Received from Cohen 8-29-83 DRAFT Barnes

8/26/83

FIVE RIVERS, DMP AND ME

I. Five Rivers Study Information

I have reviewed my files on studies performed for the Agency under the Dioxin Monitoring Program (DMP). The attached material is that portion of my files which relates to the "Five Rivers Study" (FRS). These consist of

A. "Chain of Custody Record" dated 11/5/79 from Dupuy to Gross for samples UN 105-110, indicating cracked containers for samples UN 107, 109, and 110.
B. Accompanying letter
C. Letter of 5/14/80 from Gross to Dellarco, indicating transmittal of samples UN 107-110 (together with QA/QC samples) to Harless.
D. Letter of 5/14/80 from Gross to Harless, transmitting the samples, with new codes, to Harless.
E. "Chain of Custody Record" dated 4/11(16?)/80 from Dupuy to Gross for samples UN 174-190, indicating no damages.
F. Accompanying letter, dated 4/16/83.
G. "Chain of Custody Record" dated 6/4/80 from McDaniel to Gross for samples UN 191-204
H. Accompanying letter
I. Letter of 8/5/80 from Gross to Dellarco, discussing the results of the analyses of samples UN 185-188A, 118 and 127, and 159-173.
J. Letter of 8/22/81 from Gross to Fentiman, transmitting two packets of information on the "Five Rivers Project".

II. The Dioxin Monitoring Program and me

When I joined the Agency in September, 1979, the Assistant Administrator for Pesticides and Toxic Substances asked me sit in on the meetings of the Chlorinated Dioxins Work Group (CDWG). In early 1980, I was asked to serve as chair of the CDWG. This group was charged with coordinating dioxin-related activities within the Agency.

As a part of its duties, the CDWG reviewed the results of studies conducted by the Dioxin Monitoring Program (DMP), that portion of the Agency's analytical arm that had the proven capability of detecting 2,3,7,8-TCDD in the parts per trillon range. The DMP had a strong interlab procedure which involved periodic review of data by the anlysts. I participated in at least two such review meetings.

At that time the DMP was a part of the Office of Pesticide Programs (OPP), although Agency concerns on "dioxin" were spreading to other areas; for example, emission from combustion sources. By late 1980, the

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TS-391

WASHINGTON, D.C. 20460

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JUL 29 1981

OFFICE OF
RESEARCH AND DEVELOPMENT

SUBJECT: Dioxin Monitoring Program

FROM: Andrew Jovanovich
Acting Assistant Administrator
for Research and Development (RD-672)

TO: Addressees

Effective June 1, 1981, the Office of Research and Development (ORD) assumed responsibility for the EPA's Dioxin Monitoring Program (DMP) from the Office of Pesticides and Toxic Substances (OPTS). The rationale and details of the transfer are described in the attached memorandum. Inherent in the transfer are some changes in the operation of the DMP which I want to bring to your attention.

In the past, the DMP has provided specialized analytical service support to the Agency. Analytical requirements for low level (ppt) determinations of tetrachlorodibenzo-p-dioxins (TCDD) were submitted and were fulfilled in the Agency's Chlorinated Dioxin Work Group (CDWG) and the DMP. This funneling of analyses through the CDWG served two important purposes. First, the CDWG provided a central point of information and prioritization for all ongoing proposed TCDD projects. Secondly, the unique DMP analytical capability in OPTS/ORD and at University of Nebraska and Wright State University generated TCDD analyses which were carried out with high quality.

This arrangement was particularly useful when the proven capability for carrying out low level TCDD analyses was restricted to only a few laboratories and when the need for isomer-specific analyses were preeminent. Conditions have now changed; the analytical technology to perform such analyses exists at more laboratories and there is a greater demand for screening large numbers of samples rapidly as well as specific isomer confirmations.

The ORD-managed DMP program is designed to reflect these changed circumstances. We will continue to operate the DMP as in the past for the remainder of FY- 81. Beginning in FY-82, however, the program will be

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A-20

If further information is needed, please contact Dr. Josephine Huang or Mr. Christopher Timm, of the Office of Monitoring Systems and Quality Assurance, on (FTS/202) 426-2175. Also, in order to facilitate program management, please give either Dr. Huang or Mr. Timm the name of your principal contact for the DMP as soon as possible.

Attachment

Addressees:

Assistant Administrators
Regional Administrators
Office Directors

cc: Josephine Huang (RD-680)
Christopher Timm (RD-680)
Robert Booth (EMSL-Cincinnati)
Glenn Schweitzer (EMSL-Las Vegas)
Thomas Hauser (EMSL-RTP/MD-75)
CDWG Members
Surveillance and Analysis Division Directors

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

FEB 26 1981

SUBJECT: Administration of the Dioxin Monitoring Program

FROM: James M. Conlon
Associate Deputy Assistant
Administrator for Pesticide Programs (TS-766)

TO: Don Barnes
Chairman, Chlorinated Dioxin Work Group
Office of Toxic Substances (TS-788)

As you know, we are grateful for the instrumental role you played in assisting us in the transfer of the Agency's Dioxin Monitoring Program (DMP) from the Office of Pesticide Programs (OPP) to the Office of Research and Development (ORD). Understandably, ORD personnel will require some time before they will be able to accept administration of this Program. Nevertheless, because the concern about TCDD contamination in the environment spans beyond the purview of OPP, it seems appropriate to transfer our authority to you now as an interim measure. This action will not only ensure continuation of daily DMP activities but also will facilitate the transfer of this Program to ORD. Therefore, I have asked Michael J. Dellarco, the DMP Coordinator, to turn over all responsibility for the DMP to you by March 1, 1981. Furthermore, I have asked that the key files be transferred to you and that the historical files be transferred to ORD as soon as possible.

To complete the transition of Agency activities concerning TCDD, it seems appropriate to complete all OPP projects prior to embarking on new areas of study. It is my understanding that the following OPP studies are in progress in the following laboratories:

#9 EPA Deer and Elk Study - HERL/RTP

#13 Louisiana Rice Study - Toxicant Analysis Center (TAC)

#15 Wisconsin Monkey Study - University of Nebraska

#16 Mississippi Catfish Study - TAC

#22 Technical Grade Chemical Study - EPA Beltsville

Your continued support to complete these individual projects as soon as possible would be greatly appreciated. Please contact Mike Dellarco if you have any questions regarding the transfer of the DMP.

cc: B. Winter
J. Nelson
A. Dupuy
R. Harless
M. Gross
T. Tiernan

EXHIBIT # 196

[redacted]

March 20, 1980

TO: A. Dupuy
Harless
Meselson
Berossa
Baughman
Upholt
Gross

RTP

Barnes memo; exhibit in T hearings

Following up on our meeting last month, this package brings you warm (it's now spring in Washington!)greetings and data.

Enclosed please find the following 6 sets of information dealing with first phase of the beef fat study:

I. A. "EPA Beef Fat Phase I Results"

These are data which have been abstracted from data sheets prepared by the Dioxin Monitoring Program in 1976.

The study involved collection of beef fat and liver samples from slaughtered cattle which had grazed on 2,4,5-T treated rangeland and those that had not. Collection took place between February and March, 1975 in the following states: Missouri, Kansas, Texas, and Oklahoma.

The samples were extracted and analyzed by low resolution MS. Selected samples were then analyzed by high resolution MS. The table records only the high resolution MS results.

The first column contains EPA Sample #. The first four digits are related to the time of sample collection. The middle three letters code for the state in which the sample was collected

U: Missouri
N: Kansas
X: Texas
K: Oklahoma

and indicate beef fat sample (ZZ). The last three digits were assigned seriatim as the samples were prepared for analysis. For example, 0785-UZZ-001 refers to a beef fat sample from Missouri, which was received for extraction on the 78th day of 1975 and in turn received the door prize for being first in line (001).

The second column, "RTP" show the results obtained by the EPA Northrup contractor located at Research Triangle Park. These results pre-date Bob Harless' analytical participation in the program at the EPA lab, also in Research Triangle Park, NC.

The third column, "Utah/Wright State," indicates that the samples were run at low resolution MS at University of Utah, while the high resolution MS work (the only data on this table) were produced at Wright State University.

The fourth column, cleverly labeled "Dow," indicates data obtained by the Dow Chemical Company.

The fifth and sixth columns represent data obtained at Harvard after sample preparation there using a neutral extraction technique and/or an acid-base extraction technique, respectively.

The entries in the table are recorded thusly: percent of added ^{37}Cl TCDD recovered/amount detected in ppt (detection limit). The "percent recovery of added ^{37}Cl TCDD" is a measure of the efficiency of the extraction procedure. Ideally, this number would be 100. Over 100 suggests the possibility of interferences. "ND" means "not detected." "NR means "not reported." "?" means that there is some question in interpreting the 1976 data sheet. For example, on the first page we see under the Dow column for sample #0735-UZZ-002 the entry "130/ND(6)." This means that Dow reported ^{37}Cl TCDD at a level 130% what was added and they could detect no native TCDD residues in the sample in excess of the detection limit of 6 ppt.

Further aspects of this table are explained below.

B. The 1976 Blue Data Sheets (so-called due to the color of the originals)

Here we see a serial listing of EPA samples with results from both low and high resolution GC/MS for PTSEL("RTP" on the table in A above), Utah/Wright State, and Dow. Note that some samples for which there is no entry in the sequential listing of the 120 samples appear on the last two pages of the data sheets and are labelled "(Repetitive Samples)." For example, there are only blanks on page 1 for the EPA sample number 0735-UZZ-003. On p. 4, however, we find data on two separate extractions of this sample. These have been included in the table in "A" above as a regular entry followed by "1975 repeat."

Next comes...

C. The 1976 Yellow Data Sheets (so-called due to the color of the originals)

First, we find two sheets in which data from the controls (cattle grazed on range not treated with 2,4,5-T), standards (blanks), and "spiked samples" are grouped together.

Next, come three sheets recording data on re-extractions and re-analyses that were done in 1976. These have been given simplified codes. For example, the first entry shows us that fat from good-old 0785-UZZ-006 (that was the one with the big brown eyes) was re-extracted in 1976 and sent out to Dow and Wright State under the simplified designated "EPA-3." It also shows us that a 5g sample was used this time, in keeping with the 1975 extractions. Note that this information is recorded on the table in A above, directly under "0785-UZZ-006" and is referred to as "EPA-3, 1976 repeat, 5g."

Lastly, there is one sheet on which the data from Harvard are recorded. Note in this case that different determinations have been made depending upon the ion ratio selected for analysis, e.g., 322/328 vs. 322/329. Also indicated here is the ratio of the 320 response to the 322 response. Ideally, this should be .78, representing the anticipated naturally occurring isotopic mixtures of ^{37}Cl to ^{35}Cl.

Finally, what all you beef lovers have been waiting for...

D. Animal Histories

Here, we find samples listed by state of origin.

The data from the second phase of the study, in which samples were collected after the cattle had spent a summer on the range, are being tabulated and will be sent along when available.

II. Report from Collaborators Meeting of June 15, 1976. This is an evaluation of the Beef Fat Phase I Study by the DMP Manager at the time.

III. Report of the Panel Reviewingg Investigation of TCDD in Human Milk . At out meeting in February the data sheets for the milk study were distributed. This report represents an evaluation of those data.

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Our 2-day session last month was both enjoyable and profitable. I trust that we will maintain our high level of interest and creativity in the months ahead.

