

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT OF ILLINOIS
MADISON COUNTY**

HOLIDAY SHORES SANITARY DISTRICT,)
Individually and on behalf of all others)
Similarly situated,)
)
Plaintiff,)
)
v.)
)
SYNGENTA CROP PROTECTION, INC., and)
GROWMARK, INC.,)
)
Defendants.)

Case No. 2004-L-000710

**DEFENDANT'S FIRST SET OF INTERROGATORIES
TO PLAINTIFF HOLIDAY SHORES SANITARY DISTRICT ON THE CLASS
CERTIFICATION ISSUES**

Pursuant to Illinois Supreme Court Rule 213, Defendant, Syngenta Crop Protection, Inc., by its attorneys, hereby requests Plaintiff Holiday Shores Sanitary District to produce sworn responses to the following Interrogatories no later than twenty-eight (28) days after service thereof.

DEFINITIONS

As used in these Interrogatories, the following terms shall have the following meanings:

1. "Atrazine," whether singular or plural, shall mean technical grade atrazine and/or commercial grade atrazine, atrazine-containing products (where atrazine is intended as an active ingredient), and the degradation products of atrazine, deethylatrazine, deisopropylatrazine and diaminoatrazine.
2. "Defendants" mean the entities that have been named as defendants in the following lawsuits currently pending in the Circuit Court for the Third Circuit of Illinois: Holiday Shores Sanitary District v. Sipcam Agro USA, Inc., and GROWMARK, Inc., Case No. 2004-L-000708; Holiday Shores Sanitary District v. Drexel Chemical Co. and GROWMARK, Inc., Case No. 2004-L-000709; Holiday Shores Sanitary District v. Syngenta Crop Protection, Inc., and GROWMARK, Inc., Case No. 2004-L-000710; Holiday Shores Sanitary District v. United Agri Products, Inc., and GROWMARK, Inc., Case No. 2004-L-000711; Holiday Shores Sanitary District v. Makhteshim-Agan of

North America, Inc., and GROWMARK, Inc., Case No. 2004-L-000712; and Holiday Shores Sanitary District v. Dow Agrosiences LLC and GROWMARK, Inc., Case No. 2004-L-000713.

3. "Document(s)" is defined as the term is defined in Illinois Supreme Court Rules 201 (b) and 214.
4. "Facility" means any and/or all of the land, plant and equipment, however used by you to process raw water into drinking water consumed by your constituents or consumers from the time when you first began to process raw water into drinking water up to and including the present.
5. "Person" means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability corporation, governmental entity and any other legally recognized entity.
6. "Representative" means any partner, agent, employee, consultant, attorney, accountant, expert or anyone else acting or purporting to act for, at the direction of, or on behalf of the referenced entity.
7. "You," "your," "yours," and/or "HSSD" means Holiday Shores Sanitary District and any of its employees, officers, directors, agents, attorneys, predecessors and representatives

INTERROGATORIES

1. Identify each person who participated in providing any information to answer any of these Interrogatories, First Requests For Admission and/or First Set of Requests For Production..
2. Identify each of the "at least 80 other water districts that have faced similar situations [and] are keen to join the suit," mentioned by Plaintiff's attorney in the attached article published in *Pesticide & Toxic Chemical News*.
3. Identify any putative class members, if any, in addition to those listed in response to Interrogatory No. 2.
4. As to you and each water district identified in response to Interrogatory Nos. 2 and 3, please:

