

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
Agrimor Int'l Co.,)
Respondent.)
_____)

DOCKET NO.: FIFRA-04-2010-3002

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KARIN OLEK

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

COMES NOW the Complainant, the Acting Director of EPA's Region 4, Air, Toxics and Management Division, by and through its counsel, and pursuant to 40 C.F.R. § 22.14(c), hereby files this Motion seeking leave to file its Second Amended Complaint, as described more fully below and in the attached Memorandum in Support of Motion to Amend. A copy of the proposed Second Amended Complaint is attached as Attachment A.

I. Background and Basis for Filing Second Amended Complaint

On October 9, 2009, EPA filed a Complaint against the Respondent, Agrimor Int'l Company, alleging that Respondent had violated requirements of FIFRA by failing to file Notices of Arrival prior to arrival of pesticides in the United States and by distributing unregistered pesticides. Shortly after filing the Complaint, EPA discovered new evidence indicating that the one shipment of pesticides at issue in the Complaint which EPA initially believed had contained 3 different pesticides actually had contained 11 different pesticides. Based on the new evidence, on October 22, 2009, prior to an Answer having been filed, EPA filed its First Amended Complaint alleging additional violations of FIFRA and seeking a correspondingly higher penalty than was sought in the initial Complaint.

The First Amended Complaint was served on the Respondent on October 26, 2009. Pursuant to 40 C.F.R. § 22.14(c), an answer to the First Amended Complaint was due 20 days after service, or by November 16, 2009. Prior to an Answer being filed, Complainant obtained additional new evidence showing that during the five-year period between March 2005 and November 2008, at least eleven additional shipments involving at least seven different additional pesticides had arrived in the United States without Notices of Arrival having been filed by Agrimor in violation of FIFRA.

In light of the new evidence, Complainant considered filing a Second Amended Complaint to include the additional violations but decided not to do so at that time based on communications with the Respondent's counsel, who advised Complainant's counsel on November 6, 2009, that Respondent preferred to try to settle the case rather than spending time and effort filing an Answer. Complainant's counsel concurred that settlement negotiations were preferred, and also advised Respondent's counsel about the newly discovered evidence of additional violations. Complainant's counsel emailed a summary of the new evidence to Respondent's counsel.

As a show of good faith and an incentive to settlement, Complainant advised Respondent that EPA would be willing to wrap the additional newly discovered violations into a settlement without seeking additional penalties for those violations. However, Complainant's counsel also advised Respondent's counsel that if settlement negotiations were to fail, Complainant would likely seek to amend the Complaint a second time to add the additional violations.

Based on the parties' concurrence that settlement talks should proceed immediately it was further agreed that Respondent would file a motion for extension of

time to file an Answer and that Complainant would not object. On November 10, 2009, Respondent filed its first *Motion for Enlargement of Time to Answer First Amended Complaint*. On November 12, 2009, the Regional Judicial Officer (RJO) granted the Motion enlarging the time to file an Answer to December 7, 2009.

By early December 2009 it was evident that more time was needed for settlement discussions. On December 2, 2009, Respondent filed its second *Motion for Enlargement of Time to Answer the First Amended Complaint* to which Complainant did not object. On December 3, 2009, the RJO granted the motion and extended the time to file an Answer to December 23, 2009. The RJO also directed the parties to participate in a conference call with the RJO on December 8, 2009, to provide more information on how much time the parties believed they needed to reach settlement.

During the December 8, 2009, conference call, the parties represented that they were optimistic that a settlement could be reached. The RJO directed EPA counsel to file a Status Report by December 17, 2009, reporting on the parties' progress towards settlement.

On approximately December 12, 2009, Complainant made a settlement offer. In a letter dated December 16, 2009, Respondent's counsel advised, for the first time, that Respondent could not afford to pay the penalty proposed in the First Amended Complaint or in EPA's settlement offer. Respondent's counsel proposed a reduced penalty to settle the case. In response, Complainant specified the specific financial documentation that Respondent needed to submit in order for EPA to properly evaluate its inability to pay claim and its settlement offer.

In the *Status Report* filed December 17, 2009, Complainant's counsel advised the RJO that ability to pay had been raised and that Complainant might need up to three weeks to review financial documentation once it was submitted. Complainant's counsel also advised the RJO that EPA would not object to a further extension of time for Respondent to file an Answer in order to give Complainant time to complete the financial review and to continue settlement discussions with the Respondent.

On December 21, 2009, Respondent filed its *Third Motion for Enlargement of Time to Answer First Amended Complaint*, stating that the parties were still engaged in settlement discussions and that additional time was needed for EPA to resolve the issues mentioned in the Status Report (i.e., ability to pay). The RJO, referencing the *Status Report*, issued an Order on December 22, 2009, extending the time to file an Answer until February 12, 2010.

