

THE DOW CHEMICAL COMPANY QUALITY ASSURANCE
PRODUCTION SPECIFICATION

28751

PAGE: 1

PRODUCT CODE: 28751 QAC: 290 EFFECTIVE: 24 MAY 82

NAME: ESTERON (R) 240 SE HERBICIDE

DESC: AMBER, OILY, EMULSIFIABLE LIQUID.

APPL GOVT/IND STDS: EPA REG. NO. 264-89-464

EPA EST. NO. 464-MI-1

MNO12332

PROD'N PTS U.S.

:MM

DEPT: 31

TEST ITEM	UNIT	LIMITS	TEST METHODS
2,4,5-TRICHLOROPHENOXY ACETIC (2,4,5-T) BUTOXYETHYL ACID, ESTERS, MIN.	%	60.9	28751
2,4,5-T ACID EQUIV., MIN.	%	43.8	28751
2,4,5-T ACID CONTENT	LBS/GAL	3.97-4.1	28751
INERT INGREDIENTS	%	39.1	28751
2,3,7,8-TETRACHLORODIPHENYLO- P-DIOXIN	PPM	<0.008 BASED ON 2,4,5-T ACID	
*SPECIFIC GRAVITY @ 20		1.069 (APPROX.)	ASTM D891
*EMULSION CREAM RATE @ 1 HR.			AG 15B-2
* 100 PPM HARD WATER	ML	1.0 MAX.	
* 500 PPM HARD WATER	ML	0.8	

-----COMPOSITION (NOMINAL)-----

*2,4,5-T,BUTOXYETHYL ESTERS %	60.9	027513-72-5
*ASSOCIATED COMPONENTS FROM 2,4,5-T BUTOXYETHYLESTER, TOTAL, MAX.	%	2.0
*GAFAC RE 610	%	2.3
*GAFAC PE 510	%	3.5
*AROMATIC OR AROMATIC/ALIPHATIC BLENDED OIL (PETROLEUM SOLVENTS)	%	31.3

-----RAW MATERIALS-----

*2,4,5-T ACID BUTOXYETHYL ESTER
*GAFAC RE 610
*GAFAC PE 510 SURFACTANT
*KEROSENE
*NAPHTHA, HEAVY AROMATIC SOLVENT

-RM SPEC# CAS# --
87519-R1 002545-59-7
48698-R2 TNO
48634-R2 TNO
42731-R1 008008-20-6
55204-R1 068333-83-0

PI: 2618072 MISC SAMPLE
PI: 2618060 4X1 GAL CAN
PI: 2618096 55 GAL DR

PROD'N NOTE:

- (1) (THIS NOTE RESERVED FOR FURTHER CHANGE NOTIFICATION.)
- (2) LIMIT IS HIGHER THAN LABEL CLAIM (59.1% ESTER AND 42.5% AE)
TO ENSURE PRODUCT MEETS POUNDS PER GALLON CLAIM WITH FORMULATION
USING LIGHTER SOLVENT SYSTEM. RE-REGISTRATION NOT DESIRABLE

(4) INDICATES A TRADEMARK OF THE DOW CHEMICAL COMPANY

* * * D O W C O N F I D E N T I A L * * * ANOTHER PAGE FOLLOWS

DOW 2133679

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THE DOW CHEMICAL COMPANY QUALITY ASSURANCE
PRODUCTION SPECIFICATION

28751

PAGE: 2

PRODUCT CODE: 28751
PROD'V NOTE: (CONTINUED)

- AS PRODUCT LIFE IS ONLY TO DEplete CURRENT STOCK OF TECH ESTER.
(3) SPECIFICATION IS FOR PRODUCT TO BE MANUFACTURED FROM EXISTING
INVENTORIES OF 2,4,5-TRI-CHLOROPHENOXYACETIC ACID BUTOXYETHYL
ESTERS; NO NEW ESTER PRODUCTION IS ANTICIPATED.
(4) FORMULATION IS XRM 4664.

MN012332

DOW 2133680

PRODUCTION SPEC APPROVERS:

W.L. GOLD GAC 29 APR 82
E. ISENBERGER METHODS 27 APR 82
J.M. TICHON PROD 23 MAR 82
M.J. SKURSKI PROD 23 MAR 82
J.R. GLEDHILL ACPD 23 MAR 82
J.S. WOODS GAC/QAA 23 MAR 82
R.L. GANTZ PROD 31 MAR 82
J.A. SCHULTZ RED 29 MAR 82
J.W. DRENCKPOHL QA DEPT 16 APR 82
J.G. CONTINO PSC 13 APR 82
A.E. SCHOBEL AG REG. 16 APR 82
J.W. DRENCKPOHL QA DEPT 24 MAY 82

APPROVALS	:DIV-DEPT :	DATE	APPROVALS	:DIV-DEPT :	DATE
	:	:		:	:
	:	:		:	:
	:	:		:	:
	:	:		:	:

PRODUCTS NOT MEETING THIS SPECIFICATION MUST NOT BE SHIPPED
UNLESS AUTHORIZED BY SALES AND PRODUCTION MANAGEMENT
(R) INDICATES A TRADEMARK OF THE DOW CHEMICAL COMPANY
* * * D O W C O N F I D E N T I A L * * * LAST PAGE

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Mayer v. Dow
AO Interrog.
Please

DAY 2 AGENT ORANGE TRIAL
MOYER V DOW

6158

88

UNITED STATES DISTRICT COURT
EASTERN DISTRICT of NEW YORK

- - - - -x

in re

"AGENT ORANGE"

Product Liability Litigation

- - - - -x

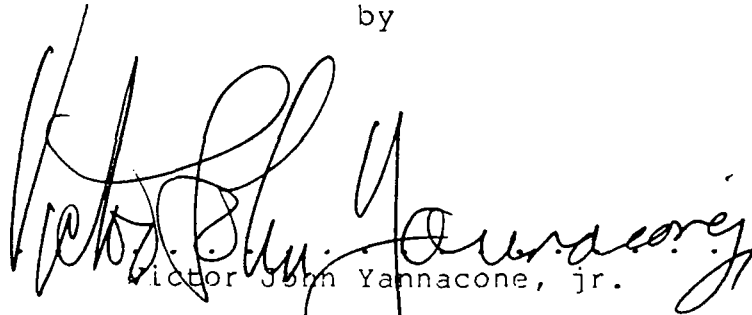
MDL No. 381 IN CLERK'S OFFICE
(All Cases) U.S. DISTRICT COURT E.D.N.Y.

★ JAN 23 1980 ★

TIME A.M. _____
P.M. _____

PLAINTIFFS' FIRST WAVE
INTERROGATORIES TO DEFENDANTS

This Master Document submitted
by



YANNAZONE & ASSOCIATES
Plaintiffs Attorneys
P.O. Address
Post Office Drawer #109
Patchogue, New York 11772
(area code 516) 654-2299

8520

PLAINTIFFS' FIRST WAVE
INTERROGATORIES TO DEFENDANTS

INSTRUCTIONS

All documents produced shall be identified by each numbered request to which they are responsive, preceded by the designation "Defendant's name (e.g. "DOW") Document 80-01-14-", and each such document can be identified thereafter by document number followed by the page of the document and any internal page subdivisions contained in such document, and the copy provided shall be of sufficient contrast and quality as to be suitable for reproduction by xerography or microphotography.

If any privilege is claimed as to any document called for by this request, your response hereto shall state the date of such document, the name and address of each such person who participated in preparing it, the name and address of each person, if any, who signed it, the name and address of each person to whom it was directed, circulated or distributed, and, the name and address of each person now in custody, control, or possession of such document.

DEFINITIONS

8521

For purposes of this Notice, the following definitions are applicable, unless otherwise indicated herein:

1. "Document" is used herein in the broadest possible sense and means any written or graphic matter of whatever kind or nature, however produced or reproduced, or to other tangible record, and, without limitation, shall include, among other things: letters, correspondence, memoranda, notes, reports, papers, files, books, records, studies, appraisals, analyses, lists, surveys, budgets, financial statements, financial projections, financial calculations, contracts, agreements, recommendations, summaries, periodicals, charts, graphs, tables and tabulations, interviews, speeches, affidavits, transcripts, depositions, brochures, books of account, bills, invoices and other records of obligations or expenditures, cancelled checks, vouchers, receipts and other records of payment, press releases, photographs, calendars, diary entries, telegrams and other communications sent or received, minutes or notes of meetings including those of the Boards of Directors of the several corporate defendants, visits or telephone conversations, inter-office communications, results of investigations, working papers, maps or papers similar to any of the foregoing, including all drafts, outlines, and proposals of any such documents (whether or not actually used); or any other means of preserving thoughts of expression, (including, without limitation, tape recordings and/or transcriptions thereof), and all tangible things from which information can be processed, or transcribed, whether

8522

originals, copies or drafts, (including, without limitation, non-identical copies), however produced or reproduced. Note that a document with handwritten or typewritten notes, editing marks, etc. is not and shall not be deemed identical to one without such qualifications, additions, or deletions.

2. For purposes of this request, "Document" shall also mean all graphic, mechanical, or electronic reproductions, representations, recordings, or compilations of data of any kind, including, but not limited to drawings, charts, graphs, motion picture films, microfilms, microfiles, photograph and tape recordings, video tapes, any transcripts or printouts produced therefrom, or other data compilations from which information can be obtained, and all drafts of any of the foregoing.

3. For purposes of this request, "Document" shall also include results of scientific studies, experiments, analyses, and investigations in whatever form such results may be recorded.

4. For the purposes of this request, the term "draft" means any earlier preliminary, preparatory, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft, and whether or not the terms of the draft are the same as, or different from the terms of the final document.

5. "Company" or "Corporate defendant(s)" shall mean the corporation itself, its predecessors and successors, its

8523

subsidiaries, divisions, affiliates, and other organizational or operating units and all of their several predecessors and successors, and any employees, agents, representatives, or other person(s) acting or purporting to act on its behalf for any purpose whatsoever.

6. "Person" shall mean any individual, partnership, firm, association, corporation, joint venturer, or other business or any other public or private legal entity.

7. "USA" means third-party defendant THE UNITED STATES OF AMERICA and its offices, departments, bureaus, agencies, representatives, department heads, agency heads, bureau chiefs, agents, attorneys, employees, or any other person, or persons, acting for, or on behalf of THE UNITED STATES OF AMERICA, under the authority or control of THE UNITED STATES OF AMERICA, or any one, or group of the foregoing.

8. "Government" shall mean the government of the United States including its executive, legislative, and judicial branches and shall also include the Department of Defense, Department of Army, Department of Air Force, Department of Navy, Veterans Administration, and any other organization within the Government of the United States of America charged with the prosecution of the war in Vietnam from 1961 through 1972.

9. For purposes of this request, the term phenoxy

8524

herbicides includes all those congeneric chemicals commonly referred to as "2,4,5-T" and "2,4-D."

10. For purposes of this request, the term "polychlorinated dibenzo-p-dioxins (PCDDs)" includes 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin").

11. For purposes of this request, the term "polychlorinated dibenzo furans (PCDFs)" includes 2,3,7,8-tetrachloro dibenzo furan (TCDF).

I.

Plaintiffs' Interrogatories

Directed to Each of the Corporate Defendants

To Elicit the Names of Possible Deponents.

1. If your company is or was organized by divisions, departments or other units other than subsidiaries, state for each year from 1948 to date the name of each such division, department or unit engaged in each of the following activities with respect to phenoxy herbicides, identifying the time periods it was engaged in such activity:

- 1.1 formulation;
- 1.2 manufacture;
- 1.3 advertising;

8525

- 1.4 marketing;
- 1.5 promotion;
- 1.6 sales;
- 1.7 customer service;
- 1.8 Extension services.

and provide an organization chart of each such division, department or other subdivision identified in response to Interrogatory 1.

2. As to each division or other unit identified in the answer to Interrogatory 1, identify each person in charge of the activities enumerated in subparagraphs 1.1 through 1.8 of such division or unit. If different persons were in charge at different times, identify each such person and the time period during which said person was in charge.

3. Identify by name and place of incorporation any company engaged in the manufacture and marketing of phenoxy herbicides which was acquired or transferred by your company during the period 1948 to date, giving in each case the date of such acquisition or transfer and the disposition of such business.

4. Identify by geographic location and post office address the facilities utilized in whole or in part for the manufacture of phenoxy herbicides, and for each of such facilities:

8526

4.1 State the number of employees including executive personnel.

4.2 State the names, last known home addresses, telephone numbers, job descriptions, and employment history of each management employee involved in the formulation, manufacture, and/or production of phenoxy herbicides, together with their job titles and the job description associated with such titles maintained by the company.

5. Identify all health and safety personnel who examined, treated, or otherwise were involved with employee health at each of the facilities identified in response to Interrogatory 5.

6. State the names, last known home addresses, telephone numbers, job descriptions, and employment history of each employee of the company who worked at each of the facilities identified in response to Interrogatory 5 who is now deceased and the causes of death listed on the death certificates.

7. State the names, last known home addresses, telephone numbers, job descriptions, and employment history of each employee of the company who worked at each of the facilities identified in response to Interrogatory 5 who is now disabled and the stated cause of such disability as is known to the company.

8. State the names, last known home addresses, telephone numbers, job descriptions, and employment history of all company

8527

personnel with any management or supervisory responsibility for the formulation, manufacture, production, advertising, promotion, marketing and sale of phenoxy herbicides who have left the company's employ for any reason whatsoever (including death or retirement) since 1948.

9. State the names, last known home addresses, telephone numbers, job descriptions, and employment history of each and every individual acting by or on behalf of the company and/or known to be acting by or on behalf of the other defendants in connection with the manufacture, production, sale, distribution, marketing and advertising of phenoxy herbicides.

10. Identify the persons, if any, that submitted bids for the formulation, manufacture, and/or production, advertising, promotion, marketing and sale of phenoxy herbicides, and state the substance of any bids actually submitted.

11. State the names, last known home addresses, telephone numbers, job descriptions, and employment history of the individual(s) best qualified to describe the process whereby phenoxy herbicides were manufactured, formulated, advertised, marketed, promoted and sold .

12. Identify each person employed by or who acted on behalf of or who represented the company before any agent, agency or committee of the Government or who submitted any written document

8528

or statement, data or report to any such agent, agency or committee of Government concerning phenoxy herbicides; and as to each such person so identified:

12.1 State the date and place such information or testimony was given;

12.2 Identify the person, agency or committee receiving such information or testimony; and

12.3 Relate the substance of such statement, data or report, or provide a copy thereof.

13. The names, last known home addresses, telephone numbers, job descriptions, and employment history of each and every employee including executives and management who have claimed disability arising out of their employment at each facility identified in response to Interrogatory 5.

14. If you or your attorneys have interviewed any present or past employee of any other corporate defendants concerning phenoxy herbicides, with respect to each such interview:

14.1 identify the person so interviewed, the person or persons conducting the interview, the persons present when the interview was taken, the persons having knowledge of the substance thereof, and the persons having custody or control of any recording of the interview or any summary or evaluation thereof;

14.2 state the date and place of any such interview.

8529

15. State whether any person acting on behalf of your Company communicated during the period from 1948 to date with any officer, agent, employee or other person acting or purporting to act on behalf of other corporate defendants named in the complaint or any other corporation engaged in the manufacture and sale of phenoxy herbicides, or with any intermediary concerning phenoxy herbicides.

8530

II.

Plaintiffs' Interrogatories
Directed to Each of the Corporated Defendants
To Disclose the Existence,
Location and Custodian of Documents

16. Identify each study, report or other memorandum prepared or used by you during the period 1949 to date relating or referring to any of the following:

- 1.1 the invention and development of phenoxy herbicides;
- 1.2 the manufacturer of phenoxy herbicides;
- 1.3 the formulation of phenoxy herbicides;
- 1.4 the advertising of phenoxy herbicides;
- 1.5 the marketing of phenoxy herbicides;
- 1.6 the promotion of phenoxy herbicides;
- 1.7 the sale of phenoxy herbicides;
- 1.8 customer service relating to phenoxy herbicides;
- 1.9 Extension services relating to phenoxy herbicides.

17. Identify each report, statistical bulletin or memorandum submitted by your company to any Government from 1945 to date with respect to phenoxy herbicides.

18. Identify by number or date and effective period each

price list or catalog description of phenoxy herbicides manufactured, formulated, advertised, marketed, promoted and sold by your Company including additions, insertions, supplements and changes therein, together with any advertising and promotional literature relating to such phenoxy herbicides for the period 1945 to date.

