,8 wasn't in that tank car, that
5 the first time they admitted it was there it had been found
6 by Dr. Rappe, was in this Court Room and they said before this
7 jury, well, for the purposes of this case they will say --
8 they will admit that it was in there. Is this the first you
9 have learned of that?

10 A I don't recall having heard that.

11 Q Mr. Park --

12 MR. MUSGRAVE: I object to this as irrelevant and
13 immaterial to the cross-examination of this witness, Your Honor.
14 This is going nowhere. We are just wasting time with this.

15 THE COURT: Overruled. It is proper cross-examination
16 in this part of the case.

17 Q (By Mr. Carr) Do you know how far up this apparent
18 policy of no disclosure -- do you know how far up it goes?
19 Does it go to the President of Monsanto?

20 MR. MUSGRAVE: Object to counsel's characterization
21 of something as apparent policy.

22 THE COURT: Overruled.

23 Q (By Mr. Carr) What I have explained to you, you
24 haven't said it to the public. You haven't said it to the

1 customers. You haven't said it to the governmental agencies.
2 You haven't said it in this Court Room. You denied it every-
3 where. How far up does it extend?

4 A (By the Witness) There is certainly no policy of
5 cover-up that I am aware of, Mr. Carr.

6 Q Well, if it is not a cover-up, is it a policy of dis-
7 closure?

8 A I don't know what policy you are speaking of.

9 Q Would you say documents filed in this Court Room where
10 they refused to admit the truth of the fact that 2,3,7,8 TCDD
11 was in that tank car, would you say that is a cover-up or is
12 that a disclosure?

13 MR. MUSGRAVE: I object to that as an improper ques-
14 tion, Your Honor, phrased only for inflammatory purposes and
15 I object to it and request that the jury be instructed to dis-
16 regard it.

17 THE COURT: Overruled.

18 A (By the Witness) I have no knowledge of, Mr. Carr, of
19 what has gone on in the trial of this matter.

20 Q (By Mr. Carr) At the time you met in May of '79 to
21 consider the 2,4 dichlorophenol product, were you informed or
22 did you know that your chemists had stated that the 2,4 dichloro-
23 phenol may contain hazardous dioxins and furans? Did you know
24 that, sir?

1 A I would have to rely on the minutes of that meeting.

2 Q Did the minutes of that meeting reveal to your TSCA
3 Committee that Dr. James D. Wilson knew that the DCP may con-
4 tain hazardous dioxin and dibenzo furans?

5 A At what concentrations?

6 Q Don't care. Hazardous. At whatever level meets the
7 definition of hazardous.

8 MR. MUSGRAVE: To whom, Mr. Carr? Asking this man
9 to set that level?

10 Q (By Mr. Carr) Did Dr. Wilson inform the committee
11 that the 2,4 dichlorophenol contained, may contain hazardous
12 chlorodibenzodioxin?

13 A (By the Witness) I can't recall the specifics.

14 Q Does it appear anywhere in your minutes that he informed
15 you?

16 A Now, which particular meeting?

17 Q The meeting dealing -- that we have been discussing
18 on May 11, May 22 and June.

19 A May 11 and May 22.

20 Q And your June memo.

21 A Which June memo?

22 Q Any June memo that you may have.

23 A I have no June memo relating to the dioxin.

24 Q Well then, please answer in accordance to the memos

1 that you do have. You have got a June 6, 1979, memo.

2 Plaintiff's Exhibit 1275.

3 A Yes.

4 Q That is in June, isn't it, sir?

5 A That relates to the May 11 and May 22 meetings.

6 Q Yes, indeed it does. Did Dr. Wilson mention to you
7 as I have stated that the 2,4 DCP may contain hazardous
8 chlorodibenzodioxins?

