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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Monsanto Company, and) IF&R Docket No. IF&R-VII-1212C-93P
Tri Valley Cooperative,)
)
Respondents)

ORDER GRANTING MOTION

TO HOLD PROCEEDING IN ABEYANCE

Respondent Monsanto Company ("Monsanto") moved that this proceeding be held in abeyance until a final decision on the merits is issued in In the Matter of American Cyanamid Company and Sur-Gro Plant Foods, et al., IF&R Docket No. VII-1129C-92P. American Cyanamid, according to Monsanto, presents questions similar to those involved in the instant case and, unlike the instant case, is already fully briefed. Therefore, Monsanto suggested, delaying further action on the instant case until issuance of a final decision in American Cyanamid could illuminate the proper resolution of this case and thereby conserve judicial resources.

Complainant opposed Monsanto's motion, asserting that significant factual differences exist between the instant case and American Cyanamid, and also between the instant case and other pending cases that present similar legal questions. Complainant argued that, because of these factual differences, a decision in any of these other cases may still leave unaddressed important questions in the instant case. Further, Complainant stated that it remains uncertain, given the possibility of appeal of any initial decisions, as to when a final decision in any of the other pending cases will be issued. Consequently, Complainant contended that its right to prosecute its complaint in the instant case should not have to await a resolution of any of these other cases.

Discussion

For the moment, the advantage of conserving judicial resources by awaiting some decision in other similar cases that are pending is the decisive factor regarding Monsanto's motion. Hence the proceeding against Monsanto will be held in abeyance until further notice.

Three of the similar pending cases are more advanced procedurally than the instant case. In both American Cyanamid and In the Matter of Monsanto Company and Simpson Farm Enterprises, Inc., IF&R Docket No. VII-1193C-93P, briefs have been filed; and in In the Matter of ICI Americas, Inc. and Dodge City Cooperative

Exchange, IF&R Docket No. VII-1191C-92P, an Order on Cross Motions for Accelerated Decision (November 16, 1993), which addressed a central legal question in the instant case, has been appealed to the Environmental Appeals Board.

Final decisions in these pending cases may be forthcoming reasonably soon, and may well clarify the instant case. It makes sense to wait at least a moderate period of time to see if meaningful help does come from any of such decisions.

It may be, as Complainant has suggested, that final decisions in these cases will be unduly delayed, or that, even when issued, such decisions will lack major significance for the instant case because of factual differences in their settings. At some point Complainant is entitled to press its claim in this case. Therefore this granting of Complainant's motion will be reviewed periodically to determine whether it remains justified.

To assist these reviews, Complainant and Monsanto will be directed to report periodically on the status of this case and the other related cases. Complainant's April 29, 1994 status report, as mandated by the Order of March 24, 1994, has been received by this Office.

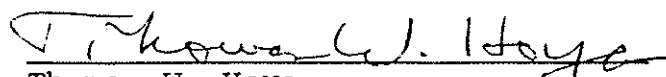
This granting of Monsanto's motion to hold in abeyance this proceeding applies only to Complainant's action against Monsanto. Complainant's action against Respondent Tri Valley Cooperative is unaffected.

As to Complainant's action against Respondent Tri Valley Cooperative, the Consolidated Partial Consent Agreement and Partial Consent Order of April 27, 1994 has been received by this Office. This Agreement and Order concludes Complainant's action against Respondent Tri Valley Cooperative.

Order

Respondent Monsanto's motion to hold this proceeding in abeyance is granted to the extent that it is hereby ordered that Complainant's action against Monsanto shall be held in abeyance until further notice. Complainant's action against Respondent Tri Valley Cooperative remains unaffected by this Order.

Both Complainant and Monsanto are directed to report by July 31, 1994 on the status of this case and on the status of other pending related cases.


Thomas W. Hoya
Administrative Law Judge

Dated: May 31, 1994

In the Matter of Monsanto Company & Tri Valley Cooperative,
Respondent
Docket No. IF&R-VII-1212C-93P

Certificate of Service

I certify that the foregoing **Order Granting Motion To Hold Proceeding In Abeyance**, dated May 31, 1994, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

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Copy by Regular Mail to:


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Maria Whiting
Legal Staff Assistant

Dated: May 31, 1994