- a) state whether you have exchanged communication about this litigation, about any of the Defendants, or about any issue in this litigation, and provide a complete description of each such communication; setting forth with whom you communicated, when you did and what was communicated
- b) identify each putative class member, including you, who has at any time from its legal creation to the present used granular activated carbon (GAC) for any purpose;
- c) specify each calendar year during which you and each putative class member has used GAC for any purpose from its legal creation to the present;
- d) describe all purposes for which you and each putative class member has used GAC and all benefits you and each putative class member received from the use of GAC for each year from its legal creation to the present;
- e) state all labor, equipment, and other costs you and each putative class member has incurred for each year from its legal creation to the present in regard to its use of GAC generally;
- f) state all labor, equipment, and other costs you and each putative class member has incurred for each year in regard to its use of GAC specifically for atrazine removal;
- g) state when and why you and each putative class member initially installed any GAC technology;
- h) identify each putative class member, including you, who has at any time from its legal creation to the present used powered activated carbon (PAC) for any purpose;
- i) specify each calendar year during which you and each putative class member has used PAC for any purpose from its legal creation to the present;
- j) describe all purposes for which you and each putative class member has used PAC and all benefits you and each putative class member received from the use of PAC for each year from its legal creation to the present;
- k) state all labor, equipment, and other costs you and each putative class member has incurred for each year from its legal creation to the present in regard to its use of PAC generally and
- l) state all labor, equipment, and other costs you and each putative class member has incurred for each year in regard to its use of PAC specifically for atrazine removal;

5. Other than activated carbon, have you or any other putative class member ever used any other treatment technology to remove atrazine? If so, please set forth:

- a) specifically what was used;
- b) during which calendar years each treatment technology was used;
- c) why each technology was used; and
- d) the labor, equipment, and other costs incurred each year by each putative class member as a result of the use of each such technology.

6. Please identify the following persons:

- a) each lay witness as defined by Illinois Supreme Court Rule 213(f)(1) that you will or may rely upon to support class certification, whether by testimony in court, affidavit, deposition, or otherwise;
- b) each expert witness, as defined by Illinois Supreme Court Rule 213(f)(2) and 213(f)(3), that you will or may rely upon to support class certification, whether by testimony in court, affidavit, deposition or otherwise;
- c) all persons who have been involved in any monitoring, sampling or testing of your raw or finished water, or the source(s) of such water, for any reason at any time during the alleged class period
- d) all persons who have been involved in any monitoring, sampling or testing of any putative class member's raw or finished water, or the source(s) of such water, for any reason at any time during the alleged class period; and
- e) all other persons, other than the defendant propounding this discovery, who have been involved in any monitoring, sampling or testing for atrazine at any location within the State of Illinois at any time during the alleged class period, setting forth where, when and why each such activity was done by whom.

7. For each expert witness that will or may be relied on to support class certification, whether by live testimony, affidavit, deposition, or otherwise, provide the following:

- a) a full description of each expert's opinions, and all testimony expected to be given as to each such opinion.
- b) a full description of all bases underlying each opinion, and all facts relating to each opinion – whether tending to support or refute that opinion.

- c) identification of all documents the expert has received or reviewed in connection with forming the expert's opinions or preparing for the expert's testimony.
- d) identification of any textbook, paper, internet site, citation, database, report, computer program, or other material the expert intends to rely on to support any opinion, providing the exact title, date of publication, author and publisher, and the specific section(s), chapter(s) and page(s) to be relied on.

8. As to Defendant's Requests For Admission, if your response to each particular Request was anything other than an unqualified admission, state every fact known to you that supports your denial or response to each such Request.

9. Identify and fully describe every item of damage, and each specific amount of such damages, that you and each putative class member seek in this litigation, along with the basis for that amount claimed.

10. Set forth all dates on which you and any putative class members have taken any samples of raw or finished water during the alleged class period to determine the presence of atrazine, specify the actual level of atrazine detected in any such samples, and explain the reason(s) that each sample was taken.

11. Describe in detail the empty bed contact time (EBCT) for your GAC and/or GAC filters since January 1, 1997. If the EBCT has changed at any time from January 1, 1997 to the present, please explain when it changed, the nature of each change, and the reason for each change.

12. Identify all chemicals, substances, products and contaminants that have been removed from your raw water by your activated carbon or other filters during each separate calendar year since January 1, 1997.

13. Identify each person with whom you have communicated regarding whether atrazine does or does not pose a risk to human health if found in drinking water at any level below the MCL of 3 parts per billion. In answering this Interrogatory, please: (i) identify all

persons involved in the communication; (ii) identify the date of the communication; (iii) describe the mode of communication (*i.e.*, written or verbal); and (iv) specify the substance of the communication (*i.e.*, atrazine does or does not pose a risk).

14. State in detail all facts that support your claims that any atrazine found in your raw or finished drinking water at any time from your legal creation to the present can be identified as having been manufactured or sold by Syngenta and/or GROWMARK as opposed to another person.

