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Report/Article Title Report of Prehearing Conference No. 1 and Notice of Prehearing Conference No. 2, in the Matter of The Dow Chemical Company, et al., Petitioners, FIFRA Docket No, 415 et al., June 7, 1979

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

A-110

Office of Administrative Law Judges

June 7, 1979

CERTIFIED - MAIL
RETURN RECEIPT REQUESTED

OFFICE OF THE
ADMINISTRATOR

(See List of Addressees)

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

Dear Participants:

Enclosed, please find a copy of "Report of Prehearing Conference Number I and Notice of Prehearing Conference Number 2", dated and filed, June 7, 1979, in the above-entitled proceeding by Administrative Law Judge, Edward B. Finch.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bessie L. Hammiel".

Bessie L. Hammiel
Docket Clerk

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

JUN 7
P 2:47

In the Matter of)
The Dow Chemical Company, et. al.,) FIFRA Docket No. 415 et. al.
Petitioners)

Report of Prehearing Conference No. 1
and Notice of Prehearing Conference No. 2

In these consolidated proceedings under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq., 1973 Supp.), a prehearing conference was held in Washington, D. C., June 5, 1979.

Pursuant to Notice of Prehearing Conference dated May 11, 1979, twenty-one parties expressed the desire to be considered active parties to this proceeding. The attached list of "Active Participants" identifies those parties. For purposes of service until such time as the next prehearing conference is held on July 19, 1979 these parties shall be considered active.^{1/} However, at the next prehearing conference each party who intends to be active shall be present and so state his

1/ Section 164.5 of the rules of practice (40 CFR 164.5) reads, in part, as follows:

(a) All documents or papers required or authorized to be filed, shall be filed with the hearing clerk, except as provided otherwise in this part. At the same time that a party files documents or papers with the clerk, it shall serve upon all other parties copies thereof, with a certificate of service on each document or paper, including those filed with the hearing clerk. . .

(b) In addition to copies served on all other parties, each party shall file an original and two copies of all papers with the hearing clerk.

intention to do so. Thereafter any service to be accomplished shall be limited to those parties.

Of course, the status of active participant carries with it the responsibilities of such status such as the filing of appropriate pre-trial briefs, which will be required at a later date, and participation in future prehearing conferences and the formal hearing. Absent such an affirmative statement the party will be considered an inactive participant and will no longer be served with the documents to be filed herein. Inactive participants retain the right to file post-hearing briefs. Copies of any specific documents not served on an inactive party may be obtained from the Hearing Clerk, Office of the Administrative Law Judges, Washington, D. C. 20460.

At the prehearing conference, the Administrative Law Judge stated that the conference was called at this time so that all matters that need be completed prior to hearing be done as quickly as possible and the necessity for the parties to begin marshalling or preparing their evidence for presentation at the hearing was emphasized. In connection with preparation for the hearing to be held herein, the following schedule was determined:

June 12, 1979

Since it is evident that Dow will insist upon trade secret status for some of the data to be presented as evidence in this proceeding the procedures to be followed were discussed. It was agreed between the parties that those who may be active would meet and hopefully agree on the language of a protective order, a confidentiality agreement, the identification of the data, and the

procedures for implementation of the terms of this order and agreement during the progress of the hearing. Such proposed protective order, confidentiality agreement, identification of data and procedures are to be filed with the Hearing Clerk no later than June 12, 1979.

July 12, 1979

The parties are to file with the Hearing Clerk a proposed agenda for the second prehearing conference to be held on July 19, 1979.

In addition the parties are to file all requests for discovery. The parties were informed that this filing was only for the information of the court since it is expected that all discovery, which is expected to be minimal, will be accomplished on a voluntary basis including data considered to be trade secret.

If a dispute arises requests for mandatory discovery will, of course, be proper.

July 17, 1979

An initial list of witnesses with a brief but informative narrative description of their testimony as to risk assessment will be filed with the Hearing Clerk and served on each of the other active participants. A list of proposed exhibits, grouped by issues and identifying the witness sponsoring each exhibit, will similarly be served on each of the other active participants and shall also be filed with the Hearing Clerk on or before July 17, 1979.

July 19, 1979

By this prehearing order No. 1 all parties are notified that a second prehearing conference will be held on Thursday, July 19, 1979 at 9:30 a.m. in Room 2409, Waterside Mall, 401 M Street, S.W., Washington, D. C.

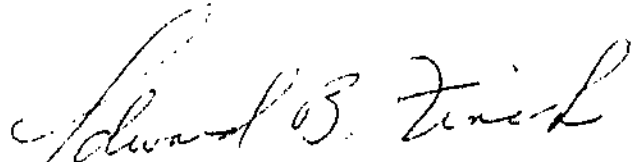
Order of Introduction of Evidence

While some discussion was held with regard to the order of introduction of evidence and the use and content of verified statements for direct testimony, it is premature at this time to establish any set rules other than to state that complete risk assessments will be presented first which will be followed by complete benefit analysis and that verified statements which identify documents and exhibits will be required for direct testimony.

Comment

Counsel for Respondent made a general statement to the effect that with respect to some uses of 2,4,5-T and silvex which are not the subject of the instant cancellation proceeding, but which have been the subject of continuing RPAR procedures, such as, use on rangeland, rice, etc., EPA may take some action under either Sec. 6(b)(1) or Sec. 6(b)(2) of FIFRA by the end of June which could conceivably impact upon any procedures which may be adopted in the instant proceeding. Such impact could involve consolidation of the two proceedings and also involve additional parties other than those already filing objections and request for hearing in this proceeding.

The schedules outlined in this prehearing report were adopted with this in mind and it is understood by all present parties that further consideration of procedures and the rights of new and additional parties pursuant to this contemplated consolidated action could alter some of the accomplishments under this schedule. If such action is taken by EPA as contemplated, any future course of action as a result thereof will be considered at the second prehearing conference to be held on July 19, 1979.

A handwritten signature in cursive script, reading "Edward B. Finch". The signature is written in dark ink and is positioned above the typed name and title.

Edward B. Finch
Administrative Law Judge

June 7, 1979

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*These parties have filed Motion to Intervene. The time for filing objections to such intervention has not expired. At the prehearing conference it was indicated that no objection would be filed. It is my intention to grant said motions upon the expiration of the ten day objection period. For purposes of service of this Report of Prehearing Conference No. 1 and to expedite consideration of the inclusion of all active parties in Protective Order and discovery procedures these parties have been included in this list of "Active Participants."

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