

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

ENVIRONMENTAL
PROTECTION AGENCY-REG.
2009 NOV 12 PM 4:05
REGIONAL HEARING
CLERK

In the Matter of:)
)
Finca Aurito Gomez Lopez)
) **Docket No. FIFRA-02-2009-5301**
)
Respondent)

ORDER DENYING COMPLAINANT’S MOTION FOR EXTENSION OF TIME

On September 28, 2009, the Court issued a Prehearing Order directing the parties to make their initial prehearing exchanges by Friday, November 20, 2009. On October 22, 2009, Complainant filed a Status Report and Motion for Extension of Time, in which Complainant informed the Court that it had made multiple attempts to contact Respondent after Respondent filed an Answer on September 9, 2009, in an effort to obtain the name and contact information of an individual who could engage in settlement discussions on Respondent’s behalf, a telephone number for Respondent in the event that Respondent chose not to hire legal counsel, and information pertaining to Respondent’s farming operations in Puerto Rico and ability to pay the proposed penalty. Complainant indicated that Respondent had yet to respond, despite Complainant’s request that Respondent provide the foregoing information by October 19, 2009. Because counsel for Complainant “prefers to devote time and effort in attempting to either engage in settlement discussion with Respondent or prepare applicable motion(s) and pursue a litigation tract” over preparing its prehearing exchange, Complainant requested that the Court extend the deadline for the parties to make initial prehearing exchanges from November 20 to December 23, 2009.

Upon consideration, the Court denies Complainant’s request. Complainant’s obligation to make its initial prehearing exchange in accordance with the Prehearing Order is not dependent on Respondent’s actions in this matter. The Court reminds the parties that, while the Court recognizes the Agency’s policy to encourage settlement of a proceeding as set forth at 40 C.F.R. § 22.18(b), the Prehearing Order explicitly states that settlement discussions “will not provide good cause” for the failure of the parties to meet the procedural schedule established by the Prehearing Order. The Court has provided no other indication during these proceedings that it would excuse *either* party from meeting the aforementioned schedule. In accordance with this Order, the Court reiterates its direction that the parties remain obligated to make their initial prehearing exchanges by November 20, 2009, as originally scheduled. Failure to comply with the Court’s orders can constitute grounds for default. 40 C.F.R. § 22.17(a).

So ordered.

William B. Moran by Jennifer Weiss
William B. Moran
United States Administrative Law Judge

Dated: November 10, 2009
Washington, D.C.