

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
Super Chem Corporation,) Docket No. FIFRA-9-2000-0021
)
Respondent)

ORDER

This proceeding arises under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et seq.* The United States Environmental Protection Agency (“EPA”) has filed a complaint against Super Chem Corporation (“Super Chem”) charging the respondent with 15 counts of distributing or selling a canceled pesticide, “Quat Super,” in violation of FIFRA Section 12(a)(1)(A). 7 U.S.C. §136j(a)(1)(A). EPA proposed that a civil penalty of \$62,400 be assessed for these violations.

EPA now moves for summary judgment. Complainant filed the present motion for accelerated decision pursuant to 40 C.F.R. 22.20, seeking judgement as to liability only for each of the 15 counts. As explained below, EPA’s motion is *denied*.

The Consolidated Rules of Practice allow for the awarding of summary judgment “if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.” 40 C.F.R. 22.20(a). At best, the evidence marshaled by EPA to support its motion only suggests that it is entitled to summary judgment; there exists enough doubt as to the significance of this evidence to require complainant to prove its case at hearing.

Simply put, EPA did not sufficiently explain in the declaration of Manuel B. Gutierrez and in the affidavit of Amy C. Miller just exactly what EPA’s attached supporting documents were and just how they unequivocally showed that Super Chem sold an unregistered pesticide. Certainly, engaging in a little speculation, a reader could look at these documents and infer that they proved what EPA said they did. That, however, is not the standard of Rule 22.20. Accelerated decision can be awarded only when there exists no genuine issues of material fact.¹

¹ EPA also referred to two potentially key documents, *i.e.*, Attachment A (an agency order purportedly issued to respondent canceling the registration of Quat Super) and Attachment B (a related Federal Register notice), which were not attached to the court’s copy of the agency’s complaint. EPA is instructed to provide these attachments to the court at its earliest convenience.

Accordingly, as presented, the affidavits and documents relied upon by EPA are not adequate to support the awarding of accelerated decision.

Carl C. Charneski
Administrative Law Judge

Issued: August 1, 2001
Washington, D.C.