19. List each study or report concerning the productivity of labor engaged in the production of phenoxy herbicides prepared or used by you during the period 1945 to date, including, but not being limited to, those used in any labor, wage or salary negotiation affecting such employees.

20. Identify each document referring or relating in any way to phenoxy herbicides passing between your company and any officer, agent, employee or other person acting or purporting to act on behalf of any other corporate defendants or any other non-defendant company engaged in the manufacture and sale of phenoxy herbicides during the period from 1945 to date.

21. Identify each document, if any, which sets forth how conflicting recommendations as to the manufacture, marketing and use of phenoxy herbicides from your advertising, promotion, marketing and sales employees, your engineering or technical employees, and your consultants were resolved.

22. Describe and explain how conflicting recommendations as to the manufacture, marketing and use of phenoxy herbicides from your advertising, promotion, marketing and sales employees, your engineering or technical employees, and your consultants were resolved.

23. Identify each document, if any, which sets forth the powers, duties and responsibilities assigned to your engineering or technical employees involved with phenoxy herbicides.

24. Describe the powers, duties and responsibilities associated with the job titles of each of your engineering or technical employees concerned with the formulation, manufacture, and/or production phenoxy herbicides.

25. Identify each document stating the policy of your Company with reference to the formulation, manufacture, and/or production, advertising, promotion, marketing and sale of phenoxy herbicides, as well as such documents embodying intermediate recommendations prior to final approval of such policy or policies, for the period from 1945 to the present.

26. For the period 1945 to date, identify each person who had authority to or was permitted to make or approve policy decisions with respect to the manufacture, marketing and use of phenoxy herbicides, the job title, and the extent of the authority of each such person with respect to phenoxy herbicides.

27. State whether or not your company had any policy with respect to compliance with the laws of the United States and the several states dealing with pesticides, and, if so, describe the policy and identify any directive or other writing which sets forth such policy.

28. If you answered Interrogatory 12 affirmatively, identify any person who, in connection with phenoxy herbicides, was discharged, reprimanded or otherwise disciplined for what was believed to be or found by you to be a violation of such policy.

29. Identify any documents relating to the analysis, examination, testing, and results of any medical complaints by employees including executive employees at the various facilities which manufactured and produced phenoxy herbicides.

30. Identify any documents concerning the dates, times, places, and effects attributable to exposure of human beings to phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), or polychlorinated dibenzo furans (PCDFs).

31. Identify any documents concerning the dates, times, places, and results of animal tests involving exposure to phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), or polychlorinated dibenzo furans (PCDFs).

32. Identify any documents concerning warranties,

representations, assurances, and/or promises made by this defendant or known to this defendant to have been made by other defendants concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs) and/or polychlorinated dibenzo furans (PCDFs).

33. Identify any documents concerning any communications between or among this corporate defendants and the other corporate defendants and/or purchasers or prospective purchasers of phenoxy herbicides concerning polychlorinated dibenzo-p-dioxins (PCDDs) or polychlorinated dibenzo furans (PCDFs).

34. Identify any documents concerning the formulation, manufacture, and/or production of phenoxy herbicides.

35. Identify any documents concerning phenoxy herbicides and/or polychlorinated dibenzo-p-dioxins (PCDDs) and/or polychlorinated dibenzo furans (PCDFs) supplied to the government.

36. Identify any documents concerning any quality control or quality assurance programs of the company with respect to phenoxy herbicides.

Leonard L. Rivkin, Esq.
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Chrysler Building
405 Lexington Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT of NEW YORK

- - - - -x

in re

"AGENT ORANGE"

Product Liability Litigation

- - - - -x

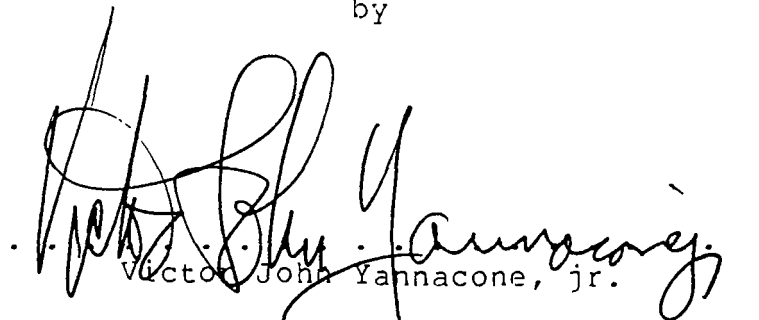
MDL No. 381
(All Cases) IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 23 1990 ★

PLAINTIFFS'
FIRST NOTICE
TO TAKE DEPOSITIONS
OF CORPORATE DEFENDANTS

TIME A.M.
P.M.

This Master Document submitted
by


Victor John Yannacone, Jr.

YANNAZONE & ASSOCIATES
Plaintiffs Attorneys
P.O. Address
Post Office Drawer #109
Patchogue, New York 11772
(area code 516) 654-2299

8537

(134)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -x

in re

"AGENT ORANGE"

MDL No. 381
(All Cases)

Product Liability Litigation

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PLAINTIFFS'
FIRST NOTICE
TO TAKE DEPOSITIONS
OF CORPORATE DEFENDANTS

PLEASE TAKE NOTICE, that pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure, plaintiffs will take the depositions of the appropriate representatives, officers or employees of the corporate defendants on 21 February 1980 at the United States Courthouse for the Eastern District of New York, Westbury Annex, 900 Ellison Avenue, Westbury, Long Island, New York, or such other site as the court shall designate.

Each such Examination shall take place before a Notary Public, duly authorized to administer oaths and take testimony, commencing at 1000 hours on the morning of the day designated, and continuing from day to day until completed.

PLEASE TAKE FURTHER NOTICE that all witnesses are instructed to produce at their respective examinations any and all documents and records within their possession, custody or control relating to the existence, identity, date generated, date received, and

present location of the documents described in this Notice.

This notice is directed to each of the corporate defendants and is a notice to take the deposition of each such corporate defendant as follows:

1. Defendant THE DOW CHEMICAL COMPANY by a person or persons with knowledge of the existence and identity of any and all documents in the possession, custody or control of said corporate defendant relating in any way to:

(a) the development, testing, use and purchase of phenoxy herbicides.

(b) a herbicide known as "Agent Orange" or "Herbicide Orange";

(c) phenoxy aliphatic herbicides;

(d) polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs).

Such person or person produced by said defendant for examination shall have knowledge of the date each such document was generated and the time, manner and circumstances by which each such document came into possession, custody or control of said corporate defendant.

2. Defendant MONSANTO CO. by a person or persons with knowledge of the existence and identity of any and all documents in the possession, custody or control of said corporate defendant relating in any way to:

(a) the development, testing, use and purchase of phenoxy herbicides.

(b) a herbicide known as "Agent Orange" or "Herbicide Orange";

(c) phenoxy aliphatic herbicides;

(d) polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs).

Such person or person produced by said defendant for examination shall have knowledge of the date each such document was generated and the time, manner and circumstances by which each such document came into possession, custody or control of said corporate defendant.

3. Defendant HERCULES, INCORPORATED by a person or persons with knowledge of the existence and identity of any and all documents in the possession, custody or control of said corporate defendant relating in any way to:

(a) the development, testing, use and purchase of phenoxy herbicides.

(b) a herbicide known as "Agent Orange" or "Herbicide Orange";

(c) phenoxy aliphatic herbicides;

(d) polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs).

Such person or person produced by said defendant for examination shall have knowledge of the date each such document was generated and the time, manner and circumstances

by which each such document came into possession, custody or control of said corporate defendant.

4. Defendant DIAMOND SHAMROCK CORPORATION by a person or persons with knowledge of the existence and identity of any and all documents in the possession, custody or control of said corporate defendant relating in any way to:

(a) the development, testing, use and purchase of phenoxy herbicides.

(b) a herbicide known as "Agent Orange" or "Herbicide Orange";

(c) phenoxy aliphatic herbicides;

(d) polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs).

Such person or person produced by said defendant for examination shall have knowledge of the date each such document was generated and the time, manner and circumstances by which each such document came into possession, custody or control of said corporate defendant.

5. Defendant THOMPSON-HAYWARD CHEMICAL COMPANY by a person or persons with knowledge of the existence and identity of any and all documents in the possession, custody or control of said corporate defendant relating in any way to:

(a) the development, testing, use and purchase of phenoxy herbicides.

(b) a herbicide known as "Agent Orange" or "Herbicide

Orange";

(c) phenoxy aliphatic herbicides;

(d) polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs).

Such person or person produced by said defendant for examination shall have knowledge of the date each such document was generated and the time, manner and circumstances by which each such document came into possession, custody or control of said corporate defendant.

Counsel for all parties are invited to attend and cross-examine.

Dated: Patchogue, New York
15 January 1980

. Victor John Yannacone, jr.

YANNACONE & ASSOCIATES
Plaintiffs Attorneys
P.O. Address
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(area code 516) 654-2299

TO: ALL PARTIES
(Service List Annexed)

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Chrysler Building
405 Lexington Avenue
New York, New York 10017

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK

SS:

COUNTY OF SUFFOLK

JOAN CACACE, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at Coram, New York.

That on the 16th day of January, 1980 deponent served the within PLAINTIFF'S FIRST NOTICE TO TAKE DEPOSITION OF CORPORATE DEFENDANTS upon the following attorneys in this action at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York:

BUD HOLMAN, ESQ.
WILLIAM KROHLEY, ESQ.
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New York, New York 10022

DONALD S. DANIELS, ESQ.
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WENDELL B. ALCORN, JR., ESQ.
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2 Lafayette Street
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JOAN CACACE

Sworn to before me this
16th day of January, 1980



LORRAINE CILENTO
NOTARY PUBLIC, State of New York
No. 52-4660206
Qualified in Suffolk County
Commission Expires March 30, 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT of NEW YORK

-----x

in re

"AGENT ORANGE"

Product Liability Litigation

-----x

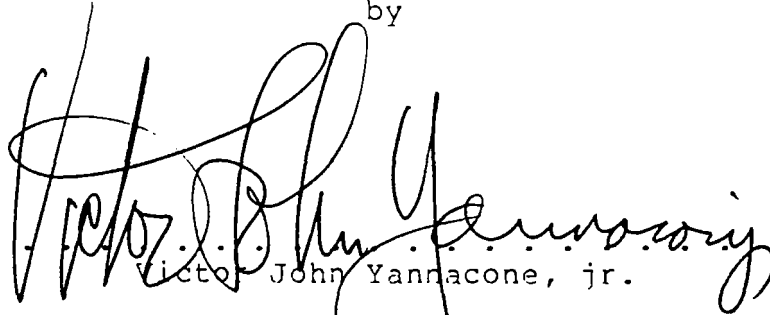
FILED
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U. S. DISTRICT COURT E.D.N.Y.

★ JAN 23 1980 ★
TIME A.M.
P.M.

MDL No. 381
(All Cases)

PLAINTIFFS'
NOTICE TO CORPORATE DEFENDANTS
TO PRODUCE DOCUMENTS

This Master Document submitted
by



YANNAZONE & ASSOCIATES
Plaintiffs Attorneys
P.O. Address
Post Office Drawer #109
Patchogue, New York 11772
(area code 516) 654-2299

8546

(135)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT of NEW YORK

- - - - -x

in re

"AGENT ORANGE"

MDL No. 381
(All Cases)

Product Liability Litigation

- - - - -x

PLAINTIFFS'
NOTICE TO CORPORATE DEFENDANTS
TO PRODUCE DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, plaintiffs request that each of the corporate defendants produce and permit the plaintiffs or their representative(s) to inspect and copy the documents described in the schedule annexed hereto in accordance with the definitions and instructions contained herein, at 1000 hours on the morning of 19 February 1980 at the United States Courthouse for the Eastern District of New York, Westbury Annex, 900 Ellison Avenue, Westbury, New York.

This Request is a continuing request. If at any time after production of documents in response hereto, and prior to the trial of this action, any of the corporate defendants comes into possession, custody, and/or control of additional documents responsive to any item herein, then such corporate defendants shall, within 30 days before trial, produce such documents at the offices of YANNAcone & ASSOCIATES, lead counsel for plaintiffs, or at such other place in Suffolk County, New York, as counsel

8547

for plaintiffs and the corporate defendants may agree, and permit the plaintiffs or their representative(s) to inspect and/or copy said documents.

Additionally, if any of the corporate defendants assert a privilege with respect to one or more documents, such document or documents should be produced under seal and deposited with the Court, and that an inventory be provided to plaintiffs describing each such document, its content and the privilege(s) asserted.

DATED: Patchogue, New York
15 January 1980

• • • • • Victor John Yannacone, jr. • • • • •

YANNAZONE & ASSOCIATES
Plaintiffs Attorneys
P.O. Address
Post Office Drawer #109
Patchogue, New York 11772
(area code 516) 654-2299

TO: ALL PARTIES

8548

DEFINITIONS

For purposes of this Notice, the following definitions are applicable, unless otherwise indicated herein:

1. "Document" is used herein in the broadest possible sense and means any written or graphic matter of whatever kind or nature, however produced or reproduced, or to other tangible record, and, without limitation, shall include, among other things: letters, correspondence, memoranda, notes, reports, papers, files, books, records, studies, appraisals, analyses, lists, surveys, budgets, financial statements, financial projections, financial calculations, contracts, agreements, recommendations, summaries, periodicals, charts, graphs, tables and tabulations, interviews, speeches, affidavits, transcripts, depositions, brochures, books of account, bills, invoices and other records of obligations or expenditures, cancelled checks, vouchers, receipts and other records of payment, press releases, photographs, calendars, diary entries, telegrams and other communications sent or received, minutes or notes of meetings including those of the Boards of Directors of the several corporate defendants, visits or telephone conversations, inter-office communications, results of investigations, working papers, maps or papers similar to any of the foregoing, including all drafts, outlines, and proposals of any such documents (whether or not actually used); or any other means of preserving thoughts of

8549

expression, (including, without limitation, tape recordings and/or transcriptions thereof), and all tangible things from which information can be processed, or transcribed, whether originals, copies or drafts, (including, without limitation, non-identical copies), however produced or reproduced. Note that a document with handwritten or typewritten notes, editing marks, etc. is not and shall not be deemed identical to one without such qualifications, additions, or deletions.

2. For purposes of this request, "Document" shall also mean all graphic, mechanical, or electronic reproductions, representations, recordings, or compilations of data of any kind, including, but not limited to drawings, charts, graphs, motion picture films, microfilms, microfiles, photograph and tape recordings, video tapes, any transcripts or printouts produced therefrom, or other data compilations from which information can be obtained, and all drafts of any of the foregoing.

3. For purposes of this request, "Document" shall also include results of scientific studies, experiments, analyses, and investigations in whatever form such results may be recorded.

4. For the purposes of this request, the term "draft" means any earlier preliminary, preparatory, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft, and whether or not the terms of the draft are the same as, or different from the terms of the final document.

8550

5. "Company" or "Corporate defendant(s)" shall mean the corporation itself, its predecessors and successors, its subsidiaries, divisions, affiliates, and other organizational or operating units and all of their several predecessors and successors, and any employees, agents, representatives, or other person(s) acting or purporting to act on its behalf for any purpose whatsoever.

6. "Person" shall mean any individual, partnership, firm, association, corporation, joint venturer, or other business or any other public or private legal entity.

7. "USA" means third-party defendant THE UNITED STATES OF AMERICA and its offices, departments, bureaus, agencies, representatives, department heads, agency heads, bureau chiefs, agents, attorneys, employees, or any other person, or persons, acting for, or on behalf of THE UNITED STATES OF AMERICA, under the authority or control of THE UNITED STATES OF AMERICA, or any one, or group of the foregoing.

8. "Government" shall mean the government of the United States including its executive, legislative, and judicial branches and shall also include the Department of Defense, Department of Army, Department of Air Force, Department of Navy, Veterans Administration, and any other organization within the Government of the United States of America charged with the prosecution of the war in Vietnam from 1961 through 1972.

8551

9. For purposes of this request, the term phenoxy herbicides includes all those congeneric chemicals commonly referred to as "2,4,5-T" and "2,4-D."

10. For purposes of this request, the term "polychlorinated dibenzo-p-dioxins (PCDDs)" includes 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin").

11. For purposes of this request, the term "polychlorinated dibenzo furans (PCDFs)" includes 2,3,7,8-tetrachloro dibenzo furan (TCDF).

