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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of American Cyanamid Company, Claimant v. Thompson-Hayward Chemical Company, Respondent	)	FIFRA COMP. Docket No. 26

Memorandum Decision and Order

This is a proceeding under Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136a(c)(1)(D) (Supp. V, 1975) ("FIFRA"), to determine the reasonable compensation to be paid to producer of test data by a registrant who has used the data in registering a pesticide. American Cyanamid Company (American Cyanamid), the claimant herein, is the producer of the data, and Thompson-Hayward Chemical Company (Thompson-Hayward), respondent herein, is the registrant who used the data. These proceedings have been instituted and the undersigned has been designated to preside pursuant to the authorization and direction of the Acting Administrator dated October 13, 1976 (41 F.R. 46020).

American Cyanamid has filed a motion to "dissolve" this proceeding asserting that certain jurisdictional prerequisites have not been met. In the alternative, American Cyanamid claims that the procedures

established by order of January 7, 1977, are unfair and unauthorized by Section 3(c)(1)(D), and that the proceedings should be stayed until these rules have been co-rected. A response to this motion has been filed by Thompson-Hayward, and a reply by American Cyanamid. The motion is identical to that filed by American Cyanamid in FIFRA COMP. Docket No. 25, a case involving the same parties, and the same arguments have been made. On consideration of the papers, and of the file which has been received from the Director of the Agency's Registration Division which constitutes the only record in this proceeding at this time, I am of the opinion that this motion should be disposed of in the same way as the motion in FIFRA COMP Docket No. 25. See my opinion and order issued on March 10, 1977. Accordingly, the motion to dissolve is denied. A stay of these proceedings is granted for the purpose of obtaining certain information from the EPA's Registration Division, and in all other respects the motion for a stay is also denied.

Order

On consideration of the motion of claimant American Cyanamid Company to dissolve their proceedings for lack of jurisdiction, or in the alternative, to stay proceedings and the response thereto filed by respondent Thompson-Hayward Chemical Company, and,

The files in this case showing that on April 29, 1975 the Registration Division of the United States Environmental Protection Agency

registered the pesticide DE-FEND E-267, No. 148-865, on application of respondent and after respondent had acknowledged that its application relied on certain test data for which compensation had been claimed by claimant,

Now, therefore, for reasons set forth in the above memorandum decision, it is,

ORDERED that pursuant to Section 2(g) of the Rules of Procedure issued herein, the Director, Registration Division, Office of Pesticide Programs, United States Environmental Protection Agency or his duly authorized designee ("Agency") submit a statement stating which test data for which claimant American Cyanamid Company claimed compensation under letter of February 6, 1975 was considered by the Agency in registering DE-FEND E-267, EPA Reg. No. 148-865, and it is,

FURTHER ORDERED, that said statement shall be submitted by April 21, 1977, unless the time is extended by a timely motion as provided in Section 4 of the Rules of Procedure, and that copies shall be served on the parties, and it is,

FURTHER ORDERED that all proceedings in this matter shall be stayed until after the statement has been filed by the Agency as ordered herein, and it is,

FURTHER ORDERED, that in all other respects the motion of American Cyanamid Company is denied.

Gerald Harwood

Gerald Harwood
Administrative Law Judge

March 15, 1977