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COMMENTS: BART KULL
SPECIAL ASSISTANT TO THE DEPUTY UNDERSECRETARY
FOR INTERGOVERNMENTAL AFFAIRS, HHS
ALTERNATE CHAIR, AGENT ORANGE WORKING GROUP

TO: JOINT MEETING OF THE NEW JERSEY AND NEW YORK
AGENT ORANGE COMMISSIONS.

DATE: MARCH 12, 1982

PLACE: RUTGERS UNIVERSITY, NEWARK, NJ

SUBJECT: AGENT ORANGE RESEARCH OVERVIEW

I APPRECIATE THIS OPPORTUNITY TO VISIT WITH YOU ABOUT A FEDERAL ORGANIZATION KNOWN AS THE "AGENT ORANGE WORKING GROUP."

THE WORKING GROUP IS CHARGED WITH BEING THE OVERALL COORDINATOR, CLEARING-HOUSE AND EVALUATOR OF THE FEDERAL RESEARCH EFFORT. UNDER THE UMBRELLA OF THE WORKING GROUP, ALL OF THE FEDERAL AGENCIES INVOLVED IN RESEARCH AND POLICY RELATED TO AGENT ORANGE AND OTHER HERBICIDES USED IN VIETNAM, ARE DRAWN TOGETHER AND WORK TOGETHER. THAT WORK WILL GO FORWARD AS RAPIDLY AS POSSIBLE; THERE WILL BE NO HINT OF POLITICAL GAMEPLAYING; AND CONCLUSIONS REACHED WILL BE PROVIDED ACCURATELY TO SECRETARY SCHWEIKER'S CABINET COUNCIL ON HUMAN RESOURCES SO THAT, IF NEED BE, OUR ADMINISTRATION AND CONGRESS CAN DEVELOP POLICY BASED ON SCIENTIFICALLY SUPPORTABLE FACTS.

THAT NEED TO UNCOVER VALID INFORMATION AS QUICKLY AS POSSIBLE FOR THE BENEFIT OF VIETNAM VETERANS WAS WHAT PROMPTED PRESIDENT REAGAN, LAST JULY, TO UPGRADE THE VISIBILITY AND "CLOUT" OF THE AGENT ORANGE WORKING GROUP.

HE RAISED THE WORKING GROUP TO CABINET COUNCIL REPORTING STATUS AND EXPANDED ITS MEMBERSHIP AND FUNDING SOURCES. THERE IS NOW A MEMBER OF THE WHITE HOUSE STAFF AS WELL AS A

REPRESENTATIVE FROM THE OFFICE OF MANAGEMENT AND BUDGET TAKING PART IN THE MONTHLY MEETINGS OF THE AGENT ORANGE WORKING GROUP, AS WELL AS ALL FEDERAL AGENCIES INVOLVED IN DIOXIN RESEARCH AND VETERANS AFFAIRS.

FURTHER, BECAUSE OF THE GROWING INTEREST OF THE INTERNATIONAL COMMUNITY IN THIS WORK, A REPRESENTATIVE OF THE DEPARTMENT OF STATE WILL BE ADDED TO THE MEMBERSHIP.

HEALTH AND HUMAN SERVICES SECRETARY DICK SCHWEIKER, WHO IS HEAD OF THE CABINET COUNCIL ON HUMAN RESOURCES...AND THE MAN TO WHOM THE WORKING GROUP REPORTS...HAS EXHIBITED AN INTENSE INTEREST IN THIS MATTER.

HE HOLDS THE STRONG BELIEF THAT THE PUBLIC AND VETERANS GROUPS HAVE A RIGHT TO BE QUICKLY ADVISED OF IMPORTANT NEW INFORMATION. YOU MAY RECALL THAT LAST SEPTEMBER 23RD, SECRETARY SCHWEIKER WENT BEFORE THE NEWS MEDIA AND ANNOUNCED THE VERIFICATION OF THE FACT THAT ON A NUMBER OF OCCASIONS, AGENT ORANGE HAD BEEN DUMPED ON AMERICAN MILITARY INSTALLATIONS IN VIETNAM. THESE DUMPINGS RESULTED FROM THE NEED TO LIGHTEN LOAD BY SPRAY AIRCRAFT WHICH HAD OCCASIONALLY LOST POWER ON TAKE-OFF.

THIS NEW INFORMATION CONFIRMED WHAT HAD BEEN ONLY SPECULATION AND OPENED THE POSSIBILITY OF IDENTIFYING A LARGE, POTENTIALLY EXPOSED GROUP OF PEOPLE AS AN AID TO MORE VALID RESEARCH. HE REVEALED THIS INFORMATION IMMEDIATELY UPON LEARNING OF IT.

SECRETARY SCHWEIKER IS CONVINCED THAT THE PUBLIC, ESPECIALLY VIETNAM VETERANS, HAS A NEED FOR INFORMATION AND, INDEED, HAS EVERY RIGHT TO KNOW.

THAT'S THE KIND OF SUPPORT THE WORKING GROUP IS GETTING FROM THE SECRETARY AND THE ADMINISTRATION.

THERE IS A STRONG SENSE OF URGENCY AS WELL AS A RECOGNITION THAT LEGITIMATE RESEARCH TAKES TIME.

VIETNAM VETERANS CANNOT BE EXPECTED TO WAIT FOREVER FOR ANSWERS.

FOOT-DRAGGING AND BUREAUCRATIC DELAYS WILL NOT BE TOLERATED. IN THIS REGARD THE WORKING GROUP HAS THE COMPLETE SUPPORT OF THE ADMINISTRATION AND THE FEDERAL SCIENTIFIC COMMUNITY.

THE VETERANS ADMINISTRATION HAS COME UNDER HEAVY FIRE FOR WHAT WAS PERCEIVED AS UNRESPONSIVENESS TO THE CONCERNS OF VETERANS RELATING TO AGENT ORANGE. THAT PERCEPTION IS CHANGING. TO SUPPORT THAT, CHUCK HAGEL HAS BEEN RECENTLY NAMED AS DEPUTY ADMINISTRATOR. CHUCK IS A PURPLE HEART VIETNAM COMBAT VETERAN. HE HAS ALREADY EXPANDED THE STAFF AND SPACE RELATED TO THE AGENT ORANGE ISSUE AND HAS SERVED NOTICE THAT THE FULL RESOURCES OF THE V.A. WILL BE DIRECTED TOWARD PROVIDING VALID ANSWERS BASED ON ACCELERATED RESEARCH, AND TOWARD DISPELLING THE CHARGE THAT THE V.A. HAS BEEN UNRESPONSIVE TO THE CONCERNS OF VETERANS ABOUT AGENT ORANGE.

MEANWHILE, THE DEPARTMENT OF DEFENSE ARMY RECORDS SEARCH DIVISION IS CURRENTLY DEVELOPING SOME HIGHLY SIGNIFICANT DATA. THE DETAILS ARE NOT, AS YET, COMPLETE. THE POSSIBILITY EXISTS THAT A LARGE NUMBER OF VIETNAM VETERANS, EXPOSED AND RELATIVELY UNEXPOSED, MAY BE IDENTIFIED FOR PURPOSES OF A RELIABLE RESEARCH COHORT. THAT DEVELOPMENT IS BEING VIEWED WITH GUARDED OPTIMISM BECAUSE IT WOULD BE EXTREMELY VALUABLE TO THE CONDUCT OF THE CONGRESSIONALLY-MANDATED VETERANS ADMINISTRATION EPIDEMIOLOGY STUDY.

