

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of )  
 )  
Intermountain Farmers Association, ) Docket No. FIFRA-8-99-58  
 )  
Respondent )

ORDER DENYING RESPONDENT'S  
MOTION FOR ACCELERATED DECISION

This case involves the aerial application of Parathion 8EC, a restricted use pesticide, to certain fields. The United States Environmental Protection Agency ("EPA") alleges that Intermountain Farmers Association ("IFA") applied Parathion 8EC in violation of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). 7 U.S.C. § 136 *et seq.* IFA has denied this charge and has filed the present motion seeking summary judgment in its favor and the dismissal of EPA's complaint. 40 C.F.R. 22.20. For the reasons set forth below, IFA's motion is *denied*.

For purposes of respondent's motion, the underlying facts do not appear to be in dispute. IFA owns and operates a facility located in Riverton, Wyoming. Ans. ¶ 5. As part of its business, IFA contracts with licensed commercial applicators to apply restricted use pesticides to the fields of clients, as well as applying the restricted use pesticides itself. Ans. ¶ 6.

Insofar as this case is concerned, IFA arranged for the aerial application of Parathion 8EC to 16 fields of its customers. Ans. ¶ 8. Crop Air was the company contracted by respondent to apply the Parathion 8EC. Crop Air is a licensed and certified aerial applicator. Ans. ¶ 10. IFA and Crop Air agreed that IFA would bill its customers for the aerial application and that, in return, Crop Air would pay respondent \$.25 for each acre treated with Parathion. See Affidavit of Roland Himes. In addition to billing its customers for the aerial application, IFA also was involved in the drawing of maps and in assessing wind speeds. Ans. ¶ 9.

Pete Reinschmidt is the owner of Crop Air. He is a certified commercial aerial applicator. Ans. ¶ 19. Affidavits submitted by respondent show that Reinschmidt did the mixing and loading of the Parathion prior to its being applied to the fields. These affidavits further show that on August 6, 7, and 12, 1997, Neil Webster flew the Crop Air plane that applied the restricted use pesticide to the fields of IFA's customers. At the time, Webster was not a certified aerial applicator. See Affidavits of Pete Reinschmidt and Neil Webster; see *also*, Ans. ¶¶ 18 & 19.

As a result of Crop Air's August 6, 7, and 12 applications of Parathion 8EC, EPA filed a 16-count complaint against IFA, one count for each of the 16 fields treated with the pesticide. As to each count, EPA alleged that IFA violated either FIFRA Section 12(a)(2)(F) (application of a restricted use pesticide without certification or supervision by a certified applicator) or FIFRA Section 12(a)(2)(G) (using a pesticide in a manner inconsistent with its labeling).  
7 U.S.C. §§ 136j(a)(2)(F) & (G).

The basis for respondent's motion for accelerated decision is that it is not the "person" who committed the alleged violations. Indeed, IFA submits that any failure to comply with the FIFRA requirements is the sole responsibility of Crop Air, the independent contractor hired to conduct the aerial application of the restricted use pesticide.<sup>1</sup>

The arguments advanced by respondent are not sufficient to show that it is entitled to judgment at this prehearing stage. Instead, the arguments made by both IFA and EPA underscore the need for further fact finding. In that regard, the term "person" is defined in FIFRA Section 2(s) as "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s). Respondent Intermountain Farmers Association easily fits within this broad definition. Thus, upon a proper evidentiary showing, IFA can be held liable for the alleged FIFRA violations.

It is, however, too preliminary to determine whether EPA succeeded or failed in its attempt to make such a showing. An evidentiary hearing is necessary in order to fully develop the extent of IFA's involvement in the Parathion 8EC application process, the involvement of Crop Air, and the relationship that existed between IFA and Crop Air. Aside from measuring whether EPA carried its burden of proof in this matter, the record produced at such a hearing will provide the necessary background for evaluating IFA's independent contractor defense.

Accordingly, IFA's motion for accelerated decision is *denied*.

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Carl C. Charneski  
Administrative Law Judge

Issued: April 27, 2000  
Washington, D.C.

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<sup>1</sup> IFA states that EPA did not bring any enforcement action against Crop Air. Resp. Mem. at 2.