

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL DEFENSE FUND, INC.,)
et al.,)

Plaintiffs,)

v.)

UNITED STATES AGENCY FOR)
INTERNATIONAL DEVELOPMENT, et al.,)

Defendants.)

Civil Action No. 75-0500

FILED
DEC 5 1975

JAMES F. DAVEY, Clerk

ORDER

This court has carefully considered the stipulation executed by the parties to this case. The court has concluded that the stipulation establishes a fair and equitable method of procedure in this action that it resolves in a fair and equitable manner some of the issues raised, and that approval of the stipulation would serve the public interest.

NOW THEREFORE, it is ordered that the attached stipulation is approved.

John J. Sirica

John J. Sirica
United States District Judge
for the District of Columbia

DATED: 12/5/75

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK.

By *James F. Davey*
Clerk

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S T I P U L A T I O N

The parties to this action, by and through their respective undersigned counsel, hereby stipulate and agree, subject to the approval of the Court, as follows:

1. The United States Agency for International Development ("AID") will prepare, circulate, make available to the public, and consider in its decisionmaking process, in accordance with the schedule and procedures set forth below and pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852, 42 U.S.C. §§4321 et seq. ("NEPA"); Executive Order 11514, 3 C.F.R. 271 (Supp. 1974); and the guidelines of the President's Council on Environmental Quality, 40 C.F.R., Part 1500 (the "CEQ guidelines") a detailed environmental impact statement (the "EIS") on its pest management program including its pesticide activities. The pest management program, as used herein, means all activities conducted, supported, financed, and/or otherwise assisted by AID intended to control or eliminate pests. Pesticide activities as used herein, means all activities conducted, supported, financed, and/or otherwise assisted by AID for the procurement or use of pesticides. Pesticides, as used herein, mean substances or mixtures of substances, (a) intended for prevention, destroying, repelling, or mitigating any unwanted insects, rodent nematodes, fungi, weeds and other forms of plant or animal life or viruses, bacteria or other micro-organisms (except viruses,

bacteria or other micro-organisms on or living in man or other living animals), or (b) intended for use as plant regulator, defoliant or desiccant.

2. AID may utilize a contractor and outside consultants or experts as well as other federal agencies, international organizations and representatives of foreign governments to assist in the preparation of the EIS, consistent with Section 1500.7(c) of the CEQ guidelines, and provided that, to the extent consistent with applicable laws and regulations, plaintiffs will be given the opportunity to identify and submit views to AID about any prospective contractors, consultants, or experts. Preparation of the EIS will be done in consultation with the Environmental Protection Agency (the "EPA").

3. Within 15 days of the approval of this stipulation by the Court, AID will publish in the Federal Register a notice of the intent to prepare the EIS. The notice will describe the pest management program, including the pesticide activities, in general terms, state the general scope of the EIS together with the anticipated schedule for preparation, and solicit comments and information from interested parties.

4. The EIS will be issued, circulated for comment to other federal agencies, and made available for comment to the public, the World Health Organization, the Food and Agricultural Organization, and foreign governments that are receiving or are eligible to receive AID assistance for the procurement and use of pesticides and desire to receive a copy, in draft form by ^{July 30} ~~August 31~~, 1976. This date may be changed by agreement of the parties or by the Court upon good cause shown. Public and other comments on the draft EIS will be accepted within 60 days of the issuance of the draft. The EIS will be issued in final form within 45 days of the close of the comment period.

5. The EIS will contain, inter alia, the following, to the maximum extent practicable:

a. Historical description of the pest management program, including the pesticide activities.

b. Description of the scope and nature of current and reasonable anticipated pest management program, including pesticide activities, regulations, guidelines, policies and practices relating thereto; an individual description of any pesticides included in such activities for which the registration for use in the United States has been finally suspended or cancelled by the EPA and for 2, 4, 5-T, Chlordane, Heptachlor, and such descriptions by functional or chemical groups of all other pesticides included in such activities; and a statement with respect to each pesticide included in the pesticide activities of the amounts used, by geographic area and purpose.

c. Assessment of environmental impacts, including adverse environmental impacts which cannot be avoided, of the current and reasonably anticipated pest management program, including the pesticide activities, wherever such impacts or activities occur, subdivided by areas of activity, i.e., food production and preservation, public health programs, non-food crops, etc., including:

(i) effects on humans using the pesticides or living near the locale where the pesticides are used, or elsewhere;

(ii) effects on flora and fauna, including fish and wildlife;

(iii) effects on pesticide residues in food, with a focus on international and national residue tolerances;

(iv) effects caused because of the mobility of pesticides as they may be carried to other areas by water, air, or otherwise; and

(v) effects caused by the cumulative impact of the pesticides, to the extent data or analyses are available on such cumulative impacts.

d. Analysis of reasonable alternatives and their environmental effects, including, but not limited to:

- (1) Terminating or temporarily suspending all or part of the pest management program, including pesticide activities;
- (2) Providing assistance for forms of pest management other than the use of pesticides; and
- (3) Requiring user compliance with standards, either those promulgated by the EPA for use of pesticides in the United States (including cancellations, suspensions, restricted uses, and label restrictions) or some other standards.

e. Conclusions as to which pesticides AID will not and which pesticides AID will provide assistance for, and, in detail, the limiting factors applicable to those pesticides for which AID will provide assistance including, but not limited to, conditions relating to use, climate, flora, fauna, or geography of areas where each pesticide may be used, handling and packaging and those efforts which will be undertaken, where possible, to obtain the agreement of host countries and/or international and regional organizations, for the establishment of such data-gathering mechanisms as might be necessary and appropriate to monitor or prevent potential adverse environmental impact associated with pesticide activities collectively and individually.