On or about January 12, 2010, Complainant received Respondent's financial documentation. On February 2, 2010, EPA completed its review of Respondent's financial information and determined that Respondent was financially capable of paying the proposed settlement amount and the penalty amount proposed in the First Amended Complaint. On February 3, 2010, Complainant advised Respondent's counsel of this determination. On February 12, 2010, before any further settlement discussions, Respondent's counsel filed an Answer to the First Amended Complaint.

Now that an Answer has been filed and Complainant's settlement offer has not been accepted, and it appears that litigation is likely to proceed, Complainant is seeking to file its Second Amended Complaint that includes the recently discovered evidence involving additional shipments of pesticides in violation of FIFRA. In addition, after the

First Amended Complaint was filed, Complainant received evidence showing that Respondent had violated various FIFRA export, recordkeeping, and labeling requirements for unregistered pesticides intended for export. The proposed Second Amended Complaint includes those alleged violations as well.

II. Naming Stockton Chemical Corporation as an Additional Respondent

In the Complaint, Complainant named Agrimor Int'l Company as the sole Respondent based on the available information at the time showing that it was the company involved in the violations. In early discussions with Agrimor prior to filing of the Complaint, its president and owner, Peter Tirosh, did not mention or describe Agrimor's relationship with any other company. After filing the Complaint, Complainant found additional information indicating that Agrimor Int'l Company had some type of business relationship with several companies including Stockton Chemical Corporation, The Stockton Group, and StocktonAgrimor AG. However, the information was not clear as to the exact nature of the relationships and whether these were parent-subsidary relationships or whether one was a division of another or which company may own or control another.

In the tax returns submitted by Agrimor in support of its inability to pay claim, portions of the tax returns, in particular, Schedule K and "Controlled Group Tax Calculation Statement," indicated that Agrimor Int'l Company and Stockton Chemical Corporation are closely related companies, that Stockton owns more than 50% of Agrimor, that Agrimor is not a subsidiary of Stockton, that both companies have common ownership, and that Mr. Tirosh and his wife each own 50% of Agrimor Int'l Company. Mr. Tirosh is president and CEO of both Agrimor and Stockton Chemical and both

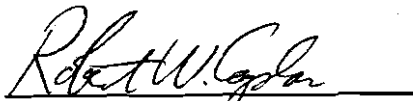
companies are listed at the same address in Florida according to a check of the Florida Secretary of State Corporations Division records. Both companies are described in various literature and company web sites as conducting the identical types of business from the same location under the same ownership, management, and control.

StocktonAgrimor's web site shows "Agrimor International/Stockton Chemical Corporation" listed at the same address in Aventura, Florida, and that Peter Tirosh founded The Stockton Group and the various divisions and/or subsidiaries or related companies and StocktonAgrimor. See www.stockton-agrimor.com Information from Dun & Bradstreet shows Stockton Chemical Corporation as being one and the same business entity as Agrimor Int'l Company, and the Florida Secretary of State records indicate that Stockton Chemical Corporation was formerly known as Agrimor International Company. Further, evidence of shipments and imports of pesticides from foreign establishments into the United States show the shippers and importers and consignees variously as Agrimor Int'l, Stockton, Stockton Chemical Corporation, and Stockton Agrimor AG.

Based on the foregoing information, EPA believes that it is appropriate and necessary to add Stockton Chemical Corporation to the Complaint as these two companies appear to be alter-egos of one another, if not identical. Additionally, the evidence indicates that Agrimor and Stockton are not independent from StocktonAgrimor AG.

WHEREFORE, Complainant respectfully requests that its Motion be granted and that the Second Amended Complaint be filed in this action.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert W. Caplan", is written over a solid horizontal line.

Robert W. Caplan
Counsel for Complainant
U.S. EPA – Region 4
404-562-9520

CERTIFICATE OF SERVICE

I hereby certify that I have this day served to the Region 4, Regional Hearing Clerk, the original and one copy of the foregoing Motion for Leave to File Second Amended Complaint and Memorandum in Support, for In the Matter of: Agrimor Int'l Co., FIFRA-04-2010-3002. I also certify that I have served a true and correct copy of the same on the parties listed below in the manner indicated.

The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection
Agency – Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

(via EPA HQ Pouch Mail
and First Class Mail)

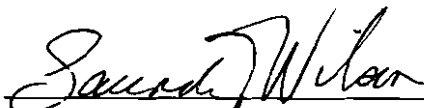
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Requested)

Date: 2/26/10


Saundi J. Wilson, Paralegal Specialist
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