8552

GENERAL REQUESTS
FOR
DOCUMENTS TO BE PRODUCED
BY
EACH CORPORATE DEFENDANT

12. Such documents as will show the organizational structure, responsibility, and inter-relationship of each division or unit of this defendant with respect to the formulation, design, manufacture, production, marketing, promotion, advertisement, and sale of phenoxy herbicides.

13. An organization chart of each such division, department or other subdivision identified in response to Interrogatory 12.

14. All documents directly or indirectly referring, or otherwise relating, directly and indirectly, to the discovery, invention, development, patenting, manufacture, formulation, advertising, promotion, distribution, sale and effects of phenoxy herbicides. Such documents shall be organized for the purpose of response to this interrogatory as follows:

14.1 Any and all contracts between the company and any other person including but not limited to the Government;

14.2 Any and all documents relating to the

8553

discovery of phenoxy herbicides.

14.3 Any and all documents relating to the invention of phenoxy herbicides.

14.4 Any and all documents relating to the development of phenoxy herbicides.

14.5 Any and all documents relating to the patenting of phenoxy herbicides.

14.6 Any and all documents relating to the manufacture of phenoxy herbicides.

14.7 Any and all documents relating to the formulation of phenoxy herbicides.

14.8 Any and all documents relating to the advertising of phenoxy herbicides.

14.9 Any and all documents relating to the promotion of phenoxy herbicides.

14.10 Any and all documents relating to the marketing of phenoxy herbicides.

14.11 Any and all documents relating to the

8554

distribution of phenoxy herbicides.

14.12 Any and all documents relating to the sale of phenoxy herbicides.

14.13 Any and all documents relating to the use of phenoxy herbicides.

14.14 Any and all documents relating to the effects of phenoxy herbicides.

14.15 Any and all documents relating to the effects of polychlorinated dibenzo-p-dioxins (PCDDs).

14.16 Any and all documents relating to the effects of polychlorinated dibenzo furans (PCDFs).

PRELIMINARY REQUESTS
FOR
SPECIFIC DOCUMENTS TO BE PRODUCED
BY
EACH CORPORATE DEFENDANT

For the purpose of response to each of the following interrogatories, and any subsequent interrogatories unless some other designating system is specifically indicated, any documents produced by the corporate defendants shall be organized according to the following decimal subdivisions of each Interrogatory paragraph number.

.1 Contracts between the company and any other person including but not limited to the Government;

.2 Documents relating to the discovery of phenoxy herbicides.

.3 Documents relating to the invention of phenoxy herbicides.

.4 Documents relating to the development of phenoxy herbicides.

.5 Documents relating to the patenting of phenoxy herbicides.

.6 Documents relating to the manufacture of phenoxy herbicides.

.7 Documents relating to the formulation of phenoxy herbicides.

.8 Documents relating to the advertising of

8556

phenoxy herbicides.

.9 Documents relating to the promotion of phenoxy herbicides.

.10 Documents relating to the marketing of phenoxy herbicides.

.11 Documents relating to the distribution of phenoxy herbicides.

.12 Documents relating to the sale of phenoxy herbicides.

.13 Documents relating to the use of phenoxy herbicides.

.14 Documents relating to the effects of phenoxy herbicides.

.15 Documents relating to the effects of polychlorinated dibenzo-p-dioxins (PCDDs).

.16 Documents relating to the effects of polychlorinated dibenzo furans (PCDFs).

8557

General Corporate Matters

15. Minutes of the Board of Directors or any Committee or Sub-Committee thereof concerning phenoxy herbicides.

16. Any and all documents concerning phenoxy herbicides prepared by or submitted to or received by the Board of Directors or any committee or sub-committee or any individual director.

17. Any and all documents concerning public positions taken by the corporate defendants with reference to phenoxy herbicides or polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs).

18. Any and all documents concerning Symposia, Colloquia or other meetings at which phenoxy herbicides were discussed or considered and in which the company participated, directly or indirectly.

19. Financial documents concerning phenoxy herbicides including, but not limited to, cost analysis and cost-effectiveness studies.

General Corporate Operations; government, generally

8558

20. Any and all documents which directly or indirectly refer or relate to any documents that this defendant is or has been required to maintain or file with any local, state, or federal government authority with respect to phenoxy herbicides.

21. Any and all documents relating to United States Food and Drug Administration (FDA) action concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

22. Any and all documents relating to United States Department of Agriculture (USDA) action concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

23. Any and all documents relating to United States Environmental Protection Agency (EPA) action concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

24. Any and all documents relating to United States Department of the Interior (USDI) action concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

25. Any and all documents relating to United States Department of Commerce action concerning phenoxy herbicides,

8559

polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

26. Any and all documents relating to United States Department of Defense action concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

27. Any and all documents relating to United States Department of State action concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

28. Any and all documents relating to United States Congressional action concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs).

General Corporate Operations; government, Southeast Asia

29. Any and all documents received by the corporate defendants from the USA concerning or referring to phenoxy herbicides, "Agent Orange", polychlorinated dibenzo-p-dioxins (PCDDs), or polychlorinated dibenzo furans (PCDFs).

30. Any and all documents containing specifications of

8560

phenoxy herbicides for use by the government.

31. Any and all documents concerning the purchase of phenoxy herbicides by the government.

32. Any and all documents concerning "Agent Orange," "Agent White," "Agent Purple," or any other mixture of phenoxy herbicides used in Southeast Asia.

33. Any and all documents indicating the dates phenoxy herbicides were manufactured, formulated, advertised, marketed, promoted and sold for use in Southeast Asia, together with the amounts produced and distributed for such use.

General Corporate Operations; phenoxy herbicides

34. Any and all documents concerning phenoxy herbicides indicating the differences, if any, in the formulation, manufacture, production, advertising, promotion, marketing, sale, and use of the several phenoxy herbicides manufactured and marketed by each individual corporate defendant and those manufactured, formulated, advertised, marketed, promoted and sold by the other corporate defendants.

8561

35. Any and all documents relating to the sale or purchase of any ingredients, compounds or other materials utilized in the manufacture, formulation, production, advertising, promotion, marketing and sale of phenoxy herbicides.

36. Any and all documents concerning programs for training employees, including management personnel, in the manufacture, formulation, production, advertising, promotion, marketing, distribution and sale of phenoxy herbicides.

37. Any and all documents describing emergency plans and procedures in effect at each and every plant manufacturing phenoxy herbicides or any of the materials, ingredients or compounds involved in such manufacture.

38. Any and all documents concerning safety at each and every plant manufacturing phenoxy herbicides or any of the materials, ingredients or compounds involved in such manufacture.

39. Any and all documents concerning inspections of any of the processes or procedures involved in the manufacture, production, and distribution of phenoxy herbicides.

40. Any and all documents concerning the presence of polychlorinated dibenzo-p-dioxins (PCDDs) or polychlorinated dibenzofurans (PCDFs) in any of the products manufactured, formulated, advertised, marketed, promoted and sold by the company.

8562

41. Any and all documents describing the practices and procedures of the company for dealing with the presence of polychlorinated dibenzo-p-dioxins (PCDDs) or polychlorinated dibenzofurans (PCDFs) in any of the products manufactured, formulated, advertised, marketed, promoted and sold by the company or in any of the products obtained by the company for the purpose of manufacture, formulation or production of phenoxy herbicides.

42. Any and all documents containing instructions, directions, suggestions, indications, and/or contra-indications relative to the use of phenoxy herbicides.

Effects of Phenoxy Herbicides

43. Any and all documents in possession of the corporate defendants, concerning or referring to phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), or polychlorinated dibenzofurans (PCDFs) in food or in the environment.

44. Any and all documents relating to research, analyses, tests, studies and/or experiments, together with any recommendations based on the results of such research, analyses, tests, studies and/or experiments, concerning phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs), and/or polychlorinated dibenzofurans (PCDFs).

8563

45. Any and all documents relating to any private organizations, foundations, or other persons which have conducted any studies, experiments, evaluations, or analyses either independently or by and on behalf of this defendant or known to this defendant to have been conducted by or on behalf of any of the other corporate defendants, and concerning the effects, if any, of phenoxy herbicides, polychlorinated dibenzo-p-dioxins (PCDDs) and/or polychlorinated dibenzo furans (PCDFs).

46. Any and all documents based on such studies, experiments, evaluations, or analyses, identifying actions, if any, taken in respect thereto by this defendant or known by this defendant to have been taken by other defendants.

47. Any and all documents concerning exposure of employees of the corporate defendants to phenoxy herbicides, or any of the other chemicals involved in the manufacture of phenoxy herbicides.

48. Any and all medical records of employees, including executive and supervisory personnel exposed to phenoxy herbicides or any chemical compound involved in the manufacture, formulation, and production of phenoxy herbicides, that corporate defendants maintain in connection with their employment.

49. Any studies conducted by this defendant or known by this defendant to have been conducted by any of the other defendants

8564

or by anyone or by any independent organization retained by this defendant or known by this defendant to have been retained by other defendants with respect to the effects, if any, upon the employees of this defendant or the employees of other defendants known to this defendant or their spouses and children who were in any manner, shape, or form associated with or exposed to the manufacture, production, and shipment of phenoxy herbicides.

50. Any and all documents concerning medical examinations conducted by the corporate defendants of each and every one of their employees concerning any claimed symptoms allegedly due to possible exposure to phenoxy herbicides or any of the other chemicals involved in the manufacture of phenoxy herbicides.

51. Any and all documents concerning "Ranch Hand" veterans, inhabitants of Nitro, West Virginia, or inhabitants of Seveso, Italy.

Incidents

52. Any and all documents which directly or indirectly refer or relate to all known or reported, verified or non-verified, corrected or non-corrected, malfunctions, failures, incidents, and/or non-conformances to specifications of any and all devices, systems, sub-systems, components, or ingredients, involved in the formulation, manufacture, or production of phenoxy herbicides.

8565

53. Any and all documents which relate or refer, directly or indirectly, to transients, incidents, accidents, or other abnormalities in operation that occurred at any plants owned directly or indirectly by the company or any of its subsidiaries involved in the formulation, manufacture, and production of phenoxy herbicides or any of the intermediate chemicals involved in the manufacture of phenoxy herbicides from 1945 to date.

54. Any and all documents relating to accidents in the manufacturing, formulation, production and distribution of phenoxy herbicides including, but not limited to, documents concerning the results of any inquiry made by the company or known to have been made by any of the other corporate defendants or any inquiry by any public or private agency relative to such accident or accidents.

Claims

55. Any and all documents relating to complaints concerning phenoxy herbicides made by employees of the corporate defendant including management and executive personnel.

56. Any and all documents from any foreign subsidiary of this defendant including but not limited to licensees, franchisees, and distributors concerning complaints of those engaged in the manufacture, formulation, advertising, promotion,

8566

marketing, sale and use of phenoxy herbicides.

57. Any and all documents which refer or relate, directly or indirectly, to possible or actual claims regarding phenoxy herbicides filed against this defendant in or before any local, state, or federal court, agency, board, or any other entity established to hear such claim exclusive of the claims involved in this lawsuit.

58. Any and all documents concerning the investigation of claims of damage associated with the use of phenoxy herbicides near Globe, Arizona.

DATED: Patchogue, New York,
15 January 1980

. . . Victor John Yannacone, jr. . . .

YANNAZONE & ASSOCIATES
Plaintiffs Attorneys
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TO: All Counsel on Service List

8567

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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK

SS:

COUNTY OF SUFFOLK

JOAN CACACE, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at Coram, New York.

That on the 16th day of January, 1980 deponent served the within PLAINTIFF'S NOTICE TO CORPORATE DEFENDANTS TO PRODUCE DOCUMENTS upon the following attorneys in this action at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York:

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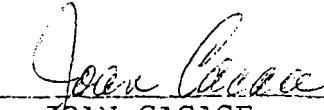
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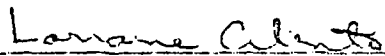
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DAVID JAROSLAWICZ, ESQ.
2 Lafayette Street
New York, New York 10007


JOAN CACACE

Sworn to before me this
16th day of January, 1980



LORRAINE CILENTO
NOTARY PUBLIC, State of New York
No. 52-4660206
Qualified in Suffolk County
Commission Expires March 30, 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT of NEW YORK

----- -x

in re

"AGENT ORANGE"

MDL No. 381
(All Cases)

Product Liability Litigation

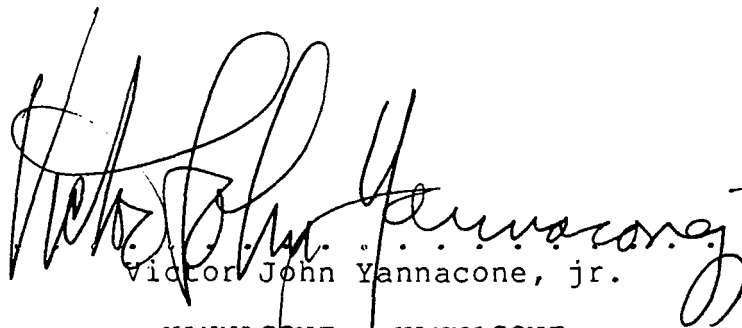
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PLAINTIFFS' NOTICE
TO
CORPORATE DEFENDANTS
TO ADMIT OR DENY
CERTAIN FACTS

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 31 1980 ★

TIME A.M.
P.M.


Victor John Yannacone, jr.

YANNAZONE & YANNAZONE
Professional Corporation
Plaintiffs' Attorneys
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(area code 516) 654-2299

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(155)

PLAINTIFFS' NOTICE
TO
CORPORATE DEFENDANTS
TO ADMIT OR DENY
CERTAIN FACTS

PLEASE TAKE NOTICE that the plaintiff veterans and their families demand that CORPORATE DEFENDANTS , by their attorneys, or the appropriate officer, director or other employee of said corporate defendant admit the following facts, or absolutely deny them, or in the alternative, provide such explanation as is necessary to clearly convey the accurate substance of each such allegation in a fashion that said defendants can admit as true.

1. Upon information and belief, the phenoxy herbicides such as 2,4-dichloro phenoxyacetic acid (2,4-D) and 2,4,5-trichloro phenoxyacetic acid (2,4,5-T), in particular their salts and esters were manufactured, formulated, advertised, promoted, marketed and sold by the corporate defendants individually and/or collectively, jointly and/or at certain times severally, alone or in concert with others, since the mid-1940s shortly after the end of World War II.

2. That in the course of manufacturing phenoxy herbicides such as the 2,4,5-trichlorophenoxy aliphatics, pentachlorophenol (PCP) and its salts, several chlorinated dioxins can be formed as intermediates or by-products of the reactions.

3. That the extent of chlorination of the dioxins produced during the manufacture of phenoxy herbicides depends on the particular chlorophenols involved in the reaction.

8573

4. That under particular conditions of temperature and

pressure during the synthesis and commercial manufacture of phenoxy herbicides such as the 2,4,5-trichlorophenoxy aliphatics, pentachlorophenol (PCP) and its salts, polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs) can be produced and, unless destroyed or otherwise removed from the commercial product, can contaminate commercial products such as the 2,4,5-trichlorophenoxy aliphatics, pentachlorophenol (PCP) and its salts.

5. That during 1970, the Surgeon General of the United States reported that the use of 2,4,5-T might be hazardous to human health.

6. That during 1970, the United States Secretary of Health, Education and Welfare and the United States Secretary of Agriculture issued a joint order calling for an immediate cessation of all uses of 2,4,5-T on or around lakes, ponds, and ditch banks and of all uses of liquid formulations around homes and recreation areas.

7. That another order was issued by these two departments on 1 May 1970 which cancelled all uses of granular formulations of 2,4,5-T around homes, recreation areas, etc. and all uses of 2,4,5-T on crops intended for human consumption.

8. That use of 2,4,5-T was banned in Italy in 1970.

8574

9. That the use of 2,4,5-T was banned in the Netherlands and in Sweden since 1970.

10. That through the efforts of the corporate defendants individually and/or collectively, jointly and/or severally, independently and/or in concert with each other and others, registration of phenoxy herbicides such as the 2,4,5-trichlorophenoxy aliphatics was not suspended for use on range and pasture lands, non-agricultural lands, or in weed and brush control programs on communications and highway rights-of-way.

11. That phenoxy herbicides were introduced into the armed conflict in Vietnam in 1962.

12. That phenoxy herbicides including 2,4,5-T, manufactured, formulated, advertised, marketed, promoted and sold by the corporate defendants and known to said corporate defendants to be contaminated with polychlorinated dibenzo-p-dioxins (PCDDs) and/or or polychlorinated dibenzo furans (PCDFs) were aurally disseminated over South Vietnam from January 1962 through February 1971.

