6/30/95

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

E.I. du Pont de Nemours and Company, Inc.	)	**Docket No. FIFRA-93-H-09**
Respondent	)	

Toxic Substances Control Act -- Discovery -- Information sought by Complainant in document requests and interrogatories was discoverable under 40 C.F.R. § 22.19(f)(1), as it had significant probative value with respect to an issue of consequence to the determination of the action.

ORDER GRANTING COMPLAINANT'S MOTIONS FOR DISCOVERY ON COUNT I AND ACCELERATED DECISION ON COUNT II

This Order grants two motions by Complainant--the Director, Compliance Division, Office of Compliance Monitoring, U.S. Environmental Protection Agency ("EPA")--against Respondent--E.I. du Pont de Nemours and Company, Inc. (referred to sometimes as "DuPont"). The first motion, granted over Respondent's opposition, is for the production of documents and responses to interrogatories relating to Count I of a two-count Complaint. The second motion, unopposed by Respondent, is for an accelerated decision on Count II of the Complaint.

Complainant initiated this proceeding on April 16, 1993 under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 1361(a). Both Counts of the Complaint, each relating to a pesticide that Respondent had registered, alleged that Respondent had failed to submit timely to EPA a toxicology study reportable under FIFRA Section 6(a)(2), 7 U.S.C. § 136d(a)(2). That section requires a registrant to report to EPA "additional factual information regarding unreasonable adverse effects on the environment" of a registered pesticide.

Such failures by Respondent to report were charged by the Complaint to have violated Sections 12(a)(2)(N) and 12(a)(2)(B)(ii) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(N), 136j(a)(2)(B)(ii). For each alleged violation, the Complaint proposed a civil penalty of $5,000, for a total for both of $10,000.

In its Answer,[1] Respondent disputed the allegation of Count I--that Respondent had received a toxicology study regarding adverse environmental effects of one of its registered pesticides in September 1986, but had not submitted it to EPA until June 1992. Respondent challenged the assertion that it had received the study in September 1986.

What happened in September 1986, according to Respondent, was that the study "was issued to DuPont de Nemours International, S.A. ('DISA'), a Swiss corporation which is a wholly-owned subsidiary of Respondent ... [which] procured the study for its own purposes, and in procuring the study was not acting as an agent for, or on behalf of, Respondent."[2] Respondent contended that it itself did not obtain the study until May 1992, so that its submission of the study to EPA in June 1992 was timely.[3]

Count II of the Complaint alleged that Respondent received another toxicology study regarding adverse environmental effects of this same pesticide in January 1988, but did not submit it to EPA until January 1992. This study was prepared in the United States directly for Respondent. Respondent's Answer took no serious issue with this allegation.

Count I

Consolidated Rules and Positions of the Parties

In reaction to Respondent's defense that DISA's obtaining of the toxicology study in September 1986 did not mean that Respondent itself had then obtained the study, Complainant moved for discovery regarding the relationship between Respondent and DISA. Subsequently, Complainant moved for an accelerated decision on Count I, arguing that Respondent should be charged with knowledge of DISA's study in 1986. Complainant contended that Respondent was thus chargeable "under both the principles of general and pure

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[1] Answer of E.I. Du Pont de Nemours and Company, Inc. (May 23, 1993).

[2] Id. at 2.

[3] Id. at 1. EPA's Enforcement Policy Regarding Failures to Report Information Under Section 6(a)(2) states that "EPA will not consider a delay in submission of information on a completed study ... to be an actionable violation of FIFRA § 6(a)(2) if the delay is for a reasonable period, no longer than 30 days from the date the registrant first receives the apparently reportable information." 44 Fed. Reg. 40716, 40717 (1979).

agency,"[4] and also because "it is appropriate to pierce DuPont's corporate veil."[5]

Respondent also moved for an accelerated decision on Count I. For this Count, this Order addresses only Complainant's discovery motion. As to that motion, Respondent answered 60 of Complainant's 70 interrogatories and supplied five of the nine requested documents, but objected mainly on grounds of relevancy to the remaining interrogatories and documents.[6] Each of these remaining

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[4] Complainant's Response to Respondent's Motion for Accelerated Decision and Cross-Motion for Accelerated Decision at 33 (May 12, 1994).

