

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

TIMM ADAMS, et al,	)	
	)	Civ. No. 03-0049-E-BLW
Plaintiffs,	)	
	)	
v.	)	MEMORANDUM DECISION
	)	AND ORDER REGARDING
	)	DUPONT’S OMNIBUS MOTION
UNITED STATES OF AMERICA,	)	IN LIMINE (number 15)
et al,	)	
	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

The Court has before it motion in limine number 15, contained in DuPont’s Omnibus Motion in Limine. For the reasons expressed below, the Court will reserve ruling on the motion until plaintiffs seek to introduce any testimony at trial regarding the evidence at issue.

**ANALYSIS**

DuPont seeks to exclude any evidence regarding Table F-4 contained in Dr. Shield’s expert report. In Table F-4, Dr. Shields used a model to predict numerical concentrations of Oust at various sites on the bellwether farms.

In an earlier motion, DuPont sought to exclude the entirety of Dr. Shields’

testimony, including his opinions expressed in the figures set forth in Table F-4. The Court rejected on substantive grounds all challenges except those to Table F-4. While the Court agreed with DuPont that Dr. Shields himself appeared to find Table F-4 unreliable, the Court ultimately concluded that no exclusion was necessary because plaintiffs would not be eliciting testimony from Dr. Shields on Table F-4.

In the present motion, DuPont claims that plaintiffs *will* be eliciting testimony from Dr. Shields on Table F-4, and seeks to exclude that testimony. Plaintiffs agree that Dr. Shields will rely on Table F-4, and point out that the Court was mistaken in its understanding that Dr. Shields found it unreliable. Plaintiffs explain that Dr. Shields has never backed away from his figures in Table F-4, but has simply been candid in explaining that the model results are variable but within the accepted variability in modeling.

The Court now understands that Dr. Shields will rely on Table F-4. By the motion at issue here, DuPont challenges the reliability of Table F-4. Because the Court has denied DuPont's earlier request to completely exclude Dr. Shield's testimony, he will be testifying, and he will necessarily attempt to lay a foundation for all his opinions, including those contained in Table F-4. After hearing that foundational testimony, the Court will rule on any objections to Dr. Shields' opinions. Until then, DuPont's motion to exclude Table F-4 is reserved.

## ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to exclude  
(docket no. 941 - part 15) is RESERVED, as explained above.



DATED: **May 17, 2009**

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable B. Lynn Winmill  
Chief U. S. District Judge