

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



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In re: Suspension of Registration of
Pesticide Products Containing Propoxur
for Failure to Comply With Data Call-In
Requirements

FIFRA Data Docket No. 169

Prentiss Drug and Chemical Co.,

Petitioner

ORDER

Petitioner Prentiss Drug and Chemical Company filed a request for a hearing herein which was received by the docket clerk on November 28, 1990, after the expiration of the thirty day period provided by statute for such requests. Petitioner received a copy of the Notice of Intent to Suspend on October 22, 1990.

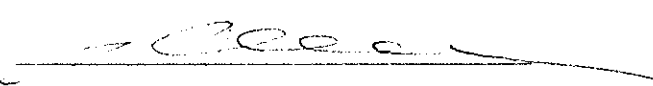
The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) § 3(c)(2)(B), 7 U.S.C. § 136a(c)(2)(B) states that:

Any suspension proposed under this subparagraph shall become final and effective at the end of thirty days from receipt of the notice of intent to suspend unless during that time a request for a hearing is made by a person adversely affected by the notice or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the notice of intent to suspend.

This provision does not literally require that the request must be received during the thirty day period. Nevertheless, receipt of the request

rather than proof of mailing before the expiration of the period has consistently been held to be the measure of compliance with this provision. 1/
In this case, it is unfortunate that such interpretation requires that the request for hearing be denied, and that the request for hearing be dismissed.

Accordingly, it is ORDERED that the request for hearing be denied, and that this matter be dismissed.



J. F. Greene
Administrative Law Judge

Washington, D. C.
January 23, 1991

1/ See, among other matters, In re: Public Citizen's Health Research Group, FIFRA Docket No. 406, Order Denying Permission to File Late Request for Hearing and Objections, November 15, 1978, at 3-4.

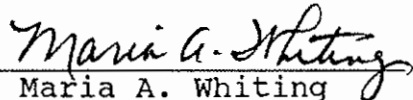
CERTIFICATE OF SERVICE

I hereby certify that a true copy of an "Order" filed on January 25, 1991 by Administrative Law Judge J.F. Greene in the matter of Prentiss Drug and Chemical Co., Inc., FIFRA DATA Docket No. 169 was mailed to the following:

Timothy Backstrom, Esquire
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U.S. Environmental Protection Agency
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(Certified) Malcolm Miller
Chairman of the Board
Prentiss Drug & Chemical Co., Inc.
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Connie Musgrove, Acting Director
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Maria A. Whiting
Office of Hearing Clerk
U.S. EPA
401 M Street, S.W.
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Dated: January 25, 1991