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EPA--REGION 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

IN THE MATTER OF: )  
 )  
STEVEN TUTTLE; TUTTLE TOOL )  
ENGINEERING; AND TUTTLE )  
APIARY LABORATORIES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-10-2004-0056  
Prehearing Exchange

Complainant, the United States Environmental Protection Agency, Region 10 ("EPA"), submits this statement and attachments as its prehearing exchange in the above FIFRA case. The statement and attachments have been served on the respondent.

**WITNESSES**

The EPA intends to call two witnesses: Christian Gebhardt, Case Reviewer, Pesticide Program, EPA Region 10, and Chad Schulze, Environmental Protection Specialist, Office of Compliance and Enforcement, Pesticides and Toxics Unit, EPA Region 10. Mr. Gebhardt will testify the facts supporting the alleged violation, offering for sale Mite Solution, an unregistered pesticide, Mite Solution. He will also testify regarding the calculation of the penalty proposed for this violation. Mr. Schulze will testify regarding his purchase of Mite Solution. He will also

describe the regulatory process for pesticide registration and, in particular, the exemptions to registration. The applicable regulations are found at 40 C.F.R. 152.15, *Pesticide Products Required to be Registered* and 152.25, *Exemptions for pesticides of a character not requiring FIFRA registration*.

#### **REBUTTAL WITNESS**

In the event the respondent asserts the proposed penalty should be reduced based on his ability to pay, EPA will call Lloyd Oatis, Financial Analyst, to provide testimony in rebuttal.

#### **EXHIBITS**

The complainant respectfully reserves the right to supplement the attached exhibits with adequate notice to the respondent and the court. Complainant's exhibits are attached as follows:

Exhibit 1: Initial Decision, In the Matter of Steven Tuttle, Tuttle Tool Engineering and Tuttle Apiary Laboratories, October 3, 1997. Respondents, Steven Tuttle, et. al. were ordered to pay a penalty for violating FIFRA by offering for sale an unregistered pesticide, Mite Solution. The court also found in its decision that Mite Solution was not exempt from registration under FIFRA.

Exhibit 2: Copies of advertisements for Mite Solution in Bee Culture Magazine dated January 1997, July 1998, October 1998, May 2000, March 2001, October 2001, and February 2002.

Exhibit 3: 1-page document showing copies of January 14, 2004 check for \$29.00 to Tuttle Apiary Labs; handwritten note requesting Mite Solution; and mailing envelope for the order.

Exhibit 4: Answers to Common Questions About Mite Solution Oil and Jelly by Steve Tuttle, President of Tuttle Apiary Labs ~ received with order documented in Exhibit 3.

Exhibit 5: FIFRA Administrative Complaint filed against Tuttle Apiary, Docket No. FIFRA-10-2004-0056, dated March 18, 2004.

Exhibit 6: Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) dated July 2, 1990.

**PROPOSED PENALTY**

The memorandum, prepared by Christian Gebhardt, Case Reviewer, EPA Region 10 Pesticides Program, explaining the calculation of our proposed penalty, is attached.

**PLACE OF HEARING**

FIFRA §14(a)(3), 7 U.S.C. §1361(a)(3), states that Respondent shall be given the opportunity for a hearing in the county, parish, or incorporated city of the Respondent's residence. Respondent's facility is located in Woodland, Cowlitz County, Washington. Complainant does not object to conducting the hearing in the nearby city, Portland, Oregon Washington, where adequate courtrooms and facilities should be available. Alternately, complainant does not object to conducting the hearing in Seattle, King County, Washington, where the EPA Region 10 offices are located.

Dated this 3<sup>rd</sup> day of August, 2004.

Respectfully submitted,

  
M. Socorro Rodriguez  
Assistant Regional Counsel

## CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States that the following statements are true and correct.

The foregoing Prehearing Exchange, dated August 3, 2004, in this action, In the Matter of Steven Tuttle; Tuttle Tool Engineering; and Tuttle Apiary Laboratories, was delivered to the Regional Hearing Clerk, and a true and correct copy was sent to the Administrative Law Judge and to Respondent at the following addresses by the methods indicated.

By first class mail:                   Honorable William B. Moran  
  Administrative Law Judge  
  U.S. Environmental Protection Agency  
  401 M Street S.W., Mail Code 1900  
  Washington, D.C. 20460

Steven Tuttle  
Tuttle Apiary Laboratories  
3030 Lewis River Road  
Woodland, Washington 98674

By hand delivery:                   Carol Kennedy  
  Regional Hearing Clerk  
  EPA Region 10 (ORC-158)  
  1200 Sixth Ave.  
  Seattle, Washington 98101

Dated: 8/4/04

  
\_\_\_\_\_  
Marcia L. Colvin  
Environmental Protection Agency  
Region 10