

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 06 JUL 10 PM 4:21

BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)

) Docket No FIFRA-07-2006-0124

THE VELVET POODLE, L.L.C.)

Respondent)

COMPLAINANT'S PRE-HEARING EXCHANGE

COMES NOW the United States Environmental Protection Agency (hereinafter EPA or Complainant), through one of its Attorneys, and respectfully submits the following Pre-hearing Exchange pursuant to the June 12, 2006, Pre-hearing Order, issued by the Honorable Carl C. Charneski, Administrative Law Judge.

I. LIST OF WITNESSES

Complainant intends to call the following fact witnesses at the administrative hearing:

1. Tom Theisen (Fact Witness), Pesticide Investigator, Iowa Department of Agriculture and Land Stewardship. Mr. Theisen, will testify regarding his investigations of the alleged sale of an unregistered, misbranded pesticide, produced in an unregistered establishment, by Velvet Poodle. Mr. Theisen will detail the information that he gleaned during his investigations, as well as the collection of documents and samples that were obtained. Mr. Theisen may further testify to other relevant and appropriate matters in this case.
2. Rich Franchini (Fact witness), Pesticide Investigator, Nebraska Department of Agriculture. Mr. Franchini, will testify regarding his investigations of the alleged sale of an unregistered, misbranded pesticide, produced in an unregistered establishment, by Velvet Poodle. Mr. Franchini, will detail the information that were gleaned during his investigations, as well as the collection of the documents and samples that were obtained. Mr. Franchini, may further testify to other relevant and appropriate matters in this case.
3. Sue Fleming (expert Witness), Chemist, Iowa Department of Agriculture and Landstewardship Laboratory. Ms. Fleming will testify to receiving the sample/syringe (sample number 0623043254-01-01) from Tom Theisen. Ms. Fleming may further testify to other relevant and appropriate matters in this case.

4. Steven Stroh (expert witness), Chemist, Iowa Department of Agriculture and Landstewardship Laboratory. Mr. Stroh will testify to receipt of sample/syringe from Sue Fleming, and the analysis and result of said sample (sample number 0623043254-01-01). Mr. Fleming may further testify to other relevant and appropriate matters in this case.
5. Mark K. Leshner (fact witness), Case Review Officer, U.S. Environmental Protection Agency, Region 7. Mr. Leshner, will testify regarding his review of the information and documents collected by Tom Theisen and Rich Franchini, during Messers Theisen and Franchini investigations of Respondent, and the violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), by Respondent. Mr. Leshner may also testify regarding how the penalty was calculated. A memorandum from Mark K. Leshner to Rupert G. Thomas, explaining how the penalty was derived, is enclosed, identified as attachment A, and is incorporated herein. Mr. Leshner may further testify to other relevant and appropriate matter in this case.

II. DOCUMENTS AND EXHIBITS

Copies of documents and exhibits which Complainant intends to introduce into evidence at the administrative hearing are attached hereto as "Complainant's Ex." (E.g. Complainant's 1). The following is a brief description of the documents and exhibits:

Complainant's Ex. 1. Notice of Inspection (Two Notices), dated June 23, 2004.

Complainant's Ex. 2. Photographs of FRONTLINE Plus for Dogs (5 photos).

Complainant's Ex. 3. Voluntary Statement from Heather Campbell, dated June 23, 2004.

Complainant's Ex. 4. Statement from Jon C. Brewer, dated June 23, 2004.

Complainant's Ex. 5. Receipt for Samples, dated June 23, 2004 (2 receipts).

Complainant's Ex. 6. Written report by Tom Thiesen, to Charles A. Eckermann, titled Sale of Non-Labeled Pesticide, dated July 9, 2004.

Complainant's Ex. 7. Written report by Rich Franchini, For Cause Inspection, dated June 23, 2004.

Complainant's Ex. 8. Report of Analysis, dated July 7, 2004.

Complainant's Ex. 9. History of Official Sample, Sample Number 0623043254-01-01.

III. DETERMINATION OF THE PROPOSED PENALTY

The penalty is determined in the manner outlined in the document titled "FIFRA CIVIL PENALTY CALCULATION JUSTIFICATION". This document is attached and incorporated herein.

IV. ATTACHMENT

The FIFRA civil penalty calculation justification, explaining the determination and calculation of the penalty is included as an attachment A, and is incorporated herein.

V. ESTIMATE OF TIME NEEDED TO PRESENT CASE.

Complainant estimate the time needed to present this case will be half of a day, not to exceed a day.

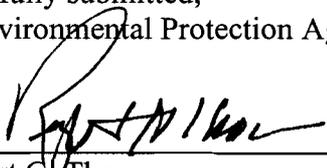
VI. PLACE OF HEARING

Complainant request that the administrative hearing takes place in Kansas City, Kansas; Kansas City, Missouri; Sioux City, Nebraska; or Sioux City, Iowa.

VII. RESERVATION OF RIGHT

Complainant respectfully reserves the right to call all the witnesses called by Respondent; to call any of its witnesses in rebuttal, and to modify or supplement the names of witnesses and exhibits prior to the hearing, pursuant to 40 C.F.R. Part 22, and upon notice to the United States Administrative Law Judge, and the Respondent.

Respectfully submitted,
U.S. Environmental Protection Agency

By 
Rupert G. Thomas
Assistant Regional Counsel
Region VII
901 North 5th Street
Kansas City, Kansas 66101
(913) 551-7282

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of July, 2006, I filed the original and one copy of Complainant's Pre-hearing Exchange, exhibits, and attachment, with the Regional Hearing Clerk, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, and mailed a copy U.S. Mail to the following:

Honorable Carl C. Charneski
United States Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20406

And

Ms. Heather Campbell
The Velvet Poodle, LLC
2418 Dakota Avenue
South Sioux City, NE. 68776.

