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E. OPINION

It is my opinion, and I so rule, that PR Notices 71-1, 71-3, and 71-5, involved herein, should be vacated, except where otherwise treated by specific order; and that the pertinent registrations, corrected to indicate only the essential uses defined in this action, should be restored to the same force and effect each carried just prior to said notices.

Petitioner USDA and Group-Petitioners have met their burden of proving that the labels involved here meet all the requirements of the Act. Likewise, those petitioners have proved preponderantly that the uses of DDT under their registrations do not create an unreasonable risk on balance with the benefits.

There was presented a lot of testimony, both oral and written. Much of it was pointed to a showing of the global extent of the presence of DDT. The purpose of expending so much expert opinion to make that point is somewhat obscure to me. During the hearing, an article appearing in a scientific publication (and allegedly based upon information from a source on Respondent's Counsel staff) stated that I did not understand the "subtle" case against DDT. Well, the only "subtle" aspect about the worldwide approach is the apparently assumed theory that no cause-and-effect showing is necessary to apply the global impact to the uses under the registrations at issue here.

Such limitless ambit of testimony possibly could be pertinent in a rule-making proceeding. At such a hearing all aspects of the

effects of all propensities of the compound being investigated should be explored in order to discover all facets against the adverse effects of which detailed rules and regulations should be promulgated.

But the fact is: this hearing is not a rule-making proceeding. This hearing is an adjudicatory proceeding in every sense of the word. The rights of parties are at stake; and that includes the party commonly referred to as "the public interest." All parties here have a right to know the reasons, in reasonable detail, why the registrations involved should be cancelled; which includes the right to offer all relevant and material evidence, both pro-and-con, in support of their contentions; and the right to subject opposing theories to the test of cross-examination.

The public-interest was represented here by Intervenor Secretary of Agriculture on the side of continued, limited uses of DDT, and by Intervenor Environmental Defense Fund (and its colleagues) on the side of a total ban on all uses of DDT. The Secretary has a statutory duty and responsibility to the attainment of reasonable quantities of food and fiber for all the public; and Environmental Defense Fund has assumed the vital role of representing the interests of all of the public who feel they have no spokesman for their individual concerns for the future of the natural environment.

In my opinion, no one questions the testimony that DDT is found in varied and remote places. Likewise, that its persistence is at once both boon and bane.

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During this hearing, the benefits and risks emanating from the uses of DDT were explored competently and thoroughly.

To be considered in the determination of the fate of the particular registrations in question, there has to be a preponderant showing that the present uses cause an unreasonable adverse effect.

That showing has not been made. That preponderance is the burden of the Respondent. I arrived at that conclusion by the application to this case of the rule of evidentiary burdens in any adjudicatory proceeding. In this case, the issuance of the PR Notices constituted a prima facie case for cancellation. The burden of proof was on the Petitioners to overcome that prima facie case by a preponderance of the evidence. That has been done by proving that the label-language for essential uses of DDT is adequate to accomplish the statutory purpose of the three "misbranding" sections (The first issue herein). Likewise, there has been proof that, on balance with the benefits, the present essential uses of DDT, under the registrations in question, do not create an unreasonable risk (The other issue herein).

The burden of going forward with the evidence passed to the Respondent (and to Int.-EDF, et als, insofar as they purposed to prove the case for Respondent). The burden of going forward with the production of evidence, irrespective of the number of times it shifts between the parties, does not stop until the evidentiary part of the hearing is closed. That burden was not met by Respondent. There was much evidence that reflected degrees of correlation between the presence of DDT and the phenomenon described.

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Correlation is not a meaningful finding when cause-and-effect is the required conclusion.

Although it was not in issue here, there was ample evidence to indicate that DDT is not the sole offender in the family of pesticides; and that necessary replacements would in many cases have more deleterious effects than the harms allegedly caused by DDT.

In my opinion, the evidence in this proceeding supports the conclusion that there is a present need for the essential uses of DDT; that efforts are being made to provide a satisfactory replacement for DDT; and that a co-operative program of surveillance and review can result in a continued lessening in the risks involved.

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