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

CITY OF GREENVILLE, ILLINOIS, et al., Individually and on behalf of all others similarly situated, Plaintiffs, v. SYNGENTA CORP PROTECTION, INC., and SYNGENTA AG, Defendants.	)	Case No. 10-188-JPG The Honorable J. Phil Gilbert

DEFENDANT SYNGENTA CROP PROTECTION, LLC'S RESPONSE IN OPPOSITION TO PLAINTIFFS' RULE 56(d) MOTION TO DEFER CONSIDERATION OF SYNGENTA'S MOTIONS FOR SUMMARY JUDGMENT

Syngenta Crop Protection, LLC ("Syngenta") filed motions for summary judgment on the claims of Plaintiffs City of Greenville ("Greenville") and City of Marion ("Marion") because the undisputed material facts demonstrate that those plaintiffs did not suffer any injury-in-fact sufficient to confer standing to sue. (Dkt. 260, 263.) In response, Plaintiffs filed a motion pursuant to Federal Rule of Civil Procedure 56(d) to forestall the Court's consideration of Syngenta's motions for summary judgment. Plaintiffs' Rule 56(d) motion should be denied because there is no just reason for the Court to delay ruling on the standing of Greenville and Marion to bring this lawsuit.

The doctrine of standing, "an essential and unchanging part of the case-or-controversy requirement of Article III" of the U.S. Constitution, requires a plaintiff to demonstrate that it "suffered an 'injury-in-fact' – an invasion of a legally protected interest." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citation omitted). In the context of the present case, this Court ruled that a plaintiff water provider can establish an injury-in-fact only by demonstrating

that the costs it seeks to recover were incurred to respond to a "specific, imminent threat of atrazine" in its water supply in excess of the statutorily-prescribed Maximum Contaminant Level ("MCL") for atrazine, which is three parts per billion on an average annualized basis. (Dkt. 106 at 2, 8.) Syngenta moved for summary judgment because all of the available raw and finished water data for Greenville and Marion conclusively demonstrates that there are negligible amounts of atrazine in the water that do not even pose a remote risk of an MCL violation, let alone an imminent risk. Those plaintiffs should not be permitted to pursue a motion for class certification when they have no standing to sue.

In their Rule 56(d) motion, Plaintiffs ask the Court to delay ruling on Syngenta's motions for summary judgment for two primary reasons. First, they claim that additional discovery *may* lead to additional raw water data that *may* show that Greenville and Marion have suffered an injury-in-fact. Second, they claim that the motions for summary judgment should be postponed until the close of expert discovery because Plaintiffs' experts ultimately will opine that *any* level of atrazine in Plaintiffs' water supplies establishes an injury-in-fact (even if it does not pose a risk of an MCL violation) despite this Court's clear ruling to the contrary.

Plaintiffs are wrong on both points, and their Rule 56(d) motion should be denied. Plaintiffs should not be permitted to take additional discovery in a speculative effort to find more raw water data because they should have had evidence sufficient to demonstrate that they suffered an injury-in-fact before filing suit. Because the crux of Plaintiffs' claims is that they were injured by having to monitor and remove atrazine from their water supply, Plaintiffs should already have in their own possession atrazine testing data sufficient to support those claims. Further, Plaintiffs' desire to take additional third-party discovery to find raw water data that *may* exist and that *may* contradict the parties' own existing raw water data is a highly speculative

fishing expedition. Finally, the Court should not delay ruling on Syngenta's motions for summary judgment while Plaintiffs attempt to develop expert testimony that this Court's standard for standing was wrong.[1]