9 MR. MUSGRAVE: Some I think it says, if you are
10 quoting what Dr. Wilson said, Mr. Carr.

11 MR. CARR: Mr. Musgrave, I would appreciate it if
12 you would let me ask my questions and you may ask yours.

13 MR. MUSGRAVE: Well, if you are quoting what Dr.
14 Wilson said, you are misquoting him.

15 MR. CARR: If you are telling the witness now that
16 I have a document in my hand --

17 THE COURT: Gentlemen, that is enough.

18 MR. MUSGRAVE: I am objecting then, Your Honor, to
19 counsel's misquoting a document.

20 MR. CARR: Your Honor, I am not even attempting to
21 quote. I am asking whether or not Dr. Wilson told him.

22 THE COURT: Objection is overruled.

23 A (By the Witness) I cannot remember the specific con-
24 versations that took place at these meetings.

1 Q (By Mr. Carr) I understand that. You don't have any
2 memory of it other than what is in your memos. Is it men-
3 tioned in your memos?

4 A I don't see that mentioned. I don't see that men-
5 tioned in these memos.

6 Q I will hand you now Plaintiff's Exhibit 1243 dated
7 April 10, 1979, a good month before your initial meeting on
8 May 11. Did Dr. Wilson tell you that one lot of 93 per cent
9 DCP may contain some hazardous chlorodibenzo dioxins and
10 dibenzo furans?

11 A Well now, our minutes do indicate that it contains
12 1 to 4 per cent 2,4,6 trichlorophenol.

13 Q That is not dioxin, is it?

14 A No.

15 Q Could you answer my question then?

16 A I'm sorry. Let me read this memorandum then. Can you
17 point me to a specific reference in here, Mr. Carr.

18 Q There isn't any reference in there. I am asking you
19 for your analysis if there is any statement at that TSCA meet-
20 ing, any of the memos relating to the TSCA meeting that he
21 informed you that one lot of DCP may contain some hazardous
22 chlorodibenzo dioxins and dibenzo furans?

23 A I don't see a statement in here. But that doesn't mean
24 that he would not have mentioned it during discussion.

1 Q You have no recollection of him telling that 10 to 200
2 parts per million were present in the para-rich cut and DCP
3 samples. Do you, sir?

4 A I cannot remember that during discussion.

5 Q 200 parts per million is very high, isn't it, or is
6 it in your judgment, Dr. Park?

7 A It would depend upon the substance, its use. Could
8 be --

9 Q I am not asking you that. 200 parts per million.
10 Have you heard of a product of chlorinated phenol that contains
11 200 parts per million?

12 MR. MUSGRAVE: Object, Your Honor. Para-rich is
13 not a product. Mr. Carr knows that.

14 MR. CARR: Would you read the entire sentence,
15 counsel? It says, "Para-rich cut and DCP samples, levels of
16 10 to 200 parts per million were present in the para-rich cut
17 and DCP samples."

18 A (By the Witness) Can you point out where it is in the
19 memorandum, please? Am I to read it?

20 THE COURT: Go ahead.

21 A (By the Witness) "Higher," this is a memorandum --

22 THE COURT: No. No. I thought you meant read it to
23 yourself.

24 A (By the Witness) Oh, I'm sorry. Yes.

1 THE COURT: Take a minute and read it to yourself.
2 I misunderstood what you were asking.

3 A (By the Witness) Okay.

4 Q (By Mr. Carr) Now, Mr. Park, you know at this period
5 of time that Monsanto was testing the chlorinated phenols, all
6 of the chlorinated phenols because of what it claimed to be
7 was its surprise. You know that, don't you, sir?

8 A I don't know that I am fully aware of that, no.

9 THE COURT: I didn't hear the last thing.

10 THE WITNESS: I am not aware of the testing that
11 Monsanto was doing at that time.

12 THE COURT: Please try to keep your voice up.

13 Q (By Mr. Carr) Don't you think it would be important
14 to your committee, to you as one of the persons responsible
15 for making the decision of whether or not the EPA should be
16 notified that you should be told that your DCP contains these
17 hazardous levels perhaps up to 200 parts per million of dioxin?

18 MR. MUSGRAVE: Object to counsel's assumption or use
19 of the word hazardous levels. It is counsel's testimony.

20 MR. CARR: I am using the words Dr. Wilson used,
21 Your Honor.

22 THE COURT: Overruled.

23 A (By the Witness) I think our committee should be made
24 aware of all information of importance.

1 Q (By Mr. Carr) And is that fact that the DCP has got
2 dioxin at 200 parts per million at that time, it was being
3 manufactured in early '79, is that important?