Sincerely,

Donald G. Barnes
Health Effects & Science Policy
Office of Assistant Administrator
for Pesticides & Toxic Substances

Enclosures

83

EPA BEEF FAT PHASE I RESULTS

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
0785-UZZ-001	Not shipped				
0785-UZZ-002	---	---	130/ND(6)		
0785-UZZ-003	49/ND(4)	---	---		
1975 repeat	74/ND(4)	---	---		
0785-UZZ-004	Not shipped				
0785-UZZ-005	79/ND(5)	---	66/10(9)		
0785-UZZ-006	29/73(20)	---	89/ND(13)		
EPA-3, 1976 repeat, 5g	---	74/ND(20)	76/21(9)	77/23(5), 25(25)	59/26(26), 76/21(12)
0785-UZZ-007	---	---	91/ND(24)		
EPA-1, 1976 repeat, 5g	---	70/ND(5)	84/ND(10)		
0785-UZZ-008	No high resolution MS				
0785-UZZ-009	Not shipped				
0785-UZZ-010	64/16(6)	---	73/45(13)		
1975 repeat	68/39(8)	---	93/66(13)	77/75(3)	
1975 repeat	64/12(3)	---	101/54(5)		
1975 repeat	195/58(15)	---	86/48(5)		
1975 repeat	61/ND(4)	---	88/63(13)		

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
EPA-26, 1976 repeat, 5g	---	80/ND(60)	93/89(7)	7 74/59(9), 70(8)	
0785-UZZ-011	121/ND(3)	---	90/ND(12)		
1975 repeat	120/ND(4)	---	92/18(7)		
0785-UZZ-012	---	7/ND(50))	34/ND(100)		
0785-UZZ-013	118/ND(3)	---	91/ND(8)		
1975 repeat	53/ND(2)	---	78/ND(16)		
1975 repeat	63/ND(5)	---	---		
0785-UZZ-014	---	---	74/ND(21)		
0785-UZZ-015	88/ND(3)	---	101/20(8)		
EPA-24, 1976 repeat 5g	---	173/ND(20)	93/14(5)		
0785-UZZ-016	88/ND(4)	---	92/ND(13)		
EPA-4, 1976 repeat, 5g	---	104/14(10)	78/9(9)		
0785-UZZ-017	83/19(12)	---	104/20(8)?		
EPA-27, 1976 repeat, 5g	---	80/24(20)	94/29(10)		
1065-NZZ-018	---	---	90/8(8)		
1975 repeat	103/ND(62)	---	95/ND(6)		

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
1065-NZZ-019	70/ND(6)	---	99/ND(12)		
1065-NZZ-020	81/ND(2)	---	---		
1065-NZZ-021	Not shipped				
1135-NZZ-022	69/ND(5)	---	76/ND(3) control		
1135-NZZ-023	Not shipped				
1135-NZZ-024	Not shipped				
1065-NZZ-025	94/75(50)	---	---		
1065-NZZ-026	50/ND(12)	---	86/ND(6)		
1065-NZZ-027	115/3(3)	112/61(10)	114/6(6) control		
1975 repeat	---	112/ND(10)	142/ND(8)		
1975 repeat	78/ND(4)	131/ND(20)	113/ND(15)		
1975 repeat	102/ND(1)	119/ND(20)	139/ND(8)		
1975 repeat	81/19(14)	113/ND(20)	121/ND(6)		
EPA-10, 1976 repeat, 5g	---	781,96,92/ND(8)	83/ND(8) control		
EPA-11, 1976 repeat, 5g	---	100/ND(25)	70/31(10) control +30 ppt		
EPA-12, 1976.repeat, 5g	---	47/32(15)	77/22(10) control +15 ppt		
1065-NZZ-028	---	---	105/ND(23) control		
1065-NZZ-029	---	95/ND(10)	---		
1065-NZZ-030	---	---	63/10(10)		

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
EPA-23, 1976 repeat 5g	---	154/12(10)	96/ND(9)		
1205-XZZ-031	84/ND(6)	----	81/ND(8) control		
EPA-16, 1976 repeat 8g	---	92/ND(5)	80/ND(3) control		
EPA-17, 1976 repeat 8g	---	NR/22(5)	100/24(4) control +25		
EPA-18, 1976 repeat 8g	---	155/46(15)	92/29(3) control +50		
1205-XZZ-032	No high resolution MS				
1205-XZZ-033	No high resolution MS				
1205-XZZ-034	61/ND(4)	89/ND(10)	---		
1205-XZZ-035	---	---	75/ND(7)		
1225-KZZ-036	---	---	155/ND(6)		
1225-KZZ-037	67/ND(2)	---	---		
1225-KZZ-038	60/ND(10)	---	72/ND(17)		
1225-KZZ-039	No high resolution MS				
1225-KZZ-040	---	---	76/ND(10)		
1225-KZZ-041	No high resolution MS				
1225-KZZ-042	No high resolution MS				
EPA-7, 1976 repeat 5g	---	95/ND(5)	73/ND(8) control		
EPA-8, 1976 repeat 5g	---	104/22(10)	67/10(10) control +10		
EPA-9, 1976 repeat 5g	---	49/28/(8)	68/7(7) control +70		

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
1225-KZZ-043	---	33/ND(40)	165/ND(20)		
1975 repeat	----	82/ND(5)	---		
1225-KZZ-044	No high resolution MS				
1225-KZZ-045	---	---	55/ND(13)	control	
1225-KZZ-046	No high resolution MS				
1225-KZZ-047	---	---	94/9(5)		
1975 repeat	---	118/22(20)	---		
EPA-29, 1976 repeat 2.5g	---	---	82/ND(27)		
1225-KZZ-048	No high resolution MS				
1225-KZZ-049	48/ND(2)	---	88/ND(13)		
1135-NZZ-050	Not shipped				
1135-NZZ-051	Not shipped				
1135-NZZ-052	Not shipped				
1135-NZZ-053	Not shipped				
1135-NZZ-054	Not shipped				
1135-NZZ-055	Not shipped				
1065-NZZ-056	Not shipped				
1065-NZZ-057	No high resolution MS				
1975 repeat	---	101/ND(10)	---		
1065-NZZ-058	Not shipped				
1065-NZZ-059	---	---	110/ND(9)		

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
EPA-6, 1976 repeat, 5g	---	61/ND(10)	69/ND(11)	86/7(2),	8(6)
1065-NZZ-060	---	---	50/ND(14)		
EPA-22, 1976 repeat 5g	---	63/ND(10)	88/ND(16)	89/6(2)	
1065-NZZ-061	---	---	105/ND(7)		
EPA-25, 1976 repeat, 5g	---	55/ND(10)	95/7(6)	77/5(1),	5(2)
1065-NZZ-062	---	---	114/ND(9) control		
1065-NZZ-063	---	---	119/ND(5) control		
1975 repeat	---	---	92/ND(14)		
1975 repeat	---	---	94/20(12)		
1975 repeat	---	---	110/ND(8)		
1975 repeat	---	---	100,108/ND(10)		
1064-NZZ-064	---	---	53/ND(7) control		
1975 repeat	---	112/24(20)	---		
1065-NZZ-065	Not shipped				
1065-NZZ-066	Not shipped				
1065-NZZ-067	No high resolution MS				
1065-NZZ-068	No high resolution MS				

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
1975 repeat	---	121/54(25	---		
1065-NZZ-069	---	---	124/ND(9)		
1975 repeat	---	92/ND(10)	---		
1065-NZZ-070	---	---	110/ND(6)		
1065-NZZ-071	Not shipped				
1205-XZZ-072	---	---	139/ND(9)		
1975 repeat	---	118/ND(20)	---		
205-XZZ-073	---	---	104/ND(6)		
1205-XZZ-074	No high resolution MS				
1205-XZZ-075	---	---	99/ND(6)		
1205-XZZ-076	No high resolution MS				
1205-XZZ-077	No high resolution MS				
1205-XZZ-078	108/ND(6)	---	83/ND(10)		
1205-XZZ-079	No high resolution MS				
1205-XZZ-080	---	---	116/ND(4)		
1205-XZZ-081	No high resolution MS				
1205-XZZ-082	86/33(30)	---	112/ND(7)		
205-XZZ-083	No high resolution MS				
1205-XZZ-084	---	---	105/ND(7)		

EPA Sample #	MTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
1205-XZZ-085	No high resolution MS				
1205-XZZ-086	---	69/ND(10)	118/ND(6) control		
EPA-28, 1976 repeat	---	---	94/ND(1)		
1205-XZZ-087	---	---	85/ND(8)		
1205-XZZ-088	---	---	122/ND(6)		
1205-XZZ-089	No high resolution MS				
1225-KZZ-090	---	---	103/ND(9)		
1975 repeat	---	95/ND(10)	---		
1225-KZZ-091	No high resolution MS				
1975 repeat	---	184/ND(10)	---		
1225-KZZ-092	No high resolution MS	---	---		
1975 repeat	---	92/ND(20)	---		
1225-KZZ-093	---	---	4/ND(3)		
1975 repeat	No high resolution MS				
1225-KZZ-094	---	---	120/ND(5) control		
EPA-5, 1976 repeat 5g	---	137/ND(10)	87/ND(9)		
1225-KZZ-095	101/5(3) or 24(16)	---	90/ND(7)		
EPA-2, 1976 repeat 5g	---	97/18(8)	60/ND(8)	58/4(2), 67/3(2)	

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
1225-KZZ-096	Not shipped				
1225-KZZ-097	No high resolution MS				
1225-KZZ-098	65/4(2) or 21(9)	---	87/ND(13)	67/11(11),12(8)	
1225-KZZ-099	---	---	80/ND(6)		
1225-KZZ-100	---	78/31(10)	93/ND(5)		
EPA-20, 1976 repeat, 5g	---	133/11(10)	94/ND(3)		
1225-KZZ-101	---	---	81/22(14)		
PA-30, 1976 repeat, 5g	---	---	110/ND(80)		
1225-KZZ-102	---	25/ND(20)	103/30(18)		
EPA-31, 1976 repeat, 4g	---	---	---		
1225-KZZ-103	No entry				
1225-KZZ-104	No entry				
1135-NZZ-105	---	---	NR/ND(10) control		
1975 repeat	---	---	121/ND(8)		
1135-NZZ-106	---	---	10/ND(8) control		
1135-NZZ-107	58/48(29)	---	74/90(13) control +100		
1135-NZZ-108	---	---	84/34(14) control +30		
1135-NZZ-109	86/29(22)	---	135/16(8) control +25		
2125-ISR-110	110/ND(3)	---	---		

EPA Sample #	RTP	Utah/Wright State	Dow	Harvard Neutral	Harvard Acid Base
1135-NZZ-111	---	---	101/ND(15)	control	
1975 repeat	---	95/ND(10)	---		
1135-NZZ-112	58/22(8)	110/75(10	103/41(6)	control +80	
2455-ISR-113	50/22(16)	---	132/34(5)	std +20	
1135-NZZ-114	---	---	145/ND(9)	control	
1975 repeat	---	95/ND(4)	---		
1135-NZZ-115	74/60(-)?	86/45(10)	144/26(9)	control+40	
2585-ISR-116	---	---	141/ND(6)	Std	
2585-ISR-117	76/29(13)	120/72(2)	130/37(6)	Std +40	
1135-NZZ-118	---	---	85/ND(4)	control	
1135-NZZ-119	---	82/21(10)	126/15(8)	control +20	
2655-ISR-120	---	---	158/20(6)	Std +20 ppt	

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

7 JUL 1976

SUBJECT: Errata: 2,4,5-T Dioxins
Analytical Collaborators Meeting
June 25, 1976 - MEMORANDUM

FROM: Ralph T. Ross, Ph.D
Dioxin Project Manager
Office of Special Pesticide Reviews

TO: See Distribution

There is a typographical error in a memorandum dated June 25, 1976, which summarized the analytical collaborators meeting in Washington, DC, on June 15, 1976. The memorandum was sent to all who attended this meeting. Part I of the conclusions given by the analytical collaborators should read as follows:

1. Of the beef fat samples (85) analyzed, one shows a positive TCDD level at 60 ppt; two samples...

The memorandum stated 90 ppt, which is incorrect.

