



---

## Uploaded to VFC Website

### ~ November 2012 ~

---

This Document has been provided to you courtesy of Veterans-For-Change!

Feel free to pass to any veteran who might be able to use this information!

For thousands more files like this and hundreds of links to useful information, and hundreds of "Frequently Asked Questions, please go to:

[Veterans-For-Change](#)

---

*Veterans-For-Change is a 501(c)(3) Non-Profit Corporation  
Tax ID #27-3820181*

***If Veteran's don't help Veteran's, who will?***

We appreciate all donations to continue to provide information and services to Veterans and their families.

[https://www.paypal.com/cgi-bin/webscr?cmd=\\_s-xclick&hosted\\_button\\_id=WGT2M5UTB9A78](https://www.paypal.com/cgi-bin/webscr?cmd=_s-xclick&hosted_button_id=WGT2M5UTB9A78)

---

**Note:** VFC is not liable for source information in this document, it is merely provided as a courtesy to our members.

**Item ID Number** 05193  **Not Scanned**

**Author** Wessel, Milton R.

**Corporate Author** United States of America, Environmental Protection Agency

**Report/Article Title** Dow Motion for Prehearing Conference

**Journal/Book Title**

**Year** 1973

**Month/Day** September 12

**Color**

**Number of Images** 0

**Description Notes** In re: 2,4,5-Trichlorophenoxyacetic Acid; I. F. & R Docket Nos. 42, 44, 45, and 48 and I. F. & R. Docket No. 295; Also included in this item are an affidavit by Milton R. Wessel, and a certificate of service.

UNITED STATES OF AMERICA: ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR AND THE  
CHIEF ADMINISTRATIVE LAW JUDGE



In re: 2,4,5-Trichlorophenoxyacetic ) I.F. & R. Docket Nos.  
Acid ) 42, 44, 45 and 48  
and  
I.F. & R. Docket  
No. 295

---

DOW MOTION FOR PREHEARING  
CONFERENCE

Registrant The Dow Chemical Company ("Dow") hereby moves the Administrator in I.F. & R. Docket No. 295, and the Chief Administrative Law Judge in I.F. & R. Docket Nos. 42, 44, 45 and 48, pursuant to the provisions of Title 40, Code of Federal Regulations, § 164.60, for Orders scheduling the prehearing conferences provided for in Title 40, Code of Federal Regulations, § 164.50, as soon as possible, to consider the following matters:

1. Identification and alignment of parties.
2. The disposition of the additional issues presented in Docket No. 295, which matters are not at issue in Docket Nos. 42, 44, 45 and 48.
3. Consolidation.
4. The disposition of the motions and applications served June 26, 1972.
5. Trial dates.
6. Preliminary consideration of prospective witnesses, memoranda and issues.

and for such other and further relief as the Administrator and the Chief Administrative Law Judge may deem just and proper.

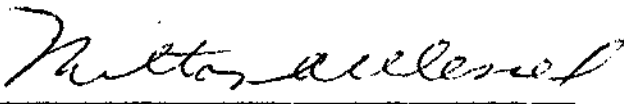
The grounds for this motion are set forth in Paragraphs 5 through 12 of Dow's Response to the Statement of Issues in I.F. & R. Docket No. 295, served August 21, 1973, in all Dockets, and in the annexed affidavit of Milton R. Wessel, sworn to September 12, 1973.

PLEASE TAKE NOTICE that in accordance with the provisions of Title 40, Code of Federal Regulations, § 164.60(b) you are required to serve and file an answer to this motion within ten days after service thereof, or within such other time as may be fixed by the Administrator, his designee or the Chief Administrative Law Judge.

Dated: New York, New York  
September 12, 1973

Yours, etc.

KAYE, SCHOLER, FIERMAN, HAYS &  
HANDLER  
Hearing Attorneys for The Dow  
Chemical Company

By   
Milton R. Wessel,  
A Member of the Firm

425 Park Avenue  
New York, New York 10022

To:

All parties as per attached  
Certificate of Service

UNITED STATES OF AMERICA: ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR AND THE  
CHIEF ADMINISTRATIVE LAW JUDGE

In re: 2,4,5-Trichlorophenoxyacetic ) I.F. & R. Docket Nos.  
Acid ) 42, 44, 45 and 48  
and  
I.F. & R. Docket  
No. 295

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

AFFIDAVIT

MILTON R. WESSEL, being duly sworn, deposes and  
says:

1. I am a member of Kaye, Scholer, Fierman, Hays & Handler, Hearing Attorneys for Registrant, The Dow Chemical Company ("Dow"), and am fully familiar with all the facts and prior proceedings herein. This affidavit is submitted in support of Dow's motion for the early convening of prehearing conferences in the above Dockets.

2. Paragraph 12 of Dow's Response to the Statement of Issues in Docket No. 295, served August 21, 1973 in all Dockets, requests the calling of early prehearing conferences. Dow's reasons therefor are set forth in Paragraphs 5 through 11. Undoubtedly the press of other matters has precluded action on this request. Some of such other matters may indeed be more

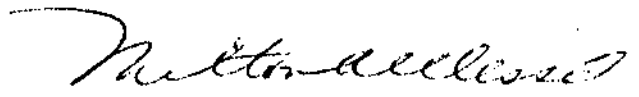
urgent than these cases in terms of the need for prompt remedial action. Nevertheless even a few hours devoted to an early prehearing conference in these matters would be of major importance in permitting the parties to prepare for a Spring hearing.

