

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

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HEARING CLERK

IN THE MATTER OF: )  
)  
E-Z CLEANERS, LLC )  
)  
)  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-04-2007-3033

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Complainant's Initial Prehearing Exchange is being submitted pursuant to Chief Administrative Law Judge Susan L. Biro's Prehearing Order dated April 16, 2008, the Order Granting Motion for Extension of Time dated April 29, 2008, and Section 22.19(a) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Penalties, and the Revocation, Termination or Suspension of Permits", 40 C.F.R. Part 22 (Rules of Practice). In this submission, Complainant is providing by June 23, 2008, the names of witnesses it intends to call at hearing, together with a brief narrative summary of each witnesses' expected testimony; copies of all documents and exhibits which it expects to introduce into evidence at the hearing identified numerically and indexed; and a statement expressing its view as to place for the hearing and estimated amount of time needed to present its direct case. Complainant's Exhibits 10 through 18 support EPA's allegations in Paragraphs 7, 11, 15, 19, 25, and 26 of the Complaint. Exhibits 10 through 18 were included in the inspection report referenced in Paragraph 10 of the Complaint, and Exhibit 18 includes the Bills of Lading referenced in Paragraphs 12 and 21 of the Complaint. Complainant's Exhibit 22 is a copy of the Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Exhibit 23 is a discussion of how the penalty in the Complaint was calculated.

WITNESSES

1. Dawn Johnson  
Environmental Protection Specialist  
Pesticides Management Section  
Pesticides and Toxic Substances Branch  
US EPA, Region 4

Ms. Johnson is expected to testify about her duties as an Environmental Protection Specialist in EPA Region 4's Pesticides and Toxic Substances Branch. These duties include investigating violations of FIFRA and the regulations promulgated thereunder. Ms. Johnson is also responsible for case development after the discovery of a violation. Ms. Johnson will testify concerning the violations alleged in the Complaint, the development and preparation of the Complaint, the calculation of the proposed penalty assessment, and the consistency of this proposed penalty with the FIFRA Penalty Policy.

2. Steven F. Gatton  
Pesticide Inspector II  
North Carolina Department of Agriculture  
and Consumer Services  
Structural Pest Control and Pesticides Division  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Mr. Gatton is expected to testify about his duties as an inspector for the North Carolina Department of Agriculture and Consumer Services. Mr. Gatton is expected to testify regarding his observations and information that he collected during a producer establishment inspection at 520-H Clanton Road, Charlotte, NC 28217 and 3561 Plateau Road North Docks, Newton, North Carolina 28658 on June 24, 2005, including the collection of documentary samples of the E-Z Clean All Purpose Hand Cleaner products from Respondent. Mr. Gatton's inspection report is attached hereto as Exhibits 10-18. He is also expected to testify that he hand delivered a copy of the July 17, 2006, Show Cause letter that was received by Respondent on July 26, 2006.

3. Mr. Phillip Sykes  
Pesticide Inspector I  
North Carolina Department of Agriculture  
and Consumer Services  
Structural Pest Control and Pesticides Division  
1090 Mail Service Center  
Raleigh, North Carolina 27699-1090

Mr. Sykes is expected to testify about his duties as an inspector for the North Carolina Department of Agriculture and Consumer Services. He is expected to testify about documentary samples he collected on June 15, 2004, of the E-Z Clean All Purpose Hand Cleaner products from Lowe's Store number 1815 located in Roanoke Rapids, North Carolina 27870.

4. John Bambach  
Investigator  
Clemson University Department of Pesticide Regulation  
511 Westinghouse Road  
Pendleton, South Carolina 29670

Mr. Bambach is expected to testify about his duties as an Inspector for the Clemson University Department of Pesticide Regulation. He is expected to testify that he hand delivered the August 3, 2007, Civil Complaint to Respondent with Mr. Lark.

5. Tammy Lark  
Investigator  
Clemson University Department of Pesticide Regulation  
511 Westinghouse Road  
Pendleton, South Carolina 29670

Mr. Lark is expected to testify about his duties as an Inspector for the Clemson University Department of Pesticide Regulation. He is expected to testify that he hand delivered the August 3, 2007, Civil Complaint to Respondent with Mr. Bambach.

6. Dennis Edwards, Chief  
Regulatory Management Branch I  
Office of Pesticide Programs  
Antimicrobials Division  
Potomac Yards South  
2777 S. Crystal Drive  
Room #S8641  
Arlington, VA 22202

Mr. Edwards is expected to testify concerning the registration requirements pursuant to FIFRA and the regulations promulgated thereunder. Mr. Edwards is expected to testify regarding his assessment that the E-Z Cleaners products make pesticidal claims, see Exhibit 6. Mr. Edwards is also an expert on the criteria which determine what constitutes a pesticide under FIFRA and its regulations. At the hearing, Mr. Edwards will also testify concerning the violations alleged in the Complaint, EPA registration procedures and their importance to the purposes of FIFRA.

#### Additional Witnesses

Complainant has no further witnesses to submit at the present time; however, the Complainant respectfully reserves the right to supplement the list of witnesses as authorized pursuant to 40 C.F.R. Section 22.19(f) with the Court's approval. Complainant also reserves the right to call any or all of Respondent's witnesses at the hearing.

#### Complainant's Documents and Exhibits

The following is an Index of the documents and exhibits Complainant anticipates introducing into evidence at the hearing.