ARGUMENT

I. Plaintiffs' Rule 56(d) Motion Should Be Denied.

The party seeking the protection of Rule 56(d) "must make a good faith showing that it cannot respond to the [summary judgment] movant's affidavits. The rule requires the filing of an affidavit stating the reasons for a claimant's inability to submit the necessary material to the court…[and the] party's request for a continuance must 'clearly set[] out the justification for the continuance.'" *Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1058 n.5 (7th Cir. 2000). A party, however, may not seek a continuance where it has "made only vague assertions that further discovery would develop genuine issues of material fact" or where the discovery sought would "amount[] to nothing more than a fishing expedition." *Grundstad v. Ritt*, 166 F.3d 867, 873 (7th Cir. 1999); *Grayson v. O'Neill*, 308 F.3d 808, 817 (7th Cir. 2002); *see also Davis v. G.N. Mortgage Corp.*, 396 F.3d 869, 885 (7th Cir. 2005) ("The only reason to believe that additional, relevant evidence would materialize…is [the plaintiff's] apparent hope of finding a proverbial 'smoking gun' . . . This, however, is based on nothing more than mere speculation and would amount to a fishing expedition, which is an entirely improper basis for reversing a district court's decision to deny a Rule [56(d)] motion.").

[1] Syngenta informed Plaintiffs' counsel that Syngenta had no objection to Plaintiffs' alternative request that the Court grant Plaintiffs an extension of two weeks (until January 17, 2012) to respond to Syngenta's motions for summary judgment. (Dkt. 268 at 6.) Syngenta also agreed to a subsequent request from Plaintiffs' counsel for an extension until January 31, 2012 for Plaintiffs to respond to the motions for summary judgment.

Plaintiffs' Rule 56(d) motion should be denied because Plaintiffs have provided only vague assertions that additional discovery *may* lead to more raw water data for Greenville and Marion. In support of their motions for summary judgment, Syngenta attached all of the available raw and finished water data that was available to Greenville, Marion and Syngenta. It is pure speculation that any third party would have any additional raw water data for the Greenville and Marion water sources that were not already in the possession of Greenville and Marion.

A. Plaintiffs Have or Should Have Had All Relevant Atrazine Testing Data For Greenville and Marion.

Plaintiffs argue that they cannot respond to the motions for summary judgment at this time because they want additional discovery of any raw water data for their own water sources. (Dkt. 268 at 3.) They first complain that they need more time to test their own raw water sources. (*Id.*) They then argue that Syngenta failed to produce all relevant atrazine testing data in Syngenta's possession, custody or control until recently. (*Id.*) They also state that they are awaiting responses to Freedom of Information Act ("FOIA") requests that they served on the Illinois Environmental Protection Agency ("IEPA") and Kansas Department of Health and the Environment ("KDHE") after Syngenta filed its motions for summary judgment. (*Id.* at 4.) As explained below, none of these assertions is sufficient to justify a postponement of the briefing schedule on Syngenta's motions for summary judgment.

1. Plaintiffs Should Not Be Permitted to Endlessly Continue to Test Their Own Water Sources in the Hope that They Find Something to Give Them Standing to Sue.

Plaintiffs ask this Court to delay ruling on Syngenta's motions for summary judgment so that Plaintiffs can continue to test their water sources for raw water data that may give them standing to sue. (Dkt. 268 at 3.) Notably, while admittedly testing their raw water sources "over

the past year," Plaintiffs failed to come forward with any evidence of raw water samples that posed a risk of an MCL violation to justify continued sampling. If any of these raw water samples had come even close to posing an imminent risk of an atrazine violation, Plaintiffs surely would have produced those results to support their Rule 56(d) motion.[2] Pure speculation that additional discovery may reveal facts to respond to Syngenta's motions for summary judgment is insufficient to support a Rule 56(d) motion, especially here where the discovery sought is already in Plaintiffs' control.

Indeed, Plaintiffs' respective Rule 30(b)(6) witnesses readily admitted that they are not aware of any raw water testing data demonstrating that Greenville or Marion is at an imminent risk of an MCL violation. Greenville's witness testified:

> Q: And to your knowledge, based on the 32 years you've been at Greenville, has there ever been an MCL violation for Greenville's water for atrazine above three parts per billion?

