

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

ORDER DENYING MOTION FOR DISCOVERY SANCTIONS

Respondent Intermountain Farmers Association (“IFA”) seeks an order prohibiting the U.S. Environmental Protection Agency (“EPA”) from introducing into evidence at trial the deposition testimony and written material of former EPA Inspector Stephen Wanderlich. IFA claims that these sanctions are warranted given EPA’s failure to turn over certain documents at the time of the inspector’s deposition.

As noted, Mr. Wanderlich no longer is an EPA employee. Moreover, he is not expected to appear as a witness in this matter.¹ In anticipation of Mr. Wanderlich’s leaving the agency, and in consideration of the fact that he might not be a witness in this case, his deposition was taken so that his testimony could be preserved. The deposition was hurriedly arranged and it took place just a few days before Mr. Wanderlich left the agency. At the deposition, Mr. Wanderlich was questioned briefly by EPA and extensively cross-examined by IFA. Generally, the deposition was uneventful but for one exception. That exception was Mr. Wanderlich’s admission that he had certain documents in his possession, documents which IFA requested be produced and which EPA refused to furnish. Arguing that this failure to turn over the requested documents at the deposition prevented it from fully questioning the deponent, IFA submits that EPA must be sanctioned.

Subsequent to Mr. Wanderlich’s deposition, IFA concedes that “EPA has ... produced documents in Wanderlich’s investigative file as to which EPA does not now claim a privilege, and that EPA has produced a list of other documents as to which it does claim a privilege, including a short synopsis of the document and the privilege claimed.” Reply Mem. at 2. This is an important concession. In that regard, despite the fact that the requested information apparently has been provided to respondent (at least that information as to which the claim of privilege has not been raised), there has been no showing by IFA as to how it was prejudiced by EPA, let alone a showing that any such prejudice rises to the level of the requested sanctions. In fact, IFA doesn’t even discuss the documents eventually furnished, or identified as privileged, by the agency. Thus, even assuming that EPA was wrong in withholding at the

¹ The Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, does not provide subpoena authority.

deposition certain information contained in its investigative file, IFA offers no support for its request that sanctions be imposed. Accordingly, IFA's motion for sanctions is *denied*.²

Carl C. Charneski
Administrative Law Judge

Issued: March 28, 2000
Washington, D.C.

² Given the unusual circumstances surrounding the deposition of Mr. Wanderlich, and in order to ensure that an unfair advantage has not been gained as a result of these circumstances, the parties are encouraged to discuss any appropriate stipulations relating to Wanderlich's deposition testimony and related exhibits. In that regard, the parties are reminded that the deposition of Mr. Wanderlich is not yet in evidence in this case.