

Chicago Tribune

Thursday, February 22, 1979

326 Year—No. 53 © © 1979 Chicago Tribune

Viet Nam vets ask billions

By Jay Branegan

CLASS-ACTION SUITS seeking billions of dollars on behalf of 4.2 million Viet Nam veterans allegedly exposed to toxic chemical poisons were filed Wednesday in U.S. District Court here.

Three suits, filed against six chemical companies, are part of a nationwide ef-

fort to collect damages for thousands of veterans who allegedly are suffering from cancer and other diseases and have fathered malformed children as a result of the impurities in Agent Orange, a defoliant widely used in the Viet Nam war.

"Either we put the burden on the manufacturers today or on the taxpayer,"

Victor J. Yannacone Jr., one of the nation's top environmental law activists. He filed the suits here along with Chicago attorneys Warren Wallin and Dem Trafelet.

Five similar suits are pending in federal court in Manhattan, Yannacone said, and "more will follow."

5 Star Final

9 Sections 15¢

in defoliant suits

THE THREE suits were filed on behalf of a Chicago-area Viet Nam veteran suffering from cancer and the estates of two who have died of the disease. Named as defendants are Dow Chemical Co., Hercules, Inc., Northwest Industries, Diamond Shamrock Corp., Monsanto Co., and North American Phillips Corp.

The suits, each about 160 pages long, allege that the firms manufactured and sold to the military more than 100 million pounds of Agent Orange and other herbicides, knowing that they were contaminated by a chemical called dioxin, "one of the most toxic substances known to man," according to Yannacone. About 4.2 million servicemen in Viet

Nam were exposed to the chemical from 1962 to 1971, the suit states.

IN ADDITION, THE suits say that scores of utility companies, railroads, and state highway departments purchased millions of pounds of contaminated herbicides for brush control along

Continued on page 16, col. 1

Viet Nam vets

Viet Nam veterans ask billions in defoliant suits

Continued from page one

roadbeds, highways, and powerlines, exposing several million civilians to danger.

The suits charge that by manufacturing and selling the herbicides with the dioxin impurities, the companies were guilty of "wanton and reckless disregard for the public health, safety, and welfare."

In addition to seeking a court order to stop the production of the contaminated herbicides, the suit asks that the companies be forced to set up a special fund to reimburse the Veterans Administration and the Social Security Administration for the costs of medical treatment and death benefits they have been and will be required to pay as a result of the alleged effects of Agent Orange.

Victims and their families also would be directly reimbursed from the fund.

Yannacone contended that 4,000 to 46,000 persons will get terminal cancer from the herbicides and that 200 to 2,000 children will be born malformed as a result of the contaminants. It takes \$50,000 to \$150,000 to care for a cancer patient for a year, Yannacone said, "so we are talking about a fund that could amount to \$4.6 billion."

A SPOKESMAN for Monsanto, reached after the suit was filed, denied making the ingredient alleged to contain the dioxin.

A Dow Chemical spokesman said, "We will vigorously defend our enviable safety record," and pointed out that a committee of the National Academy of

Sciences issued a report in 1974 stating that it found no association between exposure to Agent Orange and birth defects in humans in South Viet Nam and no confirmation of reports of other human health problems.

The Dow spokesman also said that Agent Orange is not used domestically, but the chemical ingredient used in Agent Orange and containing dioxin is used. He agreed that dioxin is toxic, but added that it is used in such small amounts that it presents no health hazard.

ELVIRA SCHMIDT, a Northwest Side waitress and the mother of one of the veterans named in the suit who died of cancer, stated she believes Agent Orange was responsible for the illness.

Mrs. Schmidt said her son, Bernard Tiranti, died of cancer in 1974, at the age of 24. "When he went away to Viet Nam, he was healthy," Mrs. Schmidt said. "When he came back, he was sick."

She said her son spent 18 months in Viet Nam after being drafted in 1971.

"Not long after he got back, he started complaining about his weight," she said.

"He was eating well, but losing weight. In May, 1973, tumors were found in his sinus area, behind the eyes and nose. He received cobalt treatments, and that fall the doctors told him the cancer was cured.

"About two weeks later, I found him crawling on the floor. He couldn't walk. The cancer had spread to his bones. He died in May, 1974."