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[2] Plaintiffs state that they will produce all of their own testing data when they produce their expert reports in July of 2012. In fact, Plaintiffs have repeatedly refused to produce their raw water data on the grounds that it is protected by attorney work product. (*See* Kjellin Dep. at 126:9-127:2, attached as Exhibit A; Leidner Dep. at 43:13-23; 84:1-86:4; 126:13-18, attached as Exhibit B.) Plaintiffs should not be permitted to use the potential existence of this raw water testing data as a sword to defeat or delay Syngenta's motions for summary judgment, while at the same time shielding it from discovery as attorney work product. Regardless, it is well-established that the data itself (unlike the attorneys' mental impressions of the data) is not attorney work product. *See, e.g., Southern Scrap Material Co. v. Fleming*, 2003 U.S. Dist. LEXIS 10815, *64 (E.D. La. June 18, 2003) (holding that the raw test results from air, water, soil, and dust samples are fully-discoverable "factual matters" that do not fall within the work product doctrine); *Andritz Spout-Bauer v. Beazer East*, 174 F.R.D. 609, 634 (M.D. Penn. 1997) (holding that, "[i]n the context of environmental claims, factual reports and compilations, such as…tables compiled from testing done to determine the contaminants present at the site…are not protected from disclosure as work product"); *In re: E.I. du Pont de Nemours and Company*, 918 F. Supp. 1524, 1548 (M.D. Ga. 1995), *rev'd on other grounds*, 99 F.3d 363, 373 (11th Cir. 1996) (finding that test results generated during the pendency of litigation that measured soil and water contamination were "*facts* . . . not protected by any privilege, be it attorney-client or the work product doctrine") (emphasis in original). This is particularly true here because the quality of the raw water samples may degrade before the samples are ever produced to Syngenta.

A: Finished water, no.

* * *

Q: But in your review in preparation for this deposition, do you know of any raw water sample where the MCL for atrazine was exceeded?

A: No.

(Leidner Dep. Tr. 41:9-13; 47:15-18.) Similarly, Marion's witness testified:

Q: The City of Marion, Kansas, has never had a detection of atrazine in excess of three parts per billion in its finished water, has it?

A: That would be correct as far as I know.

Q: In any of the raw water testing that's been done by the City of Marion, has there ever been a detection above three parts per billion for atrazine?

A No.

(Fredrickson Dep. Tr. 99:12-24, attached as Exhibit C.)

If Plaintiffs are unable to come forward with any of their own raw water testing data to establish an injury-in-fact, they should not be granted any more time to continue searching for something they should have obtained before filing suit.

2. Syngenta Has Already Produced All of the Water Monitoring Data in Its Possession, Custody or Control.

Plaintiffs do not dispute that Syngenta has already produced or granted Plaintiffs access to all of the atrazine testing data that Syngenta possesses. Syngenta has already produced its water monitoring documents and data in response to document requests served by the plaintiffs in the *Holiday Shores Sanitary District v. Syngenta Crop Protection, Inc.* litigation (Madison County Circuit Court Case Number 2004-L-710), including producing documents in response to Plaintiffs' Request for Production 16, which sought "all documents that…evidence any monitoring or testing programs done by you…that monitored water resources for the presence of atrazine…" (Defendant Syngenta Crop Protection, Inc.'s Objections and Responses to Plaintiffs'

First Request for Production, at 21, attached as Exhibit D.) Plaintiffs admit that this data was produced in May of 2011. (Dkt. 268 at 3.)

Plaintiffs argue that they only recently obtained direct access to Syngenta's internal, comprehensive water monitoring database, which may contain additional atrazine testing data not already produced to Plaintiffs. First, underlying data from the database was previously produced to Plaintiffs in May of 2011. Second, all of the data from the database for Greenville and Marion was attached as exhibits to the motions for summary judgment. (*See*, *e.g.,* Dkt. 261 at 4-5; 261-4, 261-5, 261-6, 261-7; Dkt. 264 at 4-5; Dkt. 264-3, 264-4, 264-7, 264-8, 264-9, 264-10, 264-11.) Third, Plaintiffs do not dispute that Syngenta has agreed to provide them direct access to the database. (Dkt. 268 at 4.) Accordingly, Plaintiffs have (and have had for some time) all of the data they need to respond to the motions for summary judgment. No further delay is justified.

