

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

In the Matter of: ) DOCKET NO: FIFRA-03-2015-0248  
)  
FMC Corporation, )  
)  
Respondent )

**STATEMENTS**

As directed by the July 17, 2017 Order on Complainant’s Motion for Partial Accelerated Decision as to Liability for Violations 1 Through 12,1273 of the Complaint and Respondent’s Request for Oral Argument in this matter (“Order”), (A) the parties submit the following Joint Statement concerning scheduling the hearing and (B) Complainant U.S. Environmental Protection Agency (“EPA” or “Complainant”) submits the following additional Statement concerning discovery:

**A. JOINT STATEMENT AS TO TIME NEEDED FOR HEARING AND DATES OF UNAVAILABILITY**

**Time Needed for Hearing**

Complainant estimates that it will need approximately two and a half (2.5) days to present its direct case. Respondent FMC Corporation (“FMC” or “Respondent”) estimates that it will need approximately three (3) days to present its direct case. The parties estimate that they will require approximately half the time devoted to direct (i.e., 2.75 additional days combined) for cross-examination and any redirect examination. FMC’s estimates were prepared based on each hearing day providing approximately six (6) hours of productive hearing time (i.e., not including lunch or other breaks) and EPA adopted the same approach for consistency in this Joint Statement. The parties will adjust the estimates as needed based on the Tribunal’s preference on length of hearing days.

**Dates of Unavailability and Availability**

The parties conferred promptly and will continue to coordinate in this fashion on scheduling wherever possible for the convenience of the Tribunal.

Complainant’s periods of unavailability for a hearing during the remainder of calendar year 2017 are: August 7-11, August 14-21, August 25, August 31-September 11, September 15, September 20-October 15, October 23-November 10, and December 21-31.

Unfortunately, Respondent’s fact witnesses and in-house counsel are otherwise committed during the remaining 2017 time periods when EPA is available. This is primarily due to the unusual and substantial demands of FMC’s upcoming closing of a publicly-announced transaction with DuPont, which is scheduled for November 1, 2017. A number of the FMC witnesses and FMC’s in-house counsel who are important to FMC’s ability to present its case

and adequately defend itself have significant commitments to prepare for and complete the closing and to meet post-closing integration requirements, and therefore are more limited in their availability for a hearing during this time period than they typically would be.

In an effort to identify dates as soon as possible that are available for the parties, FMC proposed to EPA that the parties provide the Tribunal with available dates in early 2018. In response to FMC's confirmation that its witnesses and counsel are available from January 31 through February 9, EPA confirmed that it is also available during this timeframe. All time estimates being taken into account, the parties believe eight (8) days should be sufficient for the hearing in this matter. The parties will continue to work together to identify dates convenient to the Tribunal if a hearing between January 31 and February 9 would not be possible.

## **B. COMPLAINANT'S STATEMENT AS TO DISCOVERY**

### **Discovery**

Complainant's pending motion for discovery as to the testimony of Mr. Orme has been obviated by Respondent's supplement to its prehearing exchange as well as the Order.

The discussion on pages 32-33 of the Order suggests that the Presiding Officer is interested in considering evidence and argument concerning individuals sent multiple copies of a direct mailer to rule on the issue of the appropriate number of units of violation for the violations of Section 12(a)(2)(E) of FIFRA. Order at 32-33. Complainant believes that Respondent currently possesses relevant information in this regard in the form of the actual mailing addresses of the individuals sent the direct mailers, and, on July 20, 2017, requested Respondent to voluntarily provide this information – either directly to EPA in a searchable and sortable format (e.g., Excel file) enabling the parties to ultimately stipulate to such numbers, or in the form of a supplement to Respondent's Prehearing Exchange. At the time of this Statement, Respondent has agreed to provide the requested information voluntarily and consequently Complainant is not moving for discovery to obtain this information at this time.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that, on the date below, copies of the parties' STATEMENTS were served upon the persons listed in the manner indicated.

**Original and one copy via the OALJ E-filing System**

Sybil Anderson, Headquarters Hearing Clerk

**One copy via the OALJ E-filing System**

Christine Coughlin, Administrative Law Judge

**One copy via E-mail and UPS Next Day Air**

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**JUL 28 2017**

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Date



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