

## **RACHEL'S HAZARDOUS WASTE NEWS #400**

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News and resources for environmental justice.

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### **EPA INVESTIGATES MONSANTO**

An internal memorandum by an official of the U.S. Environmental Protection Agency [EPA], has accused EPA of conducting a "fraudulent" criminal investigation of Monsanto, the St. Louis chemical corporation. [1]

The 30-page memo, from William Sanjour to his supervisor, David Bussard, dated July 20, 1994, describes a two-year-long criminal investigation of Monsanto by EPA's Office of Criminal Investigation (OCI).

The Sanjour memo says EPA opened its investigation on August 20, 1990 and formally closed it on August 7, 1992. "However, the investigation itself and the basis for closing the investigation were fraudulent," the Sanjour memo says.

According to the Sanjour memo:

\*\* EPA's investigation of Monsanto was precipitated by a memo dated February 23, 1990, from EPA's Dr. Cate Jenkins to Raymond Loehr, head of EPA's Science Advisory Board.

\*\* The Jenkins memo said that EPA had set dioxin standards relying on flawed Monsanto-sponsored studies of Monsanto workers exposed to dioxin, studies that had showed no cancer increases among heavily exposed workers.

\*\* Attached to the Jenkins memo was a portion of a legal brief filed by the plaintiffs as part of a trial known as Kemner v. Monsanto, in which a group of citizens in Sturgeon, Missouri had sued Monsanto for alleged injuries they had suffered during a chemical spill caused by a train derailment in 1979.

\*\* The Jenkins memo had not requested a criminal investigation; instead Jenkins had suggested the need for a scientific investigation of Monsanto's dioxin studies. But in August 1990, EPA's Office of Criminal Investigation (OCI) wrote a 7-page memo recommending that a "full field criminal investigation be initiated by OCI."

\*\* Plaintiffs in the Kemner suit made the following kinds of allegations (which we quote verbatim from the Sanjour memo):

"\* Monsanto failed to notify and lied to its workers about the presence and danger of dioxin in its chlorophenol plant, so that it would not have to bear the expense of changing its manufacturing process or lose customers;...

"\* Monsanto knowingly dumped 30 to 40 pounds of dioxin a day into the Mississippi River between 1970 and 1977 which could enter the St. Louis food chain;

"\* Monsanto lied to EPA that it had no knowledge that its plant effluent contained dioxin;

"\* Monsanto secretly tested the corpses of people killed by accident in St. Louis for the presence of dioxin and found it in every case;...

"\* Lysol, a product made from Monsanto's Santophen, was contaminated with dioxin with Monsanto's knowledge." [The Sanjour memo says that, at the time of the contamination, "Lysol (was) recommended for cleaning babies' toys and for other cleaning activities involving human contact."]

"\* The manufacturer of Lysol was not told about the dioxin by Monsanto for fear of losing his business;

"\* Other companies using Santophen, who specifically asked about the presence of dioxin, were lied to by Monsanto;...

"\* Shortly after a spill in the Monsanto chlorophenol plant, OSHA measured dioxin on the plant walls. Monsanto conducted its own measurements, which were higher than OSHA's, but they issued a press release to the public and they lied to OSHA and their workers saying they had failed to confirm OSHA's findings;

"\* Exposed Monsanto workers were not told of the presence of dioxin and were not given protective clothing even though the company was aware of the dangers of dioxin;

"\* Even though the Toxic Substances Control Act requires chemical companies to report the presence of hazardous substances in their products to EPA, Monsanto never gave notice and lied to EPA in reports;

"\* At one time Monsanto lied to EPA saying that it could not test its products for dioxin because dioxin was too toxic to handle in its labs."...

OCI's August memo alleged that "Monsanto did, in fact, produce 'research' to defend its position. 'The Record however, shows a deliberate course of conduct designed to convince its employees and the world that Dioxin is harmless,'" the OCI memo said. [2]

OCI's memo concluded, "Based upon review of the available information submitted to the EPA-OCI by the Office of Enforcement, it is recommended that a full field criminal investigation be initiated by OCI.

"Information in the plaintiff's brief indicate a potential conspiracy, between Monsanto and its officers and employees, exists or has existed to defraud the US EPA, in violation of 18 USC 371. The means of the conspiracy appears to be by (1) providing misleading information to the EPA; (2) intentional failure by Monsanto to fully disclose all pertinent TSCA [Toxic Substances Control Act] related

information to the EPA; (3) false statements in notices and reports to EPA; (4) the use of allegedly fraudulent research to erroneously convince the EPA, and the scientific community, that Dioxin is less harmful to health and the environment."