I regret this oversight in proofing. I hope it has not caused any inconvenience.

Ralph Ross

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 25 1976

SUBJECT: 2,4,5-T/Dioxins: Analytical Collaborators Meeting June 15, 1976.

FROM: Dioxin Project Manager
Office of Pesticide Programs

TO: See Distribution

The analytical collaborators met on June 16, 1976, at the U.S. Environmental Protection Agency, Washington, D. C., in order to discuss the results of the analysis of the 85 beef fat samples and 43 liver samples collected in phase I (Between February and March 1975) of the short term beef fat monitoring program. These data represent the final results from Dow Chemical USA, Wright State University and Harvard University (See attachment for list of other attendees). The data from EPA's Research Triangle Park Laboratory and the University of Utah were not completed at the time of this meeting. Therefore, no representatives from either of these laboratories were present. Several members of the analytical group have been subpoenaed and/or asked to prepare statements for 2,4,5-T/dioxin litigation in the state of Oregon.

This meeting was called in order that the data from phase I be interpreted, and the statements made at these proceedings accurately represent the data from the dioxin monitoring program. Another meeting will be held as soon as the other two laboratories mentioned above submit their data.

The conclusions given by the analytical collaborators were:

1. Of the beef fat samples (85) analyzed, one shows a positive TCDD level at 90 ppt; two samples appear to have TCDD levels at 20 ppt; five may have TCDD levels which range from 5-10 ppt. While several laboratories detected levels (5-10 ppt) in this range, the values reported were very near the sample limits of detection. There exists a great deal of uncertainty of the analytical procedure below 10 ppt.

2. The analytical method is not valid below 10 ppt.

3. An introduction of a neutral extraction technique shows promise of the capability of detecting levels below 10 ppt. This was demonstrated by comparative data at the lower parts per trillion range (5-10 ppt). However, this method has been demonstrated by only one laboratory at this time and has not been validated below 10 ppt by another competent analytical facility.

4. The fat samples analyzed were peritoneal fat and kidney fat taken from cattle which had grazed on rangelands of known treatment with 2,4,5-T. Controls were the same sample type taken from cattle from non-treated areas within the same state.

5. Of the liver samples (43) analyzed, only one sample suggests any TCDD residue, but the residue observed was too close to the sensitivity of the sample detection limits for quantitation. The fat sample analyzed from the same animal showed no TCDD residue. Three liver samples (for which fat samples were analyzed and showed positive data) showed no TCDD residues.

6. None of the collaborators reported TCDD in samples of beef fat taken from cattle in non-treated areas (at the sensitivity of the analytical method). Three of the laboratories receiving liver samples from cattle in non-treated areas observed no TCDD in the samples.

In his remarks to the meeting, Mr. Edwin Johnson, DAA for Pesticides, indicated the Agency will prepare an inhouse statement on what it considers the significance to be, if any, of the levels of TCDD found in the beef fat monitoring program. This statement will be distributed to the collaborators and to the Science Advisory Board for comment and suggestions prior to its release. The statement will report the status of all aspects of the Agency's dioxin program to date.

Mr. Johnson stated that in future dioxin meetings, all relevant data would be distributed to the colloborators in advance of the meeting to permit their independent evaluation prior to the discussions at the meeting. He explained that the procedures for setting up this particular meeting were different because of the urgency to discuss the data prior to the beginning of the Oregon 2,4,5-T litigation action.

All data for which the Agency pays will be made available to the public. Dow has been asked to notify the Agency if they wish to exert any claims of trade secret or confidentiality for their data. If so, he indicated EPA would evaluate these claims before a decision to release.

All collaborators' meetings will be open to observation by the public and press, but it is to be understood the purposes of the meetings are not changed.

Ralph T. Ross

Attachment

Distribution

Ronald Dreer
Attendees

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In Re:	
The Dow Chemical Company, et al.	FIFRA Docket Nos. 415, et al.

DIRECT TESTIMONY OF IRENE DURBIN

Judith E. Kahle
Stevens Van Strum

Northwest Coalition for
Alternatives to Pesticides
454 Willamette
Eugene, Oregon 97401

NCAP Exhibit ID-1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In Re:	
The Dow Chemical Company, et al.	FIFRA Docket Nos. 415, et al.

DIRECT TESTIMONY OF IRENE DURBIN

My name is Irene Rose Durbin. I am 32 years old and a housewife. I presently live at 415 Hawthorne, Dallas, Oregon. I have lived at this address since May 15, 1979. Previously, my husband, our three children, and myself lived in Five Rivers Valley for seven years. The period of our residence in Five Rivers was January 1972 to May 1979.

The U.S. Forest Service, Alsea District, sprayed every year during our residence in Five Rivers. Our immediate area was subject to both aerial and roadside spraying.

Five Rivers Valley is located in the coastal range, midway between Alsea and Waldport in Lincoln and Lane Counties. Exhibit ID-2. The valley floor is quite narrow, varying from 500 feet to one-half mile wide. The sides of the valley are steep and heavily forested. A river, Five Rivers, runs along the valley floor. However, to the best of my knowledge, no one living in the valley draws water directly from there. Rather, all of our water is drawn from a number of smaller creeks which flow down the valley walls and eventually empty into the river. The flow rate of these creeks may vary widely, due to seasonal differences in rainfall, runoff and stream width.

One such creek, Summers Creek, was the sole source of my family's water supply during our seven years in Five Rivers. During the spring of 1978, a small road running alongside the creek was heavily sprayed and warning signs were posted. Immediately after this particular spraying, my family noticed a peculiar taste and odor to the water. Two other nearby families, who also drew their water from Summers

Creek, also noticed these changes. The taste and smell persisted for several weeks after spraying. At no times were we ever notified about the impending spraying or cautioned not to drink the water.

In the summer of 1978, we were visited by Dr. Savage from Colorado State University, EPA Investigation team. Dr. Savage interviewed us and took water and sediment samples from the creek. These samples were taken from the point at which we draw our water.

We heard nothing about the results of these tests until the following spring. In March of 1979, I received a letter from the Lane County Health Department. The letter stated that Dr. Savage had notified the county that TCDD had been found in the creek sediment at the levels of between 10 and 20 parts-per-trillion. Exhibits ID-3 and ID-4.

The morning after we received this letter, Dr. Savage telephoned me from Colorado. He stated that he did not feel the water was safe to drink, and that he himself would not drink the water. None of the other families which drew their water from Summers Creek were informed of the EPA-CSU results. I called the Lane County Health Department, and requested that the others be notified. The Department sent them a copy of my letter; but the letter said nothing about the danger of drinking the water, and no explanation or warning was attached.

As I noted above, the Summers Creek roadside spraying incident was only one of many opportunities for us to be exposed to herbicides. The valley was sprayed repeatedly during our seven years in the area. Given the steepness of the valley and the abundance of small and seasonal feeder creeks, it seems almost impossible to prevent some form of contamination of our water supply.

As an example of the amount of spraying done in that area, spray data for the area generally within a three mile radius of our home was acquired, Exhibit ID-5, for the years 1974 through 1976. These were plotted on aerial maps. Exhibit ID-6. Then they were transferred onto an Alsea District Map. Exhibit ID-7. This spray data

includes both roadside and aerial applications. The person doing this research was unable to find roadside spray information for county roads from Lane County, as records were not kept. Exhibit ID-8.

Other routes of exposure might be possible. Our family received fresh milk from a farm several miles away. We occasionally ate venison and other game of the forest. For awhile we had a garden for which we drew water from Summers Creek. The heaviest applications of herbicide occur during the spring. In the spring of 1973 I had a miscarriage. I was 2 or 3 months pregnant at the time and did not go to the doctor. In the spring of 1974, I had another miscarriage, also after 2 or 3 months of pregnancy. That spring I became pregnant again. That pregnancy was placenta previa. (Definition: placenta is below the baby, collapsed on the cervix, rather than above the baby.) I was taken to the Universtiy of Oregon Medical Center with severe hemorrhaging where I delivered my youngest son by caesarian section. Exhibit ID-9. He was born five weeks prematurely with hyaline membrane disease. (Definition: the hyaline membrane is not developed and does not allow the lungs to expand.) His lungs collapsed and an operation was performed to insert a tube into his chest to draw the air out. His liver was under-developed, and he required a complete blood transfusion. My son was in the hospital almost a month. Exhibit ID-10. I was in the hospital for over two weeks.

After our son came home, he suffered from numerous respiratory problems over the next two years. He contracted pneumonia 3 or 4 times. During that period each of my two older children contracted pneumonia once. Aside from respiratory problems, all of my children have suffered repeated nose bleeds. Exhibits ID-11 and ID-12. Before this time, my children had never had respiratory problems or nosebleeds. All of us suffered recurring sinus attacks, headaches and eczema. My husband particularly suffered from chronic diarrhea, which had never happened before.

We moved from Five Rivers to Dallas, Oregon, in May of 1979. Since the move, we have noticed a reduction of these symptoms. The children have suffered no

nose bleeds. The severe sinus attacks, headaches and eczema have ceased. My husband's diarrhea has amost disappeared.

My husband and I feel that these symptoms are more than just chance occurances. We are not, by nature, inclined to protest. But we are concerned about the welfare of our children, and about the other families who still live in the valley. We know what we and they have suffered, and the difficulties in expressing our concern to those outside--especially to those who would force us to conclusively demonstrate that our symptoms resulted from the spraying. We do not have the capability of doing that. We can only express our sincere belief that people are being hurt--and hurt seriously—by the application of 2,4,5-T and other herbicides. We feel that this unnecessary suffering should be stopped.

lane county

April 16, 1979

Ms. Irene Durbin
Route 2, Box 265
Tidewater, Oregon

Re: Soil sediment from 5 Rivers Road
T-155 RNW Sec. 5 - S.W. Corner

Dear Ms. Durkin:

Dr. Savage of Colorado State University called me on April 16, 1979 to inform me that the soil sediment samples tested from your property showed 10-20 parts per trillion of the chemical TCDD. The water samples were negative for TCDD. Since TCDD binds very tightly to the soil, Dr. Savage could not say whether this quantity of TCDD could effect the quality of water. The health implications of this finding are unknown. No one knows whether there is a clear and present danger from this finding in the soil. If you have any questions, I suggest you discuss these findings with your family doctor.

Mr. John Stoner (687-4051), Director of Environmental Health for Lane County can assist you with general questions concerning your water supply.

I am forwarding this information so that you are kept appraised of the results of the tests taken.

Cordially,

David L. White, M.D., M.P.H.
Health Officer

DLW:jn

cc: John Stoner
Janet Chappell

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HEALTH DIVISION: DEPARTMENT OF COMMUNITY HEALTH & SOCIAL SERVICES
399 EAST 10TH AVENUE
EUGENE, OREGON 97401
ROBERT E. WHITTAKER
PHONE (503) 687-40

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c/o Melyce Connelly
Route 2 Box 253
Tidewater, Oregon 97390

July 17, 1979

Dear Sirs:

We are residents of Five Rivers, a community of about 50 families in the Alsea drainage of the coast range in western Oregon.

This spring, 1979, the U.S. Forest Service sprayed 742 acres of forest in and around our valley with 2,4-D and Tordon 101 (a mixture of 2,4-D and picloram). The 2,4-D was most widely and heavily used, applied at the rate of 10 gallons per acre on 612 acres; the 2,4-D and picloram mixture was applied at the rate of 20 gallons per acre on 130 acres. The spraying was done between May 12 and June 5. Between May 25 and July 2, three of the only five women known to be pregnant in the valley had spontaneous abortions. All three women were treated by physicians and were in the first trimester of pregnancy. The two surviving pregnancies were in later stages of gestation. The first miscarriage occurred on May 25th, the second on May 27th, and the third of July 2. All three women live within one mile of heavily sprayed units.

