

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WILLIAM R. GAFFEY,
Plaintiff,

vs.

PETER MONTAGUE, et al.,
Defendants.

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Cause No. 91-1938-C-7

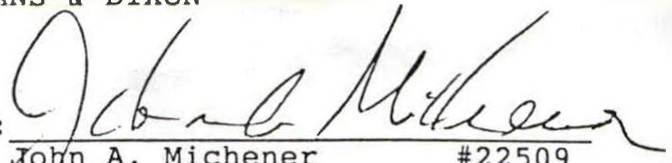
NOTICE OF DEPOSITION

TO: All Counsel of Record

PLEASE TAKE NOTICE that the deposition of Monsanto Company will be taken pursuant to Rule 30(b)(6) at 10:00 a.m. on November 16, 1993 at the law offices of Evans & Dixon, 200 North Broadway, Suite 1200, St. Louis, Missouri, then and there to testify as to the matters set out in the attachment and to produce the documents set out in the attachment.

EVANS & DIXON

BY:


John A. Michener #22509
Co-Counsel for Defendants
1200 Saint Louis Place
200 North Broadway
St. Louis, MO 63102
621-7755

CERTIFICATE OF SERVICE

Copy of the foregoing mailed this 4th day of November, 1991 to Richard A. Wunderlich, Daniel D. Zegura, Attorneys for Plaintiff, 8182 Maryland Avenue, Suite 400, Clayton, MO 63105; and Gerald R. Ortvals, Attorney for Plaintiffs, 1800 Equitable Building, 10 South Broadway, St. Louis, Missouri 63102.

cc: Schroeder Reporting



ATTACHMENT

Please use the definitions provided in the attached subpoena duces tecum. Produce the person or persons most knowledgeable about the following subjects:

1. The Monsanto corporate motivation for conducting the Nitro worker studies, including without limitation the identities and roles of all persons who participated in the proposal and decision to conduct the studies, the substance of their communications and records thereof including their present existence and location, the use or uses Monsanto officers and staff intended to and did make of the studies, and any and all instructions and guidance given to those responsible for implementation of the studies;

2. The universe of records of or referring to the Nitro worker studies that were acquired or generated by Monsanto or its agents or contractors, including without limitation their present existence, condition, location, retrievability, disclosability, and contents; to the extent such records are no longer in Monsanto's possession, custody or control, the circumstances of their destruction or removal from Monsanto's possession, custody or control including without limitation the motivation and authorization for and identities of persons accomplishing such acts;

3. The particular role of plaintiff William R. Gaffey in the [i] proposal for, [ii] decision to conduct, and [iii] implementation of any or all of the Nitro worker studies; his role in activities involving the Nitro worker studies after their

completion; his interactions with others in regard to the studies; the universe of records he generated, reviewed, and acquired in regard to the foregoing; and the present existence, condition, location, retrievability, disclosability, and contents of such records and; to the extent such records are no longer in Monsanto's possession, custody or control, the circumstances of their destruction or removal from Monsanto's possession, custody or control including without limitation the motivation and authorization for and identities of persons accomplishing such acts;

4. Information and reliability thereof that Monsanto officers, staff contractors, and agents provided to other persons or entities who studied the same or overlapping populations of workers involved in the Nitro worker studies, including without limitation Dr. Marianne Moses and Dr. Marilyn Fingerhut;

5. The source(s), extent, and duration of dioxin contamination within, on the grounds of, and in the area surrounding Monsanto's chemical manufacturing facility at Nitro, West Virginia, and any and all tests, analyses, and studies thereof including without limitation their methodologies and conduct, whether conducted by Monsanto, by others, or in conjunction with Monsanto; the extent to and circumstances under which any of the foregoing information was made available to plaintiff William R. Gaffey or his co-workers involve in the Nitro worker studies and if not made available all reasons therefor; all records of the foregoing, including their present existence, condition, location, retrievability, disclosability,

and contents, and, to the extent such records are no longer in Monsanto's possession, custody or control, the circumstances of their destruction or removal from Monsanto's possession, custody or control including without limitation the motivation and authorization for an identities of persons accomplishing such acts;

6. All payments made by Monsanto to or for the benefit of plaintiff William R. Gaffey since his retirement from Monsanto; Monsanto's intent in regard to future use of Dr. Gaffey's services and expected remuneration therefor; and factors affecting whether and the extent to which Monsanto intends to make payments to Dr. Gaffey in the future.

7. The conduct, methods, and all results of any and all Monsanto investigations into whether any or all of the Nitro worker studies are scientifically valid or fraudulent;

8. All communications between or among Monsanto officers, staff, or agents with persons outside the company in regard to allegations that one or more of the Nitro worker studies are scientifically invalid and/or fraudulent, all Monsanto decisions and policies regarding the same, and implementation thereof;

9. The Monsanto personnel record of plaintiff William R. Gaffey;

10. All records of communications between Dr. George Carlo and Monsanto officers, staff, or agents; and

11. The authenticity, genuineness, and hearsay status of all records produced by Monsanto in response to the Defendants' concurrent subpoena duces tecum.

ATTACHMENT A

I.

DEFINITIONS AND INSTRUCTIONS

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

1. "Produce" means to produce any and all originals and any and all non-identical copies of the same document described in its or their most complete form, including, without limitation, any and all surviving portions thereof, and including any and all annexes, appendices, tabs, exhibits, indexes, cover sheets, transmittal letters, or other documents found attached to or in the same file with the same document or documents, including, without limitation, whenever available the file identification and identification of the system of records in which each document and any and all copies are found. Wherever you are asked to produce affidavits or trial or deposition transcripts, also produce any and all exhibits thereto.

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

3. The term "person" or "persons" includes not only natural persons, but also all forms or organizations including without limitation unincorporated associations, partnerships,

SUBPOENA DUCES TECUM
Page 1

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

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 2

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

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

II.

RECORDS TO BE PRODUCED

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

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 4

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 5

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

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

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 6

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 7

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 8

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

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 9

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 10

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

49. Copies of all such retractions printed or broadcast.

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

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

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

53. Mary Gaffey's most current curriculum vitae.

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

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

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

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

SUBPOENA DUCES TECUM
Page 11

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

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 12

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

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

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

68. All peer reviews of the Nitro worker studies.

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBPOENA DUCES TECUM
Page 14

SCHEDULE OF EXHIBITS

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

SUBPOENA DUCES TECUM
Page 16

R Marcie Strauss, May 4, 1987 letter to Marilyn Fingerhut, NIOSH,
transmitting computer tape

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- SUBPOENA DUCES TECUM
Page 17