13. That American personnel were exposed to phenoxy herbicides such as the 2,4,5-trichlorophenoxy aliphatics, manufactured, formulated, advertised, marketed, promoted and sold by the corporate defendants and known by said corporate defendants to be contaminated with polychlorinated dibenzo-p-dioxins (PCDDs)

8575

and/or polychlorinated dibenzo furans (PCDFs).

14. That more than 90% of all the 2,4,5-T used in Vietnam was contained in a formulation designated "Herbicide Orange."

15. That the remaining 2,4,5-T used in Vietnam was contained in formulations designated "Herbicide Green," "Herbicide Pink," and "Herbicide Purple."

16. That the Department of Defense suspended the use of "Herbicide Orange" after the civilian agencies of government announced the effort to suspend certain uses of the phenoxy herbicide 2,4,5-T.

17. That in 1971, the Department of Defense directed that the "Herbicide Orange" in South Vietnam be returned to the United States and that the entire stock be disposed of in an environmentally safe and efficient manner.

18. That phenoxy herbicides such as the 2,4,5-trichlorophenoxy aliphatics, contaminated with polychlorinated dibenzo-p-dioxins (PCDDs) and/or polychlorinated dibenzo furans (PCDFs) have been and still are manufactured, formulated, advertised, promoted, marketed and sold by the corporate defendants for general consumer use throughout the United States and in foreign countries.

8576

19. Chlorodioxins can be formed in a two-step condensation reaction from ortho-substitued chlorophenoxy radicals or anions.

20. One route of formation of chlorodioxins involves strong oxidizing conditions such as the reaction of chlorine with pentachlorophenol (PCP) at elevated temperature.

21. Another route involves the condensation of alkali metal salts of chlorinated phenols which occurs spontaneously when these metal salts are heated to temperatures above 300 degrees C., a strongly exothermic reaction which procedes to completion in a very narrow temperture range once initiated.

22. That polychlorinated dibenzo-p-dioxins (PCDDs) and or polychlorinated dibenzo furans (PCDFs) can be formed on pyrolysis of such compounds as 2,4,5-trichlorophenoxy acetic acid (2,4,5-T).

8577

23. That human exposure to 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") has occurred when polychlorinated dibenzo-p-dioxins (PCDDs) were formed during the production of certain compounds such as the herbicide 2,4,5-tri-chlorophenoxyacetic acid (2,4,5-T), the fungicide pentachloro-phenol, and the germicide hexachlorophene.

24. That polychlorinated dibenzo-p-dioxins (PCDDs) which occur as impurities and/or contaminants associated with these commercial products result most often from treatment of chlorinated benzenes at elevated temperature and pressure under alkaline conditions.

25. That some of the 2,4,5-T produced prior to 1965 was contaminated with 30 mg/kg or more of 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin").

26. That techniques are available for producing 2,4,5-T with a TCDD or "Dioxin" content below 0.02 mg/kg.

27. That 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") is capable of bioaccumulation (being taken up by a living organism and retained), and can enter the human body from several contaminated elements of a food chain, including water.

28. That 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") is one of the most physiologically active low molecular

weight toxins and teratogens known.

29. That 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") is a "cellular poison".

30. That the pathologic effects produced by the toxic isomers of polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs) vary quantitatively and qualitatively among different species.

31. That 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") and trichlorodibenzofuran were isolated from the contaminants formed in 2,4,5-trichlorophenol production and were demonstrated to be strongly acnegenic when applied to rabbit ears.

32. That within a single species the toxic effects of polychlorinated dibenzo-p-dioxins (PCDDs) and/or polychlorinated dibenzo furans (PCDFs) are similar for a given species, differing only in the intensity of the toxic effect produced by a given isomer.

33. That chloracne or acneform dermatitis characterized by comedones, keratic cysts, pustules, papules, and abscesses, is a condition often associated with and characteristic of human exposure to polychlorinated dibenzo-p-dioxins (PCDDs) and squamous metaplasia and keratinization of the sebaceous glands and hair follicles have been observed in the skin of a number of

animal species following exposure to 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin").

34. That clinical symptoms of chloracne may appear weeks or months after the initial exposure to polychlorinated dibenzo-p-dioxins (PCDDs) or polychlorinated dibenzo furans (PCDFs).

35. That by means of the "rabbit ear" test, the acnegenic potency of 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") was confirmed in 1962.

36. That in 1957, 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") was identified as the agent responsible for causing occupational chloracne in employees at factories producing chlorophenol.

37. That in 1971 polychlorinated dibenzo-p-dioxins (PCDDs) were implicated as the cause of chloracne in a plant producing 2,4,5-T.

38. That a condition characterized by hydropericardium, ascites, subcutaneous edema, liver necrosis and death was described following accidental administration of toxic fats in the feed of broiler chickens.

39. That the toxic material in the toxic fats in the feed of broiler chickens occurred as a contaminant of commercial oleic

and stearic acids produced from inedible tallow recovered from animal hides upon which trichlorophenols and pentachlorophenols had been used in the curing process.

40. That the chicken edema causative was named "toxic fat" and more specifically "chick edema factor" until it was finally identified by X-ray crystallography as 1,2,3,7,8,9-hexachloro dibenzo p-dioxin. 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin"), 2,3,7,8-hexachloro dibenzo p-dioxin, and 2,3,7,8-octachloro dibenzo p-dioxin also have been identified in several commercial fatty acids.

41. That 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") is metabolically stable for a time in mammalian systems, and acts upon the endoplasmic reticulum.

42. That among the effects associated with exposure to 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") is an increase in the cellular smooth endoplasmic reticulum contents of hepatic and renal cells.

43. That 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") and other halogenated dibenzo-p-dioxins and dibenzo furans stimulate a number of enzyme systems.

44. That among the other toxic effects attributable to 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin")

identified in a number of different animal species are to be found:

- 44.1 alopecia;
- 44.2 hepatic cell necrosis, cirrhosis; hepatic porphyrin accumulation;
- 44.3 hypoplasia of lymphoid tissues (with particular involvement of the cortical cells of the thymus resulting in suppression of cell-mediated immunity and reduction of host defenses);
- 44.4 hyperplasia of the lymph tissue and bone marrow;
- 44.5 hematological changes including lymphopenia, thrombocytopenia, anemia, pancytopenia, leukopenia, hypoproteinemia, and increased susceptibility to infection concomitant with the suppression of cell-mediated immunity;
- 44.6 intestinal hemorrhage;
- 44.7 adrenal hemorrhage;
- 44.8 hypoplasia of bone marrow and lymph nodes;
- 44.9 cellular effects including hypertrophy, hyperplasia and metaplasia in the bronchial tree, bile ducts, pancreatic ducts, salivary-gland ducts and palpebral conjunctivae; gastric hyperplasia and ulceration, hypertrophic gastritis; renal pelvis hyperplasia; ureter and urinary bladder hyperplasia;
- 44.10 testicular atrophy, necrosis and abnormal spermatocyte development.

45. That general debilitation and wasting is associated with exposure to a lethal dose of polychlorinated dibenzo-p-dioxins (PCDDS) or polychlorinated dibenzo furans (PCDFS) in a number of animal species which exhibit a chronic and progressive weight loss with parallel mobilization of peripheral fat, increased serum triglyceride levels, and development of a fatty liver; atrophy, necrosis and abnormal spermatocyte development.

46. That the embryotoxic, fetotoxic and teratogenic effects of the toxic synthetic organic chemical 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") observed in certain animal

species include:

- 46.1 cleft palate;
- 46.2 hemorrhages;
- 46.3 edema;
- 46.4 fetal kidney abnormalities which may progress into hydronephrosis during the postnatal period
- 46.5 hydrocephalus;
- 46.6 lack of eyelid formation (open eye);
- 46.7 clubfoot;
- 46.8 increased prenatal mortality;
- 46.9 interference with lymphatic system development;
- 46.10 skeletal abnormalities;
- 46.11 increased fetal enzyme activity.

47. That the mutagenic and cytogenic effects of the toxic synthetic organic chemical 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") include:

- 47.1 increased incidence of reverse mutations in Escherichia coli and Salmonella typhimurium;
- 47.2 increased reversion frequency to streptomycin independence in Escherichia coli Sd-4;
- 47.3 induction of frameshift mutations in Salmonella typhimurium, strain TA1532, but not base substitutions in strain TA1530;
- 47.4 inhibition of mitosis and chromosomal abnormalities (dicentric bridges and chromatin fusion with formation of multinuclei or a single large nucleus) were observed in endosperm cells of the African blood lily (Haemanthus Katherinae Baker).

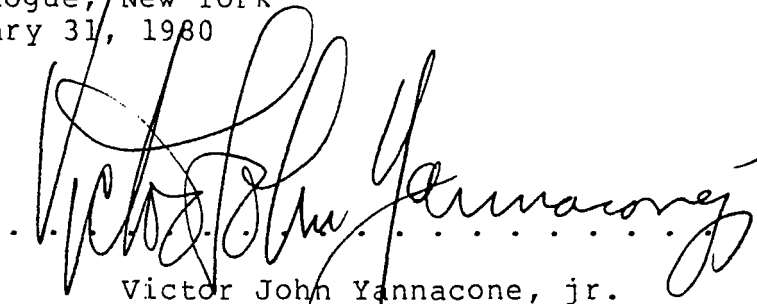
48. That exposure to 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") causes an increased incidence of neoplasms in certain animal species.

49. That the carcinogenic and tumorigenic effects of 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or "Dioxin") include:

- 49.1 neoplastic nodules of the liver, cholangiocarcinomas, hepatocellular carcinoma;
- 49.2 carcinoma of the ear duct;
- 49.3 carcinoma of the kidney;
- 49.4 adenoma of the adrenal cortex;
- 49.5 metasticizing retroperitoneal histiocytoas;

- 49.6 hyperplasia of the epithelium of the lung,
squamous cell carcinoma of the lung;
- 49.7 squamous cell carcinoma of the hard
palate/nasal turbinates;
- 49.8 squamous cell carcinoma of the tongue;
- 49.9 altered lymphopoiesis;
- 49.10 epithelial changes including hypertrophy,
hyperplasia, and mataplasia.

Dated: Patchogue, New York
January 31, 1980



Victor John Yannacone, jr.

YANNAZONE & ASSOCIATES

Plaintiffs Attorneys

Office & Post Office Address

Post Office Drawer #109

Patchogue, New York 11772

(area code 516) 654-2299

8584

AFFIDAVIT of SERVICE by MAIL

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss:

Linda C. Harrison

being duly sworn deposes and says: that deponent is over 21 years of age and a member of the office staff of YANNAKONE & YANNAKONE; that as a member of such office staff, on the

31st . day of . January, 1980. ,
she served the within

Plaintiffs' Notice to Corporate Defendants to Admit or Deny Certain
upon Facts

See Attached Sheet

by depositing a true copy of the same, properly enclosed in a post-paid wrapper in the Post Office maintained and exclusively controlled by the United States Government at Patchogue, New York, directed to said attorneys at the address stated, that being the address within the state designated by them for service upon the preceding papers in this action.

Lisa C. Hamon

Sworn to before me this

31st day of January, 1980.

[Handwritten signature]

W. PETER KAWINGTON
NOTARY PUBLIC, State of New York
NO. 60076
Commission Expires March 1981

8585

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

mdc 381

In Re:

79 C 1195

"AGENT ORANGE"
PRODUCT LIABILITY LITIGATION

DOW'S FIRST RULE 34
REQUEST FOR THE
PRODUCTION OF
DOCUMENTS TO THIRD-
PARTY DEFENDANT,
UNITED STATES OF
AMERICA

THE DOW CHEMICAL COMPANY,

Third-Party Plaintiff,

-against-

THE UNITED STATES OF AMERICA and
CERTAIN PAST AND PRESENT OFFICERS
AND OFFICIALS OF THE UNITED STATES
DEPARTMENT OF DEFENSE, THE DEPART-
MENT OF THE ARMY, THE DEPARTMENT
OF THE AIR FORCE, THE UNITED STATES
ARMY, THE UNITED STATES AIR FORCE,
THE DEPARTMENT OF COMMERCE, THE DEPART-
MENT OF HEALTH, EDUCATION AND WEL-
FARE, THE DEPARTMENT OF THE INTERIOR,
AND THE VETERANS' ADMINISTRATION,
whose names will be inserted when
ascertained, each individually and
in his official capacity,

IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.

★ FEB 4 1980 ★

TIME A.M.
P.M.

Third-Party Defendants.

S I R S:

Pursuant to Rule 34, Federal Rules of Civil Procedure,
defendant-third-party plaintiff THE DOW CHEMICAL COMPANY
(hereinafter "DOW") requests that third-party defendant THE UNITED
STATES OF AMERICA (hereinafter "USA") produce and permit DOW or
its representative(s) to inspect and copy the documents described
in the schedule annexed hereto in accordance with the definitions
and instructions contained therein, at 10 o'clock A.M., at the
United States Courthouse for the Eastern District of New York,

8537

Westbury Annex, 90 Ellison Avenue, Westbury, New York, on the 26th day of February, 1980.

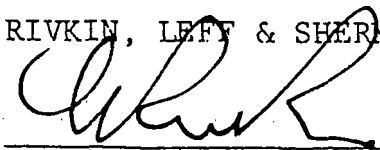
This Request is a continuing request. If at any time after production of documents in response hereto, and prior to the trial of this action, the USA comes into possession, custody, and/or control of additional documents responsive to any item herein, then the USA shall, within 30 days thereof, and in no event later than 5 days before trial, produce such documents at the offices of RIVKIN, LEFF & SHERMAN, ESQS., attorneys for defendant-third-party plaintiff DOW, or at such other place in Nassau County, New York, as counsel for DOW and the USA may agree, and permit DOW or its representative(s) to inspect and/or copy said documents.

Additionally, DOW requests that any document or documents as to which the USA asserts a privilege be produced under seal and deposited with the Court, and that an inventory be produced to DOW describing each such document, its content and the privilege(s) asserted.

DATED: January 16, 1980
Garden City, New York

Yours, etc.

RIVKIN, LEFF & SHERMAN

By: 

A Member of the Firm
Attorneys for Defendant
Third-Party Plaintiff
THE DOW CHEMICAL COMPANY
100 Garden City Plaza
Garden City, New York 11530
(516) 746-7500

TO: ALL PARTIES

8588

SCHEDULE

DEFINITIONS AND INSTRUCTIONS

- (a) "Document" is used herein in the broadest possible sense and means any written or graphic matter of whatever kind or nature, or any other means of preserving thoughts or expression, (including, without limitation, tape recordings and/or transcriptions thereof), and all tangible things from which information can be processed, or transcribed, whether originals, copies or drafts, (including, without limitation, non-identical copies), however produced or reproduced. Note that a document with handwritten or typewritten notes, editing marks, etc. is not and shall not be deemed identical to one without such qualifications additions, or deletions.
- (b) "USA" means third-party defendant THE UNITED STATES OF AMERICA and its offices, departments, bureaus, agencies, representatives, department heads, agency heads, bureau chiefs, agents, attorneys, employees, or any other person, or persons, acting for, or on behalf of THE UNITED STATES OF AMERICA, under the authority or control of THE UNITED STATES OF AMERICA, or any one, or group of the foregoing.
- (c) If the attorney-client; or any other privilege is claimed as to any document called for by this request, your response hereto shall state the date of such document, the name and address of each such person who participated in preparing it, the name and address of each person, if

any, who signed it, the name and address of each person to whom it was directed, circulated or distributed, and, the name and address of each person now in custody, control, or possession of same.

- (d) For purposes of this Request, "Document" shall also mean all graphic, mechanical, or electronic reproductions, representations, recordings, or compilations of data of any kind, including, but not limited to drawings, charts, graphs, motion picture films, microfilms, microfiles, photograph and tape recordings, video tapes, any transcripts or printouts produced therefrom, and all drafts of any of the foregoing.
- (e) For purposes of this Request, the term "draft" means any earlier, preliminary, preparatory, or tentative version of all, or part of the document, whether or not such draft was superseded by a later draft, and whether or not the terms of the draft are the same as, or different from the terms of the final document.
- (f) For purposes of this Request, the term "2,4,5-T" means 2,4,5 - trichlorophenoxyacetic acid.
- (g) For purposes of this Request, the term "2,4-D" means 2,4-dichlorophenoxyacetic acid.