Since May 12, the health of the population of our valley has undergone profound and disturbing changes. Chief among them has been the incidence of respiratory illness and intestinal disorders in almost every household. Several women experienced uterine hemorrhaging not associated with pregnancy. Children and adults suffered bleeding gums, bloody noses, and a number of women suffered from bacterial vaginal infections. Ten children and three adults have experienced an undiagnosed illness characterized chiefly by high fever; two children and two adults had undiagnosed rashes that doctors were unable to explain, and on July 9 occurred one near-fatal case of meningococcal menengitis in a two-year-old who is still hospitalized.

This is by no means an exhaustive survey of our community's health, only a summary of health problems in the families of our acquaintance. In a population of our size, such an incidence of illness in what was previously a healthy population, occurring within so short a time, is most alarming, especially to the people who live here. It is difficult, even with proof, to attribute it solely to coincidence, and the only stress the population has experienced as a whole has been exposure to the herbicides sprayed.

We urgently request that these herbicides cease to be sprayed until their safety has been unequivocally established, and that the miscarriages and the health of the population be studied immediately. A number of families are severely in debt as a result of the deterioration of their health since the spraying, and we can ill afford the problems that recur each time these herbicides are applied. Time is of the essence. The price of our present national forest policy is our children's lives.

Karen M. Hibdon Melyce Connelly
Shirley J. Berberger Jane Sutton
Carolyn Van Steenwyk

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re: Emergency Suspension Orders for 2,4,5-T and Silvex	)	FIFRA Docket Nos. 409, 410

THE DOW CHEMICAL COMPANY'S COMMENTS ON THE ADMINISTRATOR'S EMERGENCY SUSPENSION ORDERS

Edward W. Warren
L. Mark Wine
John S. Hahn

KIRKLAND & ELLIS
1776 K Street, N.W.
Washington, D.C. 20006
(202) 857-5000

Of Counsel:

Michael J. Traynor
Dow Chemical U.S.A.
2030 Dow Center
Midland, Michigan

March 26, 1979

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MAR 26

Dow assumes that they will present these impacts to the Panel at the appropriate time.

Finally, it is the users of 2,4,5-T and silvex who bear the greatest economic impact of the emergency suspensions. In these times of escalating inflation and increasing concern about unnecessary government regulation, the users of 2,4,5-T and silvex and ultimately the consumers will bear the heaviest burdens.

II. SUMMARY OF POSITION

A. Alsea II*/

The Administrator's emergency suspension orders are essentially based on the results of the study entitled Report of Assessment of a Field Investigation of Six-Year Spontaneous Abortion Rates in Three Oregon Areas in Relation to Forest 2,4,5-T Spray Practices (hereinafter "Alsea II" or "Report") (ARI R-49). As the Panel has noted,**/ the Alsea II Report is the centerpiece of the EPA suspension decision, and thus will be the centerpiece of the suspension hearings and the deliberations of this Panel. As is discussed below, the

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*/ This discussion is based on Dow's initial analysis of Alsea II conducted in the days immediately following the emergency suspensions. Since that time we have obtained some of the raw data and have conducted other inquiries into the data and other facts. Our investigations are continuing and are likely to result in additional points and supporting data.

**/ First Prehearing Conference, Tr. 67-68.

index for the Control area did not result from such herbicide application. This provides a graphic illustration of a point the Report concedes -- correlation does not necessarily mean causation.

5. There Is No Evidence That the Study Area Women Were Exposed to 2,4,5-T or Silvex.

In combination with these serious analytical flaws, the study is deficient because there are no data establishing any pesticide exposure levels for the women who experienced miscarriages; in fact, there are no data to show that exposure occurred at all. Actual patterns of use in the Alsea basin could not reasonably be expected to produce more than negligible exposure to 2,4,5-T and silvex, and the absence of any symptoms of chloracne, a condition related to dioxin poisioning, supports the view that exposure at toxic levels did not occur.*/

The Report and the Administrator's decision appears to assume, sub silentio, that the entire population of the Alsea basin was "exposed" to these herbicides, but it does not in the slightest attempt to quantify the exposure or even to

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*/ At the First Prehearing Conference, the Panel asked if Dow could provide information concerning the dioxin content of the 2,4,5-T that might have been sprayed in the Alsea area. Tr. 83-84. Upon inquiry, Dow has informed us that it cannot identify the 2,4,5-T lots actually used in the Alsea basin and that, in any event, the material used may have been manufactured by others. Nevertheless, Dow plans to present testimony at the hearing detailing the average TCDD content of its product in past years, as well as a brief explanation of the manufacturing process and control of TCDD contamination.

provide factual basis for such an assumption. This unwarranted assumption renders the Alsea II conclusion relating herbicide spraying to miscarriage suspect alone, even in the absence of the analytical errors described above.

EPA apparently recognized this serious gap in the Alsea II data in its own analysis of the study. Rather than conceding the inadequacy of the Report, however, the Agency attempted to bridge the data gap by stating that, because the Study area women experienced miscarriages, it is "reasonable to assume" that they were exposed to herbicides. This facile assumption cannot cure the lack of data to support the Alsea II conclusions.

Moreover, EPA had considerable exposure data in the RPAR record which it chose to ignore in favor of a specious hypothesis primarily based on the statistical manipulations described above, with the June peak as its cornerstone. Even if the June peak was not remarkably similar to the peak found in the Florida and Michigan data, the exposure data and EPA's own RPAR documents establish that it would be virtually impossible for the women in the Study area to have been exposed to sufficient 2,4,5-T to cause any adverse effects.

Significantly, in the original RPAR document EPA adopted a 20 miligram per kilogram of body weight level as the no-effect dose for fetotoxic and teratogenic effects. 43 Fed. Reg. 17130, 17137, 17138, 17139, 17140 (API R-1). But studies submitted to the RPAR record demonstrate that backpack spray applicators, who work

BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY
OF THE UNITED STATES OF AMERICA

OCT 26 1979

In Re:	
The Dow Chemical Company, et al.	Docket Nos. 415, et al.

REQUEST FOR PRODUCTION
OF DOCUMENTS AND RECORDS

Edward W. Warren
L. Mark Wine
Richard L. McConnell

KIRKLAND & ELLIS
1776 K Street, N.W.
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(202) 857-500

Of Counsel:

Rudolf H. Schroeter

Mark Tucker
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LA FOLLETTE, JOHNSON, SCHROETER,
& DE HAAS
320 North Vermont Avenue
Los Angeles, California 90004

Counsel for The Dow Chemical
Company

October 23, 1979

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Van Miller, et. al., "Increased Incidence of Neoplasms in Rats Exposed to Low Levels of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin," Chemosphere 6(9) at 537-44 (1977). The slides may be produced at Dr. Allen's laboratory or at any other reasonable location.

h) All correspondence and memoranda concerning 2,4,5-T, silvex, or TCDD.

i) A complete and current curriculum vitae for Dr. Allen, including educational and academic history, professional employment history, and a complete list of publications.

2. ALSEA II

All documents and records not previously produced for Dow related to any aspect of the investigation by EPA and its contractors of a possible correlation between herbicide application and spontaneous abortion in Oregon, including but not limited to all study protocols, all raw data and data compilations, all documents and records concerning data sources and the methods by which data were collected or compiled, all computations and analyses of data, and all reviews, comments, or criticism concerning any aspect of the investigation. This request includes all documents and records related to any aspect of such investigation, produced before, on, or after March 1, 1979.

Second, Deputy Assistant Administrator Edwin Johnson announced at the hearings before the Scientific Advisory Panel that EPA is collecting new data for the now-discredited Alsea II epidemiologic study on which EPA based the March 1 suspension orders.[4/] While the Agency presented no evidence to the Panel concerning Alsea II, it indicated its intention to present the new data during the cancellation hearings.[5/] These new data are only the latest in a series of Agency efforts to revitalize Alsea II by supplementing or replacing data. In each instance, careful and time consuming review has demonstrated that the data do not support the claimed results. Indeed, members of the Scientific Advisory Panel concluded at the hearings that Alsea II "can't be used in a positive or negative sense," and "just isn't going to help us a great deal."[6/] Because of the many deficiencies and errors identified in the Agency's previous attempts at data collection and interpretation for Alsea II, it is essential that Dow depose the person or persons most knowledgeable about EPA's current Alsea II efforts, in order to avoid surprise at the hearings.

OGC's claim that Dow's deposition request places an "undue burden on the [Agency's] limited resources" fails to

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4/ Id. at 13-15.

5/ Id. at 12, 14.

6/ Id. at 206-207.

While the matters to be discovered from each deponent are set forth in more detail in Appendix I, a few examples illustrate the importance of the evidence sought in these depositions. Dr. Ralph Dougherty and Dr. Matthew Meselson are listed to testify for OGC concerning complex analytic techniques for detecting trace residues of TCDD. It is essential that they be questioned concerning sample handling and analytic methodology, at a location where laboratory records and detailed underlying data are available. Similarly, Dr. James Allen must be examined at his laboratory concerning preliminary observations from his new study in rhesus monkeys at a dose level of 25 ppt TCDD, and from his ongoing study at 50 ppt TCDD. Dr. Allen's deposition will also provide an opportunity to examine tissue slides and underlying data from previous studies, and to question Dr. Allen regarding his interpretations of these data.

The discovery depositions of the person or persons most knowledgeable concerning the Agency's latest effort to rehabilitate the Alsea II study are especially important to a full and fair development of the facts. Portions of the original February 28 Alsea II data already have been supplemented, revised, or replaced by EPA on at least three occasions, including during the final hours of a four-day trial in District Court in April, and during the May suspension proceedings. In each case, careful evaluation of the revised Alsea II data and analysis has demonstrated that the claimed

results are not supported by the evidence. The evaluation of new data, including checking of data sources such as state health statistics and records, is time consuming, and cannot be completed during the hearings. Moreover, in the past Dow experts have been unable to verify the accuracy of portions of the data supplied by EPA, since it has been impossible to determine the methods by which the data were generated. The depositions of the person or persons responsible for developing these data are necessary to enable Dow experts to evaluate EPA's data collection and, if necessary, to generate the appropriate data independently.

The unique value of pretrial discovery in complex scientific litigation has been recognized by the courts, one court remarking that "the necessities of such a case transcend the usual limitations which may otherwise be imposed on discovery proceedings." U.S. v. Nysco Laboratories, Inc., 26 F.R.D. 159, 162 (E.D.N.Y. 1960). Liberal discovery of experts under Rule 26(b)(4) is "intended to make the task of the trier of fact more manageable by means of an orderly presentation of complex issues of fact." Weiss v. Chrysler Motors Corp., 515 F.2d 449, 457 (2d Cir. 1975). Thus in modern practice discovery depositions of experts have been granted liberally when needed to prepare for cross-examination and the orderly presentation of the issues.[11/]

11/ Herbst v. International Telephone & Telegraph Corp.,

(Footnote 11 continued on next page.)

Following the discovery depositions sought here, Dow's experts will evaluate carefully the information produced in the depositions. With the assistance of these experts, Dow's legal counsel will be able to develop efficient and probing cross-examination of EPA's witnesses. The full development of such cross-examination cannot be undertaken during the course of the hearings, even if witness statements are provided ten days or two weeks in advance of the witness' appearance. More important, much of the underlying data and analysis needed for meaningful cross-examination will not be included in written witness statements, and will be wholly unavailable absent the depositions sought here. As the court observed in F.T.C. v. Gibson Products of San Antonio, Inc., 569 F.2d 900, 907 (5th Cir. 1978), in affirming an order enforcing deposition subpoenas issued by an administrative agency, "The right to cross-examination . . . embodied by the Administrative Procedure Act, 5 U.S.C.A. § 556(d), would be a hollow privilege without prior discovery depositions."