15. Describe all facts that support the allegations in paragraph 19 of the Amended Complaint as to you and each putative class member.

16. Identify and fully describe all misrepresentations allegedly made by each Defendant, providing without limitation the following information:

- a) The individual and Defendant who made each misrepresentation.
- b) The date on which each misrepresentation was made.
- c) Why each misrepresentation was material to you and each member of the putative class and
- d) When and how you and each putative class member specifically relied upon each such alleged misrepresentation to your or its detriment.

17. Identify and fully describe all facts allegedly concealed by each Defendant, providing without limitation the following information:

- a) Each Defendant and each employee or representative of the Defendant allegedly with knowledge of the omitted fact.
- b) The date on which each Defendant first became aware of the omitted fact.
- c) How each Defendant first became aware of the allegedly omitted fact.

d) Why each omitted fact was material to you and each member of the putative class.

18. State how Defendants' alleged invasion of your and each putative class member's property has affected the "use and enjoyment" of the property, as alleged in paragraph 14 of the Amended Complaint.

19. Identify each of your officers, directors, trustees, employees, consultants or officials who were in any way involved in any decision or action of any kind that you took during the alleged class period pertaining in any way to atrazine. In responding to this Interrogatory, please state the specific involvement or action taken by each person and when such involvement or action occurred.

20. During the alleged class period, are you aware of any atrazine manufacturers or atrazine registrants other than Defendants that have manufactured, produced or are producing atrazine for use in Illinois? If so, identify each one of them and state the time period when each made atrazine or was a registrant of atrazine.

21. Describe your document retention policy. In your response, please discuss where documents pertaining to atrazine are located, who is responsible for maintaining these documents, whether any documents pertaining to atrazine have been destroyed, who destroyed any such documents, when was such action taken and why.

22. Describe any inquiries or complaints by consumers, employees, contractors, or other persons or entities regarding any adverse human health effects from drinking finished water provided by you. For each such complaint, describe:

- a) Who made the complaint/inquiry, and when each made it;
- b) To whom the complaint/inquiry was directed;
- c) The nature of each complaint/inquiry;

- d) Your response to the complaint/inquiry; and
- e) Which complaint/inquiry, if any, related to atrazine.

23. Fully describe each and every action taken by you and each putative class member when and why to mitigate, avoid and/or minimize the alleged actual and/or potential exposure to, and damages resulting from, the alleged presence of atrazine in the water source, raw or finished drinking water or other property.

24. Fully describe each and every action taken by you and which particular putative class member, if any, from January 1, 2004 to the present to remove atrazine from your (its) raw or finished drinking water down to a non-detect level before providing the finished drinking water to any consumers, customers and/or purchasers and why each such action was taken when by whom..

25. Fully describe how you and each particular putative class member were first made aware that atrazine is allegedly unsafe for humans when found in drinking water at any measurable level below the MCL. In responding to this Interrogatory, please provide:

- a) The date or time period in which you and each putative class member formed such a belief;
- b) All person(s) who provided any information that contributed to forming such a belief; and
- c) The date, time and place of all meetings at which you and each putative class member were provided any such information, identifying all persons present, and describing fully the content of any discussions taking place at each such meeting.

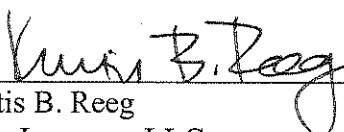
26. Identify each and every specific human health effect that you and each putative class member claim potentially results from drinking water containing atrazine at any measurable level below the MCL of 3 ppb. In responding to this Interrogatory, identify the specific factual

support linking each such alleged health effect to drinking water containing atrazine at any measurable level below the MCL.

Respectfully submitted,

SYNGENTA CROP PROTECTION INC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of June, 2009, I caused to be served the attached via **Hand Delivery**, upon the following counsel:

TO: Stephen M. Tillery, Esq.
Christine Moody, Esq.
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with a copy sent via United States mail, properly addressed and postage paid, upon the following counsel:

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EPA

Farm interests seek more details on soil fumigant risk mitigation plan

Although they expect EPA's proposed safety requirements for soil fumigants to increase burdens on users, industry groups are reserving judgment until they review the details. At the same time, a leading pesticide NGO group is criticizing some aspects of EPA's proposal, but also contends the new requirements will prompt a significant reduction in pesticide-related poisonings.