AFTER SOME DELAYS, THE U.C.L.A. PROTOCOL FOR THAT STUDY HAS BEEN REWORKED, RESUBMITTED, AND IS CURRENTLY UNDER REVIEW BY THE AGENT ORANGE WORKING GROUP SCIENCE PANEL AND OTHER AGENCY

SCIENTISTS, AS WELL AS THE CONGRESSIONAL OFFICE OF TECHNOLOGY ASSESSMENT. IT IS EXPECTED THAT THE REVIEW PROCESS WILL WEED OUT ANY POSSIBILITY OF BIAS OR WEAKNESS IN THE PROTOCOL, WHICH IS ESSENTIALLY A COOKBOOK RECIPE ON HOW THE ACTUAL STUDY WILL BE CONDUCTED. WE WISH TO MOVE RAPIDLY AND RESPONSIBLY SO THAT THE ACTUAL STUDY AND RESEARCH CAN BEGIN.

IN ADDITION, THERE IS A GREAT DEAL OF RESEARCH UNDERWAY, AND I'LL OUTLINE THAT IN A MOMENT.

THERE ARE A LOT OF FALSE ASSUMPTIONS MAKING THE ROUNDS ABOUT WHAT THE FEDERAL GOVERNMENT IS, OR IS NOT, DOING IN EFFORTS TO GET TO THE TRUTH OF THE ISSUE OF AGENT ORANGE AND ITS IMPACT ON THE HEALTH OF VIETNAM VETERANS.

IN VARIOUS STATES, LEGISLATION IS BEING INTRODUCED AND PASSED BECAUSE OF A PERCEPTION THAT THE FED IS NOT DOING ANYTHING. THAT'S NOT REALLY THE FAULT OF THE STATES SO MUCH AS IT IS OUR FAULT. TRUTH IS, NOT A VERY GOOD JOB HAS BEEN DONE TO GET INFORMATION OUT TO THE PUBLIC. ADDED TO THAT IS THE TENDENCY ON THE PART OF THE NEWS MEDIA TO GO FOR THE SPECTACULAR, WHICH IS TOO OFTEN THE EXPRESSION OF THE NEGATIVE ASPECTS OF A GIVEN PROBLEM. A PROTEST MARCH ABOUT A PROBLEM GENERALLY GETS HIGHER BILLING THAN A SCIENTIST SEEKING A SOLUTION TO THE PROBLEM IN SOME QUIET LAB.

IT'S HARD TO FAULT THAT. DAY-TO-DAY NEWS, AS I BELIEVE WALTER CRONKITE ONCE PUT IT, IS ABOUT THE CATS WHO RAN AWAY LAST NIGHT...NOT THE ONES WHO STAYED HOME.

THERE IS A GREAT DEAL OF RESEARCH GOING ON: RIGHT NOW, THERE ARE 25 SEPARATE, COMPLEX AND EXPENSIVE RESEARCH STUDIES UNDERWAY OR COMPLETED IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES DEALING WITH DIOXINS.

THERE ARE OTHER RESEARCH PROJECTS GOING FORWARD IN THE DEPARTMENT OF AGRICULTURE AND THE ENVIRONMENTAL PROTECTION AGENCY.

I WOULD LIKE TO BRIEFLY OUTLINE FOR YOU SOME OF THE MAJOR RESEARCH EFFORTS UNDERWAY.

THE NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH IS ESTABLISHING A REGISTRY OF PEOPLE IN THE UNITED STATES WHO HAVE WORKED ON THE PRODUCTION OF DIOXIN CONTAMINATED MATERIALS SUCH AS 2-4-5T, ONE OF THE COMPONENTS OF AGENT ORANGE. SINCE 1979, THEY'VE BEEN COLLECTING WORK HISTORIES GOING BACK TO THE 1940'S. THE INFORMATION WILL GIVE AN INDICATION OF WHETHER DIOXIN-EXPOSED WORKERS DIE AT A RATE, OR FROM CAUSES DIFFERENT FROM, THE GENERAL POPULATION. PRELIMINARY RESULTS ARE EXPECTED IN LATE 1983. IT'S CALLED THE "DIOXIN REGISTRY."

THAT SAME INSTITUTE IS ALSO INVESTIGATING AN ASSOCIATION BETWEEN WORK-PLACE EXPOSURE TO HERBICIDES AND THE DEVELOPMENT OF A MALIGNANT TUMOR KNOWN AS SOFT TISSUE SARCOMA...A FORM OF CANCER. IT APPEARS, FROM STUDIES IN SWEDEN AND IN THIS COUNTRY, THAT THERE IS A LINK. THAT HAS TO BE CONFIRMED. THE DIOXIN REGISTRY WILL BE HELPFUL IN ARRIVING AT A DEFINITE CONCLUSION.

SINCE 1968, THE CENTERS FOR DISEASE CONTROL HAS KEPT A REGISTRY OF ALL BABIES BORN WITH BIRTH DEFECTS IN THE METROPOLITAN ATLANTA AREA. BASED ON THE REGISTRY, THEY HAVE BEGUN A STUDY DESIGNED TO DETERMINE IF VIETNAM VETERANS ARE AT INCREASED RISK OF HAVING BABIES BORN WITH SERIOUS BIRTH DEFECTS. THEY HAVE IDENTIFIED 7,500 BIRTH-DEFECTED BABIES, MANY THE CHILDREN OF VIETNAM VETERANS. A CONTROL GROUP OF 3000 BABIES BORN WITHOUT DEFECTS WILL BE USED.

IF THE STUDY DEMONSTRATES THAT VIETNAM VETERANS HAVE AN INCREASED RISK OF FATHERING A CHILD WITH A DEFECT IT MUST THEN BE DETERMINED, IF POSSIBLE, IF THE INCREASE IS ASSOCIATED WITH AGENT ORANGE EXPOSURE OR WITH SOME OTHER FACTOR. THE STUDY IS SCHEDULED TO BE COMPLETED BY SEPTEMBER OF NEXT YEAR.

A VERY IMPORTANT RESEARCH EFFORT THAT IS MOVING AHEAD RAPIDLY IS BEST KNOWN AS THE "RANCH HAND STUDY." IT DEALS WITH

THE PILOTS AND CREWS, KNOWN AS THE RANCH HANDERS, WHO ACTUALLY SPRAYED AGENT ORANGE AND OTHER HERBICIDES FROM FIXED WING AIRCRAFT IN VIETNAM. THEY WERE HEAVILY EXPOSED.

THE AIR FORCE HAS CONTRACTED WITH THE LOU HARRIS AGENCY TO CONDUCT A FACE-TO-FACE QUESTIONNAIRE THAT DEALS WITH STATISTICAL DATA, HEALTH PROBLEMS, SYMPTOMS AND SO ON, OF BOTH THE VETERANS AND THEIR FAMILIES. THERE ARE ABOUT 1200 RANCH HAND PERSONNEL INVOLVED, ALONG WITH 1200 OTHER PEOPLE NOT EXPOSED (FOR CONTROL). ABOUT HALF OF THOSE QUESTIONNAIRES ARE NOW COMPLETED. THAT PHASE ENDING IN APRIL WILL COST ONE MILLION DOLLARS. THE NEXT STEP WILL BRING THESE PEOPLE TO HOUSTON FOR A THREE-DAY, IN DEPTH, PHYSICAL EXAMINATION. THAT PHASE HAS ALREADY BEGUN AND WILL BE COMPLETED BY SEPTEMBER. EVERYTHING WILL THEN BE COMPUTERIZED AND AN ANALYSIS OF THE QUESTIONNAIRES AND THE EXAMS WILL BE MADE. IT IS ANTICIPATED THAT WE WILL HAVE PRELIMINARY RESULTS OF THE ANALYSIS BY THE MIDDLE OF NEXT YEAR. THAT SECOND PHASE WILL COST ABOUT FIVE MILLION DOLLARS.

THE VETERANS ADMINISTRATION OFFICE OF ENVIRONMENTAL MEDICINE HAS COMPLETED A FEASIBILITY STUDY TO DETERMINE WHETHER DIOXIN CAN BE MEASURED IN HUMAN FAT TISSUE AND WHETHER ITS PRESENCE COULD BE USED TO DETERMINE EXPOSURE TO AGENT ORANGE.