[5] Id. at 19.

[6] Respondent's Response to Complainant's Motion for Discovery (January 12, 1994). Respondent suggested also that complying with the discovery requests to which it objected would be unduly burdensome, but Respondent did not develop this argument. Id. at 4, 5. Since Respondent offered no support for this suggestion of burdensomeness, it is not further addressed here.

The requests to which Respondent objected were interrogatories 5, 6, 17, 18, 27, 35, 36, 37, 44, and 45, and document requests 2, 6, 7, and 8, which are set forth below.

> 5. Does DISA engage in any activities that DuPont could not engage in without incorporating in another country or countries?
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> 6. If the answer to Interrogatory 5 was "yes," describe any and all such activities, specifying the pertinent country or countries for each.
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> 17. State the amount of DuPont's capital investment in DISA operations during the years 1990, 1991, and 1992.
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> 18. State the amount of DuPont's capital expenditures in DISA operations during the years 1990, 1991, and 1992.
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> 27. What percentage of DISA's net profits goes to DuPont?
>
> 35. What proportion of DuPont's 1990, 1991, 1992 net and gross earnings were generated by DISA?
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> 36. What proportion of DuPont's 1990, 1991, 1992 net and gross earnings were generated by wholly-owned subsidiaries?

interrogatories and document requests is reviewed below.

Discovery in this case is governed by Section 22.19 of EPA's Consolidated Rules of Practice, 40 C.F.R. § 22.19. According to Section 22.19(f)(1), Complainant's discovery may be permitted upon a determination:

> (i) That such discovery will not in any way unreasonably delay the proceeding;
> (ii) That the information to be obtained is not otherwise obtainable; and
> (iii) That such information has significant probative value.

Here, Respondent essentially challenged only the "significant probative value" of the remaining discovery requests.[7] Respondent explained the factual background of the case as follows.

> In 1986, two European subsidiaries of DuPont---DuPont de Nemours International, S.A. ("DISA") and DuPont de Nemours (France), S.A. ("DFSA")--procured a toxicology study for the purpose of complying with a European Community premarket notification directive for a pesticide product known as DPX-L5300. DISA and DFSA

> 37. What proportion of DuPont's 1990, 1991, 1992 net and gross earnings were generated by subsidiaries?
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> 44. List trade names of all products and services offered by DISA.
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> 45. List trade names of all products and services offered by DuPont.
>
> 2. Any documents that address the scope of DuPont's international business activities.
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> 6. Copies of each mark, logo, symbol, brand or device used to represent DuPont.
>
> 7. Copies of each mark, logo, symbol, brand or device used to represent DISA.
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> 8. Any licensing agreements or other documents authorizing DISA to use DuPont trade names, patents, proprietary technologies and information, marketing materials, and copyrights.

[7] Respondent mentioned also their burdensomeness. See supra note 6.

> procured this study solely on their own behalf to meet European regulatory requirements. DuPont, which does not market DPX-L5300 in Europe, had no knowledge of this study, and neither DISA nor DFSA informed DuPont of their actions with regard to this toxicology study. In May 1992, DFSA sent a copy of this toxicology study to DuPont. A DuPont toxicologist received the study on June 10, 1992, and submitted it to EPA ... on June 17, 1992.[8]

Against this background, Respondent asserted that the discovery requests to which it objected are "not even arguably relevant to a determination of whether an agency relationship existed between DuPont, DISA and DFSA."[9]

In rejoinder, Complainant contended as follows.

> The discovery requests to which Respondent objects would help to establish whether DISA acts as DuPont's agent in promoting and selling the pesticide DPX-L5300 in Europe, whether DuPont holds out to the public that DISA is its agent, whether DuPont and its subsidiaries form a single, integrated international enterprise, and the extent of DuPont's control over DISA.[10]

Thus Complainant's motion turns on whether, against this background, the discovery requests at issue have "significant probative value." As to the meaning of that phrase, it is not defined in the Consolidated Rules. In this situation, one source of guidance is the Federal Rules of Evidence.[11] Rule 401 of these Federal Rules defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The function of the phrase "relevant evidence" in the Federal Rules is sufficiently akin to the function of "significant probative value" in the Consolidated Rules that the definition of the former provides one source for

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[8] Respondent's Response to Complainant's Motion for Discovery at 2 (January 12, 1994) (footnote omitted).

