UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

78 FEB 8 P1:47

In the Matter of	)	
	)	
Ciba-Geigy Corporation,	)	
	)	
Claimant,	)	
	)	
v.	)	FIFRA COMP. Docket No. 19
	)	
Thompson-Hayward Chemical Company,	)	
	)	
Respondent	)	

ACCELERATED DECISION DISMISSING CLAIM
FOR COMPENSATION FOR TEST DATA
SUBMITTED PRIOR TO OCTOBER 21, 1972

This is a proceeding under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), Section 3(c)(1)(D), 7 U.S.C. Section 136a(c)(1)(D) (Supp V, 1975), to determine the reasonable compensation to be paid to a producer of test data by a registrant who has used the data in registering a pesticide. Ciba-Geigy Corporation the claimant herein, is the producer of the test data, and Thompson-Hayward, respondent, is the one who used the data. The product involved is T-H ATRAZINE 4L HERBICIDE, EPA Reg. No. 148-1173.

The registration involved here was granted before November 28, 1975, the effective date of the amendments to Section 3(c)(1)(D), by Pub. L. 94-140, 89 Stat. 755. Claimant's right to compensation accordingly is governed by the original Section 3(c)(1)(D) as contained in the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, 86 Stat. 973 (1972). Compensation has been claimed

for data submitted by claimant to the Agency during the period 1959 - 1973. In the case of Rohm and Haas Co. v. Thompson-Hayward Chemical Co., FIFRA COMP. Docket Nos. 39 & 40 (dated December 1, 1977), the Administrator held that under Section 3(c)(1)(D) prior to its amendment in November 1975, data submitted before October 21, 1972, is not subject to compensation. Claimant was requested to show cause why that decision is not authority for dismissing its claim for compensation for data submitted prior to October 21, 1972. In its response, claimant takes issue with the Administrator's position as reflected in his decision, but has not shown any reason for reaching a different result in this case.

Accordingly, pursuant to Section 13 of the Rules of Procedure issued herein, I am issuing this accelerated decision sua sponte dismissing Ciba-Geigy's claim for compensation so far as it relates to data submitted to the Agency prior to October 21, 1972. This decision does not affect Ciba-Geigy's claim for compensation for data submitted on or after October 21, 1972.

ORDER

Claimant's claim for compensation under Section 3(c)(1)(D) so far as it relates to data submitted prior to October 21, 1972, is dismissed.

Gerald Harwood
Gerald Harwood
Administrative Law Judge

February 8, 1978

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Respondent	)	

NOTICE OF PREHEARING CONFERENCE

Notice is hereby given that a prehearing conference, as provided for in Section 12 of the Rules of Procedure issued herein, will be held on Tuesday, February 28, 1978, at 10:30 a.m., in Room 3307 of the Mall area, United States Environmental Protection Agency, 401 M Street, S. W., Washington, D. C. The purpose of the conference is to consider matters relating to the determination of reasonable compensation claimed for data submitted on or after October 21, 1972, including the following:

1. The filing of the statements required by Rule 2.
2. Whether or not either party will request a protective order for data to be submitted by it, and the form of the order if one is sought.
3. The times for exchanging witness lists and documents.
4. The setting of a time and place for the hearing.
5. Such other matters as may expedite the disposition of the proceeding.

Gerald Harwood

Gerald Harwood
Administrative Law Judge

February 8, 1978