

US drugs giant faces lawsuit

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PCBs were banned in the 1970s due to health risks

The American drugs company Monsanto is facing a multi-million dollar lawsuit from the inhabitants of a small town who accuse the firm of contaminating local rivers and poisoning the town's inhabitants.

More than 3,500 members of Anniston, Alabama, a poor rural town about 40 miles (65 kilometres) east of Birmingham, claim that local rivers were polluted with the now banned industrial coolants PCBs and that state regulators helped cover up the damage.

"They lied, and they got away with lying for 25 or 30 years," Anniston resident David Baker told the Associated Press news agency.

Mr Baker claims his brother Terry, who died in 1971 aged 16, was found to have a brain tumour, lung cancer and hardening of the cardiac arteries.

He says he has himself suffered from skin lesions and cysts as a result of pollution caused by PCBs.

Health problems

The company, now called Solutia, said it made PCBs in Anniston from 1927 until 1971, a few years before the US government banned production of the chemicals in the late 1970s because of possible health risks.

Tom Bistline, a lawyer for the company, claims there is no proof that the chemicals released are responsible for any health problems experienced by the town's population.

"There's a study here and a study there, but there's nothing consistent," he told the AP.

But lawyers for the townspeople claim to have once-secret internal memos, showing that the company was aware of the dangers in manufacturing PCBs as early as the 1960s, but chose to do nothing.

Residents are especially angry that that neither the company nor state environmental regulators made the effort to warn them of the dangers.

Previous trouble

Solutia has already faced a deluge of litigation from residents, and was forced to spend \$40m on clean up operations around their plant in Anniston.

A trial in Birmingham last year involving similar claims was only halted when Solutia agreed to a \$40m settlement with 1,600 Anniston residents.

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The company also paid out \$43.7m to settle a suit brought by 4,000 to 5,000 property owners along a downstream creek and lake where PCBs were detected.

And the pollution scandal is not the first to hit the company, which has angered environmentalists by developing and growing genetically modified crops.

Setback

The town's case will be hampered by an Alabama Supreme Court decision last September that ruled out individuals' ability to sue companies for health problems when they have no actual illnesses.

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Testimonies are due to begin on Wednesday after jury selection in what is expected to be a highly controversial - and emotive - trial.

<http://news.bbc.co.uk/2/hi/americas/1747350.stm>

Monsanto, Agent Orange and Dioxins

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Agent Orange

(Note: much of the following is excerpted from [The Legacy of Agent Orange](#)).

Agent Orange was manufactured by Monsanto, Dow Chemicals (manufacturers of napalm), Uniroyal, Hercules, Diamond Shamrock, Thompson Chemical and TH Agriculture. Monsanto [was] the main supplier. The Agent Orange produced by Monsanto had dioxin levels many times higher than that produced by Dow Chemicals, the other major supplier of Agent Orange to Vietnam.... Monsanto's involvement with the production of dioxin contaminated 2,4,5-T dates back to the late 1940s. 'Almost immediately workers started getting sick with skin rashes, inexplicable pains in the limbs, joints and other parts of the body, weakness, irritability, nervousness and loss of libido,' to quote Peter Sills, author of a forthcoming book on dioxins. Internal Monsanto memos show that Monsanto knew of the problems but once again a cover-up was the order of the day.... Operation Hades, later changed to Operation Ranch Hand, sprayed 6 million acres of forest in Vietnam, 19 million gallons of defoliant. The intention was to turn Vietnam into desert, to cause such destruction that Vietnam would never recover.... The most gruesome legacy caused by spraying Vietnam with dioxin contaminated Agent Orange was that born by the Vietnamese themselves. In a locked room of Tu Du Obstetrical and Gynaecological Hospital in Saigon are rows of formaldehyde-filled jars containing deformed fetuses, a grotesque illustration of Man's inhumanity to Man. The level of poverty in Vietnam prevents the preservation of further examples. Many of the living have fared little better, limb deformities, cancers. Says this [CorpWatch](#) article, "The Vietnamese government estimates that three million Vietnamese were exposed to these chemicals during the war, and that at least 800,000 suffer serious health problems today as a result". [Here](#) find photos of Vietnamese children from villages which were heavily sprayed (warning the images are disturbing).