SCHLEGEL & TRAFELET, LTD.
ATTORNEYS AT LAW
ONE NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602

STEPHEN J. SCHLEGEL
DEAN M. TRAFELET

IVAR R. AZERIS
STEVEN T. POLICK
JAMES A. ROMANYAK

SUITE 3900
(312) 782-1061

MAILED 23 1982

August 20, 1982

Mr. Victor Yannacone
P.O. Drawer #109
Patchoque, NY 11772

Mr. Albert Fiorella
1565 Franklin Ave.
Mineola, LI, NY 11501

Dear Victor & Al:

For your information I am sending you an article that was in the Chicago Tribune, Tuesday, August 10, 1982.

Yours very truly,



Stephen J. Schlegel

SJS/ac

Agent Orange, a media myth

By Bruce E. Herbert

While Soviet use of biological and chemical warfare in Afghanistan is becoming an issue in the press, Agent Orange, a chemical defoliant used by our armed forces in Vietnam, is being treated as a nonissue—a move long overdue.

The Agent Orange controversy had its beginnings in early 1978 in Chicago. Maude DeVactor, a Veterans Administration benefits counselor, thought that she detected a connection between health problems young veterans were experiencing and exposure to "those chemicals" in Vietnam. She brought her suspicions to the attention of Bill Kurtis of WBBM-TV. The result was the production of a half-hour documentary, "Agent Orange: Vietnam's Deadly Fog," which resulted in a blaze of national publicity.

Agent Orange—so called because of the orange stripes on the 55-gallon drums in which it was transported—was one of a group of herbicide defoliants used in Vietnam. Variations of Agent Orange had been in worldwide agricultural use since 1946 without apparent harmful effects to humans. In the early '60s, however, it was discovered that the manufacturing process produced a contaminant, dioxin, in the ratio of a few parts per billion. Although dioxin is an extremely deadly chemical in its pure, undiluted state, scientific opinion held that the very small trace elements in Agent Orange did not constitute a health hazard. Spraying continued throughout the world and massive defoliation was conducted in Vietnam from 1966 until early 1970.

The issue of Agent Orange lay dormant until the TV documentary began informing the American public that "unusually large numbers" of Vietnam veterans were suffering from diseases and were fathering "unusually large numbers" of deformed children. The fact that there was little scientific human data to support these allegations did nothing to restrain the reportage. The American people—who were already feeling guilty about the Vietnam war—reacted with shock and outrage. Between 1978 and 1982, at least nine congressional hearings were held. The Veterans Administration was castigated for insensitivity and obstructionism. A White House task force was formed. Protest demonstrations went on throughout the country.

Vietnam Veterans of America—an outgrowth of the radical Vietnam Veterans Against the War—was flourishing when the Agent Orange issue exploded upon the national scene. Having been abysmally unsuccessful in competing for young veteran members among the main-line established veterans' organizations, Agent Orange provided a new focus for membership solicitation. Two new single-issue

Bruce E. Herbert is a deputy director of Center for International Security.

groups—Agent Orange Victims International and Citizen Soldier—also began beating the Agent Orange drum.

Another group which can claim credit for emotionalizing the Agent Orange debate is the National Veterans Law Center. Based in Washington, the center had been engaged primarily in litigation to upgrade the discharges of Vietnam-era veterans who—through either court-martial or administrative action—had been separated from the services under other than honorable conditions. On Dec. 20, 1979, Congress mandated the VA to conduct an epidemiological study to determine if, in fact, Vietnam veterans were suffering more health problems than the non-veteran population. Shortly thereafter, the veterans law center filed suit in federal district court and also filed a formal protest. Faced with these two legal actions, the VA prudently suspended all activities to let a contract for design of the study's protocol and awaited a ruling. On May 5, 1980, the court refused to hear the case and in January, 1981, the GAO ruled that the center's action had no merit in any particular, thus allowing the VA to proceed. However, it was not until May, 1981, that the VA was able to award the contract. Throughout the storm of criticism directed against the VA for foot-dragging, the National Veterans Law Center was in the forefront of the accusers, despite the fact that the center itself had helped delay the study for at least 14 months.