4 A Mr. Carr, not being the author, in fact this is the
5 first time I can recall having seen the memorandum.

6 Q My question is, is that important.

7 A It may or may not be.

8 Q I understand it is the first time you saw this docu-
9 ment.

10 A Yes. It may or may not be. In fact, this sentence
11 could be read to say that the 200 parts per million were pre-
12 sent in the para-rich cut. Whatever that means.

13 Q How can you read that to say it was present in that
14 cut? Is there an "and" in there or not?

15 A Yes.

16 Q And does the word "and" mean that it relates to that
17 which precedes it?

18 A The "and", it means that these two different things
19 contain a number of different levels.

20 Q When I say that I give my children or my child, Glenn
21 and Rex, Glenn and Rex their allowance, do you understand that
22 I would be telling you that I gave an allowance to both of my
23 children or all five of my kids, if I said all their names?

24 A No. But if you said I gave Glenn and Rich a baseball

1 bat and baseball glove, I would assume you gave one the bat and
2 one the glove.

3 Q Yes, but Dr. Wilson didn't say that, did he?

4 (Both counsel and the witness spoke
5 at the same time making their remarks
6 unintelligible and not reported in
7 this record.)

8 Q He said 10 to 200 parts per million in the para-rich
9 cut and the DCP samples, didn't he, sir?

10 MR. MUSGRAVE: May I -- just a moment. I would like
11 to object to counsel continuing to have this witness inter-
12 pret a document and what somebody meant by a document that
13 this witness is not the author of beyond what the words say.
14 The words speak for themselves. If he is not the author, he
15 is not qualified to go into the mind of the author to say any
16 more than what the document says. The document speaks for
17 itself and I object.

18 THE COURT: Overruled.

19 Q (By Mr. Carr) It does use the word "and", doesn't it,
20 sir?

21 A (By the Witness) Yes.

22 MR. MUSGRAVE: May this be a continuing objection,
23 Your Honor?

24 THE COURT: Sure.

1 Q (By Mr. Carr) Do you believe that it would be impor-
2 tant to you as a member of that committee when you are dis-
3 cussing whether or not to notify the EPA that it contained --
4 was it important that you knew it contained levels of dioxin
5 up to 200 parts per million?

6 A (By the Witness) I note that these are the mono, di
7 and tri, not the tetra. I guess as a member of the committee
8 I would like to have all available important information.

9 Q And when you concluded that you should not notify the
10 EPA, you didn't have a single bit of information, did you, sir,
11 that the 2,4 dichlorophenol contained any levels of dioxin?
12 Isn't that correct, sir?

13 MR. MUSGRAVE: You mean him or the committee, sir?

14 MR. CARR: He and the committee as reflected from
15 your minutes and your notes.

16 MR. MUSGRAVE: Well, Mr. Carr, the Exhibit 1243 was
17 shown as going to Mr. Callis or Dr. Callis who was present at
18 the meeting. He would have received it in April of '79. Cer-
19 tainly had it before the May meeting.

20 MR. CARR: He sure should have had it.

21 MR. MUSGRAVE: He sure should have.

22 Q (By Mr. Carr) Mr. Park, do you believe that the
23 committee decided at that time not to notify the EPA knowing
24 that the DCP contained 200 parts per million?

1 A (By the Witness) I really cannot recall all of the
2 information that was discussed at this meeting.

3 Q Now, yesterday when I asked you what levels you would
4 consider significant and hazardous and that needs to be reported,
5 something above trace, you went up to parts per million, didn't
6 you, sir? 1 or 2 parts per million. Didn't you, sir?

7 A That was not reported. We were talking about what
8 would I consider trace amounts.

9 Q I asked you and if you want to know specifically I
10 asked you what you would consider of significance and you said
11 that is of significance which is above the level of trace.
12 And I asked you what is trace and you went up to 30 parts per
13 million. Didn't you, sir?