ON THE BASIS OF A SMALL SAMPLING OF EXPOSED AND UNEXPOSED PERSONS, IT WAS REVEALED THAT EXPOSURE AND HEALTH STATUS DID NOT CORRELATE WITH DETECTED LEVELS OF DIOXIN. HOWEVER, THE RESULTS INDICATED THAT THE ASSAY METHOD WAS FEASIBLE, BUT TOO DELICATE AND DIFFICULT TO BE A USEFUL ASSAY METHOD AT THIS TIME.

IN MEASURING DIOXIN IN BODY FAT TISSUE, YOU ARE LOOKING FOR THREE AND FOUR PARTS PER TRILLION. THE EQUIPMENT AND EXPERTISE TO DO THIS ARE NOT FULLY DEVELOPED. SCIENTISTS TELL US THAT ONCE YOU'VE FOUND IT--AT A COST OF TWO THOUSAND DOLLARS PER ASSAY--YOU STILL HAVEN'T GOT ANYTHING BECAUSE IT IS NOT KNOWN IF IT IS THE CAUSE OF ANY DISEASE.

AND FINALLY, A COMPREHENSIVE REVIEW AND ANALYSIS OF THE WORLD-WIDE LITERATURE ON AGENT ORANGE AND OTHER PHENOXY HERBICIDES HAS BEEN COMPLETED. THIS WILL ASSIST RESEARCHERS TO IDENTIFY OPPORTUNITIES TO DEVELOP NEW KNOWLEDGE BASED ON WHAT IS ALREADY KNOWN AND PUBLISHED. COPIES HAVE BEEN DISTRIBUTED TO INVOLVED AGENCIES AND INDIVIDUALS AS WELL AS TO THE GOVERNMENT OF AUSTRALIA.

AS YOU CAN SEE, A GREAT DEAL IS BEING DONE IN TERMS OF RESEARCH.

WE WILL HAVE ANSWERS, AT LEAST THE ANSWERS THAT THE BEST SCIENTIFIC RESEARCH CAN PRODUCE, TO THE QUESTIONS THAT WEIGH MOST HEAVILY ON THE MINDS OF VIETNAM VETERANS AND THEIR FAMILIES...AND ON YOUR MINDS AND OURS.

THE AGENT ORANGE WORKING GROUP WILL NOT CAVE IN TO POLITICAL PRESSURES OR EMOTIONAL HYSTERIA TO PROVIDE QUICK AND EASY ANSWERS...THERE JUST AREN'T ANY. NEITHER WILL THIS ISSUE BE SIDESTEPED OR UNNECESSARILY DELAYED. THAT WOULD BE A BETRAYAL OF THOSE WHO SERVED THEIR COUNTRY WHEN CALLED UPON TO DO SO.



By Donald H. Schwab
Director, National
Legislative Service

AMA Reports on Agent Orange

The following is an extract of information published in the Congressional Record by the Honorable Alan Cranston:

HEALTH EFFECT OF "AGENT ORANGE" AND DIOXIN CONTAMINANTS

(By William D. Dolan, MD)

The American Medical Association's Council on Scientific Affairs, in response to a request from the Medical Student Section, has reviewed the medical evidence regarding the toxicity and long-term health effect of Agent Orange and its associated contaminant 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (TCDD). This Executive Summary, which was prepared by the Council on Scientific Affairs Advisory Panel on Toxic Substance,¹ summarizes the findings in its Technical Report on the subject, which is available on request.

BACKGROUND

During the latter states of the U.S. involvement in Vietnam, herbicidal mixtures of 2, 4-dichlorophenoxyacetic acid (2, 4-D) and 2, 4, 5-trichlorophenoxyacetic acid (2, 4, 5-T), otherwise identified by the military as Agent Orange, were sprayed over certain areas of Vietnam for the express purpose of defoliating the jungle and destroying one of the enemy's means of concealment. Similar spray programs have been used in the U.S. as a means of forestry management. For the past 30 years,

mixtures of 2, 4-D and 2, 4, 5-T have been used extensively by the homeowner and farmer for ridding lawns and agricultural acreage of unwanted broadleaf vegetation. Large numbers of persons have been exposed to varying amounts of 2, 4-D and/or 2, 4, 5-T, as well as the contaminant 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (TCDD), in the normal course of employment.

Also over these years, there has been a number of industrial incidents wherein workers, as well as civilian populations, have been subjected to accidental exposure to these compounds. There are now pending a number of litigious actions and government regulatory responses that are based upon alleged adverse health effects from such exposures.

The most serious of these allegations by Vietnam veterans and persons who were involved in accidental industrial exposures assert that Agent Orange, or compounds of a like nature, may have caused malignant tumors, sterility, spontaneous abortions, birth defects, disfiguring skin diseases and other illnesses. In spite of the voluminous data on the biological effects of the phenoxy-type pesticides and the associated chlorinated dioxins, there is still very little substantive evidence for the many claims that have been made against these compounds. Data

from experimental animals do indicate that TCDD is a toxic material; however, while suggestive, the animal data are not necessarily applicable to man. Still, a number of those exposures of TCDD of industrial and general populations that have occurred have been sufficiently well documented to offer some insight into the effect of TCDD on man.

Agent Orange, or Herbicide Orange, was a label given by the U.S. military forces to a 50:50 mixture of the n-butyl esters of 2, 4-D and 2, 4, 5-T together with a minor amount (1%) of the free acid of 2, 4, 5-T and varying amounts of the contaminant TCDD. Agents Green, Pink and Purple also were used defoliant by the military forces from 1962 through 1964, a time when very few American troops were committed to the field. Another formulation, Herbicide Agent II, was similar to Agent Orange except that the iso-octyl ester of 2, 4, 5-T was substituted for the n-butyl ester of 2, 4, 5-T. In addition to Agent Orange, other spray defoliant used in Vietnam included Herbicide White, whose active ingredient was picloram (or the tri-isopropanolamine salt of 4-amino-3, 5, 6-trichloropicolinic acid). This substance is very persistent in the environment and highly carcinogenic in rats and mice. Lesser amounts of Herbicide Blue, which contained sod-

ium cacodylate² (26 % and cacodylic acid (5%), were used. Though the long-term effects in humans of either or both of these compounds is uncertain, picloram and cacodylic acid should be considered along with the above agents that were encountered in Vietnam.

TCDD may form as a by-product of the synthesis of 2, 4 5-trichlorophenol (TCP), a precursor of 2, 4, 5-T, when 1, 2, 4, 5-tetrachlorobenzene is subjected to alkaline hydrolysis at elevated temperature and pressure. If the reaction temperature is allowed to go above 180° C, the sodium-2-hydroethoxide (formed from the ethylene glycol solvent and caustic soda) decomposes exothermically and promotes the dimerization of sodium trichlorophenate to TCDD. The presence of TCDD as a contaminant of 2, 4, 5-trichlorophenol was discovered in 1957, when workmen involved in the manufacture of TCP developed chloracne.

About 20 years ago, commercially available 2, 4, 5-T contained anywhere from 1 to 70 ppm of TCDD. When the industry became aware of the contaminant's existence and toxicity, production operations were monitored and altered to reduce the level. Current manufacturing operations are able to control the amount of TCDD in commercial 2, 4, 5-T formulations to less than 0.01 ppm (with occasional batches as high as 0.05 ppm), a level believed to be non-hazardous to humans and other organisms. Data relating to an acceptable maximum level are presently under regulatory review by FIFRA (Federal Insecticide, Fungicide and Rodenticide Act); the recommended maximum concentration is now placed at 0.1 ppm.

Commercial formulations of 2, 3, 4, 5-T and 2, 4-D were used safely in agriculture for over 30 years

with no recognizable evidence of carcinogenicity or birth defects in humans. Those adverse effects that did occur from massive doses of either pure 2, 4-D or pure 2, 4, 5-T were manifested soon after the exposure, and the victims recovered with no signs of long-term damage. When the first symptoms were found to be present months or years after the last exposure to these compounds, it was evident another causal agent had to be responsible. That agent was later suspected to be TCDD. Though closely related chemically to 2, 4, 5-T, 2, 4-D is not generally contaminated with TCDD.

