# A Battle Over Pesticide Data

## *Environmentalists have been given access to some toxicity studies, but they may not be able to discuss what they learned*

In the annals of the environmental movement, 28 June may be recorded as a day of enormous importance. At about 4 o'clock that afternoon, representatives of three environmental groups were admitted to a microfilm reading room on the second floor of a federal office building on the outskirts of Washington, D.C. They were drawn there by the opportunity to examine hundreds of studies of the environmental effects of widely used pesticides. It was the first time that the information had been seen by anyone outside the chemical industry and the federal government.

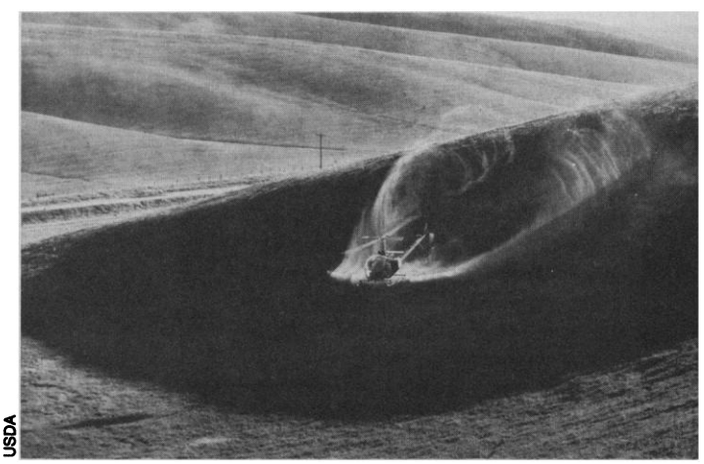
The visit marked a major step forward in a 10-year effort by environmentalists to see for themselves the evidence that individual pesticides do not cause "unreasonably adverse effects," as required by the federal pesticide statute. Many environmentalists have long suspected that this requirement is only loosely adhered to by manufacturers and poorly enforced by the Environmental Protection Agency (EPA). They fear that some pesticides used on crops, lawns, and gardens—such as captan, benomyl, toxaphene, and lindane—may cause nerve damage, cancer, birth defects, sterilization, or genetic mutations. Until June, however, they had never seen the key industry studies that bear on these concerns, a fact that detracted considerably from the credibility of their claims.

Access to the data came as the result of a compromise negotiated between attorneys representing nine major chemical firms and six major environmental organizations plus the AFL-CIO.* The negotiations occurred because of a lawsuit against EPA brought by the environmentalists, seeking compliance with a 1978 law requiring the release of pesticide health and safety data to any U.S. citizen who asks for it. The reason that the issue is only coming to a boil now is that, immediately after the law was passed, the chemical industry challenged it on constitutional grounds and obtained several injunctions against its enforcement. Only within the last year have the injunctions been lifted, as a number of district courts decided that the law was indeed constitutional. Congress, however, is having second thoughts and seems likely to change the requirement anyway—creating a tangle out of the entire question.

The challenge to the law stemmed from claims by manufacturers that pesticide health and safety data are trade secrets of great value, and that competitors could use them to gain an unfair advantage. Some of the industry's profits apparently depend on new formulations of existing chemicals no longer protected by patents. Consequently, if the data were publicly released, competitors could use them to market identical or similar products, rather than go through the costly and time-consuming process of performing the tests themselves. General release of the information would permit other firms to profit at the inventor's expense, the manufacturers claimed.

The claim has largely been rejected by the courts because Congress explicitly realized this concern and included a provision in the law forbidding use of the data by a competitor for at least 10 years after a product is registered with the federal government, and requiring compensation for its use 5 years after that. Even the industry's primary attorney, Kenneth Weinstein, admits that concerns about such unfair competition are largely speculative. No significant test data have ever been released, so examples of this corporate cribbing are not available. "This is not an area that is easily susceptible to proof," Weinstein says. "But we know that it costs a lot of money to prepare the data, and that it sometimes requires a lot of time and effort to develop the testing methodology. We're just afraid to let the theory be tested, because there is no way of retrieving the information once it gets out of the bag."

One herbicide and insecticide manufacturer, the Shell Oil Company, does not share these concerns. Edward Hobson, a Washington representative for Shell, says that his company believes that "health and safety data should be made available to anyone that asks for them. We haven't had many requests for our data, but we have yet to see any adverse commercial impact from handing it out."



USDA

*Companies have fought for 10 years to limit release of data on effects of pesticides*

Last October, when it first appeared that the other major pesticide manufacturers would lose their court challenges, Weinstein wrote to EPA Administrator Anne Gorsuch, requesting that she "adopt on an interim basis certain protective procedures" to prevent disclosure of the information in response to a request from the environmentalists. All the court suits had not been decided, he said, and, more important, it looked as if Congress would soon rewrite the law to substantially modify the open disclosure requirements. Weinstein received no formal response, but several months later John Todhunter, the EPA assistant administrator for pesticides, told several

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*The environmental groups included the Environmental Defense Fund, Friends of the Earth, the Sierra Club, the Natural Resources Defense Council, the National Coalition Against the Misuse of Pesticides, and the California Agrarian Action Project. The chemical companies included Abbott Laboratories, Ciba-Geigy Corporation, E. I. du Pont de Nemours, FMC Corporation, Rohm & Haas Company, Union Carbide Corporation, Uniroyal Chemical Company, The Upjohn Company, and Velsicol Chemical Corporation.