Monsanto responds that while "sympathetic" with the victims "*reliable scientific evidence indicates that Agent Orange is not the cause of serious long-term health effects*" [1]. However the U.S. Institute of Medicine in their book *Veterans and Agent Orange* states that there is "Sufficient Evidence of Association" between herbicides used in Vietnam and Soft-tissue sarcoma (including heart), Non-Hodgkin's lymphoma, Chronic lymphocytic leukemia, Hodgkin's disease, and Cloracne. The book also cites numerous other illnesses with less certain associations [2].

And while 291,000 American GIs sued Monsanto and other chemical companies in 1984 and won an \$180 million settlement (albeit what William Sanjour, EPA Policy Analyst describes as only a "token 'nuisance value' settlement" due to false Monsanto studies which confused the issue[3]), Vietnamese victims have attempted to sue but without success. "In February 2004, the newly -formed Vietnamese Association of Victims of Agent Orange (VAVA) filed a class action law suit in a New York court, against Monsanto and 36 other manufacturers of the poisonous chemical" [4]. However "On March 10, 2005, the District Court judge Jack Weinstein dismissed the suit, ruling that there was no legal basis for the plaintiffs' claims" [5]. On February 22, 2008 the U.S. Court of Appeals for the Second Circuit in New York again dismissed the Vietnamese lawsuit even though "studies have shown the

compound of dioxin, a component of 'agent orange' herbicides sprayed during the war, is still present in so-called 'hot spots' at levels hundreds of times higher than would be accepted elsewhere" [6]. "We anticipated this because it is not easy suing big and powerful U.S. companies on U.S. soil and under the U.S. court system,' said Nguyen Trong Nhan, vice chairman of the Vietnam Association for Victims of Agent Orange/Dioxin."

At a time when US tobacco corporations have been forced to pay billions of dollars in the US to compensate the victims of smoking, it would seem only reasonable that Monsanto be forced to pay billions to the Vietnamese for the catastrophe Monsanto has wrought on their country [7].

See also Friction Tv's [The Horror of Agent Orange](#). Also see the [Vietnam Agent Orange Relief & Responsibility Campaign](#).

[edit]

Dioxins

(Note: much of the following is extracted from [The Monsanto Investigation](#) by William Sanjour, Policy Analyst at the EPA)

"The story starts in Nitro, West Virginia at a Monsanto chemical plant which was manufacturing the herbicide 2,4,5-T (the principal ingredient of Agent Orange, which contains traces of dioxin). In 1949, a runaway reaction at the plant caused an explosion releasing reaction material, resulting in many workers being doused with dioxin. In 1978 when concern about dioxin was on the rise and EPA was considering banning 2,4,5-T, Monsanto sponsored several studies of the long range health effects of the workers exposed to dioxin ... These studies were published in medical and scientific journals between 1980 and 1984. Publication of the first study, in 1980, coincided with a time when Monsanto was defending itself in three different legal actions relating to dioxin exposure from their products. Monsanto issued a press release headlined 'Study Fails to Link "Agent Orange" to Deaths of Industrial Workers'. All of these studies showed no statistically significant increase in cancers among the exposed workers. Because of the high exposures, these studies contributed to the conclusion drawn in EPA and elsewhere that: '[T]he human evidence supporting an association between 2,3,7,8-TCDD [dioxin] and cancer is considered inadequate.' Monsanto's studies would promote the idea that human beings, unlike other animals, are relatively immune to this man-made chemical".

Then in Sturgeon, Missouri in 1979 "a freight train derailment caused the spill of a tank car, containing 19,000 gallons of a Monsanto chlorophenol intermediate called OCP-crude, used in making wood preservatives and contaminated with dioxin. Francis Kemner and others exposed to the spill filed a suit in Missouri state court in 1980 (Kemner et al v. Monsanto Company). The trial lasted three years and eight months", which Sanjour later explains was "the longest running trial in history at the time". And while in the end "the jury did not believe the plaintiffs had proven that they had suffered any harm to date ... they were outraged at the egregious behavior of the Monsanto Company". Among the allegations made by the plaintiff's attorneys was:

- 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 knew how to make chlorophenol with significantly less dioxin content but did not do so until after the Sturgeon spill.
- 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. Lysol is 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.
- Monsanto was aware that dioxin contaminated their lawn care products (which were eventually banned by EPA).
- Monsanto sold these and many other consumer products knowingly contaminated with dioxin without warning the public for over thirty years.
- 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.
- At the trial a Monsanto executive argued that it did not report what it considered very low levels of dioxin to EPA because it would merely "add fuel to the media fires."

