

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	Docket No. FIFRA-03-2015-0248
FMC Corporation,	)	
	)	
Respondent.	)	
_____	)	

**RESPONDENT FMC CORPORATION REQUEST FOR ORAL ARGUMENT ON COMPLAINANT’S MOTION FOR PARTIAL ACCELERATED DECISION AS TO LIABILITY FOR VIOLATIONS 1 THORUGH 12,273 OF THE COMPLAINT**

Pursuant to 40 C.F.R. § 22.16(d), and in accordance with the May 6, 2016, Prehearing Order, Respondent FMC Corporation (“FMC”) requests that the Presiding Officer permit oral argument on Complainant’s Motion For Partial Accelerated Decision As To Liability For Violations 1 Through 12,273 of the Complaint.<sup>1</sup> FMC proposes that oral argument be held in Washington, D.C., Philadelphia, or by telephone, at the Presiding Officer’s discretion.

FMC respectfully submits oral argument would assist the Presiding Officer and is warranted by the complexity and seriousness of the issues presented. Complainant has alleged 12,273 separate individual advertising violations and seeks partial accelerated decision as to liability on these claims, while at the same time admitting that neither the governing statute nor EPA’s regulations define “advertisement” or “advertising.” To date, EPA has not defined these terms. Oral argument would allow the Tribunal to further evaluate whether, in the absence of any governing legal definitions, testimony is needed to determine if FMC issued “advertisements” and whether FMC’s conduct constituted “advertising” within the meaning of

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<sup>1</sup> FMC conferred with counsel for Complainant regarding this Request for Oral Argument. Complainant’s position is that, due to the nature of the legal issues involved in Complainant’s Motion for Partial Accelerated Decision, oral argument is unnecessary.

the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). These key issues have been, and remain, in dispute and oral argument would provide the parties an opportunity to further clarify whether resolution of such issues requires testimony and evidence.

Oral argument will also provide the Tribunal an opportunity to probe the parties’ arguments as to whether there are genuine issues of material fact regarding the unit of violation for certain alleged advertisements – in particular the direct mailer – which presents an issue of first impression. The parties disagree about how the potential violations should be counted and having them elaborate on their arguments, and explain the significance of the facts in this regard, would assist the Tribunal in ruling on Complainant’s Motion for Partial Accelerated Decision As To Liability.

Finally, FMC respectfully submits that the Tribunal’s decision on Complainant’s Motion could have far-reaching consequences for FIFRA advertising jurisprudence and oral argument would therefore assist the Tribunal in ruling on these controversial issues for which there is no governing legal authority.

Dated: September 23, 2016

Respectfully Submitted,



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