[9] Id. at 16.

[10] Complainant's Reply in Support of Motion for Discovery at 1-2 (January 24, 1994).

[11] See In the Matter of Chautauqua Hardware Corporation, EPCRA Appeal No. 91-1, Order on Interlocutory Review (June 24, 1991), at 10 n.10 (employing Federal Rule of Evidence 401 to determine "significant probative value" of documents).

assessing the meaning of the latter.[12]

For Complainant's discovery requests here, the fact or issue "of consequence to the determination of the action" is Respondent's relationship with DISA. Was it, as Complainant contended, either an agency relationship or one that warrants piercing the corporate veil? The test for each of the discovery requests is whether it has "significant probative value" for answering this question.

Document Requests 6, 7, 8

These requests seek copies of logos and other representational materials used by DISA and by DuPont, and any authorizations of DISA to use such materials of DuPont.[13] Complainant supported the requests as follows.

> DISA's purported independence is further compromised by its dependence on DuPont's name recognition and reputation in obtaining government approval and in marketing pesticides in Europe.... The use of the parent's logo or trademark by the subsidiary is an important factor in determining the extent of control exercised by the parent corporation. See, e.g., Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1373 (3d Cir. 1992); Phone Directories Co., Inc. v. Contel Corp., 786 F. Supp. 930, 941 (D. Utah 1992)). Complainant believes that DISA uses the DuPont logo and trademarks, although this remains unverified as DuPont refuses to respond to Complainant's sixth, seventh, and eighth requests for production of documents. Complainant draws some support for this belief from the fact that the logo that appears on the cover of the DuPont Charter ... is prominently displayed on the covers of two DISA publications.[14]

Resisting the document requests, Respondent argued as follows.

> Whether DuPont and DISA market the same products or utilize similar or identical trademarks, logos, symbols or brands to market their products does not relate to whether DISA acted as DuPont's agent in procuring the toxicology study, nor does it show disregard of corporate

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[12] Also, "the test of relevance for discovery purposes is less stringent than that applied to the admissibility of evidence at trial." Trans World Airlines, Inc. v. Hughes, 332 F.2d 602, 615 (2d Cir. 1964).

[13] See supra note 6.

[14] Complainant's Response, supra note 4, at 10 (May 12, 1994).

> formalities. Marketing the same products with the same trademarks is a common practice in parent-subsidiary relationships, and has never been held to be an action that warrants piercing the corporate veil.[15]

Ruling. It is true that "[m]arketing the same products with the same trademarks is a common practice in parent-subsidiary relationships," and that it does not of itself "show disregard of corporate formalities" or "warrant[] piercing the corporate veil." But it is untrue that such marketing "does not relate to whether DISA acted as DuPont's agent in procuring the toxicology study."

Certainly one factor in assessing a parent-subsidiary relationship and in determining whether acts of the latter can be attributed to the former is any use by the subsidiary of the parent's logo. That point is made in the cases cited by Complainant.[16] Clearly such use does not establish an agency relationship between parent and subsidiary. But just as clearly, it is one factor that, if joined by a sufficient number of additional factors, could establish that relationship.

This possible connection between any DISA use of the DuPont logo and Complainant's theory of this parent-subsidiary relationship is enough to accord "significant probative value" to the documents sought in requests 6, 7, and 8. This conclusion is fortified by the liberal definition of "relevant evidence" in the Federal Rules noted above.[17] Accordingly, Complainant's motion is granted for these three document requests.

Interrogatories 17, 18

These interrogatories ask the amount of Respondent's 1990-92 capital investment and capital expenditures in DISA.[18] To support these interrogatories, Complainant argued that "in ascertaining whether a parent company controls its subsidiary, courts have placed great importance on the subsidiary receiving its initial capitalization and continued funding from the parent." Complainant's Response at 8 (May 12, 1994) (citing Fish v. East, 114 F.2d 177, 191 (10th Cir. 1940) (the degree to which the parent corporation finances the subsidiary is one factor in the determination as to whether the subsidiary is an instrumentality); Japan Petroleum Co. v. Ashland Oil, Inc., 456 F. Supp. 831, 841 (D.