14 A I think I said 30 could be, yes.

15 Q Now, this document mentions 200 parts per million
16 which is a lot more than 30 parts per million. Isn't it, sir?

17 A 200 is more than 30.

18 Q A lot more than 30, sir. Isn't it, sir?

19 A Pardon?

20 Q It is a lot more than 30, isn't it, sir?

21 A Yes.

22 Q And it is significant then. Isn't it, sir?

23 A It might or might not be in a given situation.

24 Q It meets your definition of significance. But you did not

1 report that to the EPA, did you, sir?

2 MR. MUSGRAVE: Objection, Your Honor. Mr. Carr
3 hasn't established 200 parts per million in any particular
4 product. This document I believe refers to still bottoms,
5 para-rich cuts, things that are not product. If he wants to
6 show us where it is 200 parts per million.

7 THE COURT: Overruled.

8 MR. MUSGRAVE: It is misleading the jury. Well -- .

9 A (By the Witness) There is apparently no basis for
10 reporting that information to the EPA.

11 Q (By Mr. Carr) You say apparently. Did you discuss
12 this at your meeting?

13 A I do not remember whether we did or not.

14 Q Is it mentioned in your notes that you discussed it?

15 A I don't see a reference to that specific information
16 in the notes.

17 Q Doctor, insofar -- I'm sorry. Mr. Park, insofar as
18 this meeting was concerned, were you apprised of and were you
19 aware of the fact that 250 parts per billion, not million,
20 parts per billion of dioxin is sufficiently toxic that the EPA
21 should be notified?

22 MR. MUSGRAVE: Which meeting are we talking about,
23 please?

24 MR. CARR: The meeting in May of '79.

1 A (By the Witness) I don't recall that.

2 Q (By Mr. Carr) When did you first learn that 250 parts
3 per billion is considered by a company toxicologist to be a
4 level that should be reported to the EPA? Total dioxins, not
5 just tetra.

6 A I am not sure I understand your question, Mr. Carr.

7 Q Isn't it a fact that your toxicologist advised you
8 that polychlorinated dibenzodioxin contamination of 250 parts
9 per billion in a product should be reported to the EPA?

10 A When did that occur?

11 Q My question is, isn't it a fact that he advised you
12 of that?

13 A I cannot recall an instance directly on point. I guess
14 I can --

15 Q I will help you in a moment. All right. Mark this,
16 please, as an exhibit.

17 THE COURT: Before we get into that exhibit, is this
18 a good point to take a break?

19 MR. CARR: Yes, Your Honor.

20 THE COURT: Ladies and gentlemen, we will take about
21 a ten minute break and then resume questioning. The admonish-
22 ments that I have given you earlier will apply during this
23 break also.

24 (Plaintiff's Exhibit No. 1296)

was marked for identification.)

(Short recess taken.)

Q (By Mr. Carr) Doctor, I hand you -- doctor. Mr. Park, there have been so many doctors around I have fallen in the habit. Mr. Park, I will hand you what has been marked Plaintiff's Exhibit 1296 and ask you if you recognize Mr. Nair there? Dr. Nair is a product toxicology specialist for Monsanto.

A (By the Witness) I do. Actually it is Ms.

Q All right. Offer 1296 into evidence, if it please the Court.

MR. MUSGRAVE: May I see it, please? This is a document that deals with not even a chlorinated phenol and I would object to it as having no materiality or relevancy and any other information in it given the date of January, 1985, is so remote in time from the date of the spill it has no probative value of any issue in the lawsuit.

MR. CARR: Your Honor, it deals with chlorinated dioxins which is the subject of this lawsuit. It deals with the levels that a toxicologist at Monsanto believes is toxic for total dioxins. It is absolutely relevant and material. What is toxic in January of '85 was toxic in 1979.

THE COURT: Let me finish reading it.

MR. MUSGRAVE: I would disagree with counsel's

1 interpretation of what the document says. The document speaks
2 for itself.

3 THE COURT: Just a second. Objection is overruled.
4 It is admitted over objection.

5 MR. CARR: Ask leave to pass Exhibit to the jury,
6 if it please the Court.

7 THE COURT: Yes, you may.

8 Q (By Mr. Carr) Now, Mr. Park, this memo went to you
9 and others who constitute this TSCA Section 8E Committee,
10 didn't it, sir?

