



OFFICE OF THE CHIEF JUDGE

State of Illinois
Third Judicial Circuit
Madison & Bond Counties

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FACSIMILE COVER SHEET

DATE 10/26/09

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OFFICE Judge Cowden

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Number of page(s) to follow 3

COMMENTS: _____

THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Holiday Shores Sanitary District

V

Syngenta Crop Protection, Inc. and
Growmark, Inc.

FILED
OCT 26 2009
CLERK OF CIRCUIT COURT #66
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS
04-L-710

Order

This file came before the Court on Defendant's Motion for Protective Order regarding the type and scope of discovery. The Court heard argument and took the motion under advisement to read the file, the motions, the cases cited, and to review the arguments made. Having done so, the Court now enters this order.

The request to enter a protective order to limit discovery to class certification issues only is denied as a protective order. While the Court would agree that the first major hurdle in a proposed class action is the hearing on class certification, discovery on some of the merits is not a waste of time. In addition, to determine whether there is a basis for the court to find that the proposed case may be maintained as a class action will require information on all four areas listed in 735 ILCS 5/2-801. Evaluating the criteria of whether common questions of fact or law exist that may predominate over individual questions will of necessity delve into some substantive areas. At some point, the undersigned must determine whether to allow this case to be maintained as a class action, or whether there should be limited classes with respect to particular issues or sub-classes of members, or whether the four prerequisites to maintaining a class action do not exist at all and therefore each controversy must be maintained as a separate case. These issues are the first ones that need to be resolved. The court will steer counsel towards discovery that will resolve class certification issues first; but will not pre-emptively ban any discovery that would also include the merits.

The next request is to limit discovery to atrazine only and not other compounds. This court would normally grant that request and rule that only compounds identified in the complaint (i.e., atrazine and its degradants which are apparently deethylatrazine, deisopropylatrazine, and diaminoatrazine) are discoverable. Discovery as to other compounds would be denied except to the extent that some of the reports in defendants' possession include analyses of other compounds in addition to atrazine such as simazene or other triazines and the full reports would be discoverable without any redacting. In addition, the court has reviewed the affidavit filed under seal by Mr.

Reeg and notes the years of effort by Syngenta to search for all documents related to the existing complaint and organize them for discovery which would further support the court's plan to limit the discovery to documents concerning the alleged offensive compounds identified in the complaint. This would normally be the outcome. However, in light of this court's awareness of its own file that the issue of amending the complaint to name additional degradant compounds is pending, the court will reserve ruling on the portion of the protective order requesting the limitation until such time as the court rules on the motion for leave to file an amended complaint.

The third area for which defendants seek a protective order covers the breadth and time-frame of the discovery requests and asks to allow Syngenta to produce documents related only to the sales, uses, applications and/or testing of atrazine within the State of Illinois. As Supreme Court Rule 214 provides for discovery of items or information "whenever the nature, contents, or condition...is relevant to the subject matter of the action" and further states "[a] party served with the written request shall (1) produce the requested documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request..." Further, "[i]f the party claims that the item is not in his or her possession or control or that he or she does not have information calculated to lead to the discovery of its whereabouts, the party may be ordered to submit to examination in open court or by deposition regarding such claim." All studies about atrazine (or possible atrazine plus other compounds depending upon the potential amended complaint) are discoverable. This court is well aware of discovery in other similar types of litigation that have allowed plaintiffs to discover studies from earlier decades regarding allegedly dangerous substances. Further, all parties have an obligation to abide by Illinois rules on the scope of discovery which state:

"(1) *Full Disclosure Required.* Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents" as used in these rules, includes but is not limited to, papers, photographs, films, recordings, memoranda, books, records, accounts, communication, and all retrievable information in computer storage." S.Ct. Rule 201(b).

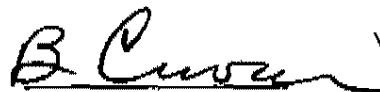
The Court denies the request for a blanket protective order to allow Syngenta (or any plaintiff or defendant) to avoid producing documents or information it possesses or

could easily possess or which become known to that party. The Court agrees that Syngenta sales of atrazine outside the state of Illinois are not relevant or pertinent and need not be produced; however information regarding the uses, applications and/or testing of atrazine outside the state of Illinois is relevant and not unduly burdensome and therefore the Court denies the rest of Syngenta's request for a protective order regarding usage, applications and test results outside the State of Illinois.

The final area covered by the motion for a protective order goes to a request to bar plaintiffs for asking for membership information in industry groups and for lobbying information. The Court denies this motion as to the names of industry groups of which defendant is a member and to the identity of any lobbyists.

The Clerk is to send a copy of this order to counsel.

Entered the 26th of October, 2009.



Judge