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[15] Respondent's Response to Complainant's Motion for Discovery at 15 (January 12, 1994).

[16] See supra text accompanied by note 14.

[17] See supra paragraph accompanied by notes 11-12.

[18] See supra note 6.

Del. 1978) (to determine whether an agency relationship exists, "the Court must look to a wide variety of factors, such as stock ownership, officers and directors, financing....").

Respondent opposed the interrogatories as follows.

> [T]here are several interrogatories that seek information regarding DuPont's capital investments or expenditures in DISA, or DuPont's net earnings or gross earnings, or DISA's net profits (Interrogatories 17, 18, 27, 35, 36, 37). This information simply reflects the normal, lawful and proper corporate functioning between a parent and a subsidiary. A parent corporation is a shareholder in its subsidiary. As a shareholder -- a whole or partial owner -- the parent may make capital investments in the subsidiary to protect its ownership stake, and may receive profits from its subsidiary, but these facts reflect ordinary and customary corporate relationships, and do not make the subsidiary an "agent," or reflect disregard of corporate formalities.[19]

Ruling. As with document requests 6, 7, and 8, "DuPont's capital investments or expenditures in DISA ... [may] reflect ordinary and customary corporate relationships, and ... not make the subsidiary an 'agent,' or reflect disregard of corporate formalities." But it is also conceivable that such financing by Respondent--since it presently remains undisclosed--could point to a different sort of parent-subsidiary relationship.

The inquiry of the moment is whether such financing by Respondent has "significant probative value" in legally characterizing the parent-subsidiary relationship as one of agency or something else. As stated in the cases cited by Complainant, the answer to this inquiry is in the affirmative. Such financial information is certainly a factor to be reviewed in determining the legal nature of Respondent's relationship to DISA. Hence Complainant's motion is granted for interrogatories 17 and 18.

Interrogatories 35, 36

These interrogatories ask the proportion of Respondent's 1990-92 net and gross earnings generated by DISA and generated by wholly owned subsidiaries.[20] Complainant contended that Respondent used DISA to market its products in Europe, that DISA arranged the toxicology study of DPX-L5300 to satisfy European regulatory requirements, and that in so doing DISA thus acted as Respondent's

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[19] Respondent's Response to Complainant's Motion for Discovery at 14 (January 12, 1994).

[20] See supra note 6.

agent. Complainant asserted that Europe provided 38 percent of Respondent's 1992 worldwide sales, and Complainant suggested that the requested earnings information would indicate the importance to Respondent of this DISA marketing activity.

Complainant observed as follows.

> DuPont per se does not register pesticides or obtain other government permits for selling pesticides in Europe.... DuPont per se does not sell pesticides in Europe.... DuPont per se does not participate in regulatory affairs or political activities in Europe.[21]

Complainant drew the following conclusion.

> DuPont caused the incorporation of DISA for the primary purpose of marketing DuPont products in Europe. DISA contracted the study on DPX-L5300 in order to market this DuPont pesticide in Europe. DISA acts as DuPont's agent for the specific purpose of creating an European market for DuPont's pesticide DPX-L5300. The cause of action arises through a necessary and foreseeable step in DISA's effort to accomplish DuPont's purpose; therefore, DISA acted as DuPont's agent under a pure agency theory.[22]

Respondent's opposition to interrogatories 35 and 36 was combined with its opposition to interrogatories 17 and 18 quoted above.[23] Basically, Respondent argued that the "information [sought] simply reflects the normal, lawful and proper corporate functioning between a parent and a subsidiary."[24]

Ruling. As with interrogatories 17-18, the targeted financial information may indeed reflect a "normal, lawful, and proper" parent-subsidiary relationship. Regardless, it is the sort of information that can show the extent of a parent's role in a subsidiary's operations, because the basis of a parent's interest is often the revenue it can obtain through the subsidiary. Thus the requested financial information could have "significant probative value" for Complainant's theory that the Respondent-DISA relationship was such that Respondent should be charged with the activities of DISA. Therefore, Complainant's motion is granted for

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[21] Complainant's Response, supra note 4, at 17 (emphasis in original).

[22] Id. at 16.

[23] See supra text accompanied by note 19.

