

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

**In re FIFRA Section 3(c)(2)(B) Notice of Intent
to Suspend Dimethyl Tetrachloroterephthalate
(DCPA) Technical Registration**

**AMVAC Chemical Corporation;
Grower-Shipper Association of Central
California; Sunheaven Farms, LLC; J&D
Produce; Ratto Bros., Inc.; and Huntington
Farms,
Petitioners.**

Docket No. FIFRA-HQ-2022-0002

RESPONDENT’S MOTION FOR ADDITIONAL DISCOVERY

Respondent, the United States Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Office of Pesticide Programs (“OPP”), pursuant to 40 C.F.R. § 164.51 and the Presiding Officer’s October 3, 2022 Hearing and Scheduling Order and October 18, 2022 Order on Respondent’s Motion to Amend Hearing and Scheduling Order, hereby moves that the Presiding Officer enter an order requiring Petitioner AMVAC Chemical Corporation (“AMVAC”) to respond to the discovery requests filed as an attachment to this motion.

Under 40 C.F.R. § 164.51(a), further discovery shall only be permitted where the Presiding Officer determines:

- (1) that such discovery shall not in any way unreasonably delay the proceeding,
- (2) that the information to be obtained is not otherwise obtainable and
- (3) that such information has significant probative value. The Administrative Law Judge shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Administrative Law Judge or upon agreement of the parties.

Respondent's requests will not unreasonably delay the proceeding. The requests are limited in scope to matters set forth in Respondent's filings before the Presiding Officer and the Environmental Appeals Board. Resolving these matters now will enable this proceeding to be concise and focused on those matters that can only be resolved through an evidentiary hearing.

Additionally, Respondent's requests seek information that is most reasonably obtained from AMVAC. Specifically, the requests seek admission as to whether AMVAC disputes Respondent's assertions of fact and AMVAC's basis for doing so. Respondent's requests for documents seek information possessed by or under the control of AMVAC.

Finally, Respondent's requests seek admission about facts and documents that have significant probative value to the question before the Presiding Officer, to wit: whether AMVAC failed to take appropriate steps to secure the data required by the January 31, 2013 DCI issued by OPP ("DCPA DCI"). *See* JX 4. If answered in good faith, and in accordance with the record currently before the Presiding Officer, Respondent's requests for admission would affirmatively show that AMVAC failed to take appropriate steps to secure several of the data requirements enumerated in the DCPA DCI. Likewise, Respondent's requests for documents are limited to addressing AMVAC's decision to take steps—with respect to securing the data required by the DCPA DCI—which were substantially similar to steps that EPA had previously rejected in waiver request denials or other communications. Such documents would be expected to demonstrate that AMVAC's actions did not constitute reasonable steps to secure other data required by the DCPA DCI.

For the foregoing reasons, Respondent requests that the Presiding Officer order AMVAC to respond to the requests for admission and provide the documents requested in the request filed

as an attachment to this motion. Respondent requests that AMVAC be required to serve and file its responses within 30 days of an order granting this motion.

Respectfully submitted,

Dated: October 25, 2022

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AMVAC Chemical Corporation; Grower-Shipper Association of Central California; Sunheaven Farms, LLC; J&D Produce; Ratto Bros., Inc.; and Huntington Farms, Petitioners.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Respondent's Motion for Additional Discovery**, dated October 25, 2022, was sent this day to the following parties in the manner indicated below.

Forrest Pittman
Attorney Advisor

Copy by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
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Dated October 25, 2022