DOCUMENTS TO BE PRODUCED

GENERAL REQUESTS

1. Any and all documents setting forth the amounts supplied and names of manufacturers of phenoxy herbicides intended for use in Vietnam.
2. Any and all documents concerning or referring to the purchase by the USA of phenoxy herbicides intended for use in Vietnam.
3. Any and all documents received by the USA from any named defendant herein, concerning or referring to phenoxy herbicides, "Agent Orange", 2,4,5-T, 2,4-D or dioxin.
4. Any and all documents concerning or referring to testing of phenoxy herbicides done by or on behalf of the USA with reference to defoliants used in Vietnam.
5. Any and all computer printouts, maps, and map overlays, grids and other documents showing areas wherein defoliants were used in Vietnam, with dates thereof.
6. Any and all documents showing location and/or movement of troops, units and/or other bodies of servicemen in Vietnam.
7. Any and all documents consisting of or relating to testing and test results of phenoxy herbicides done by or on behalf of the USA with reference to defoliants used within the territorial units of THE UNITED STATES OF AMERICA.
8. Any and all documents concerning or relating to the use, development, manufacture and supply of 2,4,5-T used within the territorial units of THE UNITED STATES OF AMERICA.
9. Any and all documents concerning or relating to the creation, duration, purposes, activities and results of project "Ranch Hand".
10. Any and all documents located within the U.S. Department of Agriculture, relating to or concerning the investigation of the "spray project" near Globe, Arizona.
11. Any and all documents relating to, concerning or referring to the "Symposium On Use of Herbicides in Forestry", held in 1978, in Washington, D. C.
12. Any and all documents in the possession of the Office of the Comptroller General of the USA and/or the General Accounting Office referring to 2,4,5-T, "Agent Orange or dioxin."

13. Any and all documents referring to or concerning the development, use, testing or disposition of "Agent Orange" or phenoxy herbicides at Fort Detrick, Frederick, Maryland.
14. Any and all copies of publication "Army" referring to or concerning defoliants and their use in Vietnam.
15. Any and all documents in the possession of the Surgeon General of the United States Air Force referring to or concerning the use or effects of phenoxy herbicides in Vietnam.
16. Any and all documents in the possession of the Occupational and Environmental Health Laboratories of the United States Air Force (Brooks AFB, Texas), referring to or concerning the use or effects of phenoxy herbicides in Vietnam.
17. Any and all documents referring to or concerning exposure of servicemen to phenoxy herbicides in Vietnam.
18. Any and all documents referring to, consisting of or concerning medical examinations conducted by the USA of each serviceman who contacted the Veterans Administration concerning any claimed symptom allegedly due to possible exposure to phenoxy herbicides or Agent Orange.
19. Any and all documents received by the USA from servicemen referring to or concerning exposure to phenoxy herbicides or Agent Orange.
20. Any and all documents contained in the "Central Registry," which was incorporated by order of the Administrator of the Veterans Administration, referring to or concerning phenoxy herbicides, 2,4,5-T or Agent Orange.
21. Any and all documents concerning or referring to "ranch hand" veterans, community inhabitants of Nitro, West Virginia or Seveso, Italy.
22. Any and all documents prepared by or received by the "ad hoc Advisory Committee on Agent Orange " (in possession of the Veterans Administration.)
23. Any and all documents prepared by or received by the "Formal Top Level Advisory Committee on Agent Orange."
24. Any and all documents concerning or referring to the preparation or dissemination of FDA (U.S. Food and Drug Administration) by-lines report, "Cytogenetics Effect of 2,3,7,8 tetraclorodibenzp-p-dioxin on Rat Bone Marrow Cells".
25. Any and all documents in possession of the U.S. Food and Drug Administration, Division of Chemistry and Physics, concerning or referring to location of dioxins in the environment.

26. Any and all documents received by or prepared by the National Institute of Environmental Health Services, or its "sample collection committee," concerning or referring to 2,4,5-T or dioxin.
27. Any and all documents concerning or referring to the location of dioxin in food and the environment authored by Dr. Jean Pierre Marliac.
28. Any and all documents concerning or referring to grant(s) in aide given to Dr. Mathew Meselson of Harvard University, in the possession of the Environmental Protection Agency.
29. Any and all documents concerning positions taken with reference to dioxin or 2,4,5-T received by or prepared by the "dioxin working group" of the Environmental Protection Agency.
30. Any and all documents referring to or concerning the "analytical collaborators meeting" held June 15, 1976 in the possession of the Environmental Protection Agency.)
31. Any and all documents referring to or concerning the storage, dumping, incineration or disposal of "herbicide orange" or "Agent Orange."

SPECIFIC REQUESTS

32. Document entitled, "Report on 2,4,5-T", prepared by the Panel on Herbicides of the Presidents Science Advisory Committee, C.M. MacLeon, Chairman.
33. Document entitled, "The Present Status of Chemical Control of Vegetation in Relation to Military Needs", prepared by the Institute for Defense Analyses, Department of Defense.
34. Document entitled "Vegetational Spray Tests in South Vietnam", having identifying DDC #Ad476961.
35. Document entitled "Information Manual for Vegetation Control in Southeast Asia", Miscellaneous publication #33, emanating from Ft. Detrick, Frederick, Maryland.
36. Final report of the TECOM project #5-CO-213-00-015, U.S. Army Dugway Proving Ground, Dugway, Utah.
37. Document entitled "Vegetational Spray Tests in South Vietnam" by U.S. Army Chemical Corps Biological Laboratories, Ft. Detrick, Frederick, Maryland, 1962. (DDC #AD 476961)
38. Document entitled "Oconus Defoliation Test Program", technical report 1979, Props Department, Biological Sciences Laboratory U.S. Army Biological Center, Ft. Detrick, Frederick, Maryland (1966).
39. Document entitled "Defoliation Tests in 1966 at Base Gagetown New Brunswick, Canada. Technical Memorandum 141." Department of the Army, Ft. Detrick, Frederick, Maryland, 1968.
40. Document entitled "OEHL-TR-78-92 (The Toxicology, Environmental Fate and Human Risk of Herbicide Orange and its Associated Dioxin)".
41. Document entitled "Use of Herbicides in Southeast Asia, Historical Report", from San Antonio Air Logistics Center, Directorate of Energy Management, Kelly AFB, Texas.
42. 1976 report "Annual Research Progress Report #11" of United States Air Force Academy.
43. Technical report AFTL-TR-75-49, entitled "Field Studies of Wild Life Exposed to TCDD Contaminated Soils", Air Force Laboratories, Eglin AFB, Florida.
44. Technical report "ADTC-TR-70-36" from Armament Development and Test Center, Eglin AFB, Florida.
45. Document entitled "Comparison Test of Defoliants" ADTC-TR-69-30, Volume 1, Eglin AFB, Florida.

46. Technical reports "AFATL TR-74-12," United States Air Force Armament Development and Test Center, Eglin AFB, Florida (years 1974 and 1975).
47. Technical report "USAFA TR-76-18", known as report of the Department of Chemistry and Biological Sciences, USAF Academy, Colorado.
48. "Memorandum", prepared for Assistant Secretary of Defense entitled "Summary of Current Status Project 'ranch hand'", dated 1961, Office of the Secretary of the Department of the Air Force.
49. Document entitled "Defoliants History of Test Area C-52A" emanating from Armament Development and Test Center, Eglin AFB, Florida, December, 1969.
50. Document entitled "The Location of Herbicide Missions and Hickey's Informants in South Vietnam, The Effects of Herbicides in South Vietnam." National Academy of Science, Washington, D. C.
51. Document entitled "Herbicides Used in Southeast Asia." Technical report SAOQ-TR-69-11078. Directorate of Air Force Aerospace Fuels, Kelly AFB, Texas, 1969.
52. Document entitled "Analytical Methodology for Herbicide Orange. Vol. II. Determination of Origin of USAF Stocks." Technical report ARL-75-0110, Aerospace Research Laboratories Wright-Patterson AFB, Ohio, 1975.
53. Document entitled "Response of Tropical and Subtropical Woody Plants to Chemical Treatments", Research Report CR-13-67, Agricultural Research Services, U.S. Department of Agriculture, Washington, D. C., 1968.
54. The final report on "2,4,5-T Scientific Workshop" conducted on March 8-9, 1974.
55. Final report, "EPA-1AG-D6-0054.", prepared by the Environmental Protection Agency.
56. Research report entitled "CR-13-67", of Agricultural Research Services, U.S. Department of Agriculture, 1968.
57. Document entitled "Health Effects of Exposure of Herbicide Orange in South Vietnam Should be Resolved." Prepared by Office of the Comptroller General of the United States, General Accounting Office.
58. Document entitled "Analytical Methodology for Herbicide Orange. Vol. I. Determination of Chemical Composition", technical report ARL-75-0110, Aerospace Research Laboratories Wright-Patterson AFB, Ohio, 1975.

59. Document entitled "Biological Effectiveness of Stull Bifluid and Orange", technical report AFATL-TR-68-122, Air Force Armament Laboratory, Eglin AFB, Florida, 1968.
60. Document entitled "Comparison Test of Defoliants", technical report ADTC-TR-69-30, Vol. I, Armament Development and Test Center, Eglin AFB, Florida, 1969.
61. Document entitled "Fate of 2,3,7,8-tetrachlorodibenzo-p-diox (TCDD) in the Environment: Summary and Decontamination Recommendations", technical report USAFA-TR-76-18, Department of Chemistry and Biological Sciences, USAF Academy, Colorado 1976.
62. Document entitled "Studies of the Ecological Impact of Repetitive Aerial Applications of Herbicides on the Ecosystem of Test Area C-52A, Eglin AFB, Florida," technical report AFATL-TR-75142, Air Force Armament Laboratory, Eglin AFB, Florida, 1975.
63. Document entitled "Environmental Protection Technology Series EPA-600/2-78-086."
64. Report of the "Advisory Committee on 2,4,5-T" to the Administrator of the Environmental Protection Agency, 1971.
65. Document entitled "CDC#EPI 72-13-2", prepared by the United States Public Health Service, Center for Disease Control, Atlanta, Georgia.
66. Any and all documents utilized in, referring to or concerning the preparation or dissemination of each of the above documents.

STATE OF NEW YORK)
) SS:
COUNTY OF NASSAU)

Carol M. Samide, being duly sworn, deposes and says:

That deponent is not a party to the action, is over 18 years of age and resides at 425 Roundhill Road, East Hills, New York.

That on the 11th day of January, 1980, deponent served the within Dow's First Rule 34 Request for the Production of Documents to Third-party Defendant, United States of America. upon the attorneys below set forth representing the parties, as indicated, at the addresses shown, said addresses being designated by said attorneys for that purpose.

ATTORNEY:

All Counsel.
(See attached list)

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Carol M. Samide

Sworn to before me this

11 day of Jan. 1980

Eleanor Osthus

ELEANOR OSTHUS
Notary Public, State of New York
No. 30-4867483
Qualified in Nassau County
Commission Expires March 30, 1981

8597

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Judicial Panel on Multidistrict
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320 Executive Building
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Listing of Attorneys - Page 2

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Eastern District of New York
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

MDL No. 381
(All Cases)

In Re

"AGENT ORANGE"

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y. NOTICE OF MOTION

Product Liability Litigation **★** on **APR 8 1980** **★**

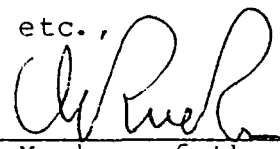
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TIME A.M.
P.M.

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of LEONARD L. RIVKIN, sworn to on April 8, 1980, upon the accompanying memorandum of law, and upon all prior proceedings herein, the undersigned will move this Court before the Honorable George C. Pratt, United States Court House, 900 Ellison Avenue, Westbury, New York, on the twenty-fourth day of April, 1980, at 9:00 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure granting a protective order exempting Dow's proposed Computer Document Retrieval and Litigation Support System from discovery.

Dated: Garden City, New York
April 8, 1980

Yours, etc.,

By: 
A Member of the Firm
RIVKIN, LEFF & SHERMAN
Attorneys for Defendant The
Dow Chemical Company
100 Garden City Plaza
Garden City, New York 11530
(516) 746-7500

To: All Counsel

8602

(209)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

MDL No. 381
(All Cases)

In Re

"AGENT ORANGE"

AFFIDAVIT

Product Liability Litigation

-----X

STATE OF NEW YORK)
) s.s.:
COUNTY OF NASSAU)

LEONARD L. RIVKIN, being duly sworn, deposes and
says:

1. Your deponent is a member of the firm of
RIVKIN, LEFF & SHERMAN, attorneys for the defendant and
third-party plaintiff THE DOW CHEMICAL COMPANY ("Dow"), and,
as such, is familiar with the facts and proceedings had
herein. This affidavit is submitted in support of Dow's mo-
tion which seeks a protective order exempting Dow's proposed
Computer Document Retrieval and Litigation Support System
("Litigation Support System") from discovery.

2. The plaintiffs, defendants, and third-party
defendants have met on a number of occasions with a view
towards effectuating an initial phase of voluntary discovery
and production of documents. These meetings have proved

fruitful, and Dow has already made some documents available for inspection pursuant to such voluntary agreements.

3. Your deponent has met with his client on a number of occasions and has visited at the offices of his client in Michigan with a view towards establishing some general impressions and knowledge on the number of documents which we will be obligated to review for production in accordance with both the Notice of Production heretofore served and agreements previously referred to. Your deponent represents to this Court that he has been informed by his client and upon information and belief submits that Dow will be obligated to review a minimum of 300,000 documents to an approximate maximum of 500,000 documents in an effort to comply with both the agreements and production notices herein before referred to. It is further your deponent's belief that the greatest majority of these documents will be produced in accordance with said agreements and notice.

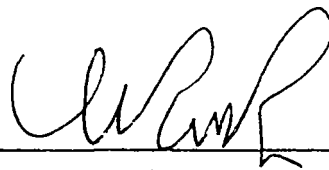
4. In order to adequately review, control, and make available for production the aforementioned numbers of documents, your deponent submits that it will be an absolute necessity to have mechanical assistance. As a consequence thereof, your deponent has worked with some Dow associates and has developed a Litigation Support System which will effectuate, among other things, controls and retrieval capabilities to permit the expeditious production of documents.

5. This Litigation Support System was prepared and will be maintained for the exclusive use in the instant action.

6. This Litigation Support System has not as yet been put into effect.

7. No prior request for the relief referred to herein has been made.

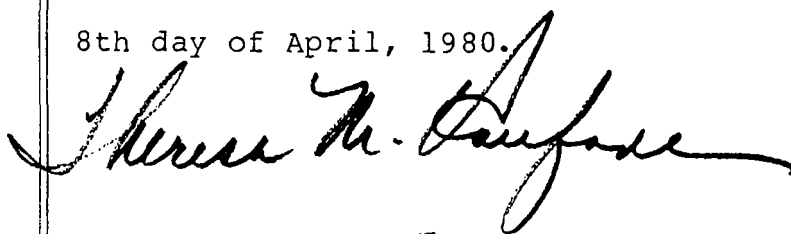
WHEREFORE, it is respectfully requested that this Court grant Dow's motion for an order protecting from discovery their Litigation Support System and for such other and further relief as to this Court seems just and proper.



LEONARD L. RIVKIN

Sworn to before me this

8th day of April, 1980.



THERESA M. RANFONE
NOTARY PUBLIC, State of New York
No. 30-4500076 - Nassau County
Commission Expires March 30, 1981

8605

STATE OF NEW YORK)
) SS:
COUNTY OF NASSAU)

Carol M. Samide being duly sworn, deposes and says:

That deponent is not a party to the action, is over 18 years of age and resides at East Hills, New York.

That on the 8th day of April, 1980, deponent served the within Notice of Motion, Supporting Affidavit, and Accompanying Memorandum of Law.

upon the attorneys below set forth representing the parties, as indicated, at the addresses shown, said addresses being designated by said attorneys for that purpose.

ATTORNEY:

To all counsel
See attached list.

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Carol M. Samide

Sworn to before me this
8th day of April, 1980

Theresa M. Ranfone

THERESA M. RANFONE
NOTARY PUBLIC, State of New York
No. 30-4600076 - Nassau County
Commission Expires March 20, 1981

8606

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Listing of Attorneys
Page 2

Copies of All Documents to:

Clerk of the Panel
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

In Re

★ MAY 8 1980

★ MDL No. 381
(All Cases)

TIME A.M.
P.M.