[24] Respondent's Response to Complainant's Motion for Discovery at 14 (January 12, 1994).

interrogatories 35 and 36.

Interrogatories 5, 6

These interrogatories ask whether DISA engages in any activities that would be barred to Respondent unless it incorporated in another country and, if so, the country or countries and identity of any such activities. Complainant argued that "if DuPont could only do business in another country by establishing a subsidiary in that country, then this may be sufficient to establish an agency relationship."[25]

To support its point, Complainant drew an analogy with U.S. pesticide regulation, which provides that "an applicant [for U.S. pesticide registration] not residing in the United States must ... designate an agent ... to act on behalf of the applicant on all registration matters."[26] Complainant concluded that "it is likely that DuPont would not be permitted to sell its pesticides in some or all European countries without incorporating or establishing an agent there, just as is the case in the U.S., although this remains unconfirmed as DuPont has refused to answer Interrogatories 5 and 6."[27]

Respondent stated its opposition as follows.

> Interrogatory 5 asks if DISA engages in activities that DuPont could not engage in without incorporating in other countries. However, engaging in such activities is an ordinary and, [sic] typical purpose for establishing a foreign subsidiary. Whether DISA engages in activities in other countries that DuPont cannot engage in has no bearing on whether DISA acted as DuPont's agent, or on whether DuPont is not observing corporate formalities in

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[25] Complainant's Response, supra note 4, at 18.

[26] Id. at 17, citing 40 C.F.R. § 152.50(b)(1).

[27] Complainant's Response, supra note 4, at 18. Complainant cited three cases: Whitfield v. Century 21 Real Estate Corp., 484 F. Supp. 984, 985 (D. Tex. 1979)("Imputed liability may be found where the license of the real estate broker or agent inures to the benefit of the corporation and enables it to engage in the business of selling real estate."); United States v. Northside Realty Associates, Inc., 474 F.2d 1164, 1168 (5th Cir. 1973) (same); Fitz-Patrick v. Commonwealth Oil Co., 285 F.2d 726, 730 (5th Cir. 1960) (where pleadings showed that defendant created wholly-owned subsidiary in Haiti for sole purpose of securing Haitian government approvals granted only to Haitian corporations, corporate fiction was disregarded).

conducting business with DISA.[28]

Ruling. As with the other discovery requests, that DISA's incorporation in a European country may enable it to engage in activities that are closed to Respondent does not of itself establish Complainant's theories of agency or of piercing the corporate veil. But it is a possibly important ingredient of this parent-subsidiary relationship, and therefore it has "significant probative value" in characterizing the relationship. Accordingly, Complainant's motion is granted for interrogatories 5 and 6.

Interrogatories 27, 37, 44, 45; Document Request 2

Interrogatory 27 asks the percentage of DISA's net profits going to Respondent; interrogatory 37 asks the proportion of Respondent's 1990-92 net and gross earnings generated by subsidiaries; interrogatories 44 and 45 ask the trade names of all products and services offered by DISA and by Respondent; and document request 2 asks for documents on the scope of Respondent's international business activities. The parties did not specifically address these discovery requests, other than Respondent's objection, quoted above,[29] to interrogatories 27 and 37 along with the several other financial interrogatories that it opposed.

Ruling. As to interrogatories 27 and 37, the revenue that a parent obtains from a subsidiary can be a central factor in determining the motive for and nature of their relationship. Hence the financial information sought by these interrogatories has "significant probative value" for essentially the same reasons that warranted granting Complainant's motion for interrogatories 17 and 18.

The trade name information requested by interrogatories 44 and 45 has "significant probative value" for substantially the same reasons that dictated the granting of document requests 6-8 regarding DISA's use of Respondent's logos and other representational materials. Such use is a relevant factor in characterizing the parent-subsidiary relationship.

The materials sought by document request 2 would indicate Respondent's global commercial network within which DISA was designed to operate, and thereby they might illuminate the underlying purpose of the parent-subsidiary relationship. Hence they have "significant probative value" in ascertaining the nature of that relationship.

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[28] Respondent's Response to Complainant's Motion for Discovery at 14 (January 12, 1994).

[29] See supra text accompanied by note 19.

In sum, Complainant's motion is granted for interrogatories 27, 37, 44, and 45, and for document request 2.