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congressional staff aides that any release of the data would indeed be delayed until Congress had time to modify the law in line with the desires of the industry.

Subsequently, the Natural Resources Defense Council (NRDC) sued EPA on behalf of all of the environmental groups, alleging that the agency was deliberately not complying with the 1978 law. In June, on the day that a judge was to order Todhunter's deposition, the agency declared that it was not holding things up and mailed out a formal denial of Weinstein's request for protection.

Congress, meanwhile, has been scrambling to respond to the manufacturers' demand for stricter limitations on access to the health and safety data. Last week, for example, the House of Representatives was scheduled to vote on a bill that would require anyone viewing such data to agree to stricter and more elaborate EPA regulations regarding data copying, transfer, storage, publication, and submission to a court. If the data involve what the legislation describes as "innovative [scientific] methods and technologies," they could be viewed only by scientists employed in government or with nonprofit health, environmental, or labor organizations, who would have to comply with EPA rules for use of the data and communication with one another.

The industry claims that these provisions will not unduly inhibit public review of the studies. Weinstein says that much of the data could be described or quoted in a review article; "you just couldn't reproduce a verbatim copy and send it to another manufacturer." But the provisions on innovative methods seem more tricky. Means of detecting pesticide residues and metabolites, and therefore human exposure, could be covered by the definition. Farmworkers and journalists would be denied access to those studies, and any review would occur among a select group of scientists. Publication would be sharply constrained. Todhunter, in recent testimony before a Senate subcommittee, maintained that adequate independent review could still be accomplished. "The most important mechanism in this regard is for scientists to go and talk to each other," he said. "Information in a peer reviewed journal is mostly outdated by the date of publication."

In contrast, much of the environmental community believes that the provisions could prevent an adequate review. Ralph Lightstone, an attorney for the migrant farmworkers project of California Rural Legal Assistance, is concerned that the industry will ultimately contest the regulations EPA develops to implement the law, thereby delaying disclosure for years longer. Jacqueline Warren, an attorney with the Environmental Defense Fund, believes that open circulation of test methodologies is critical to obtaining adequate scientific review. A group of 51 environmental scientists from state governments, academia, and consulting firms recently wrote to Congress that much pesticide research could be classified as innovative, and that free and full review could thus be prevented under the provisions of the House bill. Despite such objections, however, similar legislation has been introduced in the Senate, where the industry's view is also expected to prevail.

"The big question is: are we going to get the current law implemented before it is erased from the books?" asks Al Meyerhoff, an attorney with NRDC. Weinstein feels confident of an industry victory. Lawrie Mott, a scientist for NRDC, notes that the environmentalists still have a long way to go before they can make use of what they learned through access to the data in June. They had only 4 days to sift through a mountain of material; nothing except study titles could be recorded; and those present were barred from discussing what they saw with anyone else. The environmentalists agreed to such awkward conditions because they hoped that a quick review of the data would permit them to shorten the request for their own complete copies, hastening EPA's compliance. Whether or not that will actually happen seems highly problematic, as the industry has a role to play in reviewing what EPA decides to give up.

Mott is pleased to have had even a short look. "It was the first time we had seen unpurged chemical company data," she says. But whether she and the others can ever freely tell the public what they saw appears to be firmly under the industry's control. At the least, it seems likely that future debates about pesticide safety will continue to center around studies that the public has never seen.

—R. JEFFREY SMITH

# Tokyo's Edge Over Detroit

Despite the popular conception that Japanese automakers have captured a large slice of the U.S. market because of superior technology, the real reason for their success lies in better management, according to a study published on 26 July by the National Academy of Engineering.* As a result, the study concludes, if the U.S. industry is ever going to recover its competitive position, it must change the way it does business. In particular, it must start bringing workers into decision-making and create an environment where innovation is encouraged. All of this, the report concedes, amounts to "something close to a cultural revolution."

The report, written by a committee chaired by Harvard Business School professor William Abernathy, runs through most of the standard diagnoses of the ills afflicting Detroit but keeps coming back to a central theme. Japanese companies, it says, have been able to change and innovate more rapidly and have managed to maintain a system of excellent quality control. In comparison, the American industry tends to be more rigid, labor-management relations are more hierarchical and adversarial, and there has been less scope for innovation.

The emergence of so-called "quality of worklife" experiments in some U.S. auto plants is a step in the right direction, the report suggests, and the committee perceives "reason for optimism" in the willingness of labor and management to discuss productivity and quality control in collective bargaining. But it warns that the magnitude of the required changes must not be underestimated.

As for technology, the study suggests that the industry "may be at the beginning of a period of intense, technology-based competition." But it questions whether U.S. companies, in which "for the most part the research organizations . . . have not been tied to the basic competitive activities of the business" are yet up to the task. In essence, the report is suggesting that the answer to the U.S. industry's ills can be found in Detroit rather than in Washington.—COLIN NORMAN

*The Competitive Status of the U.S. Auto Industry (National Academy of Sciences, Washington, D.C., 1982). $13.50.


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