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**Report/Article Title** Motion of the Dow Chemical Company to Set Prehearing Conference Within 10 Days and to Begin Cancellation Hearings on or Before June 4, 1979, in re: Notice of Intent to Cancel Registrations for 2,4,5-T and Silvex, Docket No. 438, April 23, 1979

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
In re Notice of Intent to Cancel )  
Registrations for 2,4,5-T and )  
Silvex )  
\_\_\_\_\_

Docket No. 438

MOTION OF THE DOW CHEMICAL COMPANY  
TO SET PREHEARING CONFERENCE WITHIN 10 DAYS  
AND TO BEGIN CANCELLATION HEARINGS ON OR BEFORE  
JUNE 4, 1979

The Dow Chemical Company, a registrant for 2,4,5-T and silvex products, previously filed a request for a cancellation hearing and objections, with respect to each and every registration and use subject to the notices of intent to cancel published on March 15, 1979 in the Federal Register. 44 Fed. Reg. 15893, 15917. In order to move cancellation proceedings forward as rapidly as possible, Dow is today requesting immediate reference of these proceedings to an Administrative Law Judge. Dow hereby moves that a prehearing conference be set in these proceedings within 10 days, and that the cancellation hearings be set to begin no later than June 4, 1979.

Each of the registrations subject to the notices of cancellation is also subject to the emergency suspension orders issued by EPA on March 1, 1979. Thus, every product at issue in these proceedings has been and remains off the market for major uses.

Moreover, because of seasonal use patterns for both 2,4,5-T and silvex, little practical relief for 1979 is offered the registrants of these products by the suspension hearings currently underway. In addition, the suspension proceedings do not afford an opportunity to be heard by an independent Administrative Law Judge, but rather are conducted by a panel of agency employees who have had great difficulty conducting the hearings in accordance with applicable legal requirements. In short, the suspension hearings as presently conducted do not offer a fair opportunity for the presentation of the issues.

For all these reasons, Dow has today withdrawn from further participation in the suspension hearings. These cancellation proceedings constitute the only remaining recourse for Dow, with respect to the products subject to the suspension orders and cancellation notices.

It is therefore imperative that these cancellation hearings be conducted in an expeditious manner, and that a final decision be reached on or before March 1, 1980 -- the starting date for the 1980 spraying season. In light of the intensive preparation undertaken in March and April by Dow, agency counsel, and others, these goals are realistic and achievable. Dow accordingly proposes the following overall schedule for the conduct of these hearings:

First Prehearing Conference

On or before May 3, 1979

Additional Prehearing Preparation	May 3, 1979 - June 3, 1979
Second Prehearing Conference (If Needed)	May 23, 1979
Final Prehearing Conference	May 31, 1979
Hearings Begin	On or before June 4, 1979
Receipt of Evidence Completed	Early Fall, 1979
Administrative Law Judge Enters Initial Decision	On or before December 1, 1979
Administrator Enters Final Decision	On or before March 1, 1980

It should be emphasized that this schedule is designed to be implemented flexibly; all parties should cooperate in a reasonable effort to conclude the hearings as quickly as possible, but no party's procedural rights should be abridged in order to meet arbitrary deadlines. Dow believes this approach may well result in a final decision even before the March 1, 1980 goal.

At the First Prehearing Conference, Dow believes the following matters should be addressed:

1. The parties who intend to participate actively in the cancellation proceedings should be identified.
2. A schedule should be set for the exchange of tentative witness lists.
3. A date should be set for the commencement of evidentiary hearings.
4. The Administrative Law Judge should address any other matters requiring early resolution.

Dow firmly believes that the approach set forth in this Motion will permit a thorough examination of the important

issues raised in these proceedings and accordingly asks that the prehearing conference and evidentiary hearings be scheduled as requested.

Respectfully submitted,

*Edward W. Warren*

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L. Mark Wine  
Richard L. McConnell, Jr.

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Counsel for The Dow Chemical  
Company

April 23, 1979

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion of The Dow Chemical Company to Set Prehearing Conference Within 10 Days and to Begin Cancellation Hearings on or Before June 4, 1979, were mailed first class postage prepaid or hand delivered to the persons on the attached list on April 23, 1979.

A handwritten signature in cursive script, appearing to read "L. Mark Wine", is written over a horizontal line.

L. Mark Wine



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P. O. Box 423  
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Land-O-Lakes, Inc.  
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W. Sixth Avenue  
Shanandoah, Iowa 51601

Imperial, Inc.  
P. O. Box 423  
W. Sixth Avenue  
Shenandoah, Iowa 51601

Imperial, Inc.  
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Highway 13, North  
Albert Lea, Minnesota 56007

Chevron Chemical Company  
Ortho Division  
940 Hensley Way  
Richmond, California 94804

Universal Cooperatives, Inc.  
3001 Metro Drive  
Suite 500  
Minneapolis, Minnesota 55420

Thompson-Hayward Chemical Co.  
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Kansas City, Kansas 66106

Southern Mill Creek  
Products Company  
5414 North 56th S.  
P. O. Box 1096  
Tampa, Florida 33601

Farmingdale Garden Labs, Inc.  
136 Verdi Street  
Farmingdale, New York 11735

Dymon, Inc.  
3401 Kansas Avenue  
Kansas City, Kansas 66106

Borden, Inc.  
180 East Broad Street  
Columbus, Ohio 43215

Rowco, Inc.  
Right-of-Way Company  
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San Antonio, Texas 78217

The Terre Company  
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Saddle Brook, New York 07662

Lebanon Chemical Corporation  
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Portland, Oregon 97218

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Nott Manufacturing Co.  
Pleasant Valley  
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Navy Brand Mfg. Co.  
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St. Louis, Missouri 63110

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Grand Rapids, Michigan 49504

Helena Chemical Company  
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Vertac, Inc.  
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Memphis, Tennessee 38137

Black Leaf Products Co.  
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Elgin, Illinois 60120

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Rockland Chemical Co., Inc.  
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Caldwell, New Jersey 07006

Gro-Green Products, Inc.  
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Buffalo, New York 14210

Riverside Chemical Co.  
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Grand Rapids, Ohio 43522

Vaughan-Jacklin Corporation  
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Bound Brook, New York 08805

Standard Oil Co. (Indiana)  
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Kansas City, Kansas 66118

The Riverdale Chemical Co.  
200 East 17th Street  
Chicago Heights, Illinois 60411

The Platte Chemical Co.  
150 South Main  
Fremont, Nebraska 68025

Frank Miller & Sons, Inc.  
13831 South Emerald  
Chicago, Illinois 60627

Pueblo Chemical & Supply Co.  
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Garden City, Kansas 67846

Tobacco States Chemical Co.  
P. O. 12046  
Lexington, Kentucky 48580

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San Antonio, Texas 78217

Chem-Pak Co.  
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So. Miami, Florida 33143

Economy Products Co.  
Box 427 West 8th Avenue  
Shenandoah, Iowa 51601

Bonide Chemical Co., Inc.  
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Yorkville, New York 13495

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Farmland Industries, Inc.  
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Kansas City, Missouri 64116

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Zep Manufacturing Co.  
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Industries, Inc.  
Atlanta, Georgia 30301

Amchem Products, Inc.  
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Ambler, Pennsylvania 19002

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Continental Peat Co.  
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