BIOLOGICAL EFFECTS

Two of the more pronounced biological effects of some of the chlorinated dioxins are their tendency to cause chloracne (especially, in the rabbit, nude mouse, monkey and man) and the accumulation of fluid (ascites) in the pericardium and peritoneal cavity of chicks.

Chloracne in man is typified by comedones in a malar distribution; the pre- and post-auricular portions are often accompanied by hirsutism and sometimes by meniosis and a secondary inflammation. The disease was first described in 1899; its cause was discovered in 1918 to be due to contact with certain chlorinated hydrocarbons. Chloracne has now become one of the more common forms of occupational dermatitis. Other acute toxic reactions to dioxin include liver and renal damage, porphyria cutanea tarda, hyperpigmentation, hirsutism, polyneuropathies (e.g., sensory impairments and weakness in lower extremities) and neurasthenic or depressive syndrome. Thus far, long-term effects, except for persistent chloracne, have not been seen.

Chloracne is not caused by 2, 4, 5-T and 2, 4-D per se; if the condition occurs upon exposure to either or both of these compounds, it is most likely that the contaminant TCDD is responsible. Chloracne usually appears within 2 to 3 weeks after the first exposure. Mild chloracne clears up within several months after cessation of exposure; severe chloracne, on the other hand, has been known to persist for as long as 30 years following the last exposure. Persons most responsive are those who are prone to develop acne vulgaris. If one's exposure to TCDD is severe enough, cysts form and, on occasion, inflammation and scarring will occur. If there is no medical history of chloracne, then the likelihood of a significant exposure to, or adverse health effects from, TCDD is remote. Hence, chloracne is the clinical marker of TCDD exposure.

Chronic exposures to TCDD lead to degeneration of the liver and thymus in experimental animals: one sensitive index of exposure is atrophy of the thymus. Porphyria, altered levels in serum enzymes and weight loss are also observed. Major organs to be affected are the liver, blood forming organs and the reticuloendothelial system. Progressive weight loss, the first clinical sign of toxicity in the monkey, may be accompanied by alopecia, facial edema and a dry, scaly dermatitis over the rest of the body.

The metabolism of TCDD in man is unknown, and for the present there is only limited information available on the metabolic pathways and metabolites that may occur in other mammals. TCDD is distributed equally among the fat and liver of mammals, to a lesser extent in the kidneys and is elimi-

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nated via the feces. Samples of fat from beef cattle and samples of milk from cows that had grazed on a 2, 4, 5-T treated pasture or rangeland, in addition to human milk from an area where 2, 4, 5-T herbicides were used repeatedly over a period of 20 years, had small to undetectable (not more than 10 ppt) amounts of TCDD.

No clearly defined mutagenic effect has been observed in vitro with TCDD. TCDD does induce genetic changes by the Ames test with *S typhimurim* and *E coli* but not with repair-defective strains; there is no evidence (from dominant lethal and cytogenetic evaluations in rodents) that such changes occur in whole animals.

Of perhaps more relevance to man are the in vitro studies on mammalian cells - i.e., HeLa; Balb-3T3, normal mouse fibroblasts; SV101, virus (SV40) transformed 3T3 mouse fibroblasts; human foreskin fibroblasts; and normal human lymphocytes. No significant growth inhibition in the cell cultures nor discernible ultrastructural changes have been observed by electron microscopy.

The teratogenicity and fetotoxicity of TCDD were discovered in 1969, in the course of a study on the biological activity of 2, 4, 5-T. The sample being used was later found to be contaminated with TCDD. The incidence of cleft palate was greater in two particular mouse strains (C57BL/6 and AKR), while the C57BL/6 mouse and the rat developed a higher incidence of cystic kidney. All doses given the rat led to gastrointestinal hemorrhage in the fetus. The increased ratio of fetal liver to body weight in the mouse suggested that TCDD was fetotoxic in this particular species.

A majority of studies using high

doses of 2, 4, 5-T with 0.1 ppm of TCDD or less showed cleft palate in mice, but no other species, and embryotoxicity in the mouse, rat, hamster, sheep, monkey and rabbit. There is no scientific evidence that 2, 4-D, 2, 4, 5-T or TCDD has caused reproductive difficulties or hazards in the human. No conclusive evidence is yet available that phenoxy herbicides or TCDD are mutagenic or teratogenic in man.

TCDD can induce cancer or serve as a cancer promoter in some strains of rats and mice. In contrast to some other chemical carcinogens, the carcinogenicity is always accompanied by considerable systematic toxicity.

From an environmental view, TCDD breaks down rapidly on leaves of plants, in water and on the surface of soil, especially through the action of sunlight. In soil it generally has a half-life of about 230 days; some soil micro-organisms can degrade it, especially if other chlorinated hydrocarbons are present.

EXPERIENCE IN MAN

One of the most extensive human experiences with the adverse effects of TCDD in man involves the residents of Seveso, Italy. In July, 1976, TCDD was accidentally released from the ICMESA³ trichlorophenol synthesis plant when a safety disk in a steam-heated reactor vessel ruptured. The plume of reactor vessel ruptured. The plume of reactor contents, including TCDD, rose 160 feet above the factory and fell in a cone-shaped pattern about a mile long and a half-mile wide. This is the largest single population to have been exposed to the compound. Over 37,000 persons were potentially exposed to varying degrees.

Two years after the incident occurred, the acute and mid-term health effects were assessed; the

mild chloracne, which occurred mainly in a small group of children, healed quickly. Subclinical peripheral nerve impairment was reported; there was also some liver involvement, but without apparent functional disorder. Neither immunoresponse nor susceptibility to infectious diseases was altered.

The most recent progress report on the long-term epidemiologic survey of the residents of the Seveso area emphasizes the preliminary nature of their findings and reiterates the conclusion of prior investigators. Except for the skin, no organs or body functions were impaired. No derangement of gestation, no fetal lethality and loss, no gross malformations, no growth retardation at term and no cytogenetic abnormalities have yet occurred.

The first of several accidental releases of TCDD and other dioxins, attending the manufacture of 2, 4, 5-trichlorophenol (TCP) or 2, 4, 5-T occurred in 1949 in the U.S. At least 11 other industrial accidents or exposure incidents have occurred since then, both here and abroad. To date, an estimated 579 workers are known to have been exposed, including 156 employees in the ICMESA plant at Seveso.

CURRENT STUDIES

There are now a number of studies underway by agencies of the U.S. Government and industry, which may resolve questions on the kinds and extent of human damage from exposure to low levels of TCDD:

Through its Department of Environmental and Drug-Induced Pathology, the Armed Forces Institute of Pathology (AFIP) is examining biopsy and autopsy tissue of all Vietnam veterans. To date, only 152⁴ cases have been assessed: the dominant diseases are epidermal inclusion cysts and chronic, non-

specific dermatitis. If any malignancies were to have been induced by TCCD, they should be appearing by now, yet there have been no unusual morphological features nor clustering of tumors by diagnosis or site as to implicate Agent Orange.

A soft-tissue sarcoma study also has been proposed that will be conducted jointly by the Armed Forces Institute of Pathology and the National Cancer Institute.

The Air Force, through Project Ranch Hand, will administer and examine the 1,200 personnel who were involved in the actual handling and spraying of Agent Orange. They, and the control population of 20,000, are to be followed over the next 20 years.

The University of California, Los Angeles, was awarded a contract by the Veterans Administration for the design of an epidemiologic study of Vietnam veterans.

Approximately 45,000⁵ Vietnam veterans who expressed concern about the hazards of Agent Orange have been examined by the VA; data on 25,000 of these men have been placed in a special Agent Orange Registry, which may serve later to identify them and to provide medical information as well as indications of health trends over the long term.