"AGENT ORANGE"

ORDER

Product Liability Litigation

-----X

A motion having been made by the defendant, THE DOW CHEMICAL COMPANY, for a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure exempting THE DOW CHEMICAL COMPANY's proposed Computer Document Retrieval and Litigation Support System from discovery, and said motion having duly come on to be heard before this Court on the 24th day of April 1980,

NOW, upon reading and filing the notice of motion dated the 8th day of April 1980, the affidavit of LEONARD L. RIVKIN, sworn to the 8th day of April 1980, and after having heard LEONARD L. RIVKIN in support of the motion, and having heard VICTOR J. YANNACONE, JR. on the motion without opposition there- to, and no other party having opposed said motion, and upon read- ing and filing the letter of consent between the parties dated May 2, 1980, and due deliberation having been had herein, and upon all the proceedings had herein, it is

NOW, on motion of RIVKIN, LEFF & SHERMAN, attorneys

8331

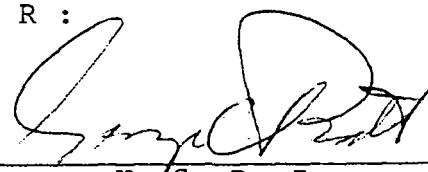
(227)

for THE DOW CHEMICAL COMPANY,

ORDERED, that said motion be and the same is hereby granted and that THE DOW CHEMICAL COMPANY's Computer Document Retrieval and Litigation Support System is herein and hereby exempt from discovery.

Westbury NY
May 5, 1980

ENTER :



U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

In Re

MDL No. 381
(All Cases)

"AGENT ORANGE"

Product Liability Litigation

-----X

FILED
IN CLERK'S OFFICE
J. S. DISTRICT COURT E.D. N.Y.

★ APR 8 1980 ★

TIME A.M. _____
P.M. _____

MEMORANDUM OF LAW OF
THE DOW CHEMICAL COMPANY
IN SUPPORT OF ITS MOTION
FOR A PROTECTIVE ORDER

RIVKIN, LEFF & SHERMAN
ATTORNEYS AND COUNSELLORS AT LAW
100 GARDEN CITY PLAZA, GARDEN CITY, N.Y. 11530

8611

210

We submit this memorandum on behalf of defendant The Dow Chemical Company ("Dow") in support of Dow's motion for a protective order.

Preliminary Statement

By the instant motion, Dow respectfully moves this Court, pursuant to Rule 26(c), Fed.R.Civ.P., for a protective order immunizing from discovery Dow's attorneys' proposed Computer Document Retrieval and Litigation Support System (hereinafter "Litigation Support System"). The Litigation Support System is intended to be a valuable legal aid which will permit Dow's attorneys to review all documents relating to the present controversy in order to organize, collate, index, and, ultimately, determine which documents are required to be produced pursuant to discovery requests made of Dow. Hence, the Litigation Support System will enable Dow's attorneys to review the many thousands of documents involved with greater dispatch, thereby facilitating discovery. As a result, all parties to this action, as well as the Court, will benefit from a more expeditious and efficient discovery process.

However, for reasons explained below, we will severely prejudice our defense by compiling such a system which might itself be subject to discovery without the safeguard that the requested protective order would provide. For that reason, Dow has approached this Court with a somewhat

novel request for relief: a prospective protective order. Such a protective order would be prospective in nature, since Dow has not yet been asked to produce any such Litigation Support System as part of a discovery request. Indeed, Dow's attorneys have not yet compiled such a system, although, as discussed below, the preliminary stages of such a compilation have already begun. Nevertheless, by its motion, Dow asks the Court to recognize the important function of the computer within the discovery process, when used to enable a party's attorneys to review and organize documents and otherwise prepare that party's defense. This function takes on an even greater importance in situations such as the present litigation, wherein a party's attorneys will have to review hundreds of thousands of pages of documents. Thus, the protective order requested herein would enable Dow's attorneys to proceed with its plan to construct the Litigation Support System without the threat of severe prejudice to us.

Status of Discovery

This court is already painfully familiar with the facts of the instant action, and we will therefore refrain from imposing upon the Court with a full statement of those facts.* Instead, we will simply outline the present state

*See, e.g., Dow's Memorandum of Law in Opposition to the Government's Motion to Dismiss.

of discovery, which is pertinent to the motion made herein.

By its Practice and Procedure Order of May 18, 1979, this Court stayed all discovery, and that stay is presently in effect.*

However, the parties to this action have routinely met in order to work out among themselves voluntary document production agreements which hopefully will obviate the need to burden the Court with numerous document production motions, and Dow has in fact already made some documents available for inspection pursuant to such an agreement. See the accompanying affidavit of Leonard L. Rivkin (the "Rivkin Affidavit"), attorney for The Dow Chemical Company, para. 2 . As the result of discussions between Dow and its counsel, we estimate that we ultimately will have to review for discovery and inspection from 300,000 to 500,000 documents, and will ultimately produce close to that amount. (These numbers pertain to actual documents and not merely to pages.) Rivkin Affidavit, para. 3 .

We have begun the formidable task of screening these documents in order to enter them in the envisioned computer scheme. Thus, Dow's attorneys have already initiated the preliminary steps required to construct the Litigation Support System. Rivkin Affidavit, para. 4 .

*See Practice and Procedure Order, para. 7.

All parties to this action and the Court will benefit from the Litigation Support System visualized herein. As a result of these benefits, the entire case will proceed in a more efficient and orderly manner, and the Court's time can be put to best advantage by eliminating the need for many discovery requests and rulings. Therefore, we respectfully ask this Court to issue an order protecting our proposed Litigation Support System from discovery by any of the parties to the instant action.

POINT I

DOW'S PROPOSED LITIGATION SUPPORT SYSTEM
IS PROTECTED BY RULE 26(b)(3),
FED.R.CIV.P., AS MATERIAL PREPARED
FOR LITIGATION

Rule 26(b)(3) protects from discovery material prepared in anticipation of litigation or for trial, and makes such material subject to discovery

only upon a showing that the party seeking discovery has substantial need for the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.*

We respectfully submit that the proposed Litigation Support System is fully protected by the Rule stated above, as that system would not under any circumstances qualify as an exception to the general non-discoverability status of trial preparation material. The preliminary work that has already begun with respect to the material in question is part of the preparation by Dow's attorneys for the trial of this action. The Litigation Support System itself will be compiled as part of the efforts of Dow's attorneys to prepare Dow's defense and third-party action. Such preparation is being carried out by the direction and participation of Dow's defense counsel.

*See Burlington Indus. v. Exxon Corp., 65 F.R.D. 26, 43 (D.C. Md. 1974). See also Advisory Committee Notes to the 1970 amendment to the discovery Rules, 48 F.R.D. 487, at 501 (1970).

In order to circumvent what has been often referred to as the "qualified" privilege afforded documents prepared in anticipation of trial, one seeking discovery must demonstrate that he has substantial need for such material and that he would suffer undue hardship if compelled to obtain the material through other means. Plaintiffs would be hard-pressed to make either showing with respect to the Litigation Support System proposed by Dow's attorneys.

It cannot be conceived how the plaintiffs would have a substantial need for such material in order to prepare their case. The system that Dow's attorneys will prepare will, among other things, constitute a listing of all documents in Dow's possession relating to the present controversy. Each entry will contain information that we feel will aid us in identifying documents so that it can be determined if a particular document should be made available pursuant to a discovery request. Thus, the listing described herein will not contain any new or original information, but rather will embody a kind of "shorthand" version of each document. The actual documents themselves in their entirety will be available for discovery and inspection, subject to any privilege involved, pursuant to appropriate production requests made by the plaintiffs. Thus, a showing of substantial need cannot be made.

Similarly, plaintiffs cannot demonstrate their inability to obtain the "substantial equivalent" of the system

by other means without undue hardship. Plaintiffs can in fact do far better than obtain a mere document listing; they can obtain the actual documents themselves either through voluntary discovery agreements with Dow or through requests for documents made pursuant to Rule 34, Fed.R.Civ.P., once the Court has lifted the discovery stay. Without such a showing, in addition to demonstrating substantial need, the proposed Litigation Support System would remain exempt from discovery under Rule 26 (b) (3).*

We are cognizant, however, of the "undue hardship" exception to the protection afforded trial preparation material by Rule 26 (b) (3), and for that reason we come before this Court. We respectfully submit that this exception does not apply to the material in question, and we therefore ask the Court to issue the order requested herein, which will fully and completely protect our trial preparation material, so that we may proceed in the manner we have described.

*See, e.g., Home Ins. Co. v. Ballenger Corp., 74 F.R.D. 93 (N.D. Ga. 1977); Arney v. Geo. A. Hormel & Co., 53 F.R.D. 179 (D.C. Minn. 1971).

POINT II

DOW'S PROPOSED LITIGATION SUPPORT SYSTEM
IS PROTECTED FROM DISCOVERY BY
RULE 26(b)(3) BECAUSE IT REFLECTS
THE THOUGHT PROCESSES AND OPINIONS
OF DOW'S LEGAL COUNSEL

In addition to the privilege status afforded materials prepared in preparation for trial by Rule 26(b)(3), the Rule also provides that

the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.
[Emphasis added.]

Such material has become known as "opinion work product," as distinguished from mere work product, or materials prepared in anticipation of litigation, discussed above. While work product is afforded protection subject to certain qualifications, the plain words of Rule 26(b)(3), cited in part above, direct the courts to reject any attempt to discover material constituting the attorney's thought processes. The leading authority embodying the rationale behind the Rule that protects such material is Hickman v. Taylor, 329 U.S. 495 (1947). There, the Supreme Court said, in pertinent part:

In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the

relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests.

Hickman, supra at 510-511.

Thus, while material prepared in anticipation of litigation or for trial enjoys a qualified privilege, many courts have held that opinion work product is protected by an absolute privilege, and is not subject to discovery under any circumstances. Within the Second Circuit, the Southern District has noted that

[t]he only mandatory protection afforded by the Rule [26(b)(3)] appears in its last sentence, which directs the trial court to "protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation."

Herbert v. Lando, 73 F.R.D. 387 (S.D.N.Y. 1977).*

The participation of Dow's attorneys in the planning of the Litigation Support System, and, ultimately, in its actual preparation, would qualify such material as opinion work product. Therefore, this Court should afford the material the strict protection of Rule 26(b)(3). Dow's defense counsel has participated in the formulation of the plan for the system, including, among many other things, the

*See also Berkey Photo, Inc. v. Eastman Kodak Co., 74 F.R.D. 613, at 616 (S.D.N.Y. 1977). The notion that such material enjoys total immunity from discovery is not universally held, but, in any event, only extremely unusual circumstances would warrant the disclosure of opinion work product. See, e.g., In re Murphy, 560 F.2d 326 (8th Cir. 1977), where the court said, at 336:

It is clear that opinion work product is entitled to substantially greater protection than ordinary work product. Therefore, unlike ordinary work product, opinion work product can not be discovered upon a showing of substantial need and an inability to secure the substantial equivalent of the materials by alternate means without undue hardship. See Fed.R.Civ.P. 26(b)(3). In our view, opinion work product enjoys a nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances. See Hickman v. Taylor, supra. Our unwillingness to recognize an absolute immunity for opinion work product stems from the concern that there may be rare situations, yet unencountered by this court, where weighty considerations of public policy and a proper administration of justice would militate against the nondiscovery of an attorney's mental impressions. Absent such a compelling showing, the attorney's opinion work product should remain immune from discovery.

selection of subject matter areas and the selection of information to be recorded under each document entry. As such, the Litigation Support System will reflect our "mental impressions, conclusions, opinion, or legal theories" in that the material will indicate the determination by Dow's counsel of which material is pertinent to the action. The assemblage of material will surely reflect the attorneys' perception of "the relevant from the irrelevant facts." Hickman v. Taylor, supra at 511.

Such computerized compilations have been held to constitute attorney opinion work product. In In re IBM Peripheral EDP Devices Antitrust Litigation, MDL 163-RM, slip op. (N.D. Cal. Feb. 10, 1975), IBM's counsel had developed "a computerized trial support system which includes summaries and analyses of certain of the IBM documents requested by plaintiffs in these actions." Id. The plaintiffs moved for an order compelling IBM to describe its computerized trial support system with particularity. The plaintiffs' ultimate intention was to seek an order entitling them to use the computerized trial support system to identify documents.

The court denied the plaintiffs' motion to compel IBM to answer interrogatories with respect to the computer material, and said that neither IBM nor its attorneys would be required in further discovery proceedings to divulge information concerning that material. The findings of the court, enumerated below, are particularly germane with respect to the matter at hand:

1. The computer trial support system developed by IBM's counsel and the material contained therein was prepared solely for the litigation, and it was put in the computerized form so that it could be used in connection with litigation.
2. All documents and other materials referenced by the trial support system of IBM's counsel are available through normal discovery to the plaintiffs. The trial support system in no way hides, destroys or deprives the plaintiffs of access to any evidence whatsoever.
3. The trial support system created by IBM's counsel reflects their mental impressions, theories and thought processes, and the Court is not satisfied that information contained in that system can be segregated from such lawyers' mental impressions and theories.
4. To allow plaintiffs a more detailed description of the trial support system, or to allow plaintiffs to make use thereof, would impinge on the right of IBM's counsel to organize material in the perspective they want to put it in, and to utilize such information in their trial preparation. Plaintiffs have failed to make a sufficient showing of need or urgency to justify such a result.
5. Plaintiffs have failed to show that there are no alternate means available

to them to obtain the equivalent information without undue hardship.

6. The Court will not exercise its discretion to compel disclosure of information from or about the trial support system simply because it would be somewhat more convenient for plaintiffs if the Court did so.

In re IBM Peripheral EDP Devices Antitrust Litigation supra.

All of the court's findings in the foregoing case are applicable to the Litigation Support System now under development by Dow. As previously stated, the material is being prepared with the participation of Dow's legal counsel. It is being prepared solely for use in the instant action, and will be compiled only so that it can be used in connection with the pending suit. Rivkin Affidavit, para. 5 .

The documents that will be entered in the Litigation Support System are available to the plaintiffs pursuant to appropriate production demands. As in the case mentioned above, Dow's system "in no way hides, destroys or deprives the plaintiffs of access to any evidence whatsoever." Rather, it would actually decrease the time in which documents could be made available to plaintiffs pursuant to either their requests or to voluntary agreements reached between the parties.

As previously discussed, the thought processes and mental impressions of Dow's legal counsel will be reflected in the very order and construction of the material itself. Because Dow's attorneys have participated in the design of

the Litigation Support System, their mental impressions and theories cannot be segregated from the material. Instead, the system will itself incorporate those theories and impressions.

As in the IBM case, discovery of the Litigation Support System would impinge on the right of Dow's counsel "to organize material in the perspective they want to put it in, and to utilize such information in their trial preparation." Such a result would clearly violate the rationale of Rule 26(b)(3), and the holdings of Hickman v. Taylor, supra, and its progeny.

Given the foregoing, Dow's proposed Litigation Support System should be afforded the full protection of Rule 26(b)(3), thereby immunizing it from discovery, since it constitutes opinion work product.

POINT III

THE COURT SHOULD ISSUE A PROTECTIVE
ORDER, PURSUANT TO RULE 26(c),
FED.R.CIV.P., TO PREVENT THE UNDUE
BURDEN TO DOW THAT WOULD RESULT FROM
DISCOVERY OF ITS LITIGATION SUPPORT
SYSTEM

Rule 26(c) authorizes the courts to issue orders limiting discovery "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" Dow respectfully submits that such an order is warranted under the instant facts.

By compiling its Litigation Support System, Dow's attorneys are putting forth their best efforts to expedite the discovery phase of the instant litigation. The proposed system represents Dow's good faith effort to furnish the plaintiffs with as much relevant material as quickly and efficiently as possible, as well as being an integral part of the defense strategy of Dow's attorneys. Nevertheless, Dow could conceivably severely prejudice itself as a result of its effort to expedite discovery.