Plaintiffs complain that Syngenta has produced primarily finished (treated) water testing results, as opposed to raw (untreated) testing results, for Greenville and Marion. (Dkt. 268 at 2-3.) This contention is entirely irrelevant because, as discussed above, Syngenta has already produced all of the water testing data in its possession, custody or control – regardless of whether it is raw or finished water data. In fact, the limited amount of available raw water data for Greenville and Marion actually undermines Plaintiffs' claims in this case and supports Syngenta's motions for summary judgment. A community water system is only required to test its *finished* water, not its raw water, for compliance with the Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.* If Greenville and Marion had truly been concerned at any time as to the atrazine level in their raw water, they would have voluntarily done regular raw water testing, which neither of them ever did. The absence of raw water data for Greenville and Marion indicates that

Greenville and Marion did not perceive any risk of an MCL violation. Regardless, Plaintiffs do not claim that there is any other raw water data that Syngenta failed to produce; consequently, they do not need any additional time for discovery.

3. Plaintiffs' FOIA Requests Are Untimely and Purely Speculative.

Plaintiffs apparently do not possess any raw water data (other than the data that was attached to Syngenta's motions for summary judgment) to respond to Syngenta's motions for summary judgment. Accordingly, in response to the motions, they served FOIA requests on IEPA for raw water data for Greenville and on KDHE for raw water data for Marion. (Dkt. 268 at 4.) These FOIA requests, to which a response may not be forthcoming for several months at least, are a transparent ploy to delay summary judgment. Plaintiffs could have (and should have) served these FOIA requests before filing suit, or at least during the last year of discovery in this case. Summary judgment should not be delayed to allow Plaintiffs to seek new discovery that they could have taken at any time from these public agencies. More importantly, Plaintiffs failed to present any facts to suggest that either one of these agencies would have any raw water atrazine testing data, especially where Plaintiffs themselves do not have the data. Such fishing expeditions are insufficient to support a Rule 56(d) motion. *See Davis*, 396 F.3d at 885.

B. This Court Should Not Delay Briefing on the Motions for Summary Judgment in Order for Plaintiffs to Prepare an Expert Report that Concludes that This Court's Standing Analysis Was Wrong.

In denying Syngenta's motion to dismiss for lack of standing, this Court held that Plaintiffs must demonstrate at the summary judgment stage and at trial that they are or were subject to an "imminent threat" of atrazine in excess of the MCL in order to have standing to sue in this case. (Dkt. 106 at 8-9.) The Court stated that Plaintiffs must demonstrate that the costs they seek to recover must have been or will be "necessary" in order to satisfy their "statutory

obligation [under the MCL] to provide potable water," not to serve some other "lesser, though laudable, goal," such as filtering atrazine to a non-detect level. (*Id.*)

Despite this Court's clear directive on the evidence that would be needed by Plaintiffs to survive summary judgment, Plaintiffs now ask the Court to delay these proceedings so Plaintiffs can prepare and submit a report from an expert who will opine that "voluntary treatment" of atrazine at "any level" below the MCL constitutes an injury-in-fact sufficient to confer standing. (Dkt. 268 at 4-5.) The law of the case doctrine precludes Plaintiffs from relying on such expert testimony to establish that atrazine at "any level" constitutes an injury-in-fact. (Dkt. 106 at 8.) This Court should not delay briefing on Syngenta's motions for summary judgment while Plaintiffs prepare an expert report which concludes that this Court's standing analysis was wrong.

C. The Current Posture of the Case Does Not Warrant Delaying a Ruling on Syngenta's Motions for Summary Judgment.

Plaintiffs offer three other purported reasons why the Court should delay ruling on Syngenta's motions for summary judgment: (1) Syngenta has filed a motion to dismiss Plaintiffs' declaratory relief count; (2) Plaintiffs have not yet deposed Syngenta's executives; and (3) the case will continue regardless of whether the Court grants Syngenta's motions. (Dkt. 268 at 5-6.) None of these purported reasons for delay has merit.