The proposals were announced on July 10 by EPA, which is allowing 60 days for public comment and says the proposals will be refined as needed. The risk mitigation measures cover methyl bromide, chloropicrin, dazomet, metam sodium, and metam potassium. In a statement, EPA Assistant Administrator Jim Gulliford said, "The new restrictions protect workers and bystanders against inadvertent exposure to soil fumigants and are practical to implement."

(see *Fumigants*, Page 5)

BUSINESS

Atrazine class action suit moving forward

An Illinois judge has denied motions by atrazine manufacturers to dismiss a class action lawsuit filed by a water utility that alleges the pesticide has contaminated its water supply.

The decision by Madison County Circuit Court Judge Daniel Stack is a blow to Syngenta, Dow Chemical and other defendants in the long-running case, but the judge did hand them a minor victory by raising doubts about punitive damages requested by the plaintiff.

Filed in 2004 by Holiday Shores Sanitary District, the suit alleges that atrazine — the most widely used herbicide in the United States — breaks down into degradates that present a public health risk. The district runs a water plant in Edwardsville, Ill., and retrieves its water from a nearby lake.

Faced with sampling that showed atrazine levels in the lake above the federal and state drinking water standard of 3 parts per billion, Holiday

(see *Atrazine*, Page 16)

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Atrazine, continued from Page 1

Shores spent about \$1 million to "completely revamp their filtration system," according to the district's attorney, Stephen Tillery of Korein Tillery.

The district is seeking compensation for those costs and for future filtration costs, Tillery told *Pesticide and Toxic Chemical News*.

At least 80 other water districts that have faced similar situations are keen to join the suit, he added.

Syngenta, which is headquartered in Basel, Switzerland, did not respond to a request for comment.

Health disputes

Filings in the case reflect broad disagreements about the health risks from atrazine, which has faced increasing scrutiny in recent years and was banned in the European Union in 2005.

Studies have raised public health concerns about the endocrine-disrupting chemical and found it easily flows into surface and groundwater and degrades slowly. The lawsuit cites studies that show the herbicide can cause sexual abnormalities in frogs, but defendants argue there is scant evidence that it poses a serious risk to public health or the environment.

A 2006 cumulative risk assessment by EPA on atrazine and closely related herbicides echoed the industry view (see *PTCN*, June 26, 2006, Page 6).

Syngenta filed a slew of motions to dismiss the case some 30 months ago.

The chemical giant argued that Stack should defer the case to EPA under the primary jurisdiction doctrine, which calls for legal disputes to be referred to an administrative agency when it has a specialized or technical expertise that would help resolve the controversy or when there is a need for uniform administrative standards.

The dismissal motion meets neither standard, Stack concluded, explaining that the defendants had failed with similar arguments in 2005 when they tried to keep the case in federal court.

Stack also tossed out a motion that sought to dismiss the case for lack of standing, noting that Holiday Shores has "alleged sufficient injury" to have standing in this case.

"The existence of a [maximum contaminant level] for atrazine does not extinguish Holiday Shores' claims under Illinois law against the manufacturers and suppliers of an alleged defective product that is

alleged to have caused damage to Holiday Shores," Stack wrote.

A motion to dismiss on causation was also rejected.

Holiday Shores alleges that Syngenta caused the contamination of its water supply and named it in the complaint as liable under each count, the judge wrote in the 24-page order.

"Illinois law requires no more of Holiday Shores," Stack concluded.

Syngenta also asked Stack to dismiss the utility's trespass claim, which argues the company had extensive knowledge of the properties of atrazine and the risks from ordinary use.

The chemical company countered that it was not in control of the atrazine at the time when it entered the water district's property.

As Holiday Shores has alleged that its injuries were the "foreseeable result of the defendants' actions, remoteness is not an issue," Stack ruled.

Syngenta's motion to dismiss a negligence charge was rejected by the judge because Holiday Shores has alleged facts that "if proven" would show the defendants' intentional or negligent actions caused harm.