Similarly, the information discovered in these depositions will assist Dow in the preparation of its direct case, and is essential to a comprehensive and coherent presentation

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(Footnote 11 continued from previous page.)

65 F.R.D. 528, 530-31 (D. Conn. 1975); Horgan v. A.T.O., Inc., 23 F.R. Serv. 2d 179, 181 (D. Mass. 1977). See Quadrini v. Sikorsky Aircraft Division, United Aircraft Corp., 74 F.R.D. 594 (D. Conn. 1977); In Re IBM Peripheral EDP Devices, 77 F.R.D. 39, 41 (N.D. Cal. 1977).

2. ENVIRONMENTAL PROTECTION AGENCY — November 29, 1979
New Alsea Data and Analysis — 9:30 a.m.

The Agency based its March 1 suspension orders and cancellation notices largely on the Alsea II study, an epidemiologic investigation conducted in Oregon which purported to show a correlation between the use of herbicides in forestry and the incidence of miscarriage. While Alsea II has been roundly discredited by the scientific community at large and apparently by the Scientific Advisory Panel,[6/] EPA has announced that it is engaged in a broad new program of data collection and analysis for Alsea II. The person or persons most knowledgeable regarding the methods and sources used for data collection, as well as data compilation, should be made available for deposition well before the hearings commence.

Dow has no way of ascertaining which EPA employees or contractors are performing this latest collection of Alsea II data. Accordingly, Dow requests that OGC be required to designate the person or persons most knowledgeable in this area, and to make them available for deposition. This procedure is well-established under the Federal Rules of Civil Procedure, in instances where the party seeking discovery is unable to identify particular individuals to be deposed. See Rule 30(b)(6).

6/ Twenty-Fifth Meeting of the FIFRA Scientific Advisory Panel, Vol. I, 206-207 (August 15, 1979).

The new data presently being collected by EPA reportedly includes "further investigations into the spray data and the timing of the spray," and "additional information on total miscarriages in the area," since EPA now concedes that the original data may have reflected only ten to twenty precent of miscarriages in the areas studied.[7] In addition, it is likely that EPA is extending the study to include additional data from 1978 and 1979, previously outside the purview of the study.[8]

This is not the Agency's first effort to rehabilitate Alsea II by supplementing or replacing the incomplete and misleading data contained in the February 28 Alsea II report. New data developed by EPA in March were obtained by Dow under the Freedom of Information Act. In early April, further new data were disclosed by EPA witnesses near the end of a four-day District Court hearing in an action for judicial review of the Agency's emergency suspension orders. In May, additional new data were submitted to the Hearing Panel in the suspension hearings, and were obtained by Dow.

In every case, detailed and time-consuming review of the data by Dow experts has revealed that the claimed correlation between herbicide use and miscarriage is not supported

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7/ Twenty-Fifth Meeting of the FIFRA Scientific Advisory Panel, Vol. I, 14-15 (August 15, 1979) (remarks of Edwin Johnson).

8/ Id. at 15.

by the evidence. Equally important, Dow experts have been unable to determine how portions of the data were compiled by EPA, in order to check the Agency's data against original sources.

Deposition of the person or persons responsible for and most knowledgeable about the Agency's latest data collection efforts is essential to enable Dow experts to evaluate the new data, to assess the adequacy of data collection methods, and to check the accuracy of EPA's data compilations by comparisons with original sources. Dow's experience with previous Alsea II data supplied by EPA underscores the necessity of deposing such individuals, since the data compilations themselves do not reveal methods of data collection and do not reveal the information necessary for independent reproduction, verification and analyses of the data. In addition, Dow's previous reviews of the various Alsea II data sets demonstrates the need for early disclosure of all information pertaining to data collection and compilation. The Administrative Law Judge should not permit OGC to repeat the surprise tactics employed in April, when new data were produced in open court with no opportunity for evaluation by Dow experts.

3. KIM HOOPER
Department of Biochemistry
University of California, Berkeley

October 26, 1979
9:30 a.m.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In re:	)	FIFRA Docket Nos. 415, et. al.
THE DOW CHEMICAL COMPANY, et. al.	)	

NOV 5 1979

RESPONDENT ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO THE DOW CHEMICAL COMPANY'S REQUEST FOR PRODUCTION OF DOCUMENTS AND RECORDS

In accordance with the order of the Administrative Law Judge issued on October 25, 1979, Respondent hereby submits its response to the Dow Chemical Company's (Dow) "Request for Production of Documents and Records," dated October 23, 1979.

As ordered by the Administrative Law Judge (Prehearing Order and Report No. 3, October 25, 1979, at 4), Respondent is providing information on the order and manner in which it will comply with Dow's request. In Part I of this response, Respondent presents its schedule for the production of documents and records responsive to Dow's request. In Part II, Respondent briefly explains the bases for the manner and order of production and identifies areas of uncertainty.

I. Schedule for Production of Documents and Records

Respondent's schedule for the production of documents and records responsive to Dow's Request for Production is presented below. The schedule specifies three dates for production based on the relative availability and/or the current existence of responsive documents and records.

TUESDAY, NOVEMBER 20, 1979

Curricula Vitae for each of the witnesses for whom this document was requested

Documents and records responsive to the Hutchinson request (complete)

Documents and records responsive to the Alsea request (partial)

Documents and records responsive to the Dixon request (partial)

THURSDAY, DECEMBER 6, 1979

Documents and records responsive to the requests for Drs. Beroza, Dougherty, Galston, Holson, Meselson, Squire, and Streisinger.

MONDAY, DECEMBER 31, 1979

Completion of the Alsea response

Completion of the Dixon response

II. Comment on the Schedule for Production

Mr. Thomas Dixon
Alsea Witnesses

Because Mr. Thomas Dixon and the witnesses who will testify regarding the Alsea study are EPA employees or contractors, a substantial portion of documents and records responsive to Dow's Request for Production regarding these witnesses have previously

been made available to Dow pursuant to its Freedom of Information Act request of June 22, 1979. These witnesses are continuing to collect responsive documents and records, however, and these new materials will be made available to Dow in two groups. A first group of documents will be provided as an interim submission on November 20, 1979. This submission will include currently available materials not previously provided in response to the FOIA request.

A second group of documents will be made available on December 31. This will complete the response to Dow's request for documents within the time period set by the Administrative Law Judge in his order of October 25, 1979. Respondent's completion of this portion of its response depends, in part, on information which Respondent is seeking through its own discovery of the Department of Agriculture, and through requests to certain members of the National Forest Products Association.

Dr. Morton Beroza
Dr. Ralph Dougherty
Dr. Arthur Galston
Dr. Joseph Holson
Dr. Matthew Meselson
Dr. Robert Squire
Dr. George Streisinger

Documents and records responsive to requests directed to these witnesses will be made available to representatives of Dow either in Washington or in the laboratory or office of

RPTS MILLER

MILLER REPORTING.

HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

Wednesday, March 16, 1983

House of Representatives,

Subcommittee on Investigations and Oversight, of the

Committee on Public Works and Transportation,

Washington, D. C.

The Subcommittee met, pursuant to notice, at 9:35 a.m., in Room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas, Chairman of the Subcommittee, presiding.

Present: Representatives Levitas, Albosta, Andrews, Johnson, Lipinski, Molinari, Nowak, Rowland, Sundquist, Wise, McEwen, Howard (ex officio), and Snyder (ex officio.)

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Mr. SNYDER. For the record, FOIA means they could have gotten it under Freedom of Information Act?

Dr. HERNANDEZ. That is correct. I believed that. And I think that the staff at EPA believes that a draft report that has gone out in the press like that would be available. There are a lot of other things that were happening at the same time.

When I took a look at the report after I got it, I was irritated by a number of things. First, much of the document contained information about 245-T, a chemical that is contaminated with dioxin, and there had just been 50,000 pages of testimony on 245-T and dioxin taken at an administrative law hearing here in Washington, D. C.

We have a staff of people who are well informed on that subject. I was not sure that what was in this report coincided with the conclusions that we were to draw, and in the process--we are in the process of drawing up our conclusions of those 50,000 pages.

It appeared to me that what was in the first part of the report might be at odds with what kinds of conclusions we were going to draw on the basis of that large body of information.

Another of the problems that I saw with this report had to do not only with my concern that statements like I read that Dow is responsible for this were not proven in the report,

EPA EPA EPA EPA EPA

J. MILTON CLARK, Health Effects Specialist, Toxic Material Branch, Region V, Chicago, IL was interviewed on March 16, 1983, in Region V offices by Special Agent LARRY HOLLINGSWORTH.

CLARK executed a signed statement on March 17, 1983. The original of CLARK's statement is maintained at the Office of Inspector General, EPA, Washington, DC. CLARK's statement with attachment is reproduced in its entirety as follows:

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STATEMENT

I, J. MILTON CLARK, [redacted] state that:
I am a Health Effects Specialist, GS-12, in the Toxic Material Branch, Waste Management Division. I have held this position since May 1980. I am currently an Other Than Permanent Full Time (OPFT) and since May 1980, I have also been an Assistant Professor of Occupational & Environmental Health Services at the University of Illinois, School of Public Health, Chicago. From May 1980 thru approximately August 1982 I was assigned to EPA Region V under an Intergovernmental Personnel Agreement (IPA) from the University of Illinois.

In late December 1980, Region V decided to compile historical data on dioxin in the Great Lakes area. This decision was prompted by a Canadian report to the U.S. State Department in December 1980 on the same subject. I was assigned by my supervisor, Karl E. Bremer, to prepare a report on dioxins and furans in the Great Lakes area. My first draft was completed approximately late April or early May 1981 (Attachment 1). Draft one was reviewed internally in Region V. Based on the Region V peer review comments, draft two (Attachment 2) was prepared and forwarded to the Clorinated Dioxin Work Group (CDWG) in early May 1981. This is normal procedure since the CDWG was the agency's "experts on dioxin." On May 13, 1981 I received a call from Dr. Shackelford, R & D EPA HQ, who thought the report should be revised to reflect the problem on a world wide basis instead of a regional basis. He felt it would inflame the public and implicate industry. I told Shackelford that if HQ had objections to the report, they should be directed to Karl Bremer, Madonna McGrath, Val Adamkus or Dave Kee. I did not/do not now know Dr. Shackelford's position relative to ~~dioxin~~ the CDWG (Attachment 3).

On the same day I prepared a status report for Dave Kee, Director of the Air & Hazardous Materials Division, to give him a working knowledge of the study and what we intended to do with it. (Attachment 4).

On May 18, 1981, comments were provided by Sandra S. Gardebring, Region V, Director, Enforcement Division concerning my first draft which had already been revised. She tended to agree with my original report but offered some constructive suggestions. Some of her suggestions were incorporated in later drafts (Attachment 5).

On May 20, 1981, I returned a call I had received from Dr. Paul Brown, Co-Chairman of the CDWG. He said that "no one disagrees with your conclusions" but believes my comments might inflame the public. Moreover, there was some concern about the new political atmosphere in Washington. I told him we had softened the conclusions---I was already working on Draft 3 which reflected the suggestions by the Region V staff (Attachment 6).

I received a memo dated 5/26/81 from Donald Barnes to Karl Bremer. It contained suggestions and comments and stated that the comments of the CDWG as a whole would be forthcoming. Attached to the 5/26/81 memo was a memo dated 5/18/81 from Patricia A. Roberts, Attorney, Pesticides Division, EPA to Donald Barnes and Paul Brown (Attachment 7). Circa May 15 to the 31st 1981, I completed Draft 3 of the report. Draft 3 softened my original conclusions

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and incorporated suggestions and comments from the Region V staff (Attachment 8).

On June 10, 1981, a Briefing Report was prepared for Valdas Adamkus, Regional Administrator, Region V by the Region V Air and Hazardous Division staff (Attachment 9).

