

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)

ELDON C. STUTSMAN, INC.,)

Respondent)

) Docket No. FIFRA-07-2006-0210
)
)

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 September 21, 2006, Pre-hearing Order, issued by the Honorable Barbara A. Gunning, Administrative Law Judge.

I. LIST OF WITNESSES

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

1. Dick Colwell (Fact Witness), Pesticide Investigator, Iowa Department of Agriculture, State of Iowa. Dick Colwell, will testify regarding his inspection of the alleged sale of a restricted use pesticide to an uncertified applicator. Mr. Colwell will detail the information that he gleaned during his inspection, as well as the collection of documents and samples that were obtained. Mr. Colwell may further testify to other relevant and appropriate matters in this case.
2. Charles A. Eckermann (Fact witness), Chief of Pesticide Bureau, Iowa Department of Agriculture and Land Stewardship. Charles A. Eckermann will testify to having reviewed the Iowa Department and Land Stewardship's Private Applicator Certification record and determined that Tom Lehman was not a certified applicator at the time Mr. Lehman made the purchase of the restricted use pesticide from Eldon C. Stutsman, Inc. Mr. Eckermann may further testify to other relevant and appropriate matters in this case.
3. Elizabeth Murtagh-Yaw (fact witness), Case Review Officer, U.S. Environmental Protection Agency, Region 7. Elizabeth Murtagh-Yaw, will testify regarding her review of the information and documents collected by Dick Colwell during his inspection of Eldon C. Stutsman, Inc., and the violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), by the Respondent. Ms. Murtagh-Yaw may also testify regarding how the penalty was calculated. A memorandum from Elizabeth Murtagh-Yaw to Rupert G. Thomas, explaining how the penalty was

derived, is enclosed, identified as attachment A, and is incorporated herein. Ms. Murtagh-Yaw 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. Notices of Inspection, dated March 17 and 21, 2005.

Complainant's Ex. 2. Copy of a label of Guardsman Max herbicide.

Complainant's Ex. 3. Voluntary Statements from Tom Lehman, and Robert Connolly.

Complainant's Ex. 4. Invoice No. 52768 from Eldon C. Stutsman, Inc., showing sale of Guardsman Max herbicide to Tom Lehman.

Complainant's Ex. 5. Receipts for Samples dated March 17, 2005.

Complainant's Ex. 6. Written Record of Inspection by Dick Colwell, pertaining to his inspection of Eldon C. Stutsman, Inc

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, 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 on

VI. PLACE OF HEARING

Complainant request that the administrative hearing takes place in Des Moines, Iowa; or Iowa City, Iowa.

VII. APPLICABILITY OF THE PAPERWORK REDUCTION ACT ("APR") 44 U.S.C. § 3501 et seq.

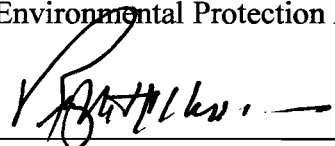
The Paperwork Reduction Act ("PRA") is not applicable in this matter. The Respondent was not charged with failing to comply with a reporting requirement.

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
Kansas City, Kansas 66101
(913) 551-7282

ATTORNEY FOR COMPLAINANT

CERTIFICATE OF SERVICE

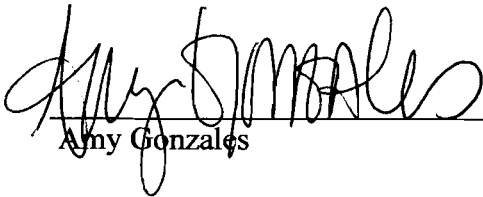
I hereby certify that on this 7th day of November, 2006, I filed the original and one copy of Complainant's Pre-hearing Exchange, exhibits, and attachment, with the Regional Hearing Clerk, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, and copy to the addressees below.

By Pouch Mail to:

Honorable Barbara A. Gunning
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

By Regular Mail to:

Steve Meyerholz.
Agronomy Manager
Eldon C. Stutsman
P.O. Box 250
Hills, Iowa 52235


Amy Gonzales