11 A (By the Witness) I certainly received a copy of it,
12 yes.

13 Q And Ms. -- Dr. Nair is a toxicologist for Monsanto,
14 is she not?

15 A Yes, she is.

16 Q And she stated on the second page that the average
17 amount of this particular product -- the average amount of
18 dioxin contamination therein was 250 parts per billion.

19 A Average amount of polychlorinated --

20 MR. MUSGRAVE: That is an improper characterization.
21 That is an assumption she makes giving a calculation she is
22 making. She does not make that statement in the document.

23 MR. CARR: She says, "The average amount of poly-
24 chlorinated dibenzo dioxin contamination is 250 parts per billion."

1 MR. MUSGRAVE: Yes, Mr. Carr, that is number five.
2 The paragraph starts, "I have taken the conservative approach
3 to determine if the low levels of dioxins found pose a health
4 hazard. I have calculated the potential body burden of dioxin
5 among workers exposed to tetrathal using the following assump-
6 tions:".

7 MR. CARR: In the third paragraph on the first page,
8 does it count up the number of dioxins in sample number five?

9 MR. MUSGRAVE: What are you asking now?

10 MR. CARR: I am asking whether she referring to the
11 ranges in the second paragraph and the third paragraph, whether
12 or not she refers to the various ranges of these dioxins in
13 this tetrathal product. Three of the twelve samples that were
14 tested contained pentachlorodibenzo dioxins and gave the
15 various levels --

16 MR. MUSGRAVE: You want to read the levels, Mr. Carr?

17 MR. CARR: Range 5.1 to 530 parts per billion and
18 she gave the average as 250 parts per billion, did she not,
19 Mr. Park?

20 THE WITNESS: She assumed an average of 250.

21 THE COURT: Your objection is overruled.

22 Q (By Mr. Carr) And based upon the average contamina-
23 tion of 250 parts per billion, she concluded, "Since the poten-
24 tial calculated daily intake exceeds the virtually safe dose by

1 "a factor 1,000, I feel this information should be submitted
2 to EPA under Section 8E of TSCA."

3 A (By the Witness) She did say that, yes.

4 Q She is saying that based upon her calculations as a
5 toxicologist based upon total dioxin content averaging 250
6 parts per billion. Does she not, sir?

7 A Well, she says that in her memo apparently based upon
8 the assumptions she has in her memo.

9 Q Doesn't she say that, sir?

10 A She said just what you read there, Mr. Carr.

11 Q Was the EPA -- you told us earlier yesterday that if
12 a toxicologist told you that 250 parts per billion, because I
13 asked you. This was delivered to me yesterday at 1:30 and I
14 asked you if that were true, 250 parts per billion, and you
15 said, "Yes, I would accept the word of the toxicologist."
16 Did you not, sir?

17 A I did.

18 Q Now this is the toxicologist that told you and your
19 committee that 250 parts per billion should be reported to
20 the EPA, did she not, sir?

21 A She did.

22 Q And did you report it to the EPA?

23 A We did not. She did exactly what she should do as a
24 toxicologist. May I explain a little bit here?

1 Q Mr. Park -- I will ask the jury be instructed to
2 disregard the latter part of his answer. It is not responsive
3 to my question.

4 THE COURT: I agree with you. It is not responsive.
5 The jury is ordered to disregard it.

6 Q (By Mr. Carr) Now, Mr. Park, the 250 parts per
7 billion that she considers should be reported to the EPA is
8 many times less than the amount of dioxin contained in the
9 2,4 dichlorophenol or for that matter in the orthochlorophenol
10 crude. Isn't that correct, sir?

11 A (By the Witness) True. 250 parts per billion would
12 be less than a part per million.

13 Q The tank car that spilled in Sturgeon contained a
14 total dioxin -- strike that. The tetradoxin as described in
15 this particular product as what level and it was in the dust.
16 Not even in the product. What was the amount of tetra described
17 by Dr. Nair as in the dust, the residue of the product?

18 A I think they detected none in the product.

19 Q That is correct. 1.5.

20 A 1.5 parts per billion.

21 Q How does that compare with 45 parts per billion that
22 was in the tank car that spilled at Sturgeon?

23 A Well, it is less.

24 Q Significantly less. 30 times less, isn't it, sir?

1 A Yes.

2 Q 30 times more of tetra was in the tank car that spilled
3 in Sturgeon. She didn't even take into consideration the
4 tetra content, did she, sir, and she didn't even describe it
5 as being 2,3,7,8. Did she, sir?

