IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CITY OF GREENVILLE, ILLINOIS, *et al.*,	)	
	)	
Plaintiffs,	)	Case No. 10-188-JPG-PMF
	)	
v.	)	The Honorable J. Phil Gilbert
	)	
SYNGENTA CROP PROTECTION, LLC, and SYNGENTA AG,	)	
	)	
Defendants.	)	

SYNGENTA CROP PROTECTION LLC'S RESPONSE TO PLAINTIFFS' MOTION FOR AN AMENDED SCHEDULING ORDER

Under the current Scheduling and Discovery Order, depositions relating to class certification are required to be taken by August 1, 2011. (Doc. 138). Discovery on the merits continues through February 10, 2012. (*Id.*) Plaintiffs have not articulated why they will be unable to address the narrow issues related to class certification by the August 1, 2011 deadline. Indeed, contrary to the suggestion in Plaintiffs' Motion for an Amended Scheduling Order (Doc. 174) that Syngenta Crop Protection LLC ("Syngenta") has not complied with any of its discovery requests, Syngenta has in fact produced more than 4.6 million pages of documents to Plaintiffs' counsel relating to atrazine in the related state case, *Holiday Shores Sanitary District, et al. v. Syngenta Crop Protection, Inc., et al.*, 04-L-710 (Madison County, Illinois), which, under the terms of the original Scheduling and Discovery Order, need not be produced again in this matter. (Doc. 71-1 at ¶3). Syngenta has also provided responses to interrogatories in the *Holiday Shores* case and notified Plaintiffs that it will be providing its interrogatory responses and initial disclosures in this matter by May 9, 2011. It also advised Plaintiffs that it would supplement its existing document production with all remaining materials collected through the beginning of February 2010 (which are not privileged or subject to ongoing privilege review)

and offered to provide witnesses for depositions in June 2011. In light of these facts, Syngenta submits that a three-month extension of time is excessive and requests that the Court extend the deadlines relating to class certification by no more than one month.

I. PLAINTIFFS DID NOT CONFER WITH SYNGENTA REGARDING THEIR PROPOSAL TO EXTEND THE SCHEDULING ORDER

On April 26, 2011, the parties held a meet-and-confer to discuss outstanding discovery issues and to schedule depositions in this case. During that telephone conference Plaintiffs' counsel mentioned their desire to extend the scheduling order, but never proposed any particular dates or in any way suggested that they intended to file a motion to extend the scheduling order. In fact, when the subject of extension was raised, defense counsel stated that Syngenta would be willing to confer regarding the possibility of an extension. Nevertheless, two days later—and without any further consultation with Syngenta—Plaintiffs filed this Motion for an Amended Scheduling Order.

II. PLAINTIFFS' MOTION IS MISLEADING WITH RESPECT TO THE AMOUNT OF DISCOVERY THAT SYNGENTA HAS ALREADY PRODUCED AND THE DISCOVERY THAT IS NECESSARY IN ADVANCE OF THE CLASS CERTIFICATION DEADLINES

Although Plaintiffs would have the Court consider the allegations and discovery requests in this case in a vacuum, the reality is that Syngenta has been providing documents and information to Plaintiffs' counsel in the related state case—*Holiday Shores*—for a number of years. Counsel for the plaintiffs in *Holiday Shores* and this case are the same (Korein Tillery, LLC and Baron & Budd); the claims in *Holiday Shores* and this case are identical (trespass, nuisance, negligence, and strict liability); and the discovery requests in *Holiday Shores* and this case are substantially similar. The Scheduling and Discovery Order entered July 20, 2010 (Doc. 71-1), specifically addressed the overlap between discovery in this matter and the *Holiday*

Shores case. Indeed, Paragraph 3 of the Joint Report of the Parties and Proposed Scheduling Order adopted by the Court, provides:

> A related case is pending in Illinois State Court captioned *Holiday Shores Sanitary District, et al. v. Syngenta Crop Protection, Inc., et al.*, 04-L-710 (Madison County, Illinois). **In order to ensure judicial economy, Syngenta Crop Protection, Inc. will not be required to re-produce documents produced in *Holiday Shores Sanitary District.*** And upon designation of documents as responsive to requests in this matter, those documents will be deemed produced for purposes of this litigation as well. All parties will produce documents in the same electronic format as those documents are being produced in *Holiday Shores Sanitary District.* Likewise, the parties are instructed, to the extent possible, to cross-notice depositions in each matter.