By permitting the plaintiffs to obtain access to the Litigation Support System, which will in substantial part consist of a coded compilation of documents in Dow's possession relevant to the present lawsuit, the Court would in effect permit the plaintiffs to obtain information grossly in excess of that actually requested. Thus, the plaintiffs would receive answers to questions that were not asked in

the first instance. Plaintiffs must make out their own cases against the defendants, if they are so able, partially through the process of discovery. The release of Dow's Litigation Support System would cause Dow to participate in the construction of the case against it. While Dow recognizes that the Federal Rules of Civil Procedure permit and encourage liberal and broad discovery, there has never been any suggestion by any court that a party should be compelled to affirmatively participate in the verification of the claims lodged against it. The Rules already provide that the plaintiffs are entitled to any documents in Dow's possession that relate to the present controversy, when proper requests for such documents are made, unless a specifically enumerated privilege bars discovery. It cannot be argued that those same Rules envision the involuntary surrender of a document by one party containing that party's own counsel's perception of which documents relate to the litigation, arranged according to the attorney's understanding of the issues in the case, and containing entries made in accordance with counsel's view of materiality and relevance.

Dow submits that subjection of its Litigation Support System to discovery by the plaintiffs, causing severe prejudice to Dow, would constitute an undue burden under Rule 26(c). For that reason alone, Dow should be permitted to proceed with the compilation of its Litigation Support

System free from the threat of its subsequent discovery by the plaintiffs.

In addition, as discussed in Point II above, the system itself will constitute opinion work product, reflecting the mental impressions, thought processes, and legal theories of Dow's defense counsel. Such material is explicitly protected from discovery by Rule 26(b)(3), and its release would place Dow at a severe disadvantage in the litigation. Therefore, the use of the material in question by the plaintiffs, should they be permitted to obtain it, would be unduly burdensome and even oppressive to Dow.

It is clear that material such as Dow's proposed Litigation Support System is appropriate subject matter for a protective order. In United States v. International Business Machines Corp., 58 F.R.D. 556 (S.D.N.Y. 1973), IBM was accused of procuring the destruction of material falling within the protection of the court's preservation order. One such item was a computerized data base constituting "an annotated document retrieval system, designed to assist counsel in the organization of the numerous documents involved in the case," id. at 558, similar in many respects to Dow's proposed system. IBM argued unsuccessfully that it was justified in authorizing the destruction of the data bank because the material constituted work product. The court observed that "work product is generally exempt from production under the Federal Rules," but rejected IBM's

contention because "the order in question was not an order to produce; rather, it was a preservation order." However, the court noted that "[i]f the documents had been retained, then, in response to a notice to produce, IBM could have moved for a protective order on the grounds of privilege."

Id.

Accordingly, the hardship that Dow would suffer as a result of the production of its proposed Litigation Support System constitutes "good cause" under Rule 26(c), and this Court should therefore issue an order exempting Dow's Litigation Support System from discovery.

CONCLUSION

Given the foregoing, we respectfully ask this court to accord the relief requested herein and grant Dow's motion for a protective order prohibiting the discovery of its Litigation Support System.

Respectfully submitted,

Rivkin, Leff & Sherman
Attorneys for Defendant
The Dow Chemical Company
100 Garden City Plaza
Garden City, New York 11530
(516) 746-7500

April 8, 1980

On the Brief:

Leonard L. Rivkin
Bruce Smith
Jeffrey Silberfeld
Steven M. Cohen
Peter Alpert (not yet admitted)
David H. Ledgin (not yet admitted)

8630

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TELEPHONE (516) 746-7500 TELEX 645-074 CABLE ADDRESS AT LAW GRGY TELECOPIER (516) 747-2843

FILED

U. S. DISTRICT COURT



MAY 19 1980

LEONARD L. RIVKIN, P. C.
PARTNER

TIME A.M. _____
P.M. _____

May 13, 1980

Victor J. Yannacone, Jr., Esq.
Yannacone & Yannacone, Esqs.
Post Office Drawer No. 109
Patchogue, New York 11772

Dear Mr. Yannacone:

Re: "Agent Orange" Product Liability Litigation
MDL No. 381

This is to confirm our various telephone conversations culminating in our understanding of yesterday wherein our document production is to be limited at this time, as follows:

First, it is understood that the limitations mentioned herein are without prejudice to any request that you might make to expand the production, subject, of course, both to our rights to object and agreement on a confidentiality order.

Secondly, with regard to those documents that are not being produced but are subject to the production Notice, Dow will hold same pursuant to a non-destruct understanding until the culmination of the existing lawsuits.

It is further understood that the cutoff date for the production of documents will be the date of the service of the first summons and complaint, i.e., July 25, 1978. Notwithstanding the foregoing, Dow will produce all documents, subject to the Notice in the instant case, that have been heretofore produced to the EPA.

Dow is in possession of many bound books, pamphlets and the like which we will not produce in accordance with the Notice. We will, however, index these items and produce copies of the index which will list the author, title and edition. Dow also has a repository of its papers and published documents which we will treat similarly to the bound book and pamphlet items.

In addition to the foregoing, there are literally miles of chromatograph sheets and computer printouts. It is understood

8633

cont'd..

(215)

RIVKIN, LEFF & SHERMAN

Victor J. Yannacone, Jr., Esq.

Page 2

May 13, 1980

that these items will not now be produced but, as aforementioned, will be retained under a non-destruct understanding. There are also innumerable laboratory notebooks and data books of the individual scientists which will not be produced, but will also be maintained under the non-destruct agreement. These laboratory notebooks and data books of the individual scientists will be produced with them, when and if they are deposed.

Since Tordon is not a phenoxy herbicide and does not contain 2,4,5-T, the documents pertaining to it will not be produced, although a non-destruct agreement will be effective for those documents as well. We will, however, produce all documents in accordance with the Notice pertaining to "Agent White."

There are literally thousands of other documents which might, in a technical sense only, be classified as phenoxy herbicides, but are in no way involved with or contain 2,4,5-T and it is understood that these documents will not be produced at this time -- again, they will be held pursuant to the non-destruct agreement.

It is further understood that Dow's search will be limited to those documents located within the territorial limits of the United States.

I believe the foregoing reflects our mutual efforts in attempting to avoid confrontations which can only be determined with judicial assistance and I thank you for such efforts.

Very truly yours,

RIVKIN, LEFF & SHERMAN

BY

LEONARD L. RIVKIN

LLR:mp

cc: Hon. George C. Pratt

All Counsel

8634

UNITED STATES DISTRICT COURT
EASTERN DISTRICT of NEW YORK

- - - - -x

in re

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ AUG 5 1980

TIME A.M.
P.M.

"AGENT ORANGE"

MDL No. 381

(All Cases)

Product Liability Litigation

- - - - -x

NOTICE
TO DEFENDANT
OCCIDENTAL PETROLEUM CORPORATION
TO ADMIT OR DENY CERTAIN ALLEGATIONS OF FACT

PLEASE TAKE NOTICE that the plaintiff veterans and their families demand that defendant OCCIDENTAL PETROLEUM CORPORATION, by their attorneys, or the appropriate officer, director or other employee of said corporate defendant admit the following facts, or absolutely deny them, or in the alternative, provide such explanation as is necessary to clearly convey the accurate substance of each such allegation in a fashion that said defendants can admit as true, and demand is further made that said defendant file and serve such admissions, denials or statements on or before 27 June 1980.

8635

360

Defendant OCCIDENTAL PETROLEUM CORPORATION

Corporate History

1. That defendant OCCIDENTAL PETROLEUM CORPORATION was incorporated in California on or about May 21, 1920.

2. That in 1961, for 213,302 shares and \$1,047,000 cash, defendant OCCIDENTAL PETROLEUM CORPORATION acquired Signet Oil & Gas Co.

3. That on or about July 1, 1963, for 421,053 shares defendant OCCIDENTAL PETROLEUM CORPORATION acquired Best Fertilizers Co. and Best Fertilizers Co. of Texas.

4. That on or about December 11, 1963, for 103,579 shares, defendant OCCIDENTAL PETROLEUM CORPORATION acquired International Ore & Fertilizer Corp.

5. That on or about March 2, 1964, for 544,511 shares, defendant OCCIDENTAL PETROLEUM CORPORATION acquired Jefferson Lake Sulphur Co.

6. That in 1965, defendant OCCIDENTAL PETROLEUM CORPORATION acquired Green Belt Chemical Corp., Summers Fertilizer Co., and Best Fertilizers of Arizona.

7. That on or about November 1, 1966, for 1,742,759 of its

8636

common shares, defendant OCCIDENTAL PETROLEUM CORPORATION acquired the Permian Corporation.

8. That in 1966, defendant OCCIDENTAL PETROLEUM CORPORATION acquired Garrett Research & Development Co., now Occidental Research Corporation.

9. That on or about March 1, 1967, for 732,573 of its common shares, defendant OCCIDENTAL PETROLEUM CORPORATION acquired McWood Corp.

10. That on or about January 29, 1968 for 1,494,706 shares of its \$4 cumulative convertible preferred stock, defendant OCCIDENTAL PETROLEUM CORPORATION acquired Island Creek Coal Company.

11. That on or about Feb. 1, 1968, for 500,000 shares of its \$4 convertible preferred stock, \$40,000,000 in promissory notes, and \$27,447,000 cash, defendant OCCIDENTAL PETROLEUM CORPORATION exercised an option to purchase all the European refining and marketing operations of Signal Companies, Inc.

12. That on or about July 24, 1968 defendant OCCIDENTAL PETROLEUM CORPORATION acquired defendant HOOKER CHEMICAL CORPORATION and on or about the same date HOOKER acquired the assets and assumed the liabilities of Sel Rex Corp. That in connection with these acquisitions, defendant OCCIDENTAL

8637

PETROLEUM CORPORATION issued 5,414,921 shares of its \$3.60 convertible preferred and 574,066 shares of its \$2.16 convertible preferred.

13. That on or about August 8, 1969, for \$29,166,000 cash and assumption by Island Creek of certain 4-3/8% convertible subordinated debentures due June 1, 1983 and 5-1/4% sinking fund debentures due Oct. 1, 1977, Island Creek Coal Company, a subsidiary of defendant OCCIDENTAL PETROLEUM CORPORATION, acquired the operating assets and assumed some of the liabilities of Maust Coal & Coke Corp. Island Creek did not purchase the company itself, however.

14. That in March 1970, defendant OCCIDENTAL PETROLEUM CORPORATION acquired Leather's Chemical Co., Bradford, England.

15. That in July 1970, for approximately \$3,500,000 in cash and 175,000 shares of its \$8 preferred stock valued at approximately \$17,500,000, defendant OCCIDENTAL PETROLEUM CORPORATION acquired the Latin American vinyl plastic operations of W.R. Grace & Co.

16. That in July 1971 Jefferson Lake Petrochemicals of Canada, Ltd. was combined with the Canadian oil, gas and chemical operations of defendant OCCIDENTAL PETROLEUM CORPORATION into a new company called Canadian Occidental Petroleum Ltd. which is now 82% owned by defendant OCCIDENTAL PETROLEUM CORPORATION.

8638

17. That in 1971 defendant OCCIDENTAL PETROLEUM CORPORATION acquired Effluent Control International Ltd., Almex, S.A., and Aramis S.A. all of which were consolidated with Udyllite Mexicana into a new company called Oxymex S.A. de C.V.

18. That in August 1977, for approximately \$49,000,000 cash, defendant Hooker Chemical Corp., a subsidiary of defendant OCCIDENTAL PETROLEUM CORPORATION acquired Zoecon Corp.

19. That in August 1978, defendant OCCIDENTAL PETROLEUM CORPORATION acquired Ring Around Products, Inc.

8639

Defendant OCCIDENTAL PETROLEUM CORPORATION

Subsidiaries and Affiliates

20. That defendant OCCIDENTAL PETROLEUM CORPORATION is an operating and holding company owning, as of December 31, 1978, 100% voting control, unless otherwise indicated, of the following subsidiaries. The name of the state of incorporation or location of the principal office of each company is also indicated in parentheses (); and the percentages indicated in parentheses () indicate the percentage of the company owned by defendant OCCIDENTAL PETROLEUM CORPORATION in those companies which are not wholly owned subsidiaries.

Occidental Petroleum Investment Co. (California)
Hooker Chemical Corp. (California)
Hooker Chemical Holdings, Ltd. (United Kingdom)
Leathers Chemical Co., Ltd. (United Kingdom)
Oxy Metal Industries (G.B.) Ltd. (United Kingdom)
Hooker Chemical Investment Co. (California)
Hooker Chemical Properties Corp. (California)
Occidental Engineering Co. (Delaware)
Occidental International Engineering Co. (California)
Oxy Chemical Corp. (California)
B.D.M. Chemical Corp. (Colorado)
Suwanee River Chemical Co. (Florida)
Hooker Chemicals & Plastics Corp. (New York)
Hooker Chemicals Ltd. (Canada) (Includes 31.09% owned by Hooker Chemical Corp and 11.40% owned by Oxy Chemical Corp. and its subsidiaries)
Canadian Occidental Petroleum Ltd. (Canada) (82.22%)
Canadian Occidental of California, Inc. (California)
Hooker Taft Corp. (La.)
International Ore & Fertilizer Corp. (Delaware)

8640

Occidental Chemical Co. (California)
 OMF California, Inc. (California)
 Oxy Metal Industries Corp. (California)
 Wilshire International Corp. (California)
 Interore Corp, Inc. (California)
 Puerto Rico Chemical Co., Inc. (Delaware)
 Jacksonville Bulk Terminals, Inc. (Florida)
 Occidental Chemical & Phosphate Corp. (California)
 Oxychem Investments Corp. (California)
 Oxy Metal Industries (Suisse) S.A. (Switzerland)
 Oxychem Properties Corp. (California) (Includes 25%
 owned by Hooker Chemical Investment Co.)
 Sinteticos S.A. (Colombia)
 Sodaplast-Sociedad para Desenvolvimento de Plasticos
 Limitada (Brazil) (Includes 31,74% owned directly by Hooker
 Chemical Corp.)
 Vulcan Material Plastico S.A. (Brazil)
 Zoecon Corp. (Delaware)
 Island Creek Coal, Inc. (California)
 Island Creek Coal Co. (Delaware)
 Coal Properties Co. (Delaware)
 Coal Venture Co. (Delaware)
 Garden Creek Pocahontas Co. (Delaware)
 Hammer Coal Co. (Delaware)
 Birch Coal Co. (West Virginia)
 Bird Coal Co. (West Virginia)
 Cherry River Coal & Coke Co. (West Virginia)
 Gauley Coal & Coke Co. (West Virginia)
 Potomac Coal Co. (Pennsylvania)
 Island Creek Pocahontas Co. (Delaware)
 Occidental International Finance N.V. (Netherlands
 Antilles)
 Occidental Oil & Gas Corp. (California)
 Occidental Construction or about & Management Co. Ltd.
 (United Kingdom)
 Occidental Crude Sales, Inc. (Delaware)

8641

Occidental Exploration or about & Production or about
 Co. (California)
 Occidental Boliviana, (Chaco), Inc. (California)
 Occidental Boliviana (Charague), Inc. (California)
 Occidental Boliviana, Inc. (California)
 Occidental Oil Shale, Inc. (California)
 Occidental Overseas Ltd. (Delaware)
 Occidental Petroleum (Great Britain), Inc. (California)
 Occidental of Britain, Inc. (California)
 Occidental Petroleum (Caledonia) Ltd. (United Kingdom)
 Occidental Petroleum (Scapa) Ltd. (United Kingdom)
 Occidental Petroleum (United Kingdom) Ltd.
 Occidental Petroleum Corp. of Peru (California)
 Occidental International Oil, Inc. (California)
 Occidental of Libya, Inc. (Delaware)
 Occidental of Libya (EPSA), Inc. (Liberia)
 Occidental Oil & Gas (USA), Inc. (California)
 Oxy Petroleum, Inc. (California)
 The Permian Corp. (Delaware)
 Western Oil Transportation or about Co., Inc. (Texas)
 Occidental Overseas Finance N.V. (Netherlands Antilles)
 Occidental Refineries Ltd. (United Kingdom)
 Occidental Worldwide Investment Corp. (Liberia)
 Concord Petroleum Corp. (Liberia)
 Permian Trading Corp. (Liberia) (0.8% owned by public)
 Raffinerie Belge de Petroles S.A. (Belgium) (99.2%)
 Occidental Overseas Capital Corp. (Delaware)
 Occidental Land, Inc. (California)
 Occidental Research Corp. (California)
 Sheridan Enterprises, Inc. (California)
 Ring Around Products, Inc. (California)

21. All the foregoing subsidiaries are consolidated in the
 Consolidated Financial Statements of defendant OCCIDENTAL
 PETROLEUM CORPORATION except Occidental Land, Inc. which is

8642

carried at an amount equivalent to the equity in its net assets.

Defendant OCCIDENTAL PETROLEUM CORPORATION .