6 A Well, it wasn't in the product.

7 Q She didn't describe it as being 2,3,7,8. Did she, sir?

8 A No, she did not.

9 Q But without the tetra being in the product and only
10 the lesser toxic dioxins being in the product at the level of
11 250 parts per billion, she said the EPA should be notified.
12 Didn't she, sir?

13 A Yes. She says she feels like this information should
14 be submitted.

15 Q Because she considers that it meets the criteria that
16 the EPA sets out. Doesn't she, sir?

17 A No, she doesn't say that at all.

18 Q What other reason could she have to report it to the
19 EPA unless it meets the EPA's criteria?

20 A I don't know.

21 Q Who is the person on that committee other than Dr. Nair
22 charged with giving an opinion on the toxicity of that product?

23 A What other person? What other toxicologist on that
24 committee?

1 MR. MUSGRAVE: That assumes that Dr. Nair is on the
2 committee, Mr. Carr. I don't think that has been established
3 and I object to that.

4 THE COURT: Objection is sustained.

5 Q (By Mr. Carr) Was there a toxicologist on the committee?

6 A (By the Witness) As I recall you probably have a copy
7 of the minutes there, Mr. Carr. I don't have that in front of
8 me, but as I recall I believe Dr. Roush represented toxicology.

9 Q Dr. Roush is not a toxicologist, is he, sir? He is
10 an M.D.?

11 A Yeah. Am I correct in that? I am trying to go on my
12 recollection.

13 Q I can help you. I can give you a copy. I will have
14 it marked.

15 A Thank you.

16 (Plaintiff's Exhibit No. 1297
17 was marked for identification.)

18 Q Handing you what has been marked Plaintiff's Exhibit
19 1297 and ask you if you recognize that as a memo to the file,
20 not to the EPA, of this TSCA Committee?

21 A Yes.

22 MR. CARR: Offering 1297.

23 MR. MUSGRAVE: Same objection as before, Your Honor.

24 THE COURT: I'm sorry I didn't hear.

1 MR. MUSGRAVE: Same objection as before with regard
2 to Plaintiff's 1296.

3 THE COURT: You mean 1297?

4 MR. MUSGRAVE: The same as 1296.

5 THE COURT: Okay. It is admitted over objection and
6 I will incorporate those objections in the arguments of both
7 counsel.

8 MR. CARR: Ask leave to pass this exhibit to the
9 jury, Your Honor.

10 THE COURT: Yes.

11 Q (By Mr. Carr) Now, Mr. Park, the members of that
12 committee including yourself were C. P. Farley, F. E. Kearney,
13 W. J. McCarville, W. B. Papageorge, Dr. Roush. Were any of
14 those persons toxicologists?

15 A (By the Witness) Dr. Roush represented toxicology at
16 the meeting.

17 Q My question is specific. Are any of those persons
18 toxicologists?

19 A Dr. Roush I guess was -- filled the toxicologist
20 function.

21 Q That isn't what I asked you, sir. I asked you whether
22 or not any of these persons are toxicologists?

23 A Mr. Carr, I am trying to answer. I know the qualifica-
24 tions of the other four are not. I guess I am not that deeply

1 familiar with Dr. Roush's qualifications except that he is very
2 well qualified.

3 Q I am well qualified in certain areas, but not in others.
4 You are well qualified in some areas, but not in others. Is he
5 a toxicologist?

6 A A toxicologist reports to him.

7 MR. CARR: Your Honor, would you direct the witness
8 to answer this question?

9 A (By the Witness) I don't know whether he is a toxicolo-
10 gist or not, Mr. Carr.

11 Q (By Mr. Carr) Why don't you say that, Mr. Park?

12 A I am sorry. I thought that was clear. I don't know
13 the extent of his training in toxicology.

14 Q What you do know is that Dr. Park is a toxicologist,
15 don't you, sir?

16 A No, he isn't.

17 MR. MUSGRAVE: She is.

18 A (By the Witness) He's been trying to train me.

19 Q (By Mr. Carr) I'm sorry.

20 A You said Dr. Park.

21 Q Did I? I'm sorry. Dr. Nair.

22 A You have been trying to train me, Mr. Carr, and I am
23 not there yet.

24 Q I am doing my level best to train you. After 20 years

1 though I am going to give up.

