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To: Potential Dow EPA Hearing Witnesses

In an order received yesterday, the EPA Hearing Panel established initial dates and procedures for the hearing. I thought each of you would appreciate receiving a copy of the order so that you will have a better idea of the hearing status.

As you will see in the enclosed order, testimony will begin on Thursday, April 19. The hearing will be split into two phases, risks and benefits. Although we are not sure how long EPA's case will take, we anticipate that the Dow risk case will begin during the week of April 23 and will take several weeks to complete. We expect benefits testimony to be presented during the week of May 14. Finally, written statements will be required three days before a witness is scheduled to appear.

We will keep you advised as the schedule is developed in more detail. Even the dates given above are subject to change.

Sincerely yours,


L. Mark Wine

LMW:bac
Enclosure



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

April 5, 1979

OFFICE OF THE
ADMINISTRATOR

HAND DELIVERY

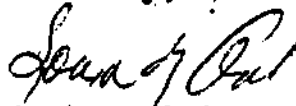
(See List of Addressees)

Subject: In re Emergency Order Suspending 2,4,5-T & Silvex
FIFRA Docket Nos. 409 & 410

Dear Sirs or Madams:

Enclosed, please find a copy of "Notice and Order" dated April 4, 1979, filed April 5, 1979 in the above-entitled proceeding by Charles N. Gregg, Chairperson, Hearing Panel.

Sincerely,


Sonia G. Anderson

Enclosure

LIST OF ADDRESSEES

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ENVIRONMENTAL PROTECTION AGENCY

Suspension of Registrations for Certain Uses of 2,4,5-T and Silvex

FIFRA Docket Nos. 409 and 410

Notice and Order

I. Active Parties

Any party may be an active party. If parties do not intend to participate in the introduction of evidence or examination of witnesses, they will be considered inactive parties. Inactive parties will not lose the right to file proposed findings and conclusions and briefs. They will not, however, be entitled to expedited service (See V below), and they will not be served with written witness statements and other papers relating to the introduction of testimony and the conduct of hearings.

To be an active party, a party must file a statement to this effect (including a reference to its having filed and served its statement of intention to introduce evidence and/or cross-examine witnesses as provided in IV, below) with the Hearing Clerk by April 12 and shall serve such statement on all parties by hand delivery or telex by noon, April 13.

II. Order of Introduction of Evidence

Evidence will be introduced in the following order:

- o The complete evidence on the risk associated with the suspended uses of 2,4,5-T and Silvex will be introduced by all parties before commencement of the introduction of evidence on the benefits of such uses.
- o The respondent will introduce its complete evidence on risk first. The petitioners (pesticide registrants) will then introduce their complete evidence on risk.
- o Following the completion of evidence on risk, the respondent will present its evidence on the benefits of the suspended uses, to be followed by the evidence on benefits of the petitioners.
- o The parties may choose the order of presentation of subject matter in introducing evidence on risk and in introducing evidence on benefits.

III. Requirements Regarding Written Witness Statements

Except in unusual circumstances, and as approved by the Panel, introduction of direct testimony and documentary evidence and other exhibits shall (in the case of oral direct testimony) be preceded by, and in other cases consist of, introduction of a sworn written statement of a witness which shall incorporate his complete direct testimony and/or identify with specificity the documentary evidence and other exhibits to be introduced through him. Such statement shall be filed with the Hearing Panel and served on active parties no later than 11:00 a. m. on the third day preceding the day on which it is anticipated that the witness will testify (by 10:00 a. m., Friday, in the case of a Tuesday hearing). Exhibits need not be served on parties, but they shall be filed with the Hearing Panel as provided in V below, except that fewer copies can be provided in the case of bulky exhibits by arrangement with the Panel. Counsel should attempt to oblige other parties who request copies of exhibits.

IV. Schedule and Related Orders

The following schedule is established:

April 10

Each party who intends to introduce direct evidence (including documentary and other exhibits) will provide the names of the witnesses whose testimony it will introduce (or through whom exhibits will be introduced); a brief description of each witness' proposed testimony (including identification of exhibits); a statement whether the testimony will be in writing alone or whether permission to introduce oral direct testimony will also be requested; and in the latter case, the estimated time for such oral testimony and a brief justification for allowing oral testimony in addition to written testimony. This information will be served on every party and will be filed with the Hearing Panel. Filing and service upon parties in the greater Washington area will be by hand delivery, and service upon other parties by telex (or other guaranteed 24-hour delivery), in each case by close of business April 10.

