

6/14/95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
A & V, INC., ) Docket No. IF&R-V-017-93  
 )  
Respondent )

ORDER DENYING COMPLAINANT'S MOTION FOR ACCELERATED DECISION  
AND DENYING RESPONDENT'S MOTION TO DISMISS COUNT III

On May 12, 1995<sup>1</sup>, the United States Environmental Protection Agency, Region 5 (complainant), filed an accelerated decision motion on the liability issue. A & V, Inc. (respondent or AV), responded in opposition to the motion on May 31. Additionally, in its opposition, respondent included a motion to dismiss count III for failure to establish a prima facie case. Complainant filed its response in opposition to the dismissal motion on June 8. The arguments of the parties have been weighed.

Under 40 C.F.R. § 22.20(a), an accelerated decision should only be granted where no genuine issue of material fact exists, and a party is entitled to judgment as a matter of law. The Administrative Law Judge is of the mind that genuine issues of material fact exist regarding the alleged violations. First, under counts I and II, respondent contests the accuracy of complainant's testing methods and procedures which form the basis of whether or not respondent sold an alleged "adulterated" and/or "misbranded" pesticide, in violation of Section 12(a)(1)(E) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §

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<sup>1</sup> Unless otherwise stated, all dates are for the year 1995.

viewed with favor under the standard enunciated in 40 C.F.R. § 22.20(a).

IT IS ORDERED that:

1. Complainant's motion for an accelerated decision be DENIED.
2. Respondent's motion to dismiss count III be DENIED.

*Frank W. Vanderheyden*

Frank W. Vanderheyden  
Administrative Law Judge

Dated: June 14, 1995

IN THE MATTER OF A & V, INC., Respondent,  
Docket No. IF&R-V-017-93

Certificate of Service

I certify that the foregoing Order, dated 6/14/95, was sent this day in the following manner to the below addressees:

Original by Regular Mail to: Ms. Jodi Swanson-Wilson  
Regional Hearing Clerk  
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Copy by Regular Mail to:

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Marion Walzel  
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Legal Staff Assistant

Dated: June 14, 1995