2 A Very well.

3 Q Dr. Nair is a toxicologist, is she not?

4 A Yes.

5 Q And she reported to you that this level of 250 parts
6 per billion not even including TCDD is a toxic substance that
7 should be reported to the EPA. Didn't she, sir?

8 A She did not --

9 MR. MUSGRAVE: Object to counsel's characterization
10 of the document. The document speaks for itself as to what
11 Dr. Nair said.

12 THE COURT: Overruled.

13 Q (By Mr. Carr) Did she say, "I feel this information
14 should be submitted to the EPA under Section 8E of TSCA." Did
15 she say that?

16 A (By the Witness) She said that to the person she
17 reports to. The top toxicologist.

18 Q Did you get a copy of her report?

19 A I received it later.

20 Q And you considered her report on the 24th of January,
21 23rd of January, didn't you, sir?

22 A Yes.

23 Q And you had that report in front of you, didn't you,
24 sir?

1 A Yes.

2 Q Did you have a report from any other toxicologist in
3 front of you at that meeting?

4 A We also had --

5 Q Can you answer that question, please, sir?

6 A Yes.

7 Q What report from what toxicologist did you have?

8 A From her supervisor.

9 Q What toxicologist's report did you have? What other
10 toxicologist reported at that meeting?

11 A I am trying to say. There was a report from her super-
12 visor.

13 Q I asked you what toxicologist. Is her supervisor a
14 toxicologist?

15 A Yes.

16 Q Who is that?

17 A Dr. Levinskas.

18 Q Is he a toxicologist?

19 A Yes.

20 Q And what memo did he tell you that countered the memo
21 of Dr. Nair?

22 A He felt that she had exaggerated the risk in this
23 situation.

24 Q He said that she had exaggerated the risk. Did he, sir?

1 A Yes. As I recall, I don't have his memorandum in front
2 of me.

3 Q I do have. It was given to me this morning at 9:15
4 a.m. I have it, sir. Now, you tell me where he says she
5 exaggerates the risk.

6 A He says, "Since TCDD was found only in waste dust at
7 1.5 PPB the calculations regarding potential PCDD exposure
8 from tetrathal represents an extreme situation which greatly
9 exaggerates the risk."

10 Q Because the TCDD is not in there?

11 MR. MUSGRAVE: P, sir.

12 Q (By Mr. Carr) Because the TCDD is not there, sir?

13 A (By the Witness) I just read you what he said, Mr.
14 Carr.

15 Q I understand that, Mr. Park. Did he talk about the
16 TCDD contamination of the work place? Did he, sir?

17 A Are you going to allow me --

18 Q That is the only copy I have.

19 A I don't have any here, sir.

20 Q Did he talk about the possible TCDD contamination of
21 the work place?

22 A It says, "This does raise a question, however, of
23 possible TCDD contamination of the work place."

24 Q Did he tell you that a mixture of hexachloro dioxins

1 were found to be carcinogenic in a NTP bioassay?

2 A He does say that.

3 Q Does he say that the acute toxicity in guinea pigs of
4 pentachloro dioxin compares to 2,3,7,8 tetrachloro dioxin;
5 two-thirds the toxicity of it? Did he say that, sir?

6 A He says it has an oral LD 50 of 3.1 micrograms.

7 Q Compared to 2.

8 A Let's see. Compared to 2 micrograms per kilogram for
9 2,3,7,8 tetrachloro dioxin.

10 Q Did he say in any place that it should not be reported
11 to the EPA?

12 A No.

13 Q As a matter of fact, what he said and he also discussed,
14 did he not, that there is a mixture of hexachloro dioxin that
15 is fetal toxic and produces fetal abnormalities and subcutaneous
16 edema in the pups in dosages higher than the 2,3,7,8 TCDD.