While, public outrage about Agent Orange was being maintained, the noncorroborative results produced by competent scientific investigation were largely ignored. Despite the expenditure of scores of millions of dollars since 1978, thousands of hours of congressional investigation and testimony and tens of thousands of hours of peer-reviewed scientific study, no body of compelling medical data has yet been produced to support the contention that even gross exposure to Agent Orange significantly increases the risk of long-term serious health decrements. Although the jury is still out and it is yet possible that some causative link may be found, the results to date make it seem unlikely that the more than 30 ongoing scientific investigations on Agent Orange will yield results much different from the negative findings thus far produced.

After nearly five years of almost constant publicity, as of March 1, 1983, only 16,821 veterans have even filed claims with the VA for suspected Agent Orange damage. Of this number, less than 8,400 present any certifiable medical condition, whether or not these disabilities can ever scientifically be linked to exposure. Three thousandths of one percent of the 2.4 million men who could have been exposed to Agent Orange in Vietnam is hardly a compelling statistic on which to make assumptions about "unusually large numbers" of veterans suffering latent Agent Orange-induced health impairments.

The past perfect state of our lives

If it weren't for the fact that new things are so satisfying to buy, it would be depressing to realize how soon they start to deteriorate.

Andy Rooney

Lawyers map strategy here for vast Agent Orange suit

By Mary Elson

MORE THAN 100 attorneys from all 50 states are in Chicago this weekend to discuss an unprecedented class-action suit filed against the nation's seven largest chemical companies on behalf of thousands of Viet Nam veterans exposed to the toxic defoliant Agent Orange.

The suit, filed in January, 1979, in a New York state District Court, now involves more than 1,250 attorneys from 150 law firms nationwide and is regarded as history-making litigation in the field of product liability.

"This is the first time, we believe, in the history of American jurisprudence that in excess of 150 law firms have banded together to pool our resources rather than competing with one another for cases," Chicago attorney Stephen J. Schlegel said at a press conference Friday.

The three-day conference to brief participants on the suit's content and progress convened Friday night.

THE SUIT seeks general and compensatory damages—which could run into billions of dollars—for Viet Nam veterans who have become sick or whose children suffered birth defects as a result of exposure to the chemical dioxin used in the defoliant Agent Orange which was sprayed in huge quantities during the war.

Some 4,200 veterans are listed as plaintiffs in the suit, but attorneys are asking that the companies be held responsible for compensating any Viet Nam veteran who becomes ill with Agent Orange-related diseases in the future.

The attorneys estimate that as many as 40,000 of the nation's 2.5 million war veterans will eventually become sick or die from the effects of Agent Orange, and that at least 2,000 children will be born with "catastrophic" birth defects.

Schlegel estimates that as many as 10,000 veterans in Illinois alone could become victims.

VICTOR YANNAZONE, a New York attorney who filed the original suit on behalf of a Viet Nam helicopter defoliant spray pilot who died of a rare form of abdominal cancer, said the suit will seek to prove that the chemical companies knew as far back as 1964 that the chemical was harmful and "deliberately failed to disclose those dangers to the public."

The companies named in the suit include: Dow Chemical Co.; Monsanto Co.; Hercules, Inc.; Thompson-Hayward Chemical Co.; Diamond Shamrock Corp.; Uniroyal, Inc.; Agrisect, Inc.; Thompson Chemicals; and Hoffmann-Laft, Inc., a subsidiary of Syntex Corp., a subsidiary of Occidental Petroleum

Corp.

Company officials have claimed there is no firm evidence to link sickness among the veterans with exposure to Agent Orange.

YANNAZONE, WHO also filed the suit that resulted in the government's ban on the pesticide DDT in 1969, said that among the 4,000 plaintiffs in the suit, all have at least three of the following symptoms:

- A skin condition that has persisted since returning from Viet Nam.
- Some form of liver damage.
- Some form of degenerative disease, including cancer and muscular disorders.

● Children with severe birth defects that have no generally accepted explanation such as Down's Syndrome. [Among defects being discovered in children of Viet Nam veterans are urinary and genital tract deformities, missing limbs, clubbed feet, mislinked blood vessels, and cleft palates.]

Yannacone said the United States government was not named as a defendant because there is no evidence that government officials were aware of the hazards of Agent Orange at the time it was being used in Viet Nam.

The first hearing in the case is scheduled for Oct. 3.