"That is sufficient to state a cause of action for a private nuisance," wrote Stack.

He also denied a request to dismiss a negligence count and a count of strict liability.

"Plaintiffs allege that the atrazine products were used in the manner in which they were intended and foreseeably certain to be used, but that the products were unreasonably dangerous when they were used as intended by defendants," Stack wrote.

Holiday Shores detailed "several ways in which the product did not perform as safely as an ordinary consumer would expect, including its propensity to contaminate reservoirs and lakes providing supplies for public water providers and that the ingestion of water containing even small amounts of atrazine is hazardous to human health."

Punitive in play

Stack also denied a motion to dismiss based on a question of whether the Illinois Environmental Protection Act provides Holiday Shores the right to sue. Although the statute does not explicitly provide such a remedy, Stack contends such actions are implied by the law. In addition, he rejected the argument that Holiday Shores must first have brought the case to the Illinois Pollution Control Board before pursuing action in the courts.

Syngenta also argued that the claims by Holiday Shores violate the interstate commerce clause of the U.S. Constitution, reasoning that the water district seeks to effectively ban the sale of atrazine.

"Nowhere in the complaint are any representations that Holiday Shores is attempting to regulate the sale of atrazine," Stack wrote. "Instead, this complaint represents a tort action seeking redress for injury ... [it] does not seek economic protectionism favoring Illinois interests over out-of-state interests."

The judge did, however, strike the water district's request for punitive damages from the complaint, concluding that such a request was "premature."

Although Stack noted that Holiday Shores could petition the court to amend the complaint to again ask for punitive damages, he suggested they are unlikely to be allowed "under any of the circumstances alleged in the complaint."

Tillery said Stack's ruling has not deterred Holiday Shores from its plan to request punitive damages.

A status conference will be held later this month to set a schedule for the case to proceed.

— J.R. Pegg

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RESEARCH

More intersex toads found in ag areas than suburbia, study finds

New research has found sexual abnormalities in toads increase as their habitat becomes more agricultural — adding more fuel to an ongoing debate about the impact of pesticides versus land development on amphibians.

"Gonadal abnormalities, such as those reported here, are likely to reduce the reproductive success of affected individuals and could help explain why two independent studies have documented that amphibian populations exposed to pesticides are declining or have gone extinct," the study, published online July 3 in *Environmental Health Perspectives*, states.

But other researchers have criticized the findings, finding fault with the study's methodology and assertions.

Abnormalities

Scientists from the University of Florida measured sexual organ abnormalities and function in at least 20 giant toads from five different sites of varying degrees of development and agricultural use. They also examined the toads' secondary sexual characteristics, including body color pattern, number of nuptial pads and forelimb size.

What they discovered: Many male toads are feminized and demasculinized at agricultural sites.

More intersex toads — those with both male and female sexual organs — were found at the two sites with the most agriculture than the other areas. Furthermore, the number and development of ovaries and oviducts in the presence of testes — a measure

of intersex severity — increased in these toads as agriculture increased. Intersex toads also had, on average, more circulating estradiol than testosterone.

Agriculture also appeared to affect the secondary sexual characteristics of the toads — such as coloring and forelimb size. Intersex males were similar in body color pattern to females, while normal males in agricultural areas were less spotted than females but more so than males in non-agricultural areas.

While female toads appeared normal, study co-author Lou Guillette told *Pesticide & Toxic Chemical News* it's possible they were impacted at a molecular level.

"It's not that females aren't as sensitive to estrogens, but if we expose a male, we see changing secondary sexual characteristics," he said. "Changes are more prominent in males."

What's to blame?

The suggestion that exposure to pesticides causes sexual abnormalities among amphibians is nothing new. A number of studies have shown a higher incidence of intersex individuals and sex organ abnormalities among frogs exposed to herbicides like atrazine.

But the issue is controversial. Other studies have found no strong association between pesticides and sexual abnormalities in amphibians, concluding that reproductive abnormalities seen in these animals in the wild are from a natural developmental process or the result of habitat alteration, i.e., land development.

Guillette acknowledged those arguments, noting many studies examining the impacts of agriculture on organisms are done by examining them in a "pristine"