I received copies of two newspaper articles dated 6/14/81 which contained information on my dioxin report. From my review of the drafts, it would have had to have been taken from draft number 2 because of the conclusions relating to the prohibition on the consumption of fish (Attachment 10).

Following a June 16, 1981 press release by the Michigan Department of Public Health, a copy of Draft 2 or 3 was sent to the Michigan Department of Natural Resources at their request. This is normal practice. It was particularly appropriate to send the report due to their concern generated by the press and because the report contained large amounts of Michigan data on dioxin (Attachment 11).

On June 18, 1981, Draft 4 of the report was transmitted to Marilyn C. Bracken. Deputy Assistant Administrator for Program Integration and Information from Valdas Adamkus (Attachment 12). Attached to Draft 4 was a risk assessment document on ingestion of TCDD which was an expanded and refined version of that which had appeared in earlier drafts (Attachment 13). We separated this from the report itself based on conference calls with Dr. Don Barnes, Dr. Marilyn Bracken and others on the CDWG. The conclusions were also dropped over our objections because they (Bracken, Barnes, et al) believed the report should only be a compilation of data and that the conclusions were not supported by information and discussion presented in the earlier drafts. Although they (Bracken, Barnes, et al) knew we did not agree, we made the changes because the CDWG would not approve the report as we had originally written it. We pointed out to them that we thought this was a mistake since the public was already aware of the report as noted in previous news articles. It would look like the agency was participating in a coverup. Bracken said that Barnes would handle press inquiries to the changes.

Subsequent to sending Draft 4 to Headquarters (June 18, 1981), both myself and Karl Bremer received a call from Dr. Don Barnes who provided changes/deletions from the draft (Note: The Handwritten comments on Attachment 12 were made by me and Karl Bremer). Subsequent to this conversation (latter June) I received a mark-up copy of Draft 4 in Don Barnes' handwriting with additional changes and deletions (Attachment 14). In late June 1981 the CDWG told us they did not believe the dioxin health effects could be adequately explained in so short a report. Again, over my objections, the health information was removed from the report and a very detailed summary of dioxin health information was attached.

Note: There were several conferences during this period in which Drs. Barnes and Bracken always participated as well as others from the CDWG. We did not always know who was participating since the CDWG was using a speaker phone. In one such conference call on June 25, 1981, Bracken et al raised a concern that the report was targeting Dow Chemical Company. Valdas Adamkus reassured them that this was not the case (Attachment 15).

Subsequent to the June 25 call but prior to July 10, there was a conference call from Dow Chemical between myself, Dave Kee, Ron Kagel of Dow and another Dow official (name unknown). The Dow officials began discussing the draft report page by page.(I was told by Dave Kee that Dr. Hernandez provided the report to Dow.) The Dow officials were critical of the report in general; specifically, they wanted six lines on page 12 modified to reflect Dow's evaluation of their own data which EPA had concluded in 1978 indicated a substantial risk of injury to health and the environment as defined under Section 8e of the Toxic Substances Control Act. They were also concerned with EPA's 1979 conclusion that their discharge into Tittabawassee and Saginaw Rivers and Saginaw Bay in Michigan was the major if not only source of dioxin contamination found in these rivers and bay (Attachment 16). To my knowledge, no one from Region V contacted Dow Chemical to discuss the report contents with them nor did we provide them a copy of the report.

Subsequent to the conference call with Dow Chemical, Val Adamkus told me he was called by Ectyl Blair, Vice President of Dow Chemical, who told him that if the six lines were removed from the report, Dow would totally endorse it; but if Dow had valid points, they should be considered; if not, we should keep the language as it was. As a result of my conversation with Adamkus and Dave Kee, I prepared replacement language for the six lines on page 12. I personally believed that the replacement language adequately balanced Dow's position that there could be other pollution sources contributing to the dioxin contamination in the Saginaw River Basin (Attachment 17).

Several days following (before 7/10/81), Dave Kee told me that Val Adamkus wanted shorter, less controversial language than I used in my "replacement language." I told Dave that it was not my understanding of what Adamkus wanted. Dave said that we would never get the six lines on page 12 to Dow's satisfaction so let's just drop them because the report had already been compromised and the Region needed to get the report released due to pressure from the Governor of Michigan.

Shortly thereafter, Dave Kee told Walter Kovalik, who worked for Marilyn Bracken, that the lines were taken out because it would take too long to resolve the language with Dow and the report needed to get out. Note: This was prior to 7/9/81, although my notes - circled in red - indicate it was 8/10/81.

On July 9, 1981, Region V submitted draft number 5 to Marilyn Bracken which had omitted the six lines on page 12 as well as the other deletions and changes mentioned earlier (Attachment 18). Following the submission of draft 5, Dr. Barnes called me and Karl Bremer and gave additional comments and corrections.

At the same time when I was questioning Dr. Barnes about the removal of references to Dow Chemical from the report, Barnes said that some of the references were removed at Dr. Hernandez's direction.

On July 14, 1981, working draft 6 was submitted to Marilyn Bracken (Attachment 19). On July 15 or 16, Dr. Barnes told me that lines 10, 11

J. Milton Clark 3/17/83 - 7 -

MC

which discussed EPA's 1979 study on miscarriges in Alsea, Oregon and 124 in the introduction should be removed and replaced with the language " selected epidemiological studies"(Attachment 20). When I asked him why. MC since this came from a prior EPA study, Dr. Barnes said that Dr. John Toddhunter MC had directed this modification to her.(Note: Toddhunter was Dr. Barnes new MC superior). I agreed to a slight change but felt that the "meat" needed to stay in. I talked to Barnes later who said that Adamkus would have to call Headquarters if we used our existing language. The lines were removed when the report was sent to Governor Milliken of Michigan on July 16, 1981 (Attachment 21).

MC

On July 16, 1981, we asked Bracken when the risk assessment would be released; she said that Hernandez had a copy and it was under review. The CDWG did not want us to get into a line-by-line discussion with the press about the changes between the draft and final report(Attachment 22). They said they would take care of press calls.

After the final report was released(Attachment 23), I asked Dr. Barnes about the status of the risk assessment document; if we were going to get a revised version. Barnes told me Hernandez did not wish to release the report because risk assessment of dioxin was a Headquarters responsibility (Attachment 24). This has still not been made public nor has the Agency circulated this type of scientific assessment to aid state health agencies in establishing safe dioxin levels for fish consumption in the Great Lakes area.

MC

I have read the foregoing statement consisting of four pages, each of which I have signed. I fully understand the statement and it is true, accurate and complete to the best of my knowledge and belief. I have made the corrections shown and placed my initials opposite each. I have made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

J. Milton Clark
(signature)

Signed before me this 17th day of March, 1983 at
the Holiday Inn Capitol
Washington, D.C

(Special Agent)

(witness)

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EPA: INVESTIGATION OF SUPERFUND AND AGENCY ABUSES

(Part 1)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

FEBRUARY 17, 1983—RETURN OF SUBPENA FOR DOCUMENTS
MARCH 7, 1983—EPA'S GENERAL COUNSEL: VERACITY OF TESTIMONY AND CONFLICT OF INTEREST ISSUES
MARCH 18, 1983—ALTERATION OF EPA SCIENTIFIC STUDIES
MARCH 21, 1983—RITA M. LAVELLE: CONTEMPT OF CONGRESS

Serial No. 98-81

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2. Preparation
   a. Contact the Administrator's secretary as soon as meeting is scheduled and review the file folder
   b. Make list of items and questions and have appropriate OLEC staff collect background briefing materials and prepare response
   c. Prepare package in form similar to background package for Administrator's staff meeting

D. OGC Staff Meetings
1. Background
   a. Every Monday, 12:30 p.m., Rm 1001 WT, with OGC division heads
   b. First Monday in each month, with all OGC supervisors
2. Led by Mike Brown with Bill Pedersen, Joel Mandelman, Richard Mays, Winston Haythe, Mary Boylen, and myself as additional attendees
3. Review with Mike in advance topics for discussion

E. OEC Staff Meetings
1. Background
   a. Every Tuesday, 11:00 a.m., Room 1001 WT, with OEC division heads
   b. Have never attended any of these meetings
2. Led by Mike Brown with Richard Mays, and Winston Haythe as additional attendees

XI. Green Book

A. Used for keeping notes/reminders concerning meetings with Bob Perry

B. Used for keeping track of points off/added to individual OGC and OEC staff for performance appraisal purposes

XII. Hiring

A. Background
1. For FY 1982, OLEC at hiring ceiling; no outside hiring except for SES positions (Water, Solid Waste, and Pesticides/Toxics) and perhaps criminal investigators
2. For any applicant interview, Bob needs copy of 171 Form, resume if possible, and interview evaluation form (Mary Boylen has copies of the form)
3. Mary Boylen in charge of interviewing mechanics
   a. Has all resumes/171 Forms received by OLEC on file
   b. Contact with EPA's Personnel Office
      1). Dan Daniels and Doris McCurdy handle OLEC SES applications
      2). Regina Solomon handles GS and GM applications
4. Applicant interviewed by me
   a. When 12th Floor requests someone from OLEC to interview applicant solely as courtesy
   b. When Bob is running behind in his schedule

EPA: INVESTIGATION OF SUPERFUND AND AGENCY ABUSES

Alteration of EPA Scientific Studies

FRIDAY, MARCH 18, 1983

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2123, Rayburn House Office Building, Hon. John D. Dingell (chairman) presiding.

Mr. DINGELL. The subcommittee will come to order. This morning, the subcommittee continues its hearings examining the administration and execution of laws under the responsibility of the Environmental Protection Agency. The Chair is particularly concerned again with matters relating to and conduct of the Environmental Protection Agency. This inquiry is conducted under authority of rules X and XI of the House, and is clearly within the jurisdictional responsibility of this subcommittee.

Today, we will focus on the question of the integrity of the process by which the Environmental Protection Agency discharges its mission to protect the health of the American people and the safety of the environment. This is perhaps as crucial an issue as any which this committee can examine. Questions have been raised that an independent study by the Environmental Protection Agency was allowed to be manipulated, influenced, and compromised, by those who had a vested interest in the outcome of that study.

The report in question was intended to be a review of the sources and effects of dioxins. It was also contemplated that the report would contain recommendations, where appropriate, for further research needs and for the control of these substances in the region.

During the last two Congresses, this subcommittee conducted hearings on the possible adverse health effects from dioxin contamination. We have looked at exposure to dioxin from agent orange, from domestic spraying of forests and farmlands, and also from merely living in small Missouri communities. As a Representative from the State of Michigan, I am very aware and troubled with the growing body of scientific evidence regarding the existence of dioxins in the Great Lakes, the surrounding waters, and in the fish in those lakes and waters. This raises the question: How

I told Dr. Brown that we had softened the conclusion No. 5 concerning the prohibition of fish consumption and revised this to conclusions No. 5 and No. 6 in a new draft, No. 3 of the report.

If you have a text with you, there, that would be on page 61. We went through and numbered the text in its entirety.

Mr. BREMER. Mr. Chairman, I would like to add something at this point. The reason that those conclusions, or that particular conclusion was softened was because we agreed in the region and at headquarters that we were overstepping our role. We were making recommendations related to fish consumption, and headquarters felt that this was the—entirely within the purview of the Food and Drug Administration, and also public health officials in Michigan, to make statements as to where fish should be consumed, at what level. That was our reason for that change.

Mr. CLARK. OK.

To continue, shortly after May 26, Dr. Don Barnes, the other co-chairman of the dioxin work group, supplied in writing his review on the second draft of the dioxin report. And that of Pat Roberts, an EPA attorney who had been active on the 2-4-5-T hearings. Both commended the report but did offer a number of specific remarks relative to the draft to help improve and polish the document.

On June 10, Dave Kee prepared a briefing document. Relative to the dioxin problem in region 5, and a staff meeting was held with Mr. Adamkus on that date.