6. As soon as possible after the final EIS is filed, AID will publish regulations implementing the conclusions referred to in paragraph 5. The regulations will provide that, when assistance for the procurement and use of pesticides is sought, AID will determine, in writing, whether the specific pesticide, use, climatic, geographic or other relevant condition or factor has been analyzed in the EIS and is provided

for in the regulations. If they have not been analyzed and provided for in the regulations, AID will not provide assistance without initially assessing the impact of the pesticide, and if such assessment reveals potential significant environmental impact, AID will not provide assistance without the preparation, circulation for comment, release to the public, and consideration in its decisionmaking process, of a further environmental impact statement or an amendment to the EIS. Notwithstanding the above, AID may provide assistance before such assessment or environmental impact statement is completed (a) if the AID Administrator personally determines that an emergency, as defined in paragraph 7, exists and that the time available from discovery or prediction of the pest outbreak is insufficient for the preparation of the assessment or statement; and (b) for controlled experimentation of limited scope, and not involving application for crop production purposes. In instances where capital or technical assistance is sought and where specific uses of such assistance are not identified, AID will condition the provision of such assistance on compliance with AID's regulations. Written copies of all determinations and assessments referred to above will be made available, on request, to any interested member of the public.

7. (a) Until the regulations referred to in paragraph 6, above, are effective, AID will not provide assistance for the procurement and use of --

- (1) dichlorodiphenyl trichloroethane (DDT) (except for public health use)
- (2) Aldrin and Dieldrin (except for restricted termite use, the dipping of roots and tops of non-food plants)
- (3) 2, 4, 5-T
- (4) Chlordane
- (5) Heptachlor

and will not provide assistance for a pesticide which is not registered, for a use which is not registered, for a pesticide or a use which has been finally suspended, or for a use or pest-

60 days from such notice, except that such assistance may be provided if the Administrator personally determines, in writing, that the benefits of using the pesticide outweigh the potential adverse effects and that no preferable alternative is available. The above prohibitions do not apply to assistance for pesticides if the responsible AID employee determines, in writing, that the pesticide will be used for health purposes and that significant health problems will occur without the use of the pesticide. Further, AID may provide assistance for the use of any pesticide referred to above if the AID Administrator personally determines, in writing, in each specific instance, that an emergency exists. An emergency will be determined to exist when a pest outbreak has or is about to occur and no pesticide registered for the particular use, or alternative method of control is available to eradicate or control the pest, and when significant economic problems will occur without the use of the pesticides. Further, notwithstanding the above, AID may provide assistance for the procurement and use of a pesticide if the pesticide is not registered in the United States or if the pesticide has been cancelled at the end of a five-year registration period or at the request of a registrant and if the pesticide will be used on agricultural crops and associated vectors not grown or found in the United States, and if the AID Administrator personally determines, in writing, that the benefits of using the pesticide outweigh the potential adverse effects and that no preferable alternative is available.

(b) Any determination by the AID Administrator mentioned in subparagraph (a), above, will be made in consultation with the EPA, will include a statement of the basis for the determination, and will be published in the Federal Register within 10 days of the time the determination is made. AID will, unless time constraints do not permit, provide public notice that the Administrator intends to render such a determination.

(c) Within 30 days of the approval of this Stipulation by the Court, AID will issue and publish in the Federal Register a regulation or other directive implementing this paragraph.

8. AID recognizes its responsibilities to conduct its operations in a manner that mitigates or avoids any potential short- or long-term deleterious environmental effects of local, regional or global proportions. AID will ensure that the environmental consequences of proposed AID-financed activities are identified and properly analyzed. AID will assist, to the extent possible, in strengthening the indigenous capabilities of developing countries to appreciate and evaluate the potential environmental effects of proposed development strategies and projects and to select, implement and manage effective environmental protection measures.

9. AID will propose, solicit and consider public comments on, and adopt environmental regulations, to assist AID in implementing the requirements of NEPA, such NEPA regulations to be adopted in consultation with the CEQ.

10. The following schedule will apply to the regulations referred to in paragraph 9 above:

- a. Draft regulations published for comment in the Federal Register by February 29, 1976.
- b. Public comment accepted for a period of approximately 60 days.
- c. Final regulations published in the Federal Register 30 days after the close of the comment period.

The above dates can be altered by agreement of the parties or by the Court upon good cause shown.

11. The environmental regulations, referred to in paragraph 9 above, will cover all aspects of AID's activities (capital assistance, technical assistance, commodity assistance

- a. AID will assess every proposed new activity at the earliest possible stage, including those that may arise in connection with ongoing projects, to identify whether the activity is a major action significantly affecting the environment.
- b. AID will prepare a detailed environmental impact statement in accordance with Section 102(2)(C) of NEPA, the CEQ guidelines, and AID regulations on any aspect of AID's activities (capital assistance, technical assistance, commodity assistance, etc.) covered by NEPA in each instance where such a statement is required. Where the proposed action will not require an impact statement, AID will, nevertheless, assess the potential environmental effects and the results of that assessment will be an integral part of its decision-making process.
- c. AID will prepare supplements to previously prepared assessments or impact statements to cover significant new information which may become available or to cover significant modifications of programs or activities which were previously studied in an assessment or environmental impact statement.
- d. When an AID activity is undertaken with the understanding that further identifiable, related activities are intended to be undertaken of substantially the same nature, promoted and financed by AID or another U.S. government agency, or where AID assistance is conditioned upon the recipient country's undertaking further related activities of substantially the same nature, AID will identify the further activities in an AID project paper and will consider the cumulative impact of its activity and of the further activities when preparing assessments and in deciding whether to prepare an environmental impact statement and, if an environmental impact

12. Upon the approval by the Court of this Stipulation,
the attached Order shall be entered herein.

Respectfully submitted,


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Dated: December 1, 1975
Washington, D. C.