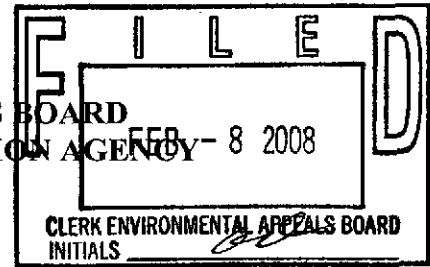


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re: _____)
Martex Farms, S.E. _____)
Docket No. FIFRA 02-2005-5301 _____)

FIFRA Appeal No. 07-01

ORDER DENYING MOTION TO FILE SUPPLEMENTAL RESPONSE

On February 7, 2008, the U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, ("EPA" or "Agency") filed a motion seeking leave to file a supplemental response to a question raised by the Environmental Appeals Board ("Board" or "EAB") during the oral argument held in the above-captioned matter ("Motion"). Martex Farms, S.E., ("Martex") opposes the motion. *See* Motion at 1. For the reasons set forth below, the Board denies the Motion.

The Board held oral argument in this matter on November 5, 2007, during which the following exchange occurred:

A: First, Complainant requests that the ALJ's findings regarding whether applications conducted within 30 minutes [of each other] may be combined for purposes of compliance with display requirements set forth at 40 C.F.R. 170.[1]22 and Section 170.[2]22; that this finding be clarified to require that when doing so, the start and end time of the application be listed in the display of pesticide application information.

Q: So you're not objecting to the combination? The only issue is what start time is listed?

A: That's correct. For purposes of this matter, Complainant has not objected to the combination of the applications taking place within 30 minutes [of each other].

Q: Does that mean that you accept that as an interpretation or you're just choosing not to argue it in this case?

A: We are choosing not to argue that in this case.

Q: But you're reserving the right to argue it elsewhere?

A: That's correct.

EAB Oral Arg. Tr. ("Tr.") at 33-34. The Agency now seeks to "clarify its response with regard to its reservation of the right to 'make this argument elsewhere[,]'" and notes two instances in which the Agency may object to the combination of multiple pesticide applications for purposes of determining compliance with the Worker Protection Standard regulations at 40 C.F.R. part 170. Motion at 2.

In light of Martex's opposition to the Motion and the lack of an Agency explanation as to why a substantial period of time has elapsed prior to this request to clarify statements made at the oral argument more than three months ago, we decline to consider the additional information the Agency proposes.

The Motion is hereby **DENIED**.

So ordered.

Dated:

February 8, 2008

ENVIRONMENTAL APPEALS BOARD

By: *Anna Wolgast*

Anna L. Wolgast

Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Motion to File Supplemental Response in the matter of *Martex Farms, S.E.*, FIFRA Appeal No. 07-01, were sent to the following persons in the manners indicated:

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Date: FEB - 8 2008



Annette Duncan
Secretary