The Chloracne Task Force was established to sift out those cases of dermatitis that either resemble or are truly chloracne. Cases of the former type will be re-examined by dermatologists who have an expert knowledge of the disease. Thus far, there are only 700 cases of "skin conditions" out of the total 3,500⁶ filed claims for damage from Agent Orange.

RECOMMENDATIONS

The Council on Scientific Affairs recommends that:

(1) The above studies on exposed, or allegedly exposed, per-

sons continue to be supported and, if feasible, enlarged to include the cooperative engagement of all internationally known exposure data, as recommended by the International Agency for Research on Cancer (IARC).

(2) All physicians be alerted through AMA publications to the classical signs of chloracne and the possible signs and adverse effects of TCDD exposure. They should be encouraged to enlist in the present efforts to identify and treat those persons who have had serious exposures to TCDD, and to cooperate in the collection of vital information that is needed for the ongoing human epidemiological studies.

¹John R. Beljan, MD; Nelson S. Irey, MD; Wendell W. Kilgore, PhD; Kazuo Kimura, MD, PhD; Raymond R. Susking, MD; Jaroslav J. Vostal, MD, PhD; R. H. Wheeler, MS, Secretary.

²Sodium cacodylate is the sodium salt of cacodylic acid (hydroxydimethylarsine oxine)

³*Industrie Chimiche Meda Societa Anonima.*

⁴Dr. Nelson S. Irey, Chairman of the Environmental and Drug Induced Pathology at the Armed Forces Institute of Pathology, presented written testimony at the Senate Veterans' Affairs Committee Nov. 18, 1981, hearing on Agent Orange, including tabulated data on first 408 cases examined. He stated at the Nov. 19, 1981, VA Advisory Committee meeting that approximately 600 cases had been examined so far although the data from only the first 400 or so had been tabulated.

⁵The VA Department of Medicine and Surgery, Office of Environmental Medicine's Dec. 11, 1981, Weekly Status Report of Herbicide Orange Activities reports that 72,000 Vietnam veterans have

received Agent Orange Exams. According to the Office of Environmental Medicine, approximately 40,000 of these have been entered in the Agent Orange Registry.

⁶The VA Department of Medicine and Surgery, Office of Environmental Medicine reported that as of Dec. 1, 1981, 11,404 claims had been filed for injury due to Agent Orange.

Reports on Social Security And Disability

An increasing unemployment rate somehow seems to multiply the number of applications for disability benefits through Social Security.

It was recently publicized that disability benefits are presently being allowed in approximately 30% of the cases. It should be remembered that an individual's physical or mental impairment must be the primary reason for a person's inability to work if he or she is to be eligible for Social Security disability benefits. Besides, the physical or mental impairment must be medically determinable. That means that the condition must be subject to verification by medically acceptable clinical or laboratory diagnostic techniques. The condition must have lasted or be expected to last 12 months or more.

Being displaced from a job as a result of technological changes in industry or being laid off from work for economic reasons does not make a person eligible for Social Security disability benefits.

The attached press release has been prepared by HHS Public Affairs on the basis of information provided by members and staff of the Agent Orange Working Group and its Science Panel. (Tab A).

Purpose:

- * To advise the public and veterans organizations of the generally positive review of the design for the Veterans Administration Epidemiology Study by the Agent Orange Working Group Science Panel.
- * To provide information regarding the scope and status of research underway.
- * To reassert the concern of the President and the Secretary regarding the Agent Orange issue.

PROS:

- * Displays fulfillment of the charter responsibility of the Working Group to provide the public with timely information on developments relating to its activities.
- * Asserts to veterans and state legislatures that significant and positive steps are being taken by the federal sector in major research.
- * Provides interested parties with information on the relatively early dates for the availability of preliminary results of some major research (mid-to-late 1983).
- * Lends the credibility of the Agent Orange Working Group Science Panel to the validity of the VA Epidemiology study design.
- * Reasserts the commitment and concern of the President and the Secretary to an issue of intense interest to many Vietnam veterans and their families.

Cons:

- * May tend to shift some of the focus of controversy concerning the VA Epidemiology Study veteran questionnaire from the VA to the Agent Orange Working Group Science Panel and the Secretary (Tab B).
This is not a major concern because the Science Panel review recommends major changes in the questionnaire prior to final implementation by the VA.
- * Places the Secretary in the position of having questions directed to him relating to the alleged bias of the principal author of the study design, Dr. Gary Spivey of U.C.L.A. (Tab C).

Again, since the design has been subject to careful review by several scientific bodies including the AOWG Science Panel, we are assured that any hint of bias that may have existed has been detected and eliminated. This, coupled with the fact that the final design will be reviewed by the National Academy of Science, makes continuing suspicions of bias insupportable.

DRAFT

HHS NEWS

DRAFT
3-11-82

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

A proposed design for a research study on possible health effects of exposure to Agent Orange by Vietnam veterans has been approved by a science panel of the White House Agent Orange Working Group.

HHS Secretary Richard S. Schweiker, who chairs the Cabinet Council to which the working group reports, said the study plan was developed by the University of California at Los Angeles.

"We now feel the Veterans Administration can proceed with a pilot study as the forerunner to a more comprehensive study of veterans who may have been exposed to Agent Orange while serving in Vietnam," Schweiker said.

The pilot study will test the mechanisms to be used in the full study and work out any design problems. The main survey will involve some 18,000 Vietnam veterans.

This research into possible effects of Agent Orange exposure was mandated by an Act of Congress in 1979.

Schweiker said this study is only one of several efforts being made to find answers to this problem. Results are expected to provide the administration with policy guidance for action, possibly new legislation if warranted.

"I regard this step and other research efforts in the Agent Orange field as major progress in resolving this problem," Schweiker added.

Other research efforts coordinated by the Agent Orange working group include: Ranch Hand Study -- This is a special survey of some 1,200 air force personnel who were involved in Agent Orange spraying missions during the Vietnam

war. Physical examination and questioning is being done with these flight crew members on a voluntary basis. Another 1,200 Air Force persons not participating in these missions also are being examined as a control group. Preliminary results are expected in mid-1983.

Birth Defects Study -- HHS's Center for Disease Control in Atlanta expects to complete a study related to birth defects by September of next year. From a registry of 7,500 birth defected children, CDC will isolate those born to Vietnam veterans to determine if they are at increased risk of fathering children with birth defects. If so, CDC will attempt to determine if the increase is associated with exposure to Agent Orange.

NIOSH Toxic Study -- The Department's National Institute of Occupational Safety and Health (NIOSH) is looking into work place exposure of persons exposed to Dioxin, a highly toxic contaminant formed during the manufacture of the defoliant 2,4,5-T, a component of Agent Orange.

Schweiker praised the Department of Defense for its apparently successful efforts in records search to identify veterans likely to have been exposed to Agent Orange. A year ago such specific identification was thought highly doubtful.

Last July, President Reagan elevated the Agent Orange Working Group to Cabinet Council reporting status. The group oversees all research assignments and expedites funding for such research in the federal agencies involved.

With HHS as the lead agency, the Work Group is represented by Departments of Defense, Agriculture and Labor; Veterans Administration; Environmental Protection Agency; Office of Management and Budget, Action; White House Office of Science and Technology; Assistant to the President for Policy Development; Council of Economic Advisers; and, as an observer, the Congressional Office of Technology Assessment.

Office of the Secretary**Interagency Work Group To Study Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants; Meeting**

The Interagency Work Group to Study the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants will hold a public meeting on September 22, 1980, from 10:00 A.M. until 4:30 P.M. in the auditorium, North Building, 330 Independence Avenue, S.W., Washington, D.C.

