

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
THE DAEDALUS GROUP, INC.,) Docket No. FIFRA-07-2004-0087
)
Respondent)

ORDER STAYING PROCEEDING

Complainant's Motion for Default Order filed in this proceeding includes a request for assessment of penalties for three counts of violation of section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These counts implicate the following prohibitions: (1) distribution or sale of an unregistered pesticide (section 12(a)(1)(A)); (2) distribution or sale of a misbranded pesticide (section 12(a)(1)(E));¹ and (3) failure to comply with the establishment registration provisions of section 7 of FIFRA, in violation of section 12(a)(2)(L).²

As structured in the Complaint and Motion for Default Order, Complainant seeks separate penalties for a single alleged "distribution or sale" in violation of both sections 12(a)(1)(A) and 12(a)(1)(E) of FIFRA. The issue presented by Complainant in this proceeding is

¹42 U.S.C. §§ 136j (a)(1)(A) and 136j(a)(1)(E). The complaint seems to indicate that the pesticide in question was sold on two different dates (Complaint, paragraph 18), but the two counts are characterized as a single sale (Complaint, paragraphs 28 and 35, "Attachment", p. 3).

²42 U.S.C. § 136j(a)(2)(L). Complainant also requests that Respondent be found liable for failure to provide access to records required by FIFRA, in violation of section 12(a)(2)(B)(iii), 42 U.S.C. § 136j(a)(2)(B)(iii), but does not request assessment of a penalty for the latter alleged violation.

virtually the same as an issue currently before the Environmental Appeals Board in In the Matter of Rizing Sun, L.L.C. (FIFRA Appeal No. 07-02, filed June 8, 2007). In that appeal, the issue presented by the Region is as follows:

Whether EPA can assess separate civil penalties for violations of FIFRA section 12(a)(1)(A) and 12(a)(1)(E) arising from the distribution or sale of the same pesticide in the same transaction.

(Appellant's Brief in Support of Notice of Appeal, p. 1.)

Based on the foregoing, I have determined that decision on the pending Motion for Default Order will be stayed pending disposition of the referenced appeal by the Board.

So ORDERED.

Dated: August 6, 2007


Robert L. Patrick
Regional Judicial Officer
Region VII

IN THE MATTER OF The Daedalus Group, Inc., Respondent
Docket No. FIFRA-07-2004-0087

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order Staying Proceeding was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Rupert Thomas
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
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and

Kent Johnson
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Copy by Certified Mail Return Receipt
and First Class Mail to:

Robert S. Conn
Registered Agent
The Daedalus Group, Inc.
12005 Linden
Overland Park, Kansas 66209

Dated: 8/7/07


Kathy Robinson
Hearing Clerk, Region 7