



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

MAY 10 1994

Paul E. Merrell
Bradley & Merrell
c/o Jones, Jones, Close & Brown
Seventh Floor
300 South Fourth Street
Las Vegas, Nevada 89101-6026

RE: RIN-3726-93

Dear Mr. Merrell:

On March 29, 1994, I sent you non-confidential records concerning 2,4-D, 2,4-DB and 2,4-DP and dioxins. In addition to these records, I sent you a blank copy of the Affirmation of Non-multinational Status form that I needed you to complete and return so that I may begin the process of sending the remaining records to the submitting companies in order that they may substantiate any claims of confidentiality for these records. As of this date, I have not received a completed Affirmation of Non-multinational Status form. Please return a completed Affirmation on Non-multinational form or contact me on (703) 305-6440 or my supervisor, Susan Lawrence, on (703) 305-5805 by June 3, 1994.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Yanchulis".

Michael Yanchulis
Public Response Section
Office of Pesticide Programs

Enclosure



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EXPLANATION OF THE AFFIRMATION OF NON-MULTINATIONAL STATUS

Pesticide information that is responsive to your recent FOI request includes information that was submitted to EPA by pesticide applicants or registrants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In the 1978 amendments to FIFRA, Congress expressly limited who may receive this information and how it may be used by recipients. These limits, expressed in FIFRA section 10(g), were imposed by Congress to protect registrants of pesticides in the U.S. against unauthorized use of their health and safety data by competitors to obtain pesticide registrations in foreign countries. (Those who obtain pesticide registrations in foreign countries are called "Foreign or Multinational Pesticide Producers" in section 10(g), abbreviated "Multinational" herein.)

FIFRA section 10(g) therefore requires EPA to avoid knowingly disclosing this information to a Multinational, or to agents or employees of a Multinational. Numbered paragraphs (1) and (2) of the "Affirmation of Non-Multinational Status" are designed to allow EPA to implement this requirement. Section 10(g) also requires each person who seeks to obtain this information from EPA to affirm that he or she does not intend to, and will not purposefully or negligently deliver (or cause delivery of) the information to a Multinational. Numbered paragraph (3) of the Affirmation is designed to allow EPA to implement this requirement. The remainder of this explanation is provided to further assist you in understanding section 10(g) and the implications of signing the Affirmation.

Section 10(g) makes it unlawful for a person requesting registrant-submitted pesticide information to furnish a false or misleading Affirmation of Non-Multinational Status to EPA; such violations are punishable under 18 USC 1001. Thus, for example, it is EPA's position that it would be unlawful for a person to execute the Affirmation while having the intent to publish (or otherwise to deliver in any way to a Multinational in its entirety) a previously unpublished toxicity study submitted by a registrant. This is because the information delivered likely could be used to satisfy a data requirement imposed by a foreign country as a condition of producing, distributing, selling, shipping, or using the product in that country. However, section 10(g) would not restrict an intent to publish or deliver brief excerpts from such information or summaries or critiques of it, identified as such, since these likely would not be useful in satisfying data requirements imposed by other countries. Of course, the prohibition does not apply to publication or delivery of information that is already freely available to the public (such as data that has been published) or to publication of data with the consent of the registrant that submitted it to EPA.

It is less clear whether the statute imposes any other duties or prohibitions on persons once they have received the information from EPA, and EPA has taken no position on this issue. Some firms who have submitted data to EPA, however, argue vigorously that section 10(g) governs the use or disclosure of data by persons who have obtained it from EPA. Accordingly, you should be aware that if your disclosure of data obtained by you from EPA results in its becoming available to a Multinational (in a form that enables it to be used to satisfy foreign data requirements), it is possible that the firm that submitted it to EPA may seek relief against you in court, and may argue in court that you were required by section 10(g) to guard against disclosing data to a Multinational or allowing such disclosure. You may therefore wish to take steps to avoid inadvertent disclosure of the data by keeping it in a secure place. Before publishing it or deliberately disclosing it to others, you may wish to seek legal advice.

AFFIRMATION OF NON-MULTINATIONAL STATUS

This affirmation is required by the EPA interim procedures to implement Section 10(g) of the Federal Insecticide, Fungicide, and Rodenticide Act. Section 10(g) is reproduced on the reverse side for your reference.

I have requested access to information submitted by an applicant or registrant under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) to the Environmental Protection Agency. I hereby affirm that:

(1) I am not a business, or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States; and I am not an employee or agent of any such business or entity;

(2) I do not seek access to the information for purposes of delivering it or offering it for sale to any such business or entity or to any of its employees or agents;

(3) I will not purposefully deliver the information (or negligently cause it to be delivered) to any such entity or to any of its employees or agents.

I am aware that I may be subject to criminal penalties under 18 U.S.C. 1001 if I have made any statement of material facts knowing that such statement is false or if I willfully conceal any material fact.

Date 5/21/94 Signature Paul E. Mearell

Name Paul E. Mearell

Address 7493 E. 5 Rivers Rd., Tidewater, OR 97390

Organization Paul Mearell, Lawyer

☐ I am not requesting access on behalf of someone else.

☒ I am requesting on behalf of someone else. My Client is:

Client Card Voe Strum Organization NW Coalition for Alternatives to Pesticides

RETURN THIS FORM TO:

Public Response & Program Resources Branch (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460

For office use only:

RIN 3706-93 Date mailed MAY 10 1994

Caseworker Yenchulis (3/94)

The Federal Insecticide, Fungicide, and Rodenticide Act
as Amended

Public Law 92-516 October 21, 1972 as amended by
Public Law 94-140 November 28, 1975
and Public Law 95-396 September 30, 1978

7 USC 136

SEC. 18. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

P.L. 95-704
72 Stat. 431

“(g) *Disclosure to Foreign and Multinational Pesticide Producers.*—

“(1) The Administrator shall not knowingly disclose information submitted by an applicant or registrant under this Act to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States or to any other person who intends to deliver such data to such foreign or multinational business or entity unless the applicant or registrant has consented to such disclosure. The Administrator shall require an affirmation from any person who intends to inspect data that such person does not seek access to the data for purposes of delivering it or offering it for sale to any such business or entity or its agents or employees and will not purposefully deliver or negligently cause the data to be delivered to such business or entity or its agents or employees. Notwithstanding any other provision of this subsection, the Administrator may disclose information to any person in connection with a public proceeding under law or regulation, subject to restrictions on the availability of information contained elsewhere in this Act, which information is relevant to the determination by the Administrator with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment.

“(2) The Administrator shall maintain records of the names of persons to whom data are disclosed under this subsection and the persons or organizations they represent and shall inform the applicant or registrant of the names and affiliation of such persons.

“(3) Section 1001 of title 18 of the United States Code shall apply to any affirmation made under paragraph (1) of this subsection.