The Interagency Work Group was established by the White House last December. It oversees all Federal research efforts regarding the possible health effects of herbicides such as Agent Orange, and is charged with reporting to the public the results and implications of this research. The Work Group is chaired by Joan Z. Bernstein, General Counsel of the Department of Health and Human Services. It includes representatives of the Departments of Health and Human Services and Defense and the Veterans Administration. Representatives of the Environmental Protection Agency, the Departments of Agriculture and Labor, the White House Office of Science and Technology Policy, and the Congress' Office of Technology Assessment also participate as observers.

The agenda for the meeting (subject to adjustment) is: 1. Report to the public from the Work Group on its efforts and progress to date, including a review of the state of scientific knowledge about Agent Orange. (45 minutes: 10:00 A.M.-10:45 A.M.)

2. Statements from the public concerning phenoxy herbicides and contaminants (including Agent Orange) as submitted in advance of the meeting with responses from the Work Group as appropriate. (3 hours and 15 minutes: 10:45 A.M.-1:00 P.M., 2:00 P.M.-approximately 3:00 P.M.)

3. Questions from the public, as time permits. (1 hour and 30 minutes: approximately 3:00 P.M.-4:30 P.M.)

Persons who wish to appear before the Work Group should submit a request to appear, along with a copy of their written statement, to the Office of General Counsel, Department of Health and Human Services, Room 716E, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201 by no later than 5:00 P.M. September 15, 1980. The Work

Group is particularly interested in receiving statements relating to scientific information on the possible health effects of phenoxy herbicides and contaminants, and especially encourages the scientific community as well as all other interested persons to attend and participate in the meeting. Individuals will have 10 minutes in which to summarize orally at the meeting their written submissions. The order of appearance of witnesses will be determined by the Work Group and made available to the public prior to the meeting. The public is also invited to submit statements in writing for the record only.

The Work Group will try to respond to all written questions received by noon September 22 during the afternoon session scheduled to begin at approximately 3 P.M. If time does not permit all written questions submitted by noon September 22 to be responded to at the public meeting, responses to remaining written questions will be provided and made public by the Work Group.

Individuals who wish to submit questions for the Work Group to respond to should deliver them in writing to Room 716E, HHH Building, 200 Independence Avenue, S.W., Washington, D.C., by 4:00 P.M. Friday, September 19. We encourage the public to submit any questions by that date. In addition, questions may be submitted in writing before noon on September 22 to designated Work Group staff who will be present at the meeting.

For additional information, contact: Sue Nelson Wrenn, Office of Public Affairs, Department of Health and Human Services, 200 Independence, S., Washington, D.C. 20201. Phone: (202) 245-1897.

Dated: August 22, 1980.

Joan Z. Bernstein,
General Counsel, Department of Health and Human Services and Chair, Interagency Work Group to Study the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants.

[FR Doc. 80-26558 Filed 8-28-80; 8:45 am]

BILLING CODE 4110-12-M

FOIA → Agent Orange

UCLA

Questionnaire
Probes } will be
distributed.

FOIA request expected.

Pat Ryan
389-5107

Checklist on probes
Don't want release to bias survey.

Requested consultation and
refused 7 all PRA requests

Free Tests Demanded for Agent Orange Exposure

WASHINGTON, Sept. 24 (AP) — An organization representing Vietnam veterans demanded today that the Government offer free medical examinations to former servicemen who might have been exposed to Agent Orange in Vietnam when their own planes dumped the toxic spray near United States bases.

The demand followed an announcement by Government officials that newly discovered Defense Department records showed that the herbicide had been jettisoned near large groups of servicemen by planes trying to make emergency landings.

"When I got this job in July, I didn't

think anyone quite foresaw that we would be dumping this stuff on our own people," Richard S. Schweiker, Secretary of Health and Human Services, said yesterday in making the disclosure. Over the summer, President Reagan directed Mr. Schweiker to intensify the investigation into whether the health of servicemen had been damaged by exposure to the defoliant.

Warning to Veterans Asked

Lewis Milford, a lawyer for the National Veterans Task Force on Agent Orange, representing 19 organizations of veterans and environmental and religious groups, asked the Government to

identify people who had been exposed, to warn them and to give them medical examinations at Government expense.

"It is the Government's duty to warn these people," Mr. Milford said. "Spraying over base camps may mean that clerical help or even civilians may have been exposed. That makes more urgent to find out exactly who among the millions of people who served in Vietnam were exposed."

Previously, the Government knew of only 1,200 men, Air Force crews who ran the spraying missions, who were directly exposed.

But Mr. Schweiker said a new search of Pentagon records showed 90 in-

stances when airplanes dumped their chemical cargoes in emergencies, including 41 times "directly over or near U.S. air bases and other military installations."

Schweiker Called Alarmist

Meanwhile, the chairman of the House Veterans Affairs Committee charged that Mr. Schweiker had needlessly alarmed veterans.

The chairman, Representative G. V. Montgomery, Democrat of Mississippi, said that the information was disclosed by the Air Force on Sept. 16, 1980, at a hearing of the House subcommittee on medical facilities and benefits.

In a written statement, Representative Montgomery said: "I regret that Secretary Schweiker did not check with his staff concerning the disclosure of this information last year. It serves no useful purpose to hold press conferences

such as that held yesterday.

"Such procedures at the highest level of Government obviously cause much emotional upheaval for Vietnam veterans and their families."

But a spokesman for Mr. Schweiker said that the Secretary's disclosure was far more detailed.

"The information at that hearing was very, very sketchy on the number of aborted missions and the information released yesterday provided details that weren't available before," Richard McGowan, Mr. Schweiker's press secretary, said.

12 Million Gallons Sprayed

Agent Orange is the code name for a defoliant sprayed on Vietnamese jungles and crops to reduce food supplies and cover for enemy forces. It contains dioxin, one of the most toxic chemicals

known. About 60,000 Vietnam veterans have told the Veterans Administration they fear their health was impaired by coming into contact with the chemical.

United States planes dropped 12 million gallons of the chemical but stopped when the number of birth defects increased among Vietnamese women.

The Veterans Administration says it had no evidence that the herbicide caused any problems other than a severe skin rash, but some veterans blame the herbicide for an array of diseases, including cancer, birth defects in their children, miscarriages by their wives, impotence, respiratory problems and liver, skin, nerve and emotional disorders.

What's Sunday without The Times?

PRESERVATION COPY

September 10, 1981

MEMORANDUM FOR WILLIAM H. TAFT IV
GENERAL COUNSEL
DEPARTMENT OF DEFENSE

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Agent Orange

Pursuant to our telephone conversation of this date, I am enclosing a copy of the memorandum which discusses a possible new population that may have been exposed to Agent Orange.

Attachment

Memo for the file:

Only first page of Fairbank's memo sent to Taft.

RAH: September 10, 1981

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 9, 1981

FOR: MARTIN ANDERSON
THROUGH: ED GRAY
FROM: SHANNON FAIRBANKS *sf.*
SUBJECT: New Information Regarding Agent Orange

The Issue

NEWLY REVIEWED DATA SHOWS THAT A PLANE TAKING OFF FROM THE BIEN HOA BASE IN VIETNAM ON A DATE CERTAIN, DISCOVERED A FAULTY ENGINE, TURNED LEFT TO GO BACK TO THE AIR-STRIP, AND PROMPTLY DUMPED 500 GALLONS OF AGENT ORANGE ON THE BASE CAMP FROM A HEIGHT OF 2,000 FEET: - the "dump value rate" of the plane used was 1,000 gallons in 30 seconds and suggests a high exposure to Agent Orange by a newly defined but as yet unidentified population.

Background

Dr. Jerome Bricker, special assistant to Major General Augerson (Deputy Assistant Secretary of Defense for Health Resources and Programs) believes that additional aborted missions may identify other high exposure populations. tel: OY7-8973.