OCI went on to note that, "In addition to the conspiracy, substantive violations of the Toxic Substances Control Act seem to exist for Monsanto's failure to report to EPA, pursuant to TSCA 8(E), the adverse health effects of 2,3,7,8-TCDD. Violations of 18 USC 1001 also appear to exist, although the statute of limitations may have run." Eighteen USC 1001 is a federal law outlawing false statements on any matter within the jurisdiction of any agency of the United States government.

The criminal investigation was opened August 20 and was formally closed 2 years later with Monsanto neither found innocent nor found guilty. OCI said, "The investigation is closed. The submission of allegedly fraudulent studies to the EPA were [sic] determined to be immaterial to the regulatory process. Further, allegations made in the Kemner litigation appear to be beyond the statute of limitations." In other words, OCI did not finish its investigation of the allegations against Monsanto because OCI found that some of the alleged criminal activities were more than 5 years old and thus could not be prosecuted; and, further, they found that the government had not relied on Monsanto's "allegedly fraudulent studies" in setting regulations.

The Sanjour memo is a documentary history of EPA's 2-year investigation, based on a Freedom of Information Act (FOIA) request for all documents related to the investigation. The FOIA request produced a foot-thick stack of papers, all carefully redacted (whited out) to remove the names of individuals.

Sanjour writes that:

\*\* "One gets the impression, on reviewing the record, that as soon as the criminal investigation began, a whole bunch of wet blankets were thrown over it. Almost nothing appears in the record about the first three charges [in the OCI memo] once the investigation began. The investigation concentrated on criminal fraud in the Monsanto studies."

\*\* A finding of criminal fraud would have required first a finding that Monsanto's studies were scientifically flawed. Only an analysis by government scientists could have reached such a conclusion, and no EPA scientists were engaged in EPA's Monsanto investigation. "None of the scientific groups in EPA, it seems, wanted to touch this hot potato, and no one in position of authority was instructing them to do so," Sanjour writes. This left the criminal investigation essentially crippled. As Sanjour said, opening a criminal investigation without undertaking a scientific analysis was like "trying to make tiger stew without first catching a tiger."

\*\* Rather than investigating all the allegations regarding Monsanto, EPA actually spent two years investigating Cate Jenkins, the whistleblower whose memo, Sanjour says, precipitated EPA's criminal probe of Monsanto.

After OCI investigators interviewed Jenkins she wrote them a memo on November 15, 1990 (and another on Jan. 24, 1991), describing ways that agencies of the U.S. government --including EPA and the Veterans Administration (VA) --had relied on the Monsanto studies in setting regulations and policies. (Sanjour points out that OCI had to ignore Jenkins's lengthy, detailed memos in closing the investigation on the grounds OCI stated.) Jenkins said the VA used the Monsanto studies to deny

benefits to thousands of Vietnam veterans who claimed their wartime exposure to dioxin and Agent Orange had caused cancer and other diseases.

When Jenkins released her Nov. 15 memo to the press, it was the first the world had heard of EPA's criminal investigation of Monsanto and it made headlines. According to Sanjour's memo, Vietnam veterans grabbed hold of the new information in Jenkins's memos and successfully pressured Congress to give benefits to Vietnam vets who had been denied them before. For her work, veterans organizations awarded Jenkins a plaque for exemplary service.

EPA punished Jenkins for her whistleblowing by giving her no assignments during almost 2 years; in April 1992 she was finally given work to do, but it was clerical. She holds a Ph.D. in chemistry. Jenkins filed a complaint with the Department of Labor. The Labor Department found in her favor, that she was being illegally harassed. But EPA appealed that decision to an administrative law judge, thus continuing the harassment. The judge ruled in Jenkins's favor, but EPA --now with Carol Browner at the helm --appealed AGAIN, this time to the Secretary of Labor. He eventually found in Jenkins's favor, thus ending the long period of harassment. Jenkins was reinstated and her attorneys fees were paid.

Sanjour summarizes, "When Jenkins made her allegations, and when the veterans groups made known the full implication of those allegations, a government with a decent respect for the welfare of its armed forces would have publicly ordered a full and impartial investigation with all the resources and support necessary and let the chips fall where they may. Instead, our top government officials were silent or even worse, they let it be known that they despised the messenger and had nothing but friendly feelings for the accused. The United States government gave no support or encouragement to a scientific, civil, or criminal investigation of Monsanto."

--Peter Montague

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[1] William Sanjour, EPA Office of Solid Waste and Emergency Response, "Memorandum: The Monsanto Investigation" to David Bussard, Director, EPA Characterization and Assessment Branch, dated July 20, 1994. Available for \$5.00 from Citizens Clearinghouse for Hazardous Waste, P.O. Box 6806, Falls Church, VA 22040; phone (703) 237-2249.

[2] Memorandum from [name redacted] in EPA Office of Criminal Investigation to [name redacted] in EPA Office of Criminal Investigation dated August 16, 1990. A copy of this memo was sent to us by EPA's Freedom of Information Officer in Washington, D.C.