April 12

Each party who wishes to cross-examine any listed witness will provide a list of the witnesses it proposes to cross-examine; an estimate of the time needed for cross-examination of each such witness; and a brief statement indicating the likely benefit of such cross-examination. This information will be served and filed, in the same fashion as was the information on direct testimony, by close of business April 12.

April 13 and 16.

Parties who have indicated an intention to introduce evidence (direct testimony and exhibits) and/or a wish to cross-examine will attempt to allocate among themselves the available hearing time, to include allocations between the risk and benefit aspects of the hearing; within these two categories, allocation among the respondent, the petitioner Dow Chemical Company and other pesticide registrant petitioners should be attempted. Counsel shall also confer concerning objections to proposed

witnesses. Counsel shall also employ their best efforts to stipulate facts and to narrow the issues for the Panel. Where such agreements cannot be reached, counsel shall attempt to arrive at a useful statement of the differences among the parties and agreed upon statements of major issues. Respondent shall convene a conference for the foregoing purposes on Friday afternoon, April 13, or Monday morning, April 16. All active parties are urged to participate in this conference. Parties should contact Mr. Michael Winer for the time and place of the conference. Following the conference, counsel shall prepare a report or reports to the Hearing Panel on the results of these attempts to allocate time and stipulate and shall submit requests for allocation of hearing time to the extent agreement was not reached. Such report and requests shall be filed with the Hearing Panel by 4:00 p. m., April 16.

April 16

The respondent shall file and serve the written statements of its witnesses who will appear during the week of April 16.

April 17

A prehearing conference will be held at 9:00 a. m., at the Environmental Protection Agency, Crystal Mall Building No. 2, Room 1118B, 1921 Jefferson Davis Highway, Arlington, Virginia, to consider any remaining questions as to the apportionment of hearing time between the risk and benefit aspects of the hearing and among the parties, the scheduling of witnesses, and for other purposes. No party who fails to be present at the prehearing conference, except for good cause shown, will receive an allocation of hearing time. The Panel will allocate hearing time among active parties at the prehearing conference or no later than the following day. Time will be allocated on the basis of 22 full days of hearings, April 19 through May 18. The week of May 21 will be reserved for hearing witnesses recommended by the Hearing Panel and for witnesses unavailable for good cause during the preceding hearing schedule, or as otherwise provided by the Panel.

Whether requests to present oral direct testimony will be granted in the case of individual witnesses and whether requests to cross-examine particular

witnesses will be granted will not be made as a part of the allocation of time to parties, but will be addressed individually either at the prehearing conference, or in most cases, as the hearings progress.

April 19

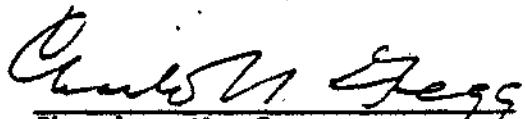
The first two hearing days for the introduction of evidence (respondent's witnesses on risk) will begin at 9:00 a. m. and will be held in Room 1118B, same address as above.


Subsequent hearings are all expected to be held at the same address. Time of commencement and hearing room numbers for each hearing day will be announced at the preceding day's hearing.

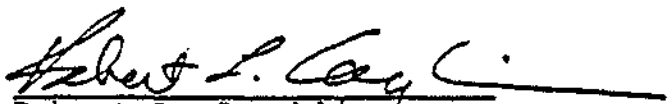
At all times following the allocation of hearing time, counsel should be prepared to provide the Hearing Panel and other parties their good faith best estimates as to the order in which and expected times when they propose to call witnesses and any changes in the witnesses they intend to call. In this connection, counsel shall exert their best efforts to avoid surprise and waste of time and allow counsel and the Hearing Panel to focus on the most important issues.

V. Service and Filing

Except as otherwise provided in particular cases, service will be made on active parties in the greater Washington area by hand delivery promptly after filing. Service on active parties outside the Washington area will be made by telex or express mail (or other guaranteed 24-hour delivery). When service on inactive parties is required, it will be by first class mail. When filing a document with the Hearing Panel, an original plus two copies shall be delivered to the Hearing Clerk, and three copies shall be delivered to the offices of the Hearing Panel at Crystal Mall Building No. 2, Room 1003, 1921 Jefferson Davis Highway, Arlington, Virginia.


 Charles N. Gregg
 Chairperson, Hearing Panel


 Dr. William A. Brungs
 Member, Hearing Panel


 Robert L. Coughlin
 Member, Hearing Panel

April 4, 1979