Dr. Bricker recently reviewed existing files in the Office of the Army Adjutant General and determined:

- there were 87 "aborted defoliating missions" in Vietnam which used various herbicides
- 41 of these missions involved Agent Orange

Comments

There has been concern by the members of the Agent Orange Working Group that a sufficient exposure population could not be contacted from the Ranch Hand group - those who are known to have flown the Agent Orange missions. An insufficient study sample response would jeopardize the scientific validity of the proposed DOD funded \$35 million, 20 year "Ranch-Hand Study", and was the reason Dr. Bricker tried to "find" another population group.

The possible expansion of this identifiable population eases DOD concerns that many of the men would not respond.

RECOMMENDATION

The Justice Department should be notified that a population has been identified with a possibility of high dosage to Agent Orange exposure.

ACTION

Ed Gray, Mike Uhlmann and I reviewed the above facts and agreed to refer the matter to Ed Wilson in the White House General Counsel's office.

The General Counsel will advise DOD to proceed immediately to provide the Justice Department with all known information, regardless how tentative the conclusions.

The Department is under a court order regarding timely communication of information in conjunction with pending Agent Orange civil suits.

It is up to the Department to review the facts and determine whether this new information is covered by the existing court order.

federal jurisdiction under 28 U.S.C. § 1331.⁹ Accordingly, defendants' motion to dismiss for lack of subject matter jurisdiction is denied, as is defendants' motion to strike or dismiss various allegations of the TAVC.

Defendants shall serve and file their answers to the TAVC, which is deemed to be the complaint in *Chapman v. Dow*, 79 C 1195, no later than 20 days from the date of this memorandum. All parties shall appear for a pretrial conference on Friday, December 21, 1979 at 9:30 a. m. The agenda for this conference shall include (1) a new timetable for resolution of plaintiffs' motion for class certification, and (2) a timetable for discovery on the merits. Any party may suggest other items for the agenda by letter to the court served and filed no later than Friday, December 14, 1979.

SO ORDERED.



**In re "AGENT ORANGE" PRODUCT
LIABILITY LITIGATION.**

MDL No. 381.

United States District Court,
E. D. New York.

Feb. 5, 1980.

On Motion to Adjourn Date for Filing
Summary Judgment Motion
March 6, 1980.

In actions, consolidated for pretrial proceedings, arising from alleged exposure of members of United States armed forces serving in Vietnam to certain herbicide used for defoliation purposes, the District Court, George C. Pratt, J., held that government was obligated to preserve documents requested in motions to produce despite government's document destruction program and despite general stay of discovery.

Ordered accordingly.

1. Federal Civil Procedure ⇐ 1632

Although general stay of discovery had been established in consolidated actions

9. The parties, without arguing the point, seem to assume that application of federal common law provides a sufficient basis for federal question jurisdiction under 28 U.S.C. § 1331. This

which arose from alleged exposure of members of United States armed forces serving in Vietnam to certain herbicide used for defoliation purposes, and despite government's document destruction program, government, which had promised to discuss preservation of records with officials and agencies likely to have relevant records and which had further promised to make good-faith effort to preserve all records relevant to litigation, was under additional obligation to preserve documents requested in motions to produce, and to make every effort to promptly respond to any notice to produce served upon it.

2. Federal Civil Procedure ⇐ 1276

In consolidated cases arising from alleged exposure of members of the United States armed forces serving in Vietnam to certain herbicide used for defoliation purposes, parties who obtained information through discovery in related cases that were pending in another district had to make such information available to all other parties in litigation.

On Motion to Adjourn Date for Filing
Summary Judgment Motions

3. Federal Civil Procedure ⇐ 2532

In actions, consolidated for pretrial proceedings, arising from alleged exposure of armed forces members to herbicide used in Vietnam, defendants were not entitled to adjournment of date set for filing summary judgment motions until interlocutory appeal had been decided and substantial progress was made on discovery where pending appeal was not relevant to summary judgment motions and where key documents were in parties' files or readily available to them.

Leonard L. Rivkin, Rivkin, Leff & Sherman, Garden City, N. Y., Morton B. Silberman, Clark, Gagliardi & Miller, White Plains, N. Y., Wendell B. Alcorn, Jr., Cadwalader, Wickersham & Taft, Ronald S. Daniels, Townley & Updike, Bud Holman and William A. Krohley, Kelley, Drye &

assumption is confirmed by *Illinois v. City of Milwaukee*, 406 U.S. 91, 92 S.Ct. 1385, 31 L.Ed.2d 712 (1972). See Wright, *Federal Courts* (3d Ed) at 68.

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Cite as 506 F.Supp. 750 (1980)

Warren, New York City, William H. Sanders, William A. Lynch and Paul G. Lane, Blackwell, Sanders, Matheny, Weary & Lombardi, Kansas City, Mo., Baker & McKenzie, Chicago, Ill., John M. Fitzpatrick, Dilworth, Paxson, Kalish, Levy & Kauffman, Philadelphia, Pa., Joan Bernott, Dept. of Justice, Washington, D. C., for defendants.

Victor J. Yannacone, Jr., Yannacone & Yannacone, Patchogue, N. Y., Schlegel & Trafelet, Ltd., Chicago, Ill., L. Steven Platt, Daniel C. Sullivan, Sullivan Associates, Ltd., Chicago, Ill., Hy Mayerson, Spring City, Pa., David Jaroslawicz, New York City, Newton B. Schwartz, P. C., Benton Musselwhite, Inc., Houston, Tex., Melvin Block, Brooklyn, N. Y., Marshall A. Bernstein, Bernstein, Bernstein & Harrison, Philadelphia, Pa., Louis B. Merhige, New Orleans, La., for plaintiffs.

The Counsel of Vietnam Veterans, amicus curiae, Washington, D. C.

GEORGE C. PRATT, District Judge:

For reasons given below and discussed at the February 1, 1980 pretrial conference, the court issues the following orders.

1. Each defendant is deemed to have denied the cross-claims asserted against it by other defendants.

2. Decision on plaintiffs' motion for class action certification is reserved until after decision by the United States Court of Appeals for the Second Circuit of the interlocutory appeal taken by defendants under 28 U.S.C. § 1292(b) from this court's memorandum and order dated November 20, 1979.

3. The stay of discovery established in paragraph seven of this court's Practice and Procedure Order, dated May 18, 1979, shall continue in effect until further order of the court, except that parties may conduct voluntary discovery by agreement among themselves.

[1] 4. At the conference, plaintiffs and defendants expressed concern about de-

struction of records under the government's document destruction program. Plaintiffs and defendants requested the court to order the government to preserve relevant records until further notice. The government objected that too broad a preservation order might unduly disrupt the document destruction programs of some 3500 governmental agencies and departments.

The court will consider any proposed document preservation order submitted by the parties. If the parties cannot agree on the form of such a proposal, parties may if they wish submit individual proposals. For the present, the government has promised to discuss preservation of records with officials of the Veterans Administration and other departments and agencies likely to have relevant records. The government has further promised to make a good faith effort to preserve all records relevant to the litigation.

The government is under an additional obligation imposed by the Federal Rules of Civil Procedure to preserve documents requested in Dow's notice to produce. As an exception to the general stay of discovery in this litigation, the court at the conference deemed Dow's motion to produce to have been served on the government as of February 1, 1980. As a further exception to the general stay of discovery, other parties may serve notices to produce on the government, which will impose on the government a similar obligation to preserve requested documents. The government shall make every effort to promptly respond to any notice to produce served upon it.

[2] 5. Parties to this litigation who obtain information through discovery in *Lowell M. Coffey v. Dow*, WDKy, CA No. C-79-495-L(B) or *Lowell M. Coffey v. Department of Defense*, WDKy, CA No. C-79-488-L(B),¹ shall make such information available to all other parties in this litigation, as agreed at the February 1, 1980 conference.

6. The computerization committee discussed in paragraph nine of this court's

1. The two *Coffey* cases were conditionally transferred to this court under 28 U.S.C. § 1407 by the Judicial Panel on Multidistrict Litigation. The conditional transfer order was vacated by

the Panel's opinion and order filed January 29, 1980, and the *Coffey* cases are now pending before Judge Ballantine in the Western District of Kentucky.

