

in opposition to that motion, contending future proceedings should be held in Washington, D.C., where previous prehearing conferences were held.

Section 14(a)(3) of FIFRA, 7 U.S.C. §1361(a)(3) provides:

"Hearing.-- No civil penalty shall be assessed unless the person charged shall have been given an opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged."

This statute is implemented by the Supplemental Rules of Practice governing FIFRA hearings, specifically 40 C.F.R. §22.35(b), which provides:

"Venue. The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties."

These provisions manifest an intent to hold FIFRA penalty hearings in a location convenient to the respondent.

The Agency's argument that Respondent has waived its right to object to venue in Washington is rejected. It is irrelevant that the earliest of these actions commenced several years ago and that Respondent has not addressed venue until now. The salient point in time is the scheduling of the hearings themselves, which has not yet occurred. The usual practice in the Office of Administrative Law Judges is to have the parties state their views on the venue for the hearing in their prehearing exchanges. The prehearing exchanges have just recently been submitted in these enforcement cases. While venue for the hearing was not apparently addressed by either party or the judge at the previous prehearing conferences or in earlier motions, now is the appropriate time to do so.

Respondent's counsel's appearance at prehearing conferences in Washington cannot be construed as a waiver of Respondent's venue rights under FIFRA. The plain purpose of the requirement that a FIFRA hearing be held in the county or city where the respondent resides is to provide a forum convenient to the Respondent and its witnesses. This consideration does not apply to a prehearing conference attended only by counsel. As indicated in its prehearing exchange, most of Respondent's witnesses are indeed located in the Mississauga - Toronto area. Respondent has never agreed in writing to hold the hearing elsewhere than Mississauga, Ontario. FIFRA and the supplemental rules both require that Respondent be given the opportunity for a hearing in the municipality of Respondent's residence.

The Agency also contends that FIFRA does not contemplate holding hearings outside the United States. General principles of jurisdiction over corporations could apply to find HCP has a "residence" in the United States if it maintains an office and does business at a location within the United States. There is no definitive information on the record before me as to whether Respondent currently maintains an office in the United States. If HCP's only actual residence is in Canada, I have not found any definitive authority or precedent for holding an EPA administrative enforcement hearing in a foreign country.

However, before having to address that issue, I will suggest that the hearing be held in the United States at a location reasonably close to Mississauga. Niagara Falls, New York is about a 90-minute drive from Mississauga, and Buffalo is about two hours. Those locations would thus be reasonably accessible to Respondent's witnesses. I suggest holding the hearing in Niagara Falls, with Buffalo as a backup if a suitable facility cannot be found in Niagara Falls.

Respondent is directed to indicate whether it agrees to hold the hearing in Niagara Falls or Buffalo by March 25, 1996. If Respondent is not willing to agree to one of those locations, the parties may submit further views on the appropriate venue for the hearing on April 8, 1996.

Andrew S. Pearlstein

Andrew S. Pearlstein
Administrative Law Judge

Dated: March 7, 1996
Washington, D.C.

In the Matter of Health Care Products, Inc.
Docket No. IF&R VIII-90-279C
In the Matter of Health Care Products, Inc.
Docket No. FIFRA 93-H-02F
In the Matter of Celltech Media, Inc., et al
Docket No. FIFRA 95-H-04

In the Matter of Health Care Products, Inc.
FIFRA Docket No. 656

CERTIFICATE OF SERVICE

I certify that the foregoing Prehearing Orders dated March 7, 1996 were sent in the indicated manner to the addressees listed below:

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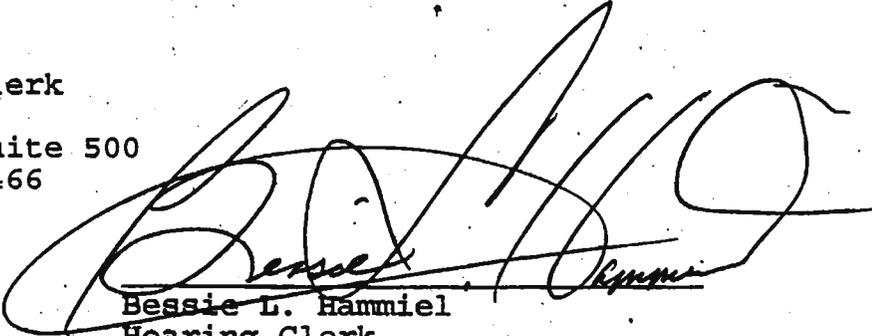
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Dated: March 7, 1996
Washington, D.C.