(Doc. 71-1) (emphasis added). In the *Holiday Shores* matter, Syngenta has produced 585,610 documents or 4,666,598 pages relating to atrazine.[1] In light of the significant overlap between Plaintiffs' requests in this case and in *Holiday Shores*, the documents produced to date in *Holiday Shores* to are likewise responsive to the discovery requests in this case. Syngenta has also advised Plaintiffs that it will be supplementing this production with additional documents (which are not privileged or subject to ongoing privilege review) collected up through the beginning of February 2010 by May 18, 2011. With respect to interrogatory answers and initial disclosures, Syngenta advised Plaintiffs during the meet-and-confer on April 26, 2011 that Plaintiffs would receive Syngenta's answers and disclosures by May 9, 2011. Given the significant overlap between the interrogatories served on Syngenta by Plaintiffs in the *Holiday Shores* case, much of this information will be duplicative of answers previously provided to Plaintiffs. Even so, Plaintiffs will have all the responses two and one half months in advance of the current deadline for depositions in advance of the class certification briefing. Syngenta has

[1] As defense counsel advised Plaintiffs' counsel during the telephone conference on April 26, 2011, Syngenta understands that any of the documents produced in *Holiday Shores* can be used in this matter subject to the terms of the Protective Order. Syngenta has only declined to stipulate to authenticity of these documents for evidentiary purposes.

offered dates in June when its employees are available for depositions. Plaintiffs declined this offer, claiming that they been provided no discovery responses and therefore could not determine who to depose.

The August 1, 2011 deadline in the Scheduling Order relates to deadlines for depositions in advance of class certification. The legal questions relating to class certification are relatively narrow and Plaintiffs themselves are in control of the documents which establish whether they are similarly situated to all other members of the putative class. Plaintiffs have not identified any information from Syngenta that they do not already possess (or will not possess by May 18) which would be necessary for purposes of class certification. Accordingly, Syngenta respectfully submits that a three-month extension to the discovery schedule—at least insofar as it relates to class certification—is unnecessary.

III. PLAINTIFFS' DISCOVERY RESPONSES ARE WHOLLY INCOMPLETE

Plaintiffs represent in their Motion for an Amended Scheduling Order that they "timely served their responses to discovery requests and their initial disclosures" and that they have produced "more than a [*sic*] 1.14 million pages of documents." Although technically true that they timely served their responses, as Syngenta explained in detail in its letter of March 2, 2011, Plaintiffs' responses and initial disclosures are far from complete. (*See* March 2, 2011 Letter from Holland M. Tahvonen to Christie Deaton, attached as Exhibit A). In a subsequent meet-and-confer on March 14, 2011, Plaintiffs represented that they would be supplementing their initial disclosures and interrogatories. To date, Plaintiffs have not yet done so and, in fact, during the telephone conference on April 26, 2011, they indicated they would not be beginning this process for another two to three weeks.

Similarly, with respect to Plaintiffs' document production, Plaintiffs estimated during the April 26, 2011 telephone conference that they have only produced "roughly half" of the responsive documents and acknowledged that they have not completed the entire production for a single Plaintiff. Indeed, although Syngenta requested that Plaintiffs prioritize the completion of productions of documents by individual Plaintiffs who will be deposed first in order to ensure that depositions need not be taken twice, Plaintiffs refused to commit to such a proposal.

IV. CONCLUSION

Syngenta has been working in good faith to resolve the outstanding discovery issues so that the parties can meet the deadline for class certification depositions in accordance with the discovery schedule. It is disappointing, therefore, that Plaintiffs, rather than propose new deadlines to Syngenta, simply filed this motion. Although Syngenta does not object to a one-month extension of the deadlines in this case, it respectfully submits that three months is excessive given the limited nature of the class certification issues and the status of discovery in this case. Syngenta therefore proposes that the Court extend the deadlines as set forth in the Proposed Amended Scheduling Order (which extends all dates by one month) (attached as Exhibit B).

