

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 35

BEFORE THE ADMINISTRATOR

In the Matter of )  
American Cyanamid Company, ) 77 JUL 27 P 3: 21  
Claimant, )  
v. ) FIFRA COMP. Docket No. 43  
Thompson-Hayward Chemical )  
Company, )  
Respondent )

ACCELERATED DECISION DISMISSING CLAIM FOR COMPENSATION

This is a proceeding under the amended Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") Section 3(c)(1)(D), 7 U.S.C. 136a(c)(1)(D) (Supp V, 1975), to determine reasonable compensation to be paid by respondent Thompson-Hayward Chemical Company ("Thompson-Hayward") to claimant American Cyanamid Company ("Cyanamid") for test data submitted by Cyanamid in registering a pesticide and relied upon by Thompson-Hayward to register a similar product.

The claim for compensation arises out of the application of Thompson-Hayward to register the pesticide DE-FEND TECHNICAL, which is comprised of the active ingredient Dimethoate. Pursuant to the procedures established by the interim policy statement issued by the EPA on November 14, 1973, 38 Fed. Reg. 31862, Cyanamid, by letter dated August 21, 1975, filed a claim for compensation with respect to safety data submitted in the registration of the pesticides CYGON TECHNICAL and CYGON SC-9. Thompson-Hayward acknowledged that

it relied upon the Cyanamid data in its registration application and the pesticide was registered on October 24, 1975.

This proceeding to determine reasonable compensation for claims under Section 3(c)(1)(D) of FIFRA has been instituted and the undersigned has been designated to preside pursuant to the authorization and direction of the Acting Administrator, dated October 13, 1976 (41 Fed. Reg. 46020).

On March 15, 1977, I issued a decision denying a motion by Cyanamid to dissolve or stay these proceedings, except to grant a stay until the Director of the EPA's Registration Division had, in accordance with my direction, furnished a statement identifying which of the test data for which Cyanamid claimed compensation in its letter of August 21, 1975, was considered by the EPA in registering Thompson-Hayward's pesticide. That statement was submitted by the Acting Director of the Registration Division on April 21, 1977, and the stay expired according to its terms.

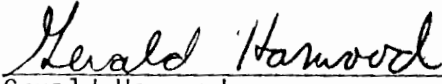
On May 25, 1977, the Administrator issued his decision in Dow Chemical Co. v. Velsicol Chemical Corp., FIFRA COMP. Docket Nos. 4 through 18, in which he held that when the claim for compensation was made with respect to data used in a registration issued prior to the enactment on November 28, 1975, of the amendments to FIFRA by Pub. L. No. 94-140, 89 Stat. 754, a producer of test data is only entitled to compensation for data submitted to the EPA in connection with an application for registration for the first time on or after October 21, 1972. Since the registration here was issued prior to November 28, 1975,

and the statement filed by the Acting Director of the Registration Division disclosed that all the data for which Cyanamid claimed compensation was submitted prior to October 21, 1972, I directed Cyanamid, by letter dated May 31, 1977, to show cause why an accelerated decision should not be issued in favor of Thompson-Hayward. Cyanamid has filed its response to that directive, and Thompson-Hayward has filed its reply.

On consideration of the papers, I conclude that Cyanamid's claim for compensation must be dismissed on the grounds that none of the data was submitted to the EPA in connection with an application for registration for the first time on or after October 21, 1972. Dow Chemical Co. v. Velsicol Chemical Corp., FIFRA COMP. Docket Nos. 4 through 18; American Cyanamid Co. v. Thompson-Hayward Chemical Co., FIFRA COMP. Docket No. 25 (filed July 26, 1977).

ORDER

These proceedings to determine compensation to be awarded to claimant for the use by respondent in registering the pesticide DE-FEND TECHNICAL of test data produced by claimant are hereby dismissed on the ground that none of claimant's data relied on by respondent is compensable under Section 3(c)(1)(D).

  
Gerald Harwood  
Administrative Law Judge

May 27, 1977