17 Did he say that, sir?

18 A Yes.

19 Q Did your committee believe from that that Dr. Levinskas
20 was overruling Dr. Nair and telling you not to report it?

21 A When our committee met, --

22 Q Excuse me. Could you answer that question? Do you
23 believe that he was overruling Dr. Nair? He was pointing out
24 more problems with it, was he not, sir, adding to what she

1 said. Wasn't he, sir?

2 A No. Our committee considered this and the other
3 memorandum.

4 Q My question is, did he not add to what she said?
5 Did he not give you additional information as to the toxicity
6 of what you are talking about?

7 A He greatly reduced the possible risk that had been
8 raised in Dr. Nair's memorandum and then he pointed out some
9 other things that had not been raised in hers.

10 Q Did he tell you in any fashion whatsoever that you
11 should not report this to the EPA?

12 A He does not specifically so state in the memo.

13 Q And you have a specific statement from your toxicolo-
14 gist that studied it, that worked on it that says it should be
15 reported to the EPA. Isn't that correct, sir?

16 A That was in the memorandum that led to our SE meeting.

17 Q And you didn't follow the toxicologist's recommenda-
18 tions, did you, sir?

19 A We did follow our toxicologist's recommendations. We
20 had a consensus.

21 Q What toxicologist told you not to report it to the EPA?

22 A The consensus --

23 Q What toxicologist told you not to report it to the EPA?

24 A The toxicologist described the toxicity --

1 Q What toxicologist told you not to report it to the
2 EPA?

3 A The committee felt it was not a reportable situation.

4 Q What toxicologist told you not to report it to the
5 EPA?

6 A I don't know that any specific one did.

7 Q What toxicologist told you to report it to the EPA?

8 A Dr. Nair --

9 Q Did you report it to the EPA?

10 A -- said she felt this information should be submitted
11 to EPA.

12 Q Was it submitted it to the EPA?

13 A It was not submitted to the EPA under Section 8E.

14 Q Was it submitted to the EPA in any form?

15 A I don't believe it was submitted to the EPA.

16 THE COURT: Mr. Carr, is this a good point to break?

17 MR. CARR: Yes, sir.

18 THE COURT: Ladies and gentlemen, we are going to
19 break a little bit early today and I would remind you as I do
20 on any overnight break that you are not to read, listen to or
21 watch anything about this case in particular or subject matter
22 in general of any of the media along with the other admonish-
23 ments that I have given you. I want to thank you for your
24 attention and consideration and patience with any delays that

1 we have had during the week. We will resume again Monday
2 morning at 9:30. Have a good weekend.

3 (Court adjourned.)
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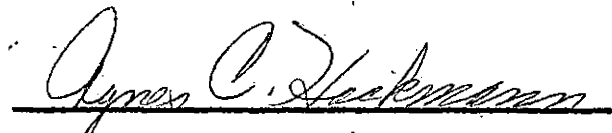
1 STATE OF ILLINOIS)

2 TWENTIETH JUDICIAL CIRCUIT)

SS

3 COUNTY OF ST. CLAIR)

4 I, Agnes C. Hackmann, one of the Official Court
5 Reporters in and for the Circuit Court of St. Clair County,
6 Illinois, and the Official Court Reporter who reported the
7 proceedings had in this cause on April 12, 1985, do hereby
8 certify that the foregoing transcript of proceedings is a true,
9 complete and correct transcript of all the proceedings had in
10 this cause.
11

12 
13 OFFICIAL COURT REPORTER

1 STATE OF ILLINOIS)

2 TWENTIETH JUDICIAL CIRCUIT)

3 COUNTY OF ST. CLAIR)

SS

4 FORASMUCH THEREFORE, as the matters and things
5 hereinbefore do not otherwise appear of record herein, the
6 Court having examined the said Report of Proceedings had in
7 this cause, and being satisfied with the correctness thereof,
8 and that the same is all of the evidence offered or received
9 at said hearing No. 80-L-970, Frances E. Kemner, et. al.,
10 Plaintiffs, versus Monsanto Company, Defendant, doth hereunto
11 set his hand and seal.

12 

14 CIRCUIT JUDGE

15 DATED this _____ day of April, 1985.
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