First, the fact that Syngenta has filed a motion to dismiss Plaintiffs' declaratory judgment count should not delay this Court from ruling on the identical arguments made in support of the summary judgment motions. The identical, purely legal argument that was raised in Syngenta's motion to dismiss Plaintiffs' declaratory judgment claims was incorporated into Syngenta's motions for summary judgment because there has not yet been a ruling on the motion to dismiss. The Court's ruling on the declaratory judgment claim in the motion for summary judgment will

apply equally to the motion to dismiss (and vice versa); consequently, there is no reason to await a ruling on the motion to dismiss.

Second, the fact that Plaintiffs have not yet deposed Syngenta's executives is not a valid basis to delay summary judgment. (Dkt. 268 at 5.) In order to overcome Syngenta's motions for summary judgment, Plaintiffs must show that Greenville and Marion are or were subject to an imminent threat of an MCL violation. (Dkt. 106 at 8.) Plaintiffs failed to provide any factual or logical basis to explain how the depositions of Syngenta's executives could possibly reveal any raw water data for Greenville and Marion's water sources that Greenville and Marion themselves do not possess or that Syngenta has not already produced.

Finally, this Court should reject Plaintiffs' argument that the Court should not rule on Syngenta's motions for summary judgment because the motions will not be dispositive of the entire case. (Dkt. 268 at 5.) Syngenta should not be forced to expend resources to continue defending the merits of claims brought by parties who lack standing to sue. Further, if Greenville and Marion lack standing to sue, Syngenta should not have to address the adequacy of these plaintiffs as class representatives at the class certification stage of this case.

CONCLUSION

For the foregoing reasons, Syngenta Crop Protection, LLC respectfully requests that this Court deny Plaintiffs' Rule 56(d) Motion to Defer Consideration of Syngenta's Motions for Summary Judgment.

Dated: December 23, 2011

Respectfully submitted,

s/ Christopher M. Murphy
By One of its Attorneys

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

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record.

Dated: December 23, 2011

s/ Christopher M. Murphy

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EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF ILLINOIS
3
4 CITY OF GREENVILLE,)
ILLINOIS, ET AL.,)
5)
Plaintiffs,)
6) Civil No.
vs.)
7) 10-188-JPG
SYNGENTA CROP PROTECTION,)
8 LLC, and SYNGENTA AG,)
)
9 Defendants.)
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15 VIDEOTAPED DEPOSITION OF DOUGLAS KJELLIN
16 TAKEN ON BEHALF OF THE DEFENDANTS
17 JUNE 28, 2011
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24
25 Job No. CS331374

1 atrazine monitoring and the levels that have been
2 experienced by the City of Marion at any time?
3 A Yes.
4 Q Can you tell me if the City of
5 Marion's ever had an atrazine level that exceeded
6 the three parts per billion MCL for atrazine in
7 its finished drinking water?
8 A Not in its finished drinking water.
9 Q City of Marion doesn't monitor its
10 raw water. It doesn't sample it, does it?
11 A Yeah, we sample raw and finished
12 water.
13 Q How often do you sample raw water?
14 A You'd have to ask Marty
15 Fredrickson. I don't know.
16 Q Well, the reason I ask is because I
17 have looked for raw water samples in all the
18 documents that have been produced to us, and I
19 haven't found any.
20 MR. McDOUGAL: Yeah, and so that
21 we're clear on that, there -- there has been some
22 sampling that has occurred at the request of
23 counsel and that for which a privilege would
24 attach, and that may be -- I don't know whether
25 that's -- that's what is causing the confusion,

1 but there has been some in that regard. I'm not
2 aware of any other, though.
3 Q (BY MR. REEG) Exclusive of what
4 your counsel just said, are you aware of any raw
5 water sampling done by the City of Marion for
6 which the sample results exist?
7 A That is a question for Marty
8 Fredrickson.
9 Q You want to turn to page 10 of this
10 Power Point?
11 A Okay.
12 Q This talks about potential health
13 effects of atrazine, right?
14 A Yes, it does.
15 Q After you went to this joint
16 meeting and saw this Power Point, what did the
17 City of Marion do to investigate potential health
18 effects of atrazine in its drinking water?
19 A I was not privy to any of that
20 discussion if there was any -- any research that
21 was done.
22 Q Well, you didn't do any yourself;
23 is that right?
24 A Only before concerning the internet
25 research.