Count II -- Motion for Accelerated Decision

When negotiations failed to produce a settlement, Complainant moved for an accelerated decision on this Count. Citing statements in Respondent's Answer, Complainant argued as follows.

> Respondent admits it is a "registrant" as defined by Section 2(y) of FIFRA, 7 U.S.C. Section 136(y). Respondent also admits it received results of a toxicological study indicating DPX-5300, the registered pesticide, is potentially a skin sensitizer. Furthermore, Respondent admits that it failed to submit the report to the Administrator within a reasonable period, 30 days, after receipt of the study.... Respondent's conduct was therefore in violation of FIFRA Sections 6(a)(2), 12(a)(2)(N), and 12(a)(2)(B)(ii), in that Respondent failed to submit a report required under the Act in a timely manner.[30]

Complainant maintained also that Respondent was properly assessed a penalty of $5,000 for the violation charged in Count I.[31]

In reply, Respondent declined to concede that it had committed the alleged violation, but chose not to oppose Complainant's motion. Respondent stated as follows.[32]

> Respondent's Answer establishes the following facts: First, that Respondent received results of a toxicological study on the pesticide product DPX-L5300 in January of 1988. Second, that the study demonstrated weak delayed hypersensitivity in five of 20 guinea pigs at the challenge phase and in only two of twenty guinea pigs at the rechallenge phase. Third, that these results indicate that DPX-5300 is a potential skin sensitizer. Fourth, that Respondent voluntarily submitted this study to EPA by letter dated June 17, 1992. Respondent does not concede that this study pertains to unreasonable adverse effects on human health or the environment caused by DPX-L5300. Thus, Respondent does not concede that

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[30] Memorandum in Support of Complainant's Motion for Accelerated Decision on Count II at 4-5 (November 10, 1993) (citations omitted).

[31] Id. at 5-7.

[32] Respondent's Response to Complainant's Motion for Accelerated Decision on Count II at 1-2 (November 26, 1993).

there has been a violation of Section 6(a)(2) of FIFRA. Respondent, however, has chosen not to oppose accelerated decision on Count II.[33]

Complainant's unopposed motion for accelerated decision on Count II stated a valid cause of action. Accordingly, Complainant's motion will be granted. Complainant's computation of its proposed $5,000 penalty under EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (July 2, 1990) was reasonable.[34] Therefore a penalty in that amount will be assessed on Respondent.

Negotiations and Status Report

For Count I, the information and documents to be furnished Complainant pursuant to this Order's granting of the discovery motion will give both parties a new chance to review any possibilities for negotiating a settlement of this Count. The parties are encouraged to consider any such possibilities. Both parties will be directed to report on the status of this case after a brief interval.

ORDER

For Count I, Complainant's motion for discovery is granted for interrogatories 5, 6, 17, 18, 27, 35, 36, 37, 44, and 45, and for document requests 2, 6, 7, and 8. Respondent is directed by July 31, 1995 to respond to these interrogatories and to produce these requested documents.

Pursuant to EPA regulations published at 40 C.F.R. Part 2, Subpart B, Respondent may assert a business confidentiality claim regarding any of the information or documents submitted. For any such claim, Respondent must comply with the requirements of 40 C.F.R. § 2.203(b), and Respondent is directed to submit the additional information specified in items (i)-(v) of Complainant's motion for discovery at 6-7.

For Count II, Complainant's motion for accelerated decision is granted. Respondent is declared to have violated Sections 6(a)(2), 12(a)(2)(N), 12(a)(2)(B)(ii) of FIFRA, 7 U.S.C. §§ 136d(a)(2), 136j(a)(2)(N), 136j(a)(2)(B)(ii), as charged in the Complaint; and Respondent is assessed a civil penalty of $5,000. Respondent's obligation to pay the civil penalty is stayed until the issuance of an initial decision in this case.

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[33] Id. at 1 (citations omitted).

[34] See Memorandum in Support of Complainant's Motion for Accelerated Decision on Count II at 5-7 (November 10, 1993).

Both parties are encouraged to consider possibilities for negotiating a settlement of Count I, and both parties are directed to report by September 30, 1995 on the status of this case.

Thomas W. Hoya
Administrative Law Judge

Dated: June 30, 1995