Dated: May 3, 2011

Respectfully submitted,

s/ Michael A. Pope
By One of Its Attorneys

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	)	
SYNGENTA CORP PROTECTION, INC., and SYNGENTA AG,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2011, I electronically filed the foregoing Response to Plaintiffs' Motion for an Amended Scheduling Order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record.

Dated: May 3, 2011

s/ Michael A. Pope

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Exhibit A

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

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March 2, 2010

VIA EMAIL AND U.S. MAIL

Ms. Christie Deaton
Korein Tillery
One US Bank Plaza
505 North 7th Street, Suite 3600
St. Louis, Missouri 63101

Re: *City of Greenville et al. v. Syngenta Crop Protection, Inc. et al.*, Case No. 10-cv-188

Dear Christie:

The purpose of this letter is to address several deficiencies in Plaintiffs' responses to Syngenta Crop Protection LLC's ("Syngenta") First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents. We would like to set up a formal meet-and-confer to address these deficiencies.

I. The American Water Company Plaintiffs Have Not Responded Fully to the Discovery Requests

As an initial matter, we understand that five of the named Plaintiffs are subsidiaries of American Water Company (Illinois-American Water Company, Indiana-American Water Company, Missouri-American Water Company, Iowa-American Water Company, and Ohio-American Water Company). According to the allegations in the First Amended Complaint, each of these companies either owns and/or operates a number of water systems. (*See* Compl. ¶¶ 21-25). Plaintiffs have responded to Syngenta's discovery requests on behalf of some of these systems, but not others. For example, in the First Amended Complaint, Plaintiffs allege that Illinois-American Water Company has 12 districts, including Alton, Cairo, Champaign, Chicago-Metro, Interurban (which includes Belleville, East St. Louis, and Granite City), Lincoln, Pekin, Peoria, Pontiac, Sterling, Streator and South Beloit.[1] Yet, in responding to Interrogatories #1-3, Plaintiffs did not provide any specific information relating to a number of the districts

[1] Information on Illinois-American Water's website suggests that there are other systems not identified in Plaintiffs' First Amended Complaint within Illinois-American (*i.e.*, Alpine Heights, Arbury, Arcola, Arrowhead, Central States, Chicago Suburban, Country Club, Dana-Long Point-Reading-Ancona-Rural Water District, DuPage, Fernway, Hollis, Homer Township, Liberty Ridge East, Liberty Ridge West, Lincoln, Lombard, Midwest Palos, Moreland, Nettle Creek, Ridgecrest, River Grange, Rollins, Saunemin, Terra Cotta, Valley Marina, Valley View, Waycinden, and West Suburban).

specifically referenced in the First Amended Complaint (*i.e.*, Champaign, Chicago-Metro, Belleville, Lincoln, Pekin, and South Beloit), or others that are apparently owned and/or operated by Illinois-American Water Company. This is true for the other American Water Company subsidiaries as well.

Accordingly, we request that you: (1) specifically identify each system that is owned and/or operated by the five American Water Company subsidiaries and (2) either explain why you have not provided responses to Syngenta's discovery requests for that system or agree that you will supplement your response as to that system by no later than March 11, 2011.

II. Plaintiffs' Responses to Syngenta's Interrogatories and Initial Disclosures are Incomplete and Non-Responsive

Plaintiffs have also failed to provide substantive answers to many of Syngenta's Interrogatories and information required under Federal Rule of Civil Procedure 26 in their Initial Disclosures. Instead, they provided blanket responses, devoid of any of the detail called for by the request and required by the Federal Rules. These responses are insufficient.