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF ILLINOIS
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4 CITY OF GREENVILLE,)
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6) Civil No.
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7) 10-188-JPG
SYNGENTA CROP PROTECTION,)
8 LLC, and SYNGENTA AG,)
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9 Defendants.)
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14 VIDEOTAPED DEPOSITION OF JEFF LEIDNER
15 TAKEN ON BEHALF OF THE DEFENDANTS
16 JULY 8, 2011
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25 Job No. CS341543

1 Q Has Greenville ever communicated
2 with the IEPA or EPA to ask that the MCL for any
3 constituent be increased?
4 A No.
5 Q All right. There was not a
6 violation for atrazine in the 2000 report; is
7 that correct?
8 A Correct.
9 Q And to your knowledge, based on the
10 32 years you've been at Greenville, has there
11 ever been an MCL violation for Greenville's water
12 for atrazine above three parts per billion?
13 A Finished water, no.
14 Q Well, have you ever tested the raw
15 water?
16 A At one time the EPA did, but they
17 cut that out.
18 Q When did the EPA test the raw
19 water?
20 A I believe that it was in the '90s.
21 Like '98.
22 Q And what was the EPA testing raw
23 water for at that time?
24 A Constituents.
25 Q Were there any constituents in

1 of where raw water samples were taken for
2 Greenville?
3 A I would have to look back. I just
4 forget when exactly they started that, but it
5 sounds correct.
6 Q Well, did you look for that in
7 preparation for this deposition?
8 A Yes, I looked at a number of
9 things.
10 Q But you don't have an answer to
11 that question?
12 A I believe it was '98.
13 Q All right. And has there been any
14 other raw water testing since 1998?
15 MR. McDOUGAL: Again, I don't want
16 to interrupt you, but we're getting into the
17 whole work product issue. Can I just have a
18 running objection on that attorney work product?
19 MR. CERISE: Yeah, but I'm going to
20 continue to ask him questions, and you may want
21 to step in or not, so.
22 MR. McDOUGAL: Okay. Fair enough.
23 A No.
24 Q (BY MR. CERISE) There's no raw
25 water testing going on right now at Greenville?

1 please?

2 MR. CERISE: Could you read that

3 back, please?

4 THE REPORTER: "You have never seen

5 any information that in the history of Greenville

6 water treatment plant that the MCL for atrazine

7 in finished water has been exceeded. Correct?"

8 A Correct.

9 Q (BY MR. CERISE) Now, you qualified

10 it with finished water. Is there some knowledge

11 that you may have that the MCL for atrazine was

12 exceeded in a raw water sample?

13 A Not to my knowledge. We've got

14 close to the MCL.

15 Q But in your review in preparation

16 for this deposition, do you know of any raw water

17 sample where the MCL for atrazine was exceeded?

18 A No.

19 Q Has Greenville ever performed any

20 kind of sampling to determine how much, if any,

21 atrazine is being removed from its water?

22 MR. McDOUGAL: Objection to the

23 extent it calls for attorney work product. Same

24 objections as I previously lodged. You can

25 answer, though.

1 Is Greenville currently taking any
2 samples at the direction of its counsel or an
3 outside consultant?
4 MR. McDOUGAL: Same objection as
5 earlier in terms of consulting expert and work
6 product privilege information. Answer yes or no.
7 A Yes.
8 Q (BY MR. CERISE) And are those
9 samples raw water or finished water or what?
10 MR. McDOUGAL: Same objection and
11 don't answer that question.
12 Q (BY MR. CERISE) The samples that
13 Greenville are taking at the request of its
14 counsel or an outside consultant, when did that
15 start?
16 MR. McDOUGAL: Same objection.
17 Answer a date only if you know.
18 A I don't know the date.
19 Q (BY MR. CERISE) It was after the
20 lawsuit was filed?
21 MR. McDOUGAL: Same objection. Yes
22 or no.
23 A Yes.
24 Q (BY MR. CERISE) Who was analyzing
25 those samples?

