

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Health Care Products, Inc.

FIFRA Docket No. 93-H-02F

Respondent

In the Matter of

Celltech Media, Inc. aka

FIFRA Docket No. 95-H-04

Health Care Products, Inc.

Through its Agent,
Meditox, Inc.

Respondent

ORDERS ON DISCOVERY

and

GRANTING MOTION TO AMEND COMPLAINT

Discovery

The parties did apparently serve their respective motions to compel discovery in a timely manner. Nevertheless, I will not rule on the particulars of the motions and extensive requests for discovery.

The parties are apparently engaging in voluntary discovery, although it has not yet been completed due to various delays. It would be unnecessary and speculative for me to rule on discovery which may well take place anyway.

The parties remain directed to complete their voluntary discovery in good faith. Consistent with my order of August 20, 1996, I expect such discovery at a minimum to encompass the exchange of reasonably available and relevant documents and things related to the issues in this proceeding: the efficacy testing of WipeOut; the registration of the WipeOut products; the FIFPA civil penalty factors; and, as discussed below, the proper identity of the Respondent. In order to save time at the hearing, the parties are encouraged to go beyond this minimum exchange by responding to relevant interrogatories, and by engaging in further production of documents.

If a party can show any actual prejudice due to the opponent's failure to disclose something that should have been disclosed, appropriate inferences may be drawn or sanctions taken at the hearing or in the initial decision. I will not entertain any further prehearing motions relating to discovery.

Motion to Amend Complaints

Complainant has filed a motion to amend the Complaints in these proceedings by substituting the new name of the Respondent, Smartel Communications Corporation ("Smartel") in the caption and throughout the Complaints. The current motion includes the proposed amended Complaints, which, in their respective first paragraphs, allege that Smartel, formerly known as Health Care Products, Inc., is a "person" subject to FIFRA. This is sufficient to meet the deficiency in the prior motion, which was denied without prejudice due to its failure to include the proposed amended complaints with the appropriate allegations concerning Respondent's name change.

In its opposition to Complainant's motion, Respondent makes the veiled assertion "that there may be facts other than the name change and stock dilutions which will shield the current entity from liability." (p. 4). Respondent then asserts it is "not inclined to reveal its defenses before trial." (Id.) . This proceeding should not be a guessing game. Presumably the Amended Complaints will require Respondent to address the allegations of its liability as Smartel and to raise any additional applicable defenses. If Smartel is not liable for the alleged violations, it could save us all a lot of time and effort if that became known before the hearing scheduled to begin on January 7, 1997.

Nevertheless, the record thus far indicates only that Respondent has undergone a straightforward name change. Normally this would be accommodated by stipulation rather than in contested motions to reception these proceedings and

to amend the complaints. Respondent has not presented any substantial reason why its current name should not be substituted in these proceedings. There is not currently any entity with the former name, Health Care Products, Inc. Indeed, Respondent's cryptic intimations that there may be more to this issue than a simple name change, provide an additional reason to grant the motion to amend the complaints, to prevent surprise at the hearing. For these reasons, Respondent's motion to amend the Complaints is granted.

Respondent is directed to formally serve the amended Complaints in accord with the EPA Rules of Practice, and Respondent will have 20 days from the date of service to file its amended Answers under 40 CFR §22.14(d).

Hearing Location

A hearing room has not yet been reserved, and I am not aware of whether Respondent or both parties have decided on either Newark or Princeton, New Jersey, as the preferred location. If the parties have a preference, it should be communicated as soon as possible in order that the Hearing Clerk, Ms. Bessie L. Hammiel, may make the appropriate arrangements. Unless I hear otherwise by November 18, 1996, I will direct Ms. Hammiel to seek a location first in the Princeton area.

Andrew S. Pearlstein
Administrative Law Judge

Dated: November 4, 1996
Washington, D.C.

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing Orders on Discovery and Granting Motion To Amend Complaint was filed in re Health Care Products, Inc., FIFRA Docket No. 93-H-02F; Celltech Media, Inc., FIFRA Docket No. 95-H-04; and exact copies of the same were mailed to the following:

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Dated: Nov. 04, 1996