On June 13, the Toronto Globe and Mail, having obtained—apparently having obtained a copy of the second draft from an unknown source, reported information contained in the draft dioxin document.

During the period June 13 to June 18, either the second or third draft of the dioxin report was provided to the Michigan Department of Natural Resources, with concurrence of headquarters. We felt at this time, since much of the data was in reference to Michigan, that we needed to supply them with a draft so they could review the information in there.

Prior to the submission of the fourth draft to headquarters to review—for review on June 18, headquarters requested that all conclusions be removed from the document. The recommendations No. 5 and 6, which suggested, only suggested to the FDA and health—and to health agencies to evaluate fish contaminant levels and perhaps reconsider their existing advisory, was considered by headquarters staff again, as Karl has pointed out, even a more softened language was not considered to be appropriate.

Also in the third draft, in the earlier drafts, was a short synopsis on risk assessment which is based upon the Carcinogens Assessment Group 1980 Report. And I used the data from that 1980 report in the attempt to look at the risk, again, of possibility of ingestion of fish.

That was asked to be removed from the document, and we expanded that shortened risk assessment into a larger, more comprehensive three-page document, and also sent that to headquarters along with the fourth draft for their review.

Before this fourth draft was sent in, we, including Karl and others, questioned the appropriateness of pulling out the conclusions when the public was already aware of the original conclusions.

We recommended the conclusions remain and text be polished to better support the conclusions. Headquarters told our office that they would handle all inquiries relative to changes in the report including removal of conclusions, and insisted upon their removal.

On June 18, the fourth draft, and this is one I am continuing to refer to, was sent in addition to this risk assessment to Dr. Marilyn Bracken, who was Administrator of the Office of Toxic Substances.

As I said before, it also included a risk assessment piece attached. I also—we asked here for prompt review of the dioxin report and calculations of dioxin risks so these could be supplied to Governor Milliken of Michigan who was anxious to receive the dioxin information. Sometime after June 18 a copy of the draft dioxin report was supplied by Dr. Hernandez to Dow Chemical.

The region was not consulted prior to the submission of that draft to Dow Chemical, and the draft was not circulated to experts at universities or environmental groups for similar peer review.

Sometime after June 18 but before July 9, several conference calls were held with Marilyn Bracken and members of the dioxin work group with myself, Mr. Adamkus and other regional staff, to discuss changes in the dioxin report.

During this time I had several conversations with Dr. Barnes, as did Karl Bremer, my boss. During this time period of June 18 to July 9, changes in the report were discussed.

In a June 25 conference with Marilyn Bracken and region V staff, and also at headquarters were members of the dioxin work group, we explained once again the purpose of the dioxin document. That was to compile regional data into one condensed form.

Over objections of region V people, including myself, a summary of health data relative to dioxins and furans removed from the report to be substituted with a detailed scientific study of the same subject.

It was my opinion that a short synopsis of health data would be valuable for the lay reader. However, headquarters staff believed that the dioxin health information could not be properly or adequately synopsized in a short report.

Hence, the original health data was removed from the dioxin report, and a detailed scientific review of dioxin health data was attached.

Also removed after June of—June 25 was a study which involved—that had been published by Dow Chemical which indicated a reduced fertility among wives of workers who had been exposed to 2-4-5-T. That was also struck from the report.

Sometime during the period of June 25 to July 9, Dow Chemical officials had a conference call with myself and Mr. Kee to comment on the dioxin report. Dow officials went page by page with us through the document. And starting with the title, and moving on through the entire document. One of the first areas that they were concerned about was the reference to EPA's 1979 Alsea, Oreg., study which showed an increased rate of miscarriages in areas where 2-4-5-T had been used in forestry. They had asked [illegible] other critical literature of that study included, even though [illegible]

ed out to them that those, some of those studies had been sponsored by industry.

Among other comments Dow wanted was to have their risk evaluation reported of dioxin contamination in Midland, also included with EPA's preliminary findings as pointed out earlier in 1978 of a substantial risk of injury as defined in section 8(e) of the Toxic Substances Control Act.

Dow had concluded, in contrast to EPA scientists at headquarters that the reported dioxin contamination insurance did not constitute a substantial risk as defined under TSCA.

EPA also concluded in early 1979 that the plant's discharge, that is, the waste water discharge from the Midland plant, represented the major source, if not only source, of dioxin contamination found in the Tittabawassee River and Saginaw Bay in Michigan.

These topics were discussed in reference on six lines on page 12 of the fourth draft of the report. I should point out that when we received the phone call from Dow Chemical, I think I could express my feelings as saying that I was—maybe the words to say would be astounded that industry was commenting on a report that EPA had prepared.

I personally felt that this was entirely inappropriate, and should not have—we should not have ever been put into a situation where we had to take comments on a report that we had prepared and was being reviewed in headquarters.

Shortly after this time, Mr. Adamkus informed me that Ectyl Blair, vice president of Dow Chemical, had called him and told him that if the six lines on page 12 were removed from the report, Dow would totally endorse the report.

In the response to—in response to this inquiry to Mr. Adamkus, Mr. Adamkus came to me and asked if there was any credence to a differing position, and, if so, to perhaps flesh that language out.

If there was not credence to a differing of opinion, and if I believed that there was not a difference that needed to be written in the document, that the lines could be as were in that particular document.

I reviewed Dow's comments and, with Mr. Kee, we reconstructed the six lines in that document to a much longer version, incorporating Dow Chemical's position.

Shortly after this time, Mr. Kee believed that it would take too long to discuss the new section with Dow and resolve the language with Dow. Moreover, Governor Milliken of Michigan, and I will have Mr. Kee talk about this perhaps some more, Governor Milliken was pressuring our office to release the study. And these lines were a center of great controversy. For these reasons, Mr. Kee decided to drop the lines from the report, although references to EPA's assessment of Dow's environmental data remain in the report.

Shortly after this time I remember a conversation with Dr. Barnes that some of the changes in later drafts of the report had been dictated by Dr. Hernandez I do not recall, however, those specific changes.

On July 9, the fifth draft of the report was sent to Dr. Bracken at headquarters which had incorporated written and verbal comments from headquarters, and verbal comments from Dow. Shortly

after this time, Dr. Barnes called Karl Bremer, and Karl took down remarks that the dioxin work group or Dr. Barnes had made. I incorporated these into the sixth draft.

Mr. BREMER. Mr. Chairman, Karl Bremer.

On July 14, the sixth draft, we were reaching the final stage, trying to get the document in final condition so that it could be sent out. The sixth draft was sent to Dr. Bracken directly at her request. This draft incorporated changes as requested by Dr. Bracken and the dioxin work group members. Between July 14 and the final date of release of the report, which was July 16, Dr. Bracken called me in the morning. Dr. Bracken indicated that she wanted all references to the Alsea, Oreg., studies removed from the report. Those were specifically lines 10, 11, 12, on page 1 of the sixth draft.

I initially resisted any removal of those lines from the report, andasked at that time why at this late date were these lines being removed? You had reviewed the draft before. Also, knowing that the Alsea study had been supported by the Agency in the past,

I also pointed out that Barbara Blum, who had been the former Deputy Administrator of EPA, had used these studies in open testimony in the past. Dr. Bracken told me that her job was on the line during that discussion, and she told me that Dr. John Todhunter had instructed her to have these lines removed.

Dr. Bracken also told me that Dr. John Todhunter had reviewed the document, and that these were his orders to her. At that time Dr. Bracken told—I asked Dr. Bracken, "Why are you removing these lines? Do you feel that they should be removed?"

She said it didn't make any difference how she or I felt about the validity of these studies or about the removal of these lines from the report.

She stated in addition that no headquarters concurrence on the report would be given unless those lines were removed. Now I want to indicate to you at this time that the reaosn that we were trying to get some type of concurrence from headquarters on the report is that we are not trying to distribute a minority report, we are trying to distribute a document from the Agency which represents a unified EPA position on dioxin, not simply a regional position.

I will give this back to Dr. Clark at this time.

Mr. CLARK. On either July 15 or July 16, Dr. Barnes also called me and told me that these lines that Karl has referred to had to be removed from the report.

I asked him why do these have to be removed, and Dr. Barnes said that Dr. Todhunter had directly communicated these to him.

I objected and said that I did not want to have these lines removed. I would take a change in language but I did not want them to be removed. Dr. Barnes went back, talked to Dr. Todhunter and said that these lines had to be removed. And that if there were any objections we would have to orchestrate those objections from our region directly into headquarters.

I actually believe that this conversation I had occurred before Mr. Bremer's conversation with Dr. Bracken.

I should like to point out as one final statement here that in her May 18 review, Patricia Roberts, who was an EPA attorney on the 2-4-5-T case involving the emergency suspension of 2-4-5-T specifi-

cally asked, or suggested, that the Alsea study be included in the report and certain language put into that report.

And I complied with that, and that was the reason why it was in the report. I think that is all that I have to say at this time.

Mr. ADAMKUS. Mr. Chairman, that describes the chronologial sequence of events of the report from the regional point of view.

Mr. SLATTERY. Are there any other comments?

Mr. BREMER. The only comments I have about this are that those documents were supplied to Mr. Dingell, I mean the background documents that were used in our explanation of the chronology of what actually occurred.

Mr. SLATTERY. At this time the chair would like to recognize the gentleman from New York for questions, Mr. Scheuer.

Mr. SCHEUER. Thank you very much, Mr. Chairman.

Mr. Adamkus, we appreciate your forthright testimony and that of your colleagues, Mr. Bremer and Dr. Clark, very much.

Mr. Adamkus, did Dr. Hernandez ever request that Dow Chemical be permitted input into this working draft during the internal review process?

Mr. ADAMKUS. Not directly requested personally in a special telephone call to me. I believe, Mr. Chairman, there are a lot of events leading to Mr. Hernandez's involvements specifically with me. Those are actually not related to your direct question because he was not involved from the very beginning of that report preparation that was described here by my colleagues.

Mr. SCHEUER. As I understood it, the Perry review process takes place on the final report, the final internal report of the EPA scientists. Isn't that correct?

Mr. ADAMKUS. Correct.

Mr. SCHEUER. When they have finished their work, when they have done their thing, so to speak, that final report is then distributed for peer review, and it seems to me that would be the appropriate time for the Dow Chemical professionals and experts to have had their input.

Isn't it unusual for an outside private sector company to provide input, whether invited or not, during the process by which the EPA scientists are doing their final internal scientific study?

Mr. ADAMKUS. I agree with you. This is a very unusual case.

Mr. SCHEUER. Mr. Adamkus, did Dr. Hernandez ever characterize the May 1981 draft by Dr. Clark here as containing "sorry science," or words to that effect?

Mr. ADAMKUS. I held a conversation, I believe this was my third conversation, and the last one, direct with Dr. Hernandez when we had discussed the report, and people who are working on the report. And he has expressed his opinion to me.

Mr. SCHEUER. Did you indicate to Dr. Hernandez during this period what you just indicated to us, that it was unusual for an outside company who was directly involved in the internal study process, to be intervening through the good graces of Dr. Hernandez? Did you indicate this was unusual and perhaps improper?

Mr. ADAMKUS. Mr. Congressman, in light of the tone of the conversation I don't believe I had any chance to express my personal opinion was told.

Mr. [illegible]UER. You were told?

Mr. ADAMKUS. About his opinion about the report and about the people.

Mr. SCHEUER. Did you assume that you were getting your marching orders from Dr. Hernandez when he indicated to you that he wanted the Dow Chemical scientists to review this preliminary report before it was finalized during the study process, and that he expected you to take their suggestions and integrate them into the report?

Did you feel you were getting your marching orders?

Mr. ADAMKUS. I received the marching orders, but not in the light that you have described it to me.

Mr. SCHEUER. Tell us what impression you did receive.