1 MR. McDOUGAL: Same objection.
2 Work product, consulting expert. Don't answer
3 that.
4 Q (BY MR. CERISE) Are split samples
5 being taken?
6 MR. McDOUGAL: Same objection.
7 Don't answer that.
8 Q (BY MR. CERISE) Are the sample
9 results being reported to the IEPA?
10 MR. McDOUGAL: Same objection.
11 Don't answer that.
12 Q (BY MR. CERISE) Are the sample
13 results being reported to anyone other than
14 counsel and your consultants?
15 MR. McDOUGAL: Same objection.
16 Don't answer that.
17 Q (BY MR. CERISE) Are any of those
18 samples being analyzed at the Greenville water
19 treatment plant?
20 MR. McDOUGAL: Same objection.
21 Don't answer that.
22 Q (BY MR. CERISE) Does Greenville
23 have the ability to analyze samples at the plant?
24 A No.
25 Q How often are samples being taken

1 per direction of counsel or an outside
2 consultant?
3 MR. McDOUGAL: Same objection.
4 Don't answer that.
5 Q (BY MR. CERISE) Are you the person
6 taking the samples at the direction of counsel or
7 an outside consultant?
8 MR. McDOUGAL: Same objection.
9 Don't answer that.
10 Q (BY MR. CERISE) Mr. Leidner, if
11 you take a sample for SOCs at the plant, say, on
12 July 8, and then take a sample for SOCs at the
13 plant on July 9, would you expect the results to
14 be the same?
15 MR. McDOUGAL: Objection,
16 speculation.
17 A I'm not for sure on that.
18 Q (BY MR. CERISE) Would you agree
19 that the constituents of the water are constantly
20 changing as the water proceeds through the water
21 treatment plant?
22 MR. McDOUGAL: Objection. Vague.
23 A I don't know.
24 Q (BY MR. CERISE) Well, if you -- if
25 Greenville took a sample of its raw water last

1 sulfate sprayed currently?
2 A No.
3 Q So how is the algae problem treated
4 now?
5 A We take it out with the clarifiers.
6 Lime softening process which burns it out.
7 Q What are the feeders to Governor
8 Bond Lake?
9 A I believe there's two tributaries.
10 Q Do you know the names of them?
11 A One is Dry Gulch, and the other one
12 escapes me at the moment.
13 Q Has Greenville been directed by its
14 counsel or any outside consultant to take samples
15 at the two tributaries?
16 MR. McDOUGAL: Same objection as
17 before, and that is attorney work product,
18 consulting expert privilege. Don't answer that.
19 Q (BY MR. CERISE) What is the volume
20 of raw water treated daily by the plant?
21 A On an average?
22 Q Yes, sir.
23 A Probably 1.5.
24 Q Million gallons?
25 A Mm-hmm.

EXHIBIT C

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15 VIDEOTAPED DEPOSITION OF MARTY FREDRICKSON
16 TAKEN ON BEHALF OF THE DEFENDANTS
17 JUNE 29, 2011
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25 Job No. CS338792

1 A Yes.
2 Q Do you have any regular
3 conversations or discussions with her about the
4 water treatment plant?
5 A No.
6 Q What's your understanding, if any,
7 regarding the City of Marion's work with the
8 WRAPS program, W-R-A-P-S? Do you know about
9 WRAPS?
10 A I'm aware of it, and I'm not
11 involved in any way with that program.
12 Q The City of Marion, Kansas, has
13 never had a detection of atrazine in excess of
14 three parts per billion in its finished water,
15 has it?
16 A That would be correct as far as I
17 know.
18 Q In any of the raw water testing of
19 -- strike that.
20 In any of the raw water testing
21 that's been done by the City of Marion, has there
22 ever been a detection above three parts per
23 billion for atrazine?
24 A No.
25 Q The City of Marion, Kansas, has

EXHIBIT D

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT OF ILLINOIS
MADISON COUNTY

HOLIDAY SHORES SANITARY DISTRICT, Individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	**Cause No. 2004-L-000710**
v.	)	
SYNGENTA CROP PROTECTION, INC. and GROWMARK, INC.,	)	
Defendants.	)	

DEFENDANT SYNGENTA CROP PROTECTION, INC.'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION DIRECTED TO
DEFENDANT SYNGENTA CROP PROTECTION, INC.