For example, in Interrogatory #4, Syngenta requested that each Plaintiff identify and describe each item of damage that it seeks in the litigation, along with support for all amounts claimed. Federal Rule of Civil Procedure 26(a)(1)(A)(iii) also requires Plaintiffs to provide this type of information in their Initial Disclosures. Although some Plaintiffs have generically identified categories of alleged damages (*i.e.*, PAC maintenance costs, watershed planning and other maintenance costs associated with treatment of atrazine in their raw water), they have failed to identify any specific damage amounts allegedly incurred as a result of Syngenta's conduct for each of these categories. (*See, e.g.*, Cameron's Resp. No. 4). Other Plaintiffs have not even included generic categories of damages, much less specific damage amounts. (*See, e.g.*, Carbondale Resp. No. 4). Plaintiffs claim that "discovery is continuing and ongoing" and that they will "disclose expert opinions and information supporting such expert opinions at the appropriate time in accordance with the Federal Rules of Civil Procedure or any scheduling order entered by the Court." Information regarding the alleged damages, however—to the extent it exists—is entirely within Plaintiffs' control and should be readily accessible. In order for Syngenta to conduct meaningful discovery, this information must be provided in advance of depositions. Accordingly, we ask that you supplement the response by no later than March 11, 2011.

Similarly, Plaintiffs' responses to Interrogatory #5, which asks Plaintiffs to identify each person with whom they have communicated at any time about whether atrazine poses a risk to human health below 3 ppb, as well as the date of such communications and the identity of any individuals involved in it, are devoid of meaningful responses. Plaintiffs answer that they filed this suit and provided the information in the publicly filed complaint and "may have discussed the existence and/or substance of lawsuit during public meetings" (emphasis added). This

answer is both non-responsive and vague. Because this information is within the possession of the Plaintiffs, we ask that you supplement this response by March 11.

In Interrogatory #7, Syngenta asked each Plaintiff to identify what actions it took to remove atrazine from its raw or finished water, and when, why and by whom the actions were taken. Plaintiffs failed to address the portions of the Interrogatory requiring them to provide specific information regarding the timing, reasons and person responsible for the various actions. Accordingly, we request that you provide complete responses to this Interrogatory by March 11.

In Interrogatory #8, Syngenta requested that each Plaintiff fully describe how and when it purportedly became aware that atrazine is unsafe at levels below 3 ppb, the human health problems it contends result from these levels of atrazine, and what scientific or medical support on which it will rely to substantiate each alleged human health problem. Each Plaintiff objected to this Interrogatory on grounds that it was premature and subject to expert testimony and further responded that it did not have "sufficient information to answer." We fail to see how this can be the case. Information regarding how and when each Plaintiff became aware of alleged safety issues with atrazine are critical facts in this litigation and are uniquely within the possession of each Plaintiff. If a water district had no concerns about the safety of atrazine at levels below 3 ppb at the time that they incurred the costs associated with its removal, then it is more likely that the removal of non-atrazine products or reasons other than atrazine-related health risks drove the decision to incur the costs. There is no need for expert testimony or opinion to explain when and how a Plaintiff came to know a particular fact. Accordingly, Plaintiffs' objections to this request lack foundation and should be supplemented.

In responding to Interrogatories #9, 10 and 11, Plaintiffs refer to documents that were to be produced in response to Syngenta's First Set of Requests for Production. If such documents have indeed been produced, you must identify, by bates number, each document to which you refer in these responses.

III. Plaintiffs' Responses to Syngenta's First Request for Documents

A. Plaintiffs' Objections to the Production of Certain Financial Documents Based on Relevance Grounds Lack Merit

Plaintiffs object to a number of Syngenta's requests for financial documents because they claim that those requests seek information that is irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence. (*See* Responses to Interrogatory Nos. 7, 29, and 52). These objections are unfounded.

Request Nos. 7, 29 and 52 generally seek documents regarding costs incurred by the Plaintiffs relating to water treatment and processing, financial documents that evidence these types of expenditures, and applications for funding. Specifically:

- Request No. 7 seeks documents that "evidence or relate to: (a) any labor, equipment, or material and all other costs incurred by you for whatever reason to process raw water into finished drinking water during each calendar year during the alleged class period and (b) any labor, equipment, material, and all other costs incurred by you to remove atrazine from your raw or finished water during each calendar year during the alleged class period."