"Monsanto fought these charges with the best lawyers and expert witnesses that money could buy. They had to; the downside risk to Monsanto was enormous. If the plaintiffs in the Kemner case could collect damages, then every user of Lysol, Weed-B-Gone, and dozens of other consumer products

using chemicals containing traces of dioxin might collect damages and put Monsanto and other chemical companies into bankruptcy".

"Despite Monsanto's parade of expert witnesses, the jury expressed its opinion of Monsanto's honesty and integrity by the unusual award of more than sixteen million dollars in punitive damages." However, the "Plaintiffs lost on appeal on the technical legal ground that a punitive award could not be made in the absence of actual damages regardless of the facts in the case".

Several years later, Cate Jenkins, a PhD chemist at EPA, became convinced that Monsanto had deliberately manipulated studies showing that dioxin was a human carcinogen [8][9]. Greenpeace also "issued a detailed 44 page critique of the Monsanto studies by Joe Thornton entitled 'Science for Sale' [10] (1). Whether this was a case of fraud or not, it wouldn't be unusual for Monsanto [11]

"On February 23, 1990, Jenkins sent a memorandum to the EPA Science Advisory Board entitled 'Newly Revealed Fraud by Monsanto in an Epidemiological Study Used by EPA to Assess Human Health Effects from Dioxins', attaching a copy of part of the Kemner Plaintiffs-Appellees' brief dealing with the Monsanto studies. She requested that the Board or the EPA Office of Research and Development, audit the records of these studies to see if they were flawed". Ironically, rather than investigate the Monsanto studies the EPA launched what Sanjour says was a harrasing investigation of Jenkins. "Within days of learning that the Office of Enforcement [which "began to look into the criminal aspect of the fraud charges"] had initiated a criminal investigation of Monsanto based on Jenkins' allegations, her job duties were withdrawn without warning. She was not given any assignments from August 30, 1990 until she was reassigned on April 8, 1992 to a job which was primarily administrative or clerical." "Dr. Jenkins filed a complaint with the Department of Labor claiming that she was being harassed for carrying out perfectly legal activities". The Labor Department investigated and found in Jenkins favor. The EPA appealed three times all the way up to the Secretary of Labor but each time the Department came down in favor of Jenkins finding that "None of the rationales [explaining her transfer] given by EPA ... appear valid".

"In August of 1992, EPA quietly closed the criminal investigation without ever determining or even attempting to determine if the Monsanto studies were valid or invalid, let alone fraudulent.... There was no public announcement that the investigation was closed. Dr. Jenkins didn't learn about it until fifteen months later. Yet Monsanto knew within a few days of EPA's closure".

According to John Thomas Burch, Jr., an attorney, a Viet Nam veteran and the chairman of the National Viet Nam Veterans Coalition, *"Dr. Jenkins' memos about the Monsanto studies 'broke a roadblock' to additional legislation in Congress which 'meant thousands of [veterans] getting medical care who wouldn't have gotten it otherwise.' For this she was awarded a plaque for exemplary service to Viet Nam veterans".*

"Although she had committed no crime, Jenkins had been vilified and harassed for the sin of wanting to protect the public from dioxin. Many wrongs, including violations of EPA's own regulations, were committed by those who illegally harassed her, but no one has suggested punishment for them. And while many EPA officials were willing, even anxious, to apologize to Monsanto, none has come forward to apologize to Dr. Jenkins".

Sanjour concluded by saying that *"This kind of cold-blooded analysis is bad enough when the product is used by the general public, but it is insufferable when used on our own armed forces who were exposed in combat.... The issue wasn't false science, but allegedly using false science to cover-*

up a callous hard-hearted decision to continue poisoning our GIs and their children because it was cheaper to do so."

[http://www.sourcewatch.org/index.php?title=Monsanto%2C Agent Orange and Dioxins](http://www.sourcewatch.org/index.php?title=Monsanto%2C_Agent_Orange_and_Dioxins)