

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

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EPA -- REGION 10

In the Matter of

Steven L. Tuttle,

Respondent

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Docket No. FIFRA 10-2004-0056

**ORDER TO SHOW CAUSE**

On September 30, 2004, the Environmental Protection Agency ("EPA" or "Complainant") filed a motion seeking an Order from this Court to find you in default on the basis of your failure to file a response to the Court's Prehearing Order. Your June 2004 letter to the Court acknowledges that you received the Prehearing Order. While the Court appreciates that you are acting *pro se* (i.e. by yourself) and that you are not an attorney, even if your letter could be construed as a submission in reply to the Prehearing Order, it was not responsive, as it did not list potential witnesses along with a summary of their expected testimony nor did it list and provide copies of exhibits you intend to submit at the hearing.

While the Court has read your view, as expressed in your Answer to the Complaint and in your June 2004 letter, that EPA does not have the authority to bring this matter and that this Court does not have the authority to hear the case, **you are advised that there is no merit to these contentions.** Your failure to comply with the Court's Prehearing Order and, now, by virtue of that failure, unless you satisfactorily *explain* that failure, will leave the Court with no choice but to find you in Default. The purpose of this Show Cause Order is to give you the

opportunity to explain your failure to comply with the Prehearing Order. Should you offer legitimate reason(s) for your failure and the Court accepts the reason(s) you offer, it could decide to excuse your default. **However, you would then still be obligated to provide the information as directed in the Court's Prehearing Order of June 2004.**

Failure to respond to this Show Cause Order *and* to provide sufficient reasons for your failure to have been responsive to the requirements of the Prehearing Order, would also mean that you would be giving up your opportunity to contest issues related to the alleged violations. For example, in addition to the right to contest all issues related to whether you violated FIFRA, as alleged in the Complaint, should the violations be established by a preponderance of the evidence, you would be losing your right to present evidence regarding the monetary penalty that could be imposed. Such monetary penalty is to consider the gravity<sup>1</sup> of the alleged violations, as well as the opportunity to show that the penalty sought by EPA is inappropriate to the size of your business or to show that the penalty EPA seeks could adversely affect the ability to continue your business. As you know, if EPA establishes the violations charged in the Complaint, it is seeking a penalty in the amount of \$14, 850.

The Court also wishes to bring to your attention that the EPA attorney in this matter has asserted that you made an obscene remark when he telephoned you to inquire whether you intended to file a response to the Prehearing Order. Even though the Court appreciates that you find it offensive for EPA to bring this administrative complaint, courtesy and decorum are still required and nothing less than that is expected.

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<sup>1</sup>For example, as one aspect of the gravity, the Court notes that you have contended that the active ingredients in your product are relatively innocuous.

With the foregoing in mind, the Court directs that you file any response to this Order to Show Cause within fifteen (15) days. Your Response must be filed with the Court, as well as with Mr. Ryan, the EPA Attorney in this matter and with the EPA Regional Hearing Clerk. As a courtesy to you, the Court has included copies of EPA's Motion for Default, its Motion to Amend the Complaint and its Amended Prehearing Exchange. In addition, a copy of the procedural rules which govern this proceeding is included. You should read these rules. Remember that you can also retain an attorney but in cases such as this the government is not obligated to provide one for you.<sup>2</sup> Mr. Ryan's address, the Seattle address for the Regional Hearing Clerk are included with this information, along with the Court's address. While you must mail your response to these three addresses, you may in addition to mailing, send your response to the Court via facsimile to 202 565 0044.

  
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William B. Moran  
United States Administrative Law Judge

Dated: May 20, 2005  
Washington, D.C.

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<sup>2</sup>In general, the right to an attorney is provided in criminal cases, where a defendant can show a lack of financial resources to retain an attorney.

In the Matter of Steven Tuttle, Tuttle Tool Engineering and Tuttle Apiary Laboratories,  
Docket No. FIFRA-10-2004-0056

CERTIFICATE OF SERVICE

I certify that the foregoing **Order to Show Cause**, dated May 20, 2005, was sent this day in the following manner to the addressees listed below:

Original and copy by Pouch Mail to:

Carol Kennedy  
Regional Hearing Clerk  
U.S. EPA  
1200 Sixth Avenue  
Seattle, WA 98101

Copy by Facsimile and Regular Mail to:

Mark A. Ryan, Esq.  
Assistant Regional Counsel  
EPA Region 10, Idaho Office  
1435 N. Orchard Street  
Boise, Idaho 83706

Copy sent Certified and Regular Mail:

Mr. Steven L. Tuttle  
3030 Lewis River Road  
Woodland, WA 98674



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Nelida Torres  
Legal Staff Assistant

Dated: May 20, 2005

The Court's Address:

Judge William B. Moran  
U.S. Environmental Protection Agency  
Office Administrative Law Judges  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900 L  
Washington, DC 20460

Regional Hearing Clerk's mailing address:

Carol Kennedy  
U.S. EPA – Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Regional Counsel's office address:

Mark A. Ryan, Esq.  
Assistant Regional Counsel  
EPA Region 10, Idaho Office  
1435 N. Orchard Street  
Boise, Idaho 83706