Checklist

Filing for Fees

DO YOU WANT TO FILE a class action fee petition? Here's how attorneys who won \$13.5 million in fees in *In re Folding Carton*, MDL 250 did it. The list was prepared by the fee committee in the case and sent to all attorneys for plaintiffs.

For a discussion of the general standards, counsel's attention is directed to the cases of *In re Equity Funding Corp. of America*, 438 F.Supp. 1303 (1977), *Grunin v. International House of Pancakes*, 513 F.2d 1048 (8th Cir. 1975); *City of Detroit v. Grinnell Corporation*, 495 F.2d 448 (2d Cir. 1974); *Lindy Bros. Builders Inc. v. American Radiator and Standard Sanitary Corporation*, 487 F.2d 161 (3d Cir. 1973); *Robman v. Petersen Coal & Oil Co.*, 63 R.D. 684 (N.D.Ill. 1974); Manual for Complex Litigation, and the Code of Professional Responsibility of the American Bar Association DR 2-106. The court has approved the following format for the petitions for fees and expenses:

1. A description of petitioner's clients including the approximate size of each client's purchases of folding cartons.
2. Any fee agreements either written or oral which counsel has with his clients. If any fees have already been received by counsel from his clients for work on any part of this case, please state the amount, the time spent, and the exact services for which the fees were received. Copies of written fee contracts should be submitted with the petitions. Full recitations of any oral agreements should be set forth in the petitions.
3. Complete copies of any written fee arrangement, or a recitation in full of any oral agreement, by and between any counsel or group of counsel in this litigation to be submitted with the petitions.
4. An itemized statement, with full supporting documentation, (e.g., invoices, expense vouchers, canceled checks, etc.) of out-of-pocket disbursements should be submitted as part of the fee petition.
5. The petition should consist in the first part of a resume of the background and qualifications of each attorney and paralegal for whom compensation is requested. A narrative summary of the general contributions made by petitioning counsel should be included as well as summary of the work of each attorney and paralegal in the firm. The petition should identify each claimant's role in the litigation and committees on which attorneys have served in this case.
6. The petition should be accompanied by complete copies of all daily time records kept by counsel in MDL 250 for which fees are sought. If counsel desires, all time records may be filed under seal with the court with the understanding that such filings will be available to this committee and each other persons as the court may from time to time designate.
7. The petition should contain: (a) a summary of the total hours for each attorney and paralegal and the total hours for which compensation is requested; (b) a statement of the applicable hourly rates for each attorney and paralegal during the pendency of this case; (c) a calculation of the total compensation requested by your firm for each attorney and paralegal at the applicable hourly rates; (d) a statement of the increment or multiplier, if any, which petitioners request; (e) a statement of the total amount requested for each attorney and paralegal when the multiplier or increment is factored in; (f) an explanation and justification for any multiplier requested.
8. The petition should cover the period from the beginning of the case until July 15, 1976.
9. Also include to the extent available a summary of fee applications and time records in other contingency cases handled by petitioners since Jan. 1, 1976. The summary should include the total amount of fees requested, the total hours involved, hourly rate, time multiplier requested and the actual fees awarded by the court.

Firm Rapped

CHICAGO — A federal judge has accused a prominent Washington law firm of "errant conduct" and "scavenging" in asking a 25-percent fee from individual claimants for what some lawyers describe as routine mop-up operations in the folding carton litigation.

Arent, Fox, Kintner, Plotkin & Kahn was not involved in the litigation but could end up receiving a fee higher than many of the 51 plaintiffs law firms who labored nearly three years in the complicated case, sources said.

The firm offered to process claims for hundreds of companies due recovery in letters sent to members of three trade associations who have an interest in the case. The trade associations are clients of the Arent firm.

"We are obviously very distressed at this kind of scavenging," said Judge Hubert L. Will in a hearing Sept. 13. "Scavenging is the best way I can describe it."

"You have got a settlement fund already established . . . and somebody is going to charge 25 percent for filing a claim form? It is outrageous. It is just almost beyond belief; and this is a distinguished Washington law firm with the former head of the Federal Trade Commission as one of its senior partners." Earl W. Kintner, chairman of the Federal Trade Commission from 1959-61, is a partner in the firm.

A spokesman for the firm said it saw nothing improper in its action and it assumed the court would ultimately review all fee arrangements to determine what is fair and reasonable. The spokesman said the fee was based on the expectation that claims would be challenged and substantial evidentiary hearings would be required.