January 14, 1980 Memorandum and Order shall be expanded by one member to include a representative of the government.

7. (a) At the conference, the government indicated that it plans to move to dismiss the third-party complaint, based on government defenses of sovereign immunity, absence of a legal duty under the Federal Tort Claims Act (FTCA), specific exemptions available to the government under the FTCA, and the defendants' failure to state a claim under the Defense Production Act of 1950, 50 U.S.C.App. § 2061 *et seq.* The government's papers in support of this motion to dismiss shall be served and filed no later than March 10, 1980.

(b) Defendants' responses to the government's motion to dismiss shall be served and filed no later than March 24, 1980. By that date, defendants shall also have served and filed motion papers seeking summary judgment as to the affirmative defenses specified below:

(i) affirmative defenses 12, 13, 20, 21, 22, 24 and 27 in Dow's answer, filed December 10, 1979, to the TAVC, and incorporated by reference into Dow's amended answer filed January 14, 1980.

(ii) affirmative defenses 4, 5, 6, 7, 8, 9, 12 and 15 in Thompson-Hayward's second amended answer filed January 14, 1980.

(iii) affirmative defenses 11, 14, 16, 17, 18 and 24 in Monsanto's amended answer filed January 15, 1980.

(iv) affirmative defenses 16 and 19 in Diamond Shamrock's amended answer filed January 16, 1980.

(v) affirmative defenses 9, 12, 14, 15, 18, 20, 24, 39 and 40 in Hercules' amended answer filed January 17, 1980.

In framing their summary judgment papers, defendants may treat together those of the above affirmative defenses that are essentially identical, provided that adequate treatment is accorded to the merits of each affirmative defense specified above.

(c) Plaintiffs' responses to defendants' summary judgment papers and to the government's motion shall be served and filed no later than April 7, 1980.

(d) Thereafter, additional papers may be served and filed by defendants and the government no later than April 14, 1980.

(e) Oral argument on the above motions shall be held on April 18, 1980 at 10:00 a. m.

ON MOTION TO ADJOURN DATE FOR
FILING SUMMARY JUDGMENT
MOTION

By memorandum and order dated February 5, 1980, this court ordered, among other things, that by March 24, 1980 "defendants shall * * * have served and filed motion papers seeking summary judgment as to [specified] affirmative defenses * * ."

[3] Now, by notice of motion dated February 29, 1980, made returnable March 19, 1980, defendants Diamond Shamrock, Dow, Hercules, Monsanto, and Thompson-Hayward move for an order adjourning the date for filing motions for summary judgment until after (1) there has been substantial progress on discovery, and (2) the Court of Appeals for the Second Circuit decides the pending interlocutory appeal from this court's memorandum and order dated November 20, 1979.

Defendants argue that: (1) because the relevant events occurred more than a decade ago, substantial discovery and investigation will be required to develop the necessary factual record for summary judgment with respect to defendants' immunity claims; (2) relevant documents in the government's possession have not yet been made available to defendants; and (3) deferring the briefing of the summary judgment motions will prevent the motions from being rendered irrelevant or superfluous by the Second Circuit's pending decision on the law governing this action.

Without waiting for the return date, the court denies the instant motion. Discovery is just beginning, but some of these actions have been pending for more than a year, and the key documents are either in the files of the parties or readily available to them. Although the court may ultimately find that summary judgment as to some of

Cite as 506 F.Supp. 753 (1980)

the defenses is inappropriate at this point in the litigation, it is possible that information already available to the parties will provide a sufficient foundation for summary judgment as to other defenses. If nothing else, the briefing and argument of the motions will facilitate determination of certain uncontested facts under FRCP 56.

Finally, the pending appeal before the Second Circuit on the question of federal common law jurisdiction is not grounds for postponement, since the summary judgment motions will focus on questions of immunity which must, of necessity, be governed by federal law.

Accordingly, the instant motion is denied. The summary judgment motions will be briefed and argued as originally scheduled.

SO ORDERED.



In re "AGENT ORANGE" PRODUCT
LIABILITY LITIGATION

MDL No. 381.

United States District Court,
E. D. New York.

May 1, 1980.

Victor J. Yannacone, Jr., Yannacone & Yannacone, Patchogue, N. Y., Schlegel & Trafelet, Ltd., L. Steven Platt, Daniel C. Sullivan, Sullivan Associates, Ltd., Chicago, Ill., Hy Mayerson, Spring City, Pa., David Jaroslawicz, New York City, Newton B. Schwartz, P. C., Benton Musslewhite, Inc., Houston, Tex., Melvin Block, Brooklyn, N. Y., Marshall A. Bernstein, Bernstein, Bernstein & Harrison, Philadelphia, Pa., Louis B. Merhige, New Orleans, La., Dorothy Thompson, Los Angeles, Cal., W. T. McMillan, W. T. McMillan & Co., Associated Counsel for Australian plaintiffs, Brisbane, Queensland, Australia, Jerry G. Wieslander, Frank G. Wieslander, Altoona, Iowa, Lewis

A. Royal, Samuel Zelden, Des Moines, Iowa, David C. Anson, Deconcini, McDonald, Brammer, Yetwin & Lacy, Tucson, Ariz., Phillip E. Brown, Hoberg, Finger, Brown, Cox & Molliga, San Francisco, Cal., Leslie Hulnick, Wichita, Kan., Sidney W. Gilreath, Knoxville, Tenn., for plaintiffs.

Leonard L. Rivkin, Rivkin, Leff & Sherman, Garden City, N. Y., Morton B. Silberman, Clark, Gagliardi & Miller, White Plains, N. Y., Roy L. Reardon, James P. Barrett and Michael V. Corrigan, Simpson, Thacher & Bartlett, Wendell B. Alcorn, Jr., Cadwalader, Wickersham & Taft, Townley & Updike, Bud Holman and William Krohley, Kelley, Drye & Warren, New York City, William H. Sanders, William A. Lynch and Paul G. Lane, Blackwell, Sanders, Matheny, Weary & Lombardi, Kansas City, Mo., Baker & McKenzie, Chicago, Ill., John M. Fitzpatrick, Dilworth, Paxson, Kalish, Levy & Kauffman, Philadelphia, Pa., Joan Bernott, Dept. of Justice, Washington, D. C., for defendants.

GEORGE C. PRATT, District Judge.

The following orders are based on proceedings at the April 25, 1980 oral argument:

1. With the consent of all parties, the government's motion to dismiss the third-party complaints shall be deemed also to have been directed against the third party complaint of Hooker Chemical and Plastics Company served after the motion was made, and Hooker's "Memorandum of Points and Authorities" in opposition to the motion may be considered by the court.

2. All defendants, including Hooker Chemical and Plastics Company, shall have until Friday, May 2, 1980 to submit additional papers on the pending summary judgment motions, as to which decision was reserved at the April 24, 1980 argument.

3. Dow's motion for a protective order exempting from discovery its "proposed Computer Document Retrieval and Litigation Support System" is deemed to be withdrawn without prejudice. Dow may renew the motion if the parties cannot agree on a

3/12/82 C - Maureen Curran.

Cabinet Council on Human Resources
Bobo Carlson
Schweitzer. / Stockdale.

Minutes of WG: have not been kept
Monthly reports to Carlson and Schweitzer

Service Panel - minutes; separate from WG
all govt employees.

* Should there be a public meeting of
working group. (see 1980 announcement)

hybrid  pre-existing working group
that was elevated to Cabinet Council
status.

Informational Board - to be sent to
States.

Documents of working group.

(202) 245-6318

MAUREEN E. CORCORAN
ATTORNEY-AT-LAW

OFFICE OF GENERAL COUNSEL
DEPARTMENT OF HEALTH
AND HUMAN SERVICES

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WASHINGTON, D.C. 20201