Business

22. Defendant OCCIDENTAL PETROLEUM CORPORATION is engaged in exploring for and developing and extracting natural resources, principally oil and gas outside the United States and coal within the United States; marketing and transporting petroleum and petroleum products; and manufacturing and distributing industrial chemicals, plastics, metal finishing chemicals and equipment, and agricultural chemicals and fertilizers. As used throughout this Notice, defendant OCCIDENTAL PETROLEUM CORPORATION refers to Occidental Petroleum Corporation or Occidental Petroleum Corporation together with one or more of its subsidiaries or joint venturers.

8643

Defendant OCCIDENTAL PETROLEUM CORPORATION

Agreements with U.S.S.R. and Poland

23. Commencing in 1973, defendant OCCIDENTAL PETROLEUM CORPORATION has entered into agreements with U.S.S.R. which provide for defendant OCCIDENTAL PETROLEUM CORPORATION to furnish technology, design, and construction supervision services and equipment for port storage and pipeline facilities to U.S.S.R. and for sale of superphosphoric acid ("SPA") to the U.S.S.R. and purchase of fertilizer by defendant OCCIDENTAL PETROLEUM CORPORATION from the U.S.S.R. during the period 1978 through 1997. The fertilizer agreements require that the sale price for each of the fertilizer commodities be set periodically by agreement between the parties based market prices, with provision for resolution of any differences. Defendant OCCIDENTAL PETROLEUM CORPORATION is to receive a 2.5% discount from the prices for ammonia; a 3.0% discount from the prices for urea, and a 3% discount from the prices for potash.

24. That in August 1978, an agreement was announced for the sale of 1,000,000 metric tons of phosphate rock from defendant OCCIDENTAL PETROLEUM CORPORATION to Poland annually and the purchase, at world prices to be agreed upon periodically, of 500,000 metric tons of molten sulphur annually by defendant OCCIDENTAL PETROLEUM CORPORATION from Poland over a 20-year period. Final implementation of the agreement is subject to resolution of certain details.

8644

Defendant OCCIDENTAL PETROLEUM CORPORATION
Principal Operations and Properties

OIL & GAS OPERATIONS

International Production and Exploration

25. Although all its international production through 1976 was from Libya, defendant OCCIDENTAL PETROLEUM CORPORATION is now producing oil in the United Kingdom sector of the North Sea as well as in Peru and Bolivia.

Libyan Operations

26. That in 1966, the Libyan Government awarded concessions 102 and 103 for the exploration and production of crude oil, gas liquids and natural gas in certain areas of the Sirte Basin of Libya to defendant OCCIDENTAL PETROLEUM CORPORATION. Both concessions were awarded for 44-year periods, with certain provisions providing renewal for up to an additional 16 years with approval of the Libyan Government.

27. That in August 1973, Libyan Government unilaterally nationalized 51% of assets of Oxylibya, including 51% of Oxylibya's interest in its concessions, a gas liquids plant, pipelines and marine terminal facilities. Oxylibya's 49%

8645

interest in the production of oil, including gas liquids from concessions 102 and 103 averaged approximately 167,000 barrels per day in 1978.

28. That in December 1975, in settlement of a dispute, Oxylibya entered into an agreement with Libya which, among other things, set forth specific minimum production levels and the intention to assure a "fair remuneration" to Oxylibya and further provided that the amount of payments owing by Oxylibya to Libya and NOC at any one time would not be less than approximately \$272,000,000.

29. That in January 1979, Oxylibya and the Libyan Secretariat of Petroleum and NOC entered into a new agreement which is to supersede the 1975 Agreement. The 1979 Agreement provides for settlement of Oxylibya's claim for supplemental "fair remuneration" under the 1975 Agreement. The 1975 Agreement's provision for "fair remuneration" is replaced in the 1979 Agreement by a provision stating that defendant OCCIDENTAL PETROLEUM CORPORATION shall receive a "reasonable return" in 1979 and 1980 from its equity productions from the concessions.

30. The 1979 Agreement also provides that NOC will pay Oxylibya to make up to prior periods during which Oxylibya took less than its full 49% share of production. That in addition, Oxylibya is to transfer to NOC its minority interest in a methanol plant. Finally, Oxylibya continues to have the option,

8646

but no obligation, to purchase crude oil from NOC in quantities equal to NOC's 51% share of production from the concessions. The 1979 Agreement terminates the provision of the 1975 Agreement under which payments owing to the Libyans would not be less than approximately \$272,000,000.

31. That in 1974 Oxylibya and the Libyan Government signed an agreement for oil exploration which at December 31, 1977 covered approximately 12,700,000 acres. The term of this agreement is 35 years for each block on which a commercial discovery is made prior to July 1, 1979. The agreement also provides that any future oil production will be divided 81% for NOC and 19% for Oxylibya, free from Libyan taxes and royalties.

32. Seven oil discoveries on this acreage have been established as commercial. Oxylibya is producing from six of these fields.

United Kingdom Operations

33. Defendant OCCIDENTAL PETROLEUM CORPORATION acts as operator for, and holds a 36.5% interest in, a group which holds production licenses to explore and develop two whole and two partial blocks covering approximately 159,000 acres in the United Kingdom sector of the North Sea. The Group also holds a 49% interest in an additional block covering approximately 54,000

8647

acres, in which the British National Oil Corp. holds 51%, awarded in the United Kingdom's fifth round of licensing. That in March 1979, the Group was awarded a new block in the sixth round of licensing, subject to satisfactory negotiation of a work commitment and joint operating agreement.

34. That in 1972 the Group discovered Piper field, located approximately 130 miles southeast of the Orkney Islands. Production commenced in December 1976. The defendant OCCIDENTAL PETROLEUM CORPORATION's share of production, net after a 12-1/2% royalty, averaged approximately 80,000 barrels per day in 1978. It is expected that a peak rate approximating 300,000 gross barrels per day, or approximately 96,000 barrels per day net to defendant OCCIDENTAL PETROLEUM CORPORATION after royalty, will be achieved in 1979.

35. That in 1974 the Group discovered Claymore field, located approximately 20 miles west of Piper field. Production commenced in November 1977. The defendant OCCIDENTAL PETROLEUM CORPORATION's share of production, net after royalty, averaged approximately 19,000 barrels per day in 1978. Peak production of approximately 115,000 gross barrels per day or approximately 37,000 barrels per day net to defendant OCCIDENTAL PETROLEUM CORPORATION after royalty, is expected to be reached in 1980.

36. At December 31, 1978, Co. had a net investment of approximately \$561,000,000 for exploration and development in the

licensed areas.

37. That in August 1977, defendant OCCIDENTAL PETROLEUM CORPORATION and the group reached an agreement with the United Kingdom government and the British National Oil Corp. ("BNOC") providing for participation by BNOC with members of group in their interests in the licenses covering the Piper and Claymore fields. Pursuant to this agreement BNOC has become a party to Piper and Claymore licenses and the operating agreements relating to the fields, the pipeline and the Flotta terminal. BNOC has a 10% vote thereunder. That in accordance with agreement, BNOC has no interest in the property or facilities covered by the operating agreements, but has an option to purchase, at prices in line with those prevailing in the international market, up to 51% of the crude oil and natural gas liquids production available from the Piper and Claymore fields.

38. Since April 1978, defendant OCCIDENTAL PETROLEUM CORPORATION has been selling 25% of its share of North Sea production to BNOC. This level will increase to 37.5% on or about Apr. 1, 1979, and to 51% on or about Apr. 1, 1980.

Peruvian Operations

39. The defendant OCCIDENTAL PETROLEUM CORPORATION has made nine oil discoveries on a block covered by a 35-year production-

8649

-sharing agreement signed in 1971 with the Peruvian state oil company ("Petroperu"). The defendant OCCIDENTAL PETROLEUM CORPORATION's net share of proved reserves attributable to these discoveries was approximately 66,636,000 barrels of crude oil as of December 31, 1977. Defendant OCCIDENTAL PETROLEUM CORPORATION is delivering approximately 80,000 gross barrels of crude oil per day to Petroperu's Trans-Andean pipeline. That in April 1978 defendant OCCIDENTAL PETROLEUM CORPORATION entered into a second production sharing agreement with Petroperu on an adjacent block, as well as a contract for secondary recovery operations in northwest Peru. At December 31, 1978, defendant OCCIDENTAL PETROLEUM CORPORATION's net investment in Peru was approximately \$219,000,000.

Bolivia

40. That in August 1973, defendant OCCIDENTAL PETROLEUM CORPORATION signed a production-sharing contract with YPF, the Bolivian national oil company, which currently covers approximately 1,200,000 acres in the Robore area of the Chaco Basin of Eastern Bolivia. Defendant OCCIDENTAL PETROLEUM CORPORATION Co. is entitled to 50% of the oil produced from the contract area and from 50% to 47% of the gas produced, depending on the rate of production, in both cases net of taxes. Production commenced in January 1978.

41. Defendant OCCIDENTAL PETROLEUM CORPORATION had a net investment in Bolivia of approximately \$44,000,000 at December 31, 1978.

Other International Operations

42. Defendant OCCIDENTAL PETROLEUM CORPORATION has exploratory rights in Colombia, Pakistan and Trinidad. Defendant OCCIDENTAL PETROLEUM CORPORATION had investments of approximately \$6,300,000 in these areas and other areas at December 31, 1978.

International Marketing and Refining Marine Transportation

43. Defendant OCCIDENTAL PETROLEUM CORPORATION engages in trading of crude oil and gas liquids purchased from third parties.

44. Defendant OCCIDENTAL PETROLEUM CORPORATION engages in marine transportation through ownership or charter of vessels primarily used to transport oil. At December 31, 1978, defendant OCCIDENTAL PETROLEUM CORPORATION's tanker fleet included three tankers having an aggregate capacity (deadweight tonnage) of approximately 200,000 long tons which it owns, and 9 tankers having an aggregate capacity of approximately 1,290,000 long tons, including two very large crude carriers ("VLCCs") each having a deadweight tonnage of approximately 260,000 long tons, owned by others, which defendant OCCIDENTAL PETROLEUM CORPORATION

has contracted to use for specified periods of time.

North American Crude Oil Marketing and Transportation

45. The Permian Corporation is engaged in North America in the business of purchasing, transporting and marketing crude oil, principally in southern, southwestern, and northwestern areas of United States.

46. At December 31, 1978, Permian Corporation's crude oil gathering and delivery system included approximately 5,300 miles of pipelines with a daily throughput capacity of approximately 580,000 barrels; 493 tractors, 501 tank trailers, and 26 truck terminals and storage facilities having a total capacity of approximately 4,200,000 barrels. That Permian Corporation operates 14 barge terminals also.

United States Production and Exploration

47. At December 31, 1978, defendant OCCIDENTAL PETROLEUM CORPORATION owned oil and gas interests in 13 states.

48. During 1975 through 1978 defendant OCCIDENTAL PETROLEUM CORPORATION expended approximately \$57,000,000 to acquire offshore leasehold interests. Defendant OCCIDENTAL PETROLEUM

8652

CORPORATION now holds various interests (including those of Canadian Occidental) in a total of 72 federal and state tracts offshore Texas and Louisiana, five tracts offshore Southern California, two in the Gulf of Alaska and four in Cook Inlet, Alaska.

49. Defendant OCCIDENTAL PETROLEUM CORPORATION has developed and is testing a modified in situ shale oil process on oil shale lands it owns in the Piceance Creek basin of Colorado. The process, recovers shale oil by heating fragmented oil shale completely underground in partially-mined and rubble columns, or retorts.

50. At December 31, 1978, the net investment of defendant OCCIDENTAL PETROLEUM CORPORATION in its shale oil process was approximately \$38,000,000, exclusive of research and development charged to income.

51. At December 31, 1978, defendant OCCIDENTAL PETROLEUM CORPORATION had approximately 660,000 gross and 594,000 net acres of prospective undeveloped geothermal properties in four western states.

Defendant OCCIDENTAL PETROLEUM CORPORATION

Chemical Operations

52. Defendant HOOKER CHEMICAL COMPANY and its subsidiaries are engaged in production and marketing industrial chemicals and plastics; metal finishing chemicals, equipment and processes; and agricultural chemicals, fertilizers and related products. Canadian Occidental Petroleum Ltd., an 82% owned subsidiary of defendant HOOKER CHEMICAL COMPANY, conducts oil and gas operations and exploratory activities in Canada and offshore United States Gulf Coast as well as certain chemical operations.

Industrial Chemicals and Plastics

53. The principal industrial chemicals and plastics products of defendant HOOKER CHEMICAL COMPANY include chlor-alkali chemicals phosphates and phosphoric acids, specialty chemicals, plastic additives and chlorinated solvents. HOOKER'S principal plastic products include polyvinyl chloride film, phenolic resins and molding compounds, polyvinyl chloride resins and polyurethanes.

8654

Metal Finishing Chemicals, Equipment and Processes

54. The metal finishing operations of defendant HOOKER CHEMICAL COMPANY include the sale of chemicals, equipment and processes used by others in the electroplating and surface treatment of metals and other materials and the sale of conversion coating processes and chemicals for modifying metal surfaces.

Agricultural Chemicals, Fertilizers and Related Products

55. The principal agricultural chemicals, fertilizers and related products of defendant HOOKER CHEMICAL COMPANY are mixed and blended fertilizers, diammonium phosphate, phosphate rock, ammonium sulphate, anhydrous ammonia, triple superphosphate, other ammoniated phosphate complex fertilizers and superphosphoric acid.

Canadian Occidental Petroleum Ltd. Oil and Gas Operations

56. That in addition to conducting various chemical operations in Canada , Canadian Occidental Petroleum Ltd. owns oil and gas interests in Canada, offshore United States Gulf Coast, and Peru.

8655

Defendant OCCIDENTAL PETROLEUM CORPORATION

Coal Operations

57. Island Creek Coal Co. is engaged in production and marketing of bituminous coal, from underground surface mines. Coal produced consists of steam coal and low, medium and high volatile metallurgical coal. It is one of the largest domestic coal producers.

58. Island Creek Coal Co. produces coal from 32 owned mines located in Kentucky, Pennsylvania, West Virginia, and Virginia. Of these mines, 13 produce steam coal, 13 produce metallurgical coal, and six produce both steam and metallurgical coal. Included in this number are several mines in Kentucky and West Virginia where mining is done by independent contractors and preparation and distribution are done by Island Creek Coal Co. Island Creek Coal Co. also supervises production at three metallurgical coal mines which are owned by joint ventures in which Island Creek Coal Co. and major steel companies are the participants.

59. Island Creek Coal Co. has under construction four underground mines, two in Kentucky, one in West Virginia, and one in Virginia. These new mines are expected to increase Island Creek Coal Co.'s productive capacity by an estimated 6,700,000 tons of coal per year by 1982.

8656

60. At December 31, 1978, Island Creek Coal Co. owned or leased bituminous coal reserves estimated at approximately 3,415,000,000 recoverable tons. Of these reserves, approximately 146,733,000 tons of assigned reserves were leased to jointly-owned companies. Island Creek Coal Co. estimates that approximately 1,535,678,000 tons of its estimated recoverable reserves have a sulphur content of 1% or less. Approximately 618,469,000 tons represent low and medium volatile coal used principally for metallurgical purposes, and approximately 549,101,000 tons represent high volatile coal of a quality which also may be used for metallurgical purposes.

61. Defendant OCCIDENTAL PETROLEUM CORPORATION is proceeding with plans for the acquisition and development of coal deposits in the western states. Defendant OCCIDENTAL PETROLEUM CORPORATION owns or leases coal rights in Colorado and Wyoming estimated by its geologists to contain approximately 457,000,000 recoverable tons.

Defendant OCCIDENTAL PETROLEUM CORPORATION

Other Operations

Real Estate

62. Occidental Land, Inc. a wholly-owned subsidiary of defendant OCCIDENTAL PETROLEUM CORPORATION has been engaged in

8657

the development and marketing of real estate located principally in California.

63. Defendant OCCIDENTAL PETROLEUM CORPORATION intends to achieve an orderly disposition of its real estate.

Research and Development

64. The combined professional research and development staff of defendant OCCIDENTAL PETROLEUM CORPORATION totals approximately 400 persons.

65. Expenses for research and development by defendant OCCIDENTAL PETROLEUM CORPORATION in 1978 were approximately \$35,000,000.

DATED at Patchogue, New York,
2 June 1980

. . . Victor John Yannacone, jr. . . .

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SERVICE by mail upon USDC/EDNY 28 May 1980 Service List

8658