COMES NOW Defendant Syngenta Crop Protection, Inc. ("Syngenta") and, for its Objections and Responses to Plaintiff's First Requests for Production Directed to it, states as follows:

Pursuant to Rule 214 of the Illinois Supreme Court Rules, Plaintiff, by its attorneys, Korein Tillery, LLC, and Baron & Budd, PC, requests Defendant Syngenta Crop Protection, Inc., to produce and permit inspection of the following documents and things, in their best available form, at Korein Tillery, One U.S. Bank Plaza, 505 North 7th Street, Suite 2600, St. Louis, Missouri 63101-1625, or in such other reasonable location and form as is mutually agreed to by the parties, no later than twenty-eight (28) days after service of this request.

These Requests are to be answered in accordance with the following definitions and instructions, and these definitions and instructions are hereby incorporated by reference into each

in this Request is at least partially available in the public domain from the USEPA web site and otherwise (see certain studies listed in Plaintiff's Attachment A to its First Request to Produce filed contemporaneously herewith) and equally available to Plaintiff. Subject to the foregoing objections, and without waiving the same, subject to the hearing on its Motion for Protective Order, and to the extent that the requested information or documents are already in existence and reasonably available in the form requested by Plaintiff, Syngenta states that upon completion of its review of business records it has available and it is currently reviewing, it will respond at a reasonable date and place in the future to be agreed to between the parties or as otherwise ordered by the Court.

16. Produce any and all documents that discuss or evidence any monitoring or testing programs done by you, at your direction, or that you are aware of that monitored water resources for the presence of atrazine, atrazine-containing products, triazines, triazine-containing products, and/or constituents or degradates of such products.

RESPONSE: See objections to Definitions 2, 7, 15 and 16 above. Syngenta further objects on the grounds that the term "constituents" is vague, ambiguous, undefined, overbroad, burdensome, oppressive and harassing. Additionally, Syngenta objects on the grounds that this Request is overbroad, burdensome, oppressive, harassing, not limited in time, geography or specific or limited customers or areas or to the State of Illinois, and includes substances other than technical and/or commercial grade Atrazine, and the three (3) breakdown substances identified by Plaintiff in its Amended Complaint and set forth in Response to Definition 2 above, such that this Request also seeks information which is irrelevant and immaterial to any issue in this case, seeks information which is not reasonably calculated to lead to the discovery of admissible evidence at trial, and is beyond the scope of permissible discovery. Moreover, the information requested in this Request is at least partially available in the public domain from the USEPA web site and otherwise (see certain studies listed in Plaintiff's Attachment A to its First Request to Produce filed contemporaneously herewith) and equally available to Plaintiff. Subject to the foregoing objections, and without waiving the same, subject to the hearing on its Motion for Protective Order, and to the extent that the requested information or documents are already in existence and reasonably available in the form requested by Plaintiff, Syngenta states that upon completion of its review of business records it has available and it is currently reviewing, it will respond at a reasonable date and place in the future to be agreed to between the parties or as otherwise ordered by the Court.

17. Produce any and all documents referring or relating to steps you have taken to prevent atrazine, atrazine-containing products, triazines, triazine-containing products, and/or constituents or degradates of such products from contaminating domestic or foreign water resources.

RESPONSE: See objections to Definitions 2, 7, 15 and 16 above. Syngenta further objects on the grounds that the term "constituents" is vague, ambiguous, undefined, overbroad, burdensome, oppressive and harassing. Moreover, Syngenta objects on the grounds that the term "contamination" assumes facts not in evidence and mischaracterizes the legal, permissible presence at certain levels of Atrazine and the three