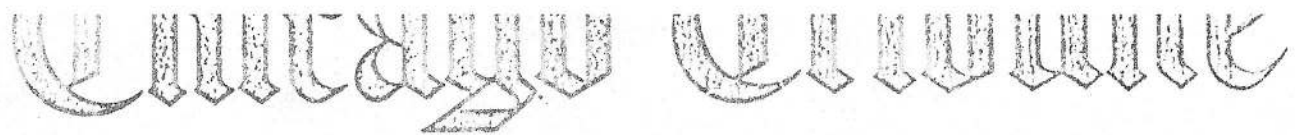
In comparison to Arent Fox's requested 25-percent fee, the plaintiffs attorneys, who logged more than 60,000 hours in the folding carton case, were awarded fees amounting to about 6 percent of the \$218 million settlement.

Some lawyers close to the case said the processing of claims may not require the use of a lawyer at all. Claimants also could use the service of the plaintiffs attorneys with no additional cost to themselves, the lawyers said.

The Big Money Winners

LAWYERS in 51 firms are sharing \$13.5 million in attorney fees awarded under a unique method of determining costs in *In re Folding Carton*, MDL 250, in Chicago. Here are the 24 firms who won more than \$100,000 in fees:

Law Firm	Fees	Expenses	Total
• Specks & Goldberg, Ltd. Chicago	\$2,092,393	\$31,948	\$2,124,342
• Sloan & Connelly, P.C. Chicago	1,735,249	32,191	1,767,441
• Chestnut & Brooks Minneapolis	1,113,920	40,853	1,154,773
• Kohn, Savett, Marion & Graf Philadelphia	800,486	38,668	839,155
• Saveri & Saveri San Francisco	750,525	33,949	784,474
• Freeman, Rothe, Freeman & Salzman Chicago	700,020	10,265	710,285
• Sachnoff, Schrage, Jones, Weaver & Rubenstein Chicago	582,499	15,538	598,038
• Ferguson & Burdell Seattle	505,712	35,958	541,670
• Foley & Lardner Wash. D.C.	493,994	36,616	530,610
• Lawrence Walner & Assoc., Ltd. Chicago	496,526	11,016	507,542
• Much, Shellist, Freed, Danenberg, Ament & Kiger Chicago	453,283	26,227	479,510
• Cochrane & Bresnahan Minneapolis	442,707	24,750	467,457
• Cooper & Scarpulla and Law Offices of Josef D. Cooper San Francisco	405,114	35,677	440,792
• Kendrick, Netter & Bennett Los Angeles	312,244	33,332	345,576
• Wald & Wald Chicago	297,000	10,418	307,418
• Litman, Litman, Harris & Specter Pittsburgh	276,287	26,983	303,270
• Mastor & Mattson Minneapolis	191,349	15,719	207,069
• Barrack, Rodos & McMahon Philadelphia	187,974	10,067	198,041
• Anderson, Granger, Nagels & Lastelic Kansas City	164,897	17,665	182,562
• Doherty, Rumble & Butler Minneapolis	137,596	36,022	173,619
• Edward A. Berman, Ltd. Chicago	117,160	10,003	127,163
• Barry Rubenstein, P.C. Chicago	111,234	9,537	120,771
• David Logan Law Offices Chicago	100,145	9,000	109,145
• Russ, Reinstein & Block Chicago	98,648	10,568	109,216



Tuesday, August 10, 1982

Missourians strike gold in Illinois court

By Daniel Egler

Chicago Tribune Press Service

SPRINGFIELD—The newest Missouri millionaires are making their money through a court case in Illinois stemming from a train derailment that spilled thousands of gallons of a potent chemical in north-central Missouri.

Forty-seven rail workers have sued the Norfolk & Western Railway Co. for damages, saying they suffered health problems from the spill. The 47 were forced to go "gloshing around in a toxic soup," one toxicologist testified.

Richard Lowe of Columbia, Mo., was the first to be awarded more than \$1 million as a settlement from the accident, which dumped about 20,000 gallons of ortho-chlorophenol from a tank car and caused the evacuation of the 800 residents of Sturgeon, Mo., more than three years ago.

Three other men have received awards totaling \$3.0 million from the Madison County jury that is to decide all 47 suits.