## INDEX

1. Opportunity to Show Cause letter dated July 17, 2006, from Complainant to Respondent.
2. Green certificate of service showing the Show Cause letter delivered on July 26, 2006.
3. April 13, 2007, letter from Complainant to Respondent.
4. May 4, 2007, letter from Complainant to Respondent regarding why the Respondent's labels were making pesticidal claims.
5. April 22, 2008, letter from Complainant to Respondent proposing a settlement conference with fax confirmation.
6. EPA Headquarters form 8500-7 (2-73) "Enforcement Case Review" regarding Respondent's Hand Cleaner Products dated February 24, 2004.
7. Dun and Bradstreet Comprehensive Report for E-Z Cleaners, LLC.
8. Returned first class mail envelope with certified mail receipt which contained the Complaint dated August 3, 2007.
9. Inspector Summary Narrative and Report by Steven Gatton dated October 23, 2006 and signed on October 27, 2006.
10. June 24, 2005, Establishment Inspection Report documenting findings at EZ Cleaners, LLC, 520 H. Clanton Road, Charlotte, North Carolina 28217.
11. Inspection Summary Narrative of the June 24, 2005
12. Copy of the Notice of Inspection citing violation suspected on June 24, 2005, by Steven Gatton, Inspector for the North Carolina Department of Agriculture and Consumer Services.
13. Copy of the Receipt for Samples, signed by Ms. Donna Seeman, Vice President of Sales and Marketing, for the EZ Clean All Purpose Hand Cleaner Antibacterial with Pumice, Blue Gel, 16oz., EZ Clean All Purpose Hand Cleaner Antibacterial Blue Crème, 14oz., EZ Clean All Purpose Hand Cleaner Antibacterial with Pumice, Blue Gel, 64oz., products collected during the June 24, 2005 inspection.
14. Ms. Donna Seeman's June 24, 2005, affidavit taken by EPA Representative Inspector Steven Gatton.

15. Investigation Summary of the June 24, 2005, inspection of EZ Cleaners, LLC establishment.
16. Photographs of the EZ Clean All Purpose Hand Cleaner product that was packaged and labeled for shipment.
17. Labels of the EZ Clean All Purpose Hand Cleaner with Pumice, Blue Gel product collected during the June 24, 2005, inspection.
18. Five Bill of Lading of the EZ Clean All Purpose Hand Cleaner products taken during the June 24, 2005, inspection.
19. September 17, 2007, Referral issued to the Clemson Department of Pesticide Regulation to hand deliver the August 3, 2007 Civil Complaint.
20. September 27, 2006, Referral issued to the North Carolina Department of Agriculture Pesticide Section to hand deliver the July 17, 2006, Show Cause Letter.
21. FIFRA Civil Penalty Calculation Worksheet
22. Federal Response Policy for the FIFRA
23. Narrative description of the penalty sought in this case.

Additional Documents and Exhibits

Complainant reserves the right to add additional exhibits it may subsequently deem necessary with fair notice to Respondent and approval of Chief Administrative Law Judge Biro.

Paperwork Reduction Act

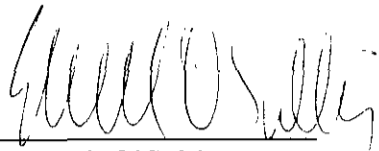
The Paperwork Production Act of 1980 (PRA) 44 U.S.C. § 3501 *et seq.*, and specifically § 3512 is not an issue in this proceeding. Of the regulations at issue, two have current OMB Control Numbers and the remaining regulations do not require recordkeeping and therefore a Control Number under the PRA is not required.

<u>Regulation</u>	<u>OMB Control Number</u>
40 CFR § 156.10	2070-0060
40 CFR Part 167	2070-0078

Place of Hearing/Length of Hearing

Complainant agrees to have the hearing either in Rock Hill, South Carolina, Charlotte, North Carolina or in Atlanta, Georgia. Complainant estimates that it will require approximately one and a half days to present its case.

Respectfully Submitted,



Elizabeth O'Sullivan  
Associate Regional Counsel  
EPA, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, 13<sup>th</sup> Floor  
Atlanta, Georgia 30303  
(404) 562-9696

6/19/08  
Date

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Pre-Hearing Exchange, In the Matter of: E-Z Cleaners, LLC, Docket No. FIFRA-04-2007-3033, with the Regional Hearing Clerk, and served a true and correct copy of same on the date shown below, to the parties listed, in the manner indicated:

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

(Via Pouch Mail to HQ)

Dawn Johnson  
U.S. EPA, Region 4  
Air, Pesticides, and Toxics  
Management Division  
61 Forsyth St., SW  
Atlanta, GA 30303

(Via EPA's internal mail)

Elizabeth O'Sullivan  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth St., SW  
Atlanta, GA 30303

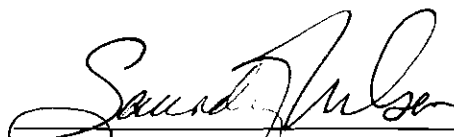
(Via EPA's internal mail)

(Respondent)

(Via Certified Mail, Return Receipt Requested)

Donna Seeman  
E-Z Cleaners  
698 Bryant Blvd.  
Rock Hill, SC 29732

Date: 6/19/08

  
Saundi J. Wilson  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
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