3. It may be helpful if some of the practical problems of preparation are outlined. The pleadings and other documents indicate that this case involves many issues and hundreds of potential witnesses located all over the world. Many of these persons are not in the employ of any party. Travel time and expense can be minimized if potential witnesses in the same area are interviewed at the same time. Yet until the nature of the issues is known, one cannot even anticipate who all the witnesses will be. Guidance is also needed as to the scope and form of any preliminary written witness statements which might be required.

4. Indeed, we do not even know who all the parties are. The Environmental Defense Fund and Harrison Welford, et al., had been major anticipated adversaries, for example, but to this point they have filed neither responses to the Statement of Issues, nor motions to intervene in Docket No. 295. Preparation and hearing will clearly be completely different if they are not involved, or appear only in the earlier and previously consolidated Dockets (in which a motion to intervene was made and denied, subject to renewal), or in all of the Dockets.

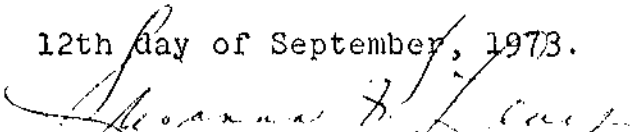
5. A number of organizations have filed responses seeking to become parties or to submit evidence. It is desirable that there be a division of effort among parties aligned on the same side of the issues. The same potential witnesses should not be seen two, three and four times. It would be valuable simply to have the interests and roles of the other parties identified at a prehearing conference. Yet in the absence of such a conference it cannot even be known which of these applicants will ultimately be parties. And although the Hearing Clerk has been most cooperative, her facilities are not adequate to permit her to continue the present burden of making and distributing copies of documents and answering queries, on any long-term basis.

6. With the limited possible exceptions noted in our Response to the Statement of Issues in Docket No. 295, we believe that it is entirely possible for this case to be ready for a fair hearing by next Spring. But a great deal of work must be done before that time. Much of it cannot really begin until the procedural outlines of the case have been clarified.

  
Milton R. Wessel

Sworn to before me. this

12th day of September, 1973.

  
Notary Public

SUSANNA K. LEVY  
NOTARY PUBLIC, State of New York  
No. 31-753092/  
Qualified in New York County  
Commission Expires March 30, 1974

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Motion and Supporting Affidavit of Registrant The Dow Chemical Company was served today by postage prepaid mail, upon the persons whose names and addresses are listed below:

Betty J. Billings (original and two copies)  
Hearing Clerk  
Environmental Protection Agency  
Room E-1019  
East Tower, Waterside Mall  
401 M Street, S.W.  
Washington, D.C. 20460

Administrator,  
Environmental Protection Agency  
Washington, D.C. 20460

David D. Dominick,  
Assistant Administrator  
for Hazardous Materials  
Control  
Environmental Protection Agency  
Washington, D.C. 20460

Anson M. Keller, Esq.  
Office of the General Counsel  
Environmental Protection Agency  
Room 519 West Tower, Waterside Mall  
4th and M Streets  
Washington, D.C. 20460

Raymond W. Fullerton, Esq.  
U.S. Department of Agriculture  
Room 2042, South Agriculture Bldg.  
12th & Independence Sts., S.W.  
Washington, D.C. 20250

J. Thomas Tidd, Esq.,  
General Counsel  
U.S. Department of Transportation  
400 7th Street, S.W.  
Washington, D.C. 20590



C. E. Lombardi, Jr.; Esq.  
Blackwell Sanders Matheny Weary  
& Lombardi  
Five Crown Center  
2480 Pershing Road  
Kansas City, Missouri 64108  
Attorneys for Thompson-Hayward  
Chemical Company

Lindley S. DeAtley  
Thompson-Hayward Chemical Company  
P.O. Box 2383  
Kansas City, Kansas 66110

Mr. R. J. Otten, Program Coordinator  
Amchem Products, Inc.  
Ambler, Pennsylvania 19002

J. Robert Hasness,  
Director of Technical Service  
Transvaal, Inc.  
P.O. Box 69  
Jacksonville, Arkansas 72076

Robert S. Bassman  
National Forest Products  
Association  
1619 Massachusetts Avenue, N.W.  
Washington, D.C.

Harry J. Breithaupt, Jr., Esq.  
General Counsel  
Association of American Railroads  
American Railroads Building  
Washington, D.C. 20036

C. W. McMillan,  
Executive Vice President  
American National Cattlemen's Association  
1015 National Press Bldg.  
Washington, D. C. 20004

John A. Matthews, Chairman  
Brush Control and Range Improvement Ass'n  
P.O. Box 176  
Abilene, Texas 79604

Don Ahrenholtz, Mgr.  
Colorado Farm Bureau  
2211 West 27th Avenue  
Denver, Colorado 80217

Acord Cantwell, Director  
Department of Natural Resources, Inc.  
Indiana Farm Bureau, Inc.  
50 East Washington Street  
Indianapolis, Indiana 46204

J. J. Dwyer  
Engineer Environmental Control  
The C & O Railway Co.  
The B & O. Railway Co.  
P.O. Box 907  
Huntington, West Virginia 25712

M. Chessin, Professor  
Department of Botany  
University of Montana  
Missoula, Montana 59801

The following, c/o Hearing Clerk  
Environmental Protection Agency  
Washington, D.C. 20460:

Indiana Farm Bureau Cooperative  
Indiana Plant Food & Agricultural Chemical Association  
Mountain Lake Right-of-Way Council  
Ohio Farm Bureau Federation  
Texas Southwestern Cattle Raisers Association

Dated: September 12, 1973



---

Milton R. Wessel