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Descripton Notes

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In re	)	
	)	
The Dow Chemical Company et al.	)	Docket No. 415 et al.
	)	
Petitioners.	)	

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR COMPULSORY DOCUMENT PRODUCTION AGAINST DR. JAMES ALLEN

Motion filed by The Dow Chemical Company (Dow) in this proceeding for compulsory document production against Dr. James Allen is granted to the extent that it relates solely to the Schedule of Documents to be produced for:

1. 500 ppt TCDD Monkey Study.
2. 50 ppt TCDD Monkey Study.
3. 25 ppt TCDD Monkey Study.
4. 5 ppt TCDD Monkey Study.

To the extent that Mr. John Van Miller participated in and may possess "documents" related to said studies, the Motion is also granted.

Duly executed subpoenas, under seal, are attached hereto and directed to Dr. James R. Allen and also to Mr. John Van Miller.

These subpoenas are issued pursuant to 40 CFR 164.70 which states that the Administrative Law Judge shall be guided by the Federal Rules of Civil Procedure. In the sprit of Rule 45 thereof, I will entertain a motion to quash or modify the terms of either or both of said subpoenas if such motion is filed within the time prescribed in that rule, and such motion contains specific statements or declarations of Dr. Allen relating to:

1. Specify which studies and "documents have been supplied to Dow and the completeness thereof as relates to the Schedule of Documents to be produced attached to the subpoenas.

2. The ownership of the subject "documents."

3. The availability of each of the studies in published literature.

4. What disposition will be made of the "documents" upon the resignation of Dr. Allen? Will they be retained by Dr. Allen or remain in the possession of an investigator or co-principal employed by the University of Wisconsin?

5. Will Dr. Allen be available as a witness to these studies after his resignation?

6. Which of the studies in question and the raw data relating thereto have not yet produced significant, reliable and accurate results and why? Give stage of completeness.

The uncertainties which have arisen due to the fact that Dr. James R. Allen plans to resign his position with the University of Wisconsin, and to insure that all relevant material and probative evidence which may be available is brought to light at the commencement of the hearing while Dr. Allen is appearing as a witness, have had a large part in the decision to issue these subpoenas.

I have considered the fact that some of the studies have been represented as being incomplete and may or may not be considered discoverable at this time, but without considering the issuance of the subpoenas as precedent for such discovery, I have concluded that the uncertainties which have arisen are an overriding factor.

The Motion for Compulsory Document Production Against Dr. James R. Allen and Mr. John Van Miller as it relates to "Van Miller -- Allen Carcinogenicity Study with TCDD in Rats," is denied.

Based upon an analysis of arguments and documents relating to the content and value of this study filed by the parties, it is concluded that while this study was completed, any reference thereto in this proceeding will not serve to assist the court in reaching a decision on the merits of this case, since nothing in the study is of such a substantive nature as to be probative in any way.

Edward B. Finch
Administrative Law Judge

February 1, 1980