TIME FILING of the suits in Madison County, 120 miles and a state away from the accident site, has stirred some legal controversy. The Madison County Circuit Court is viewed by some attorneys as one of the most lenient in granting financial settlements.

Personal injury suits have become a sizable business in the county, which is on the Mississippi River north-east of St. Louis. Many injured workers—and their attorneys—file their suits in the Madison County Courthouse in Alton rather than in the seat of the county in which they were hurt.

The 47 workers were allowed to file suit in Illinois under a federal law that permits injured railroad workers to file personal injury claims in any jurisdiction where the railroad does business.

The Norfolk & Western has tracks in Madison County, allowing Lowe and the other plaintiffs to sue there.

THE JURY last week awarded \$1.5 million to Harold Buck and \$1.2 million to John Clark, both of Moberly, Mo., and \$1.2 million to Larry Prior of New Florence, Mo. The jury was deliberating three other claims late Monday afternoon.

Lowe, a railroad yard supervisor, claimed the accident and subsequent clean-up caused him such problems as loss of memory, rashes, stomach problems and muscle pains.

Doctors said they found traces of dioxin, a substance suspected of causing cancer—in his bloodstream after the incident.

Lowe and Buck would not comment on the case, while attempts by The Tribune to reach other plaintiffs were unsuccessful. Paul Pratt, the attorney who handled Lowe's suit, also was unavailable.

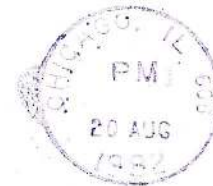
THE VOLUME [of cases] is good for us," admitted Willard Portell, Circuit Court clerk of Madison County. He said his office has operated with a \$600,000 surplus for the last few years because of filing fees and traffic fines.

"But the assumption that this is a business is absolutely wrong," Portell said. "If it's a good case, they may get a good settlement," he said, noting that of the 60,000 lawsuits filed in the county each year, only about 300 are personal injury cases.

According to evidence in his trial, Lowe walked a half-mile stretch to determine the extent of the damage from the derailment of the 67-car train and returned home drenched in chemicals. One physician testified that Lowe was lucky to have lived beyond the night of the spill.

*Send copy to
Vic Yammone
Carol to Al Fiedler
for Ann's info re: motor*

SCHLEGEL & TRAFELET, LTD.
ATTORNEYS AT LAW
ONE NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602



Mr. Victor Yannacone
P.O. Drawer #109
Patchogue, NY 11772

Scientists study weed killer as health hazard

By Jon Van

THE POSSIBILITY that a common weed killer is killing chickens and perhaps harming humans as well is under investigation by scientists at the University of Illinois Medical Center.

The herbicide, known as trichlorophenol or 2,4,5-T, was a major toxic component of Agent Orange, the chemical used in Viet Nam to defoliate jungle areas.

Dr. John Bederka, chief of the toxicology section of the University of Illinois Hospital, said his experiments last fall provided circumstantial evidence that trichlorophenol is responsible for chicken deaths on a Wisconsin farm.

According to reports, strong winds blew the chemical onto the Harold Freedlund farm accidentally in 1971. Since then, family members have experienced headaches, skin rashes, loss of bladder control, and intestinal disorders.

IN 1977, AN attempt to raise chickens on the farm produced a mortality that either died or became paralyzed.

An effort to raise 150 chickens on the farm last fall found 60 per cent had

leg and toe abnormalities, 25 per cent could barely stand, and 15 per cent died, Bederka said.

"We got a late start on it last season. We're going to start another experiment this spring," he said. "We want to trace the chickens from normal to abnormal."

If it can be shown that 2,4,5-T is indeed the source of the deaths some eight years after the original contamination, it would be reason enough to abandon the herbicide, Bederka said. A contaminant always found in minute quantities of 2,4,5-T is dioxin, "the most deadly poison known to man," he said.

ANOTHER ACTIVITY related to the Agent Orange defoliant will be a computerized case-history study of Viet Nam veterans exposed to the chemical during the war. Dr. Mitsuo Yokoyama of the University of Illinois Medical Center is setting up the immunological screening program for veterans and their wives.

That study will gather medical data from across the country to determine if families of veterans exposed to Agent Orange have more health problems, including birth defects, than do average families not exposed to the chemical.