- Request No. 29 seeks documents relating to "any loan or funding application and/or loan or funding received by you from any person at any time during the alleged class period relating to any aspect of the construction, operation or maintenance of your facility, including, but not limited to, installation or use of filtering equipment or materials."

- Request No. 52 calls for the production of documents regarding "any applications for and/or the actual receipt of any funding or grants from any person, which relate in any way to your compliance with or attempt to comply with any provisions of the Safe Drinking Water Act during the alleged class period."

Plaintiffs object to these requests to the extent that they do not directly relate to atrazine contamination. Evidence that Plaintiffs incurred costs for the removal of chemicals and contaminants other than atrazine, however, is clearly relevant to the allegations in this case. Indeed, to the extent that Plaintiffs invested in GAC or PAC or incurred other costs for removing chemicals or contaminants other than atrazine from its water or sought funding for these types of projects, evidence of these expenditures would relate directly to questions of causation and damages. As you know, Rule 26(b)(1) allows parties to obtain discovery into any non-privileged matter "that is relevant to any party's claim or defense." Because the financial materials that Syngenta has requested are relevant to the claims and defenses in this case, they should be produced.

B. Plaintiffs' Objections Based on Privilege

Plaintiffs also object to a number of requests based on claims of attorney-client privilege, attorney work product doctrine, and/or consulting expert privilege, including in response to Request Nos. 5, 8, 32, 49, 50, 51, and 56. To the extent that Plaintiffs withhold or do not disclose an otherwise responsive document based on claims of privilege, please confirm that each Plaintiff will provide Syngenta with a privilege log identifying information to support these privilege claims by March 11, 2011 as outlined in Instruction No. 2 of Syngenta's First Set of Requests for Production of Documents.

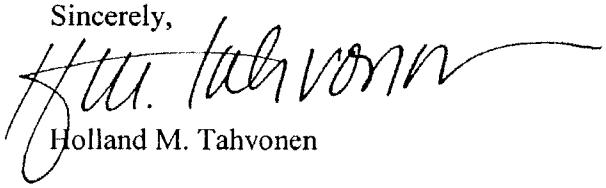
With respect to Plaintiffs' Responses to Document Request No. 8, we would like to confirm that Plaintiffs will produce all non-privileged, responsive documents. In that Request, Syngenta asked for:

> Any and all documents relating to the selection process or actual selection of any consultant, engineer, or other person whose services or expertise you utilized in connection with the facility at any time during the alleged class period pertaining in any way to (a) removing atrazine from your raw or finished water; (b) improving or enhancing to any extent the quality of the finished drinking water that you provided to any consumer, customer, or purchaser; (c) using granular activated carbon (GAC) for any purpose; (d) using powder activated carbon (PAC) for any reason; (e) designing a filtration process or system and (f) handling complaints about the quality of the finished drinking water that you provided.

Each Plaintiff objected on privilege grounds, but indicated that it would produce "documents relating to the selection process and actual selection of consultants or persons whose services or expertise Plaintiff utilized in connection with addressing the atrazine problem." Syngenta's request, however, was not limited to documents related to consultants whose services were used exclusively for issues relating to atrazine. Although we do not expect Plaintiffs to produce privileged documents (though we do expect that documents withheld on privilege grounds will be included on a log), we want to ensure that Plaintiffs do not intend to limit their production only to atrazine-related documents. As suggested above, documents that relate to Plaintiffs' use of PAC, GAC, or other filtering products for purposes other than atrazine are clearly relevant to this litigation, as are documents regarding the design of the filtration process and Plaintiffs' water quality more generally. Accordingly, please confirm that each Plaintiff will be producing non-privileged documents that are responsive to Request No. 8.

In order to resolve these issues, we would like to schedule a telephone conference on March 11, 2011. I am available at any time that day. Please let us know a time when you are available for a call.

Sincerely,



Holland M. Tahvonen

cc: Michael Pope
Mark Suprenant
Kurt Reeg
Chris Murphy
Stephen Tillery