Mr. ADAMKUS. If you would like to understand the entire situation, I would like to describe to you the very first telephone call and going by sequence through the second and third, which probably unfolds for you the entire story and probably answers a lot of your questions.

Mr. SCHEUER. Thank you very much. Dr. Bremer——

Mr. ADAMKUS. Can I do this? This is what I am asking you, Mr. Congressman.

Mr. SCHEUER. Of course.

Mr. ADAMKUS. After the June 13 date was indicated, before the Toronto newspaper story, Dr. Hernandez for the first time called me personally on the phone inquiring about the published story and strongly indicating or implying that the regional staff has leaked the story out to the press.

I had advised him that I am extremely disturbed about the disclosure of that working document and that I have conducted already among our regional members an investigation and requested the division director immediately to find out how did it happen that the report has been released.

And all my indications are that there is absolutely no way that the report has been released from the regional office, because I was told that only one single copy at that time has been sent from the region on to the headquarters to the working group, and that is the extent of the regional involvement.

We were told by the regional people that when they received the one single copy from us, they xeroxed additional copies and have distributed those copies among the working group members in headquarters. And the next thing we found out was that they found from someone—I don't know—undisclosed sources—that the newspaper has received in Toronto a copy of the report with the removed title page which said a draft document.

Mr. SCHEUER. Mr. Adamcus——

Mr. SLATTERY. The time of the gentleman has expired. The Chair at this time would like to recognize the gentleman from Ohio.

Mr. OXLEY. If I may follow up on the questioning, if you could continue your answer.

Mr. ADAMKUS. I want to give you actually the answer what was asked to me. So I don't believe—I am at the end of the conversation, I can speed it up, that I have convinced Dr. Hernandez that the region has not intentally leaked the document to the [illegible]s. A couple days later a second telephone call came to me again Dr.

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EPA OVERSIGHT ON DIOXIN CONTAMINATION

HEARING

BEFORE THE

SUBCOMMITTEE ON NATURAL RESOURCES, AGRICULTURE RESEARCH AND ENVIRONMENT

OF THE

COMMITTEE ON SCIENCE AND TECHNOLOGY U.S. HOUSE OF REPRESENTATIVES

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really work for is the American people. What people seem to stop to think here is that Dow Chemical was not calling the shots. You are really there to protect a lot of people from getting hurt. The fact is a lot of people have gotten hurt. You know, sitting there today, some people are going to get very hurt.

We have seen birth defects. We can suspect cancer. You know some people are going to die, and no one was there to protect them, all because you were concerned about Mr. Hernandez, Mr. Hernandez was concerned about Mrs. Burford, and Mrs. Burford was concerned with Ronald Reagan.

Mr. ADAMKUS. I don't have a comment, sir, because you don't listen to us, what we are telling you all the time. That is all that I can say.

Mr. ANDERSEN. I would like to respond.

Mr. TORRICELLI. Go ahead.

Mr. ANDERSEN. Region V has continued in its efforts to study and analyze the problem. One of the most important aspects of that problem is the discharge into the Tittabawassee River. For a period of approximately 1 to 1½ years, we negotiated with Dow to attempt to get the information necessary to develop that permit. It is a matter of fact that the State of Michigan is the primary agent in developing that permit.

However, we offered our technical and legal assistance to them, which includes use of our legal staff and our technical staff, to develop a BAT permit. We went to Dow, tried to negotiate that with them. When it became obvious that it was impossible to get the information—the chairman questioned them, and they have assured us they will let us on the site now if we have protocols. I wish the chairman would have asked them that a year ago, about the 308 request, because we are now in court simply because region V will not quit, will not stop pursuing the information that is necessary. We will assist the State in developing the NPDES permit.

In addition to that, almost simultaneously, we embarked on a caged fish study, which Mr. Amendola and the scientists can speak to. That is an integral part, even though Dow at the same time refused to let us put fish in its effluent on its property and refused to let us sample fish from its sewage lagoon. We moved in the direction that we thought was the greatest concern, and that is in the river. We moved as expeditiously as possible, completely unrelated to the data gathering.

I think the Congressmen should recognize that the purpose of that study was to gather existing information. That information, for the most part, existed in the literature already. The enforcement efforts and the efforts that our water division undertook were something independent from that and are proceeding.

Mr. TORRICELLI. What finally is your expectation now of where we go from here with Dow Chemical.

Mr. ANDERSEN. There are a number of things that have to be pursued. The 308, the first question, we litigated this issue already, by the way, in the Illinois district court, where the region, with very little assistance from headquarters or the Department of Justice, litigated the issue and won it on December 28. We have the authority under 308 of the Clean Water Act to go up the pipe to

obtain information in internal waste streams, to obtain information about processes. That is on appeal in the seventh circuit.

I think that will have a tremendous impact on the Dow litigation, which is more or less the same question.

Another thing that has to be addressed is the land deposition of dioxin on the site. To date, all that we have, in spite of continuing requests under the Resource Conservation and Recovery Act, is Dow's own samples. They could not tell you today where those five samples were placed, but I think I can tell you that they are wrong at least in telling you that all five of them were on the site. I believe two of them, at least that is what the scientific people tell me, are around the site.

We do not have enough information. As Mr. Adamkus has stated elsewhere, the dioxin work group just in the region is right now working on further responses to the problem, both on the land and with respect to their discharge.

Mr. SCHEUER. Would my colleague yield?

Mr. TORRICELLI. Certainly, Mr. Chairman.

Mr. SCHEUER. Mr. Andersen, as you have no doubt noticed, we are very much concerned about the testing of the soil samples and whether that was adequate to protect the public interest, and you have no doubt gleaned from the conversation that took place before that we have every intention of requesting EPA region V and the Centers for Disease Control together to design a protocol and go in and do an absolutely professional, painstakingly thorough sampling within the county and within the confines of the Dow plant to determine whether the concentrations of dioxin have reached critical levels that imply critical health effects to the citizens of Midland County and to the employees of Dow Chemical.

We have had reports, and these are not scientifically valid, that of a sample of 40 women, 40 pregnant women who are married to Dow engineers, chemists, and professionals, that 90 percent of them had serious birth defects in their infants or suffered miscarriages. We intend to ask you to investigate that, as well as the soil samples.

In view of your own skepticism that you have expressed about the five soil samples that Dow evaluated and analyzed, how would you react to a formal request by this subcommittee, and perhaps the Health Subcommittee of the Commerce Committee, to go in there and do a job and find out what the truth is, turn over every stone that needs to be turned, and tell the American people and the Congress what your estimate is as to the level of dioxin that is there and whether this constitutes a health threat to the American people, the residents of Midland County, and the employees and their spouses of Dow Chemical?

Mr. ANDERSEN. It would be absolutely positive, and, with all due respect, Mr. Chairman, I must say that the gentleman to my right is ahead of you and we are working on that as of this day, as a matter of fact.

There are any number of tools that are available to the agency, all of which can be stopped at the gate of the plant, and they are all legal problems, which is my bailiwick. Those tools are being analyzed right now for those same purposes. Therefore, I would say

Mr. CHANDLER. Would the report that is in question here be used by the State of Michigan in the permit process or in the enforcement of its laws for regulation of water?

Mr. ANDERSEN. If you are talking about the initial report that Dr. Clark developed——

Mr. CHANDLER. Yes.

Mr. ANDERSEN. That was not the purpose of the report.

Mr. CHANDLER. What was the purpose of the report?

Mr. ANDERSEN. The purpose of the report, I think as Mr. Adamkus stated, the primary purpose, if I can repeat his testimony, was to compile the relevant existing data in one place for its most effective use in dissemination in the ongoing efforts that develop the control strategy for dioxin emission.

Now as to a permit, the type of information that we would require is very specific. It is not information about dioxin that is in the river. It is information about the toxic chemicals that are in Dow's internal waste streams on their property and the processes that discharge those particular chemicals. That was not information that ever existed in the report that Dr. Clark had begun to develop.

Mr. CHANDLER. What I am trying to get at is sort of the so what of all of this. If that report had—well, let me ask you another question.

I believe it was you who talked about Dow litigation?

Mr. ANDERSEN. That is correct.

Mr. CHANDLER. What is the Dow litigation? What is at stake there?

Mr. ANDERSEN. The Dow litigation is a chase that region V, after negotiating with Dow for a period of to 1½ to obtain all of the information that I have just referred to, the internal waste stream data and the process-related data, after being unsuccessful in obtaining that by making formal requests, region V in April of 1982 felt that it had no choice but to refer that matter to EPA headquarters for litigation, where we go to the court and ask for declaratory judgment, saying EPA has the right under section 308 of the Clean Water Act to obtain this information that is internal, on the property, and the process information.

Now Dow's greatest concern in that regard, as they have stated here today, is that the process information at least—they are claiming there is a proprietary interest, that it contains information which, if released, would give their competitors an advantage. We do not believe that that is correct, and we have filed a case I believe just 1 month ago, 1½ months ago. Dow has not as of this time answered.

Mr. CHANDLER. Is the question of who is the primary contributor to contamination of the Tittabawassee and Saginaw Rivers—is that a question that is of importance in that litigation?

Mr. ANDERSEN. Absolutely. The whole purpose of the litigation is to control dioxin before it gets into the river.

Mr. CHANDLER. If I can stop you there because I want this answer to be very clear, when you, EPA, the headquarters—I do not want to get into the Torricelli misunderstanding here—when EPA asked for and got the change from "EPA concludes" to "EPA speculates" then that is important to the outcome of this litigation that you are discussing?

Mr. ANDERSEN. As a lawyer, no—I——

Mr. CHANDLER. Oh, I misunderstood you. I thought you just said that——

Mr. ANDERSEN. No. As a lawyer, the information that is in that report does not have any impact on the litigation.

Mr. CHANDLER. But I asked——

Mr. ANDERSEN. That was information that had been released before. That conclusion preceded 1979, I believe. That would not have an impact on the litigation which was really seeking information which was different from the information that we already have.

Mr. CHANDLER. All right. I will not beat it to death. I thought you said—and this is from Buzzelli's testimony. He said that Dow has been—the statement was made that Dow has been the primary contributor to contamination of these two rivers. My question was, with regard to this litigation, does that make any difference and how you couch that. The terms "concludes" and "speculates" are very different ones. What I was driving at was, does that make any difference to the outcome of this litigation. Your answer is apparently no, it does not.

Mr. ANDERSEN. No. The outcome of this litigation, Congressman, will be whether or not EPA has the authority under section 308, as a matter of law, to go up the stream, get internal waste stream data, and to get process-related information.

Mr. CHANDLER. If you don't, we ought to change the law so that you do.

Mr. ANDERSEN. The law is very clear to me, and it was very clear to the District Court of Illinois when we litigated it this fall.

Mr. CHANDLER. I have just one final question for Mr. Adamkus.

You talked about, on page 4, the deletion of several conclusions and recommendations contained in the report relative to human consumption of contaminated fish, a synopsis of dioxin and furan health data, and references to EPA's Alsea—that is how you pronounce it; I used to fish in it—Oreg., dioxin study.

What is the significance of those items? What were the conclusions and recommendations that you had in the report that were deleted? What is the significance of those, also this health data, and the references to the EPA's Alsea, Oreg., dioxin study?

Mr. ADAMKUS. The significance of Alsea, as told by my staff, was a great one. I believe that they can repeat to you the scientific basis, how they arrived at this.

I believe at that point I was more or less relieved, knowing that this information already was a public document released in 1978. If that would be the hangup of approval or disapproval of the report at that time, it was not impacting our work or the information. It is not suspended from the general public. It was a public record. It was a matter, probably, of principle that it was not allowed to be included in that particular work, but I would refer for the significance from the scientific point of view—I would like to defer this to Mr. Bremer.

Mr. CHANDLER. All right.