

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR



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IN THE MATTER OF)
)
Pan American Growers) DOCKET NO. FIFRA-04-2010-3029
Supply, Inc.,)
)
RESPONDENT)

ORDER ON RESPONDENT'S ANSWER AND DIRECTING SETTLEMENT CONFERENCE

As you previously have been notified, I have been designated by the August 18, 2010 Order of the Chief Administrative Law Judge to preside in the above captioned matter.^{1/} This proceeding arises under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

On March 12, 2010, Complainant, the United States Environmental Protection Agency ("EPA"), filed a Complaint against Respondent Pan American Growers Supply, Inc. ("Respondent"), charging four separate violations of Section 12(a) of FIFRA, 7 U.S.C. § 136j(a), in connection with the importation of pesticides. This Complaint was then reserved on

^{1/} Following an inquiry from this office, Complainant agreed to participate in the Alternate Dispute Resolution ("ADR") process offered by this office, but Respondent made no response.

April 13, 2010.^{2/} In its Complaint, the EPA seeks a civil administrative penalty of \$18,053 against Respondent.

On July 16, 2010, a letter was filed by Ines Dominguez, who identifies herself as "authorized agent" for the company. The letter is not signed by Rosa Giatan, the party to whom the Complaint was mailed. Although Rule 22.10 of the Rules of Practice allows Respondent to be represented by any "other representative," there must be adequate proof that Respondent has authorized such individual to represent it in matters before the EPA (i.e., an affidavit from a corporate officer appointing an agent to act on its behalf in a civil administrative enforcement action against the corporation). 42 C.F.R. § 22.10. Thus, Respondent is directed to provide some certification that Ines Dominguez is authorized to enter an appearance on Respondent's behalf. 42 C.F.R. § 22.10.

The one-page letter from Ines Dominguez requested a possible settlement, claimed the violations were unintentional, identified a third-party brokerage firm as the liable party, and claimed an inability to pay the proposed penalty. See *Letter by From Ines Dominguez Addressed to Hearing Clerk, July 9, 2010* ("the Letter"). The Letter was construed as an answer and was referred to the Office of Administrative Law Judges.

The Letter does not meet the requirements for filing an answer under the Rules of Practice. Under Rule 22.15 of the Rules of Practice, where the respondent contests any material fact upon which the complaint is based, its answer must clearly and directly admit, deny or explain each of the factual allegations in the complaint, or, where the respondent has no knowledge of a particular factual allegation, it must so state in the answer and the allegation will be deemed denied.^{3/} The respondent must also state the circumstances or arguments which are alleged to constitute the grounds of any defense. See Section 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b). Although the Letter asserts an inability to pay issue, it did not

^{2/} Both copies of the Complaint were addressed to Rosa Giatan, Pan American Growers Supply, Inc., in Miami. However, the proof of service provided by the EPA is completely illegible and the recipient, if any, cannot be identified.

^{3/} Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation. Section 22.15(d) of the Rules of Practice, 40 C.F.R. § 22.15(d).

22.15(b), the answer must also state whether a hearing is requested. However, subsection (c) of Section 22.15 further provides that if the respondent does not request a hearing, a hearing may be held by the Administrative Law Judge if issues appropriate for adjudication are raised in the answer. See *In re Green Thumb Nursery, Inc.*, FIFRA Appeal No. 95-4a, 6 E.A.D. 782, 786-94 (EAB, Mar. 6, 1997).

The one-page Letter filed in this case did not request a hearing. In view of the failure to state whether a hearing is requested, Respondent is directed to clarify its position as to whether a hearing before an Administrative Law Judge is requested. Such clarification statement by Respondent shall be included in its Answer, which shall be filed on or before September 17, 2010.

EPA policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

Although the record indicates that the parties have had some contact, there has been no settlement. The parties are directed to hold a settlement conference on this matter on or before **September 24, 2010**, to attempt to reach an amicable resolution of this matter. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **October 1, 2010**.

The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and

Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The statements and information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, if sent by mail, shall be addressed as follows:

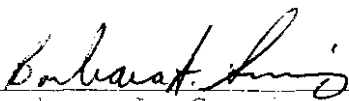
If filing by United State Postal Service (USPS):

EPA Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900L
Washington, DC 20460

If sending by non-USPS couriers:

EPA Office of Administrative Law Judges
1099 14th St. NW
Suite 350, Franklin Court
Washington, DC 20005

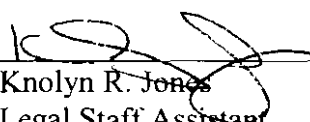
Telephone contact may be made with my legal staff assistant, Mary Angeles, at (202) 564-6281. The facsimile number is (202) 565-0044.



Barbara A. Gunning
Administrative Law Judge

Dated: August 19, 2010
Washington, DC

I hereby certify that the foregoing Order on Respondent's Answer and Directing Settlement Conference, dated August 19, 2010, was sent in the following manner to the addressees listed below.



Knolyn R. Jones
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region IV
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Copy by Pouch Mail to:

Michiko Kono, Esq.
Associate Regional Counsel
U.S. EPA - Region IV
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30308-8960

Copy By Regular Mail To:

Rosa Giatan, Esq.
Pan American Growers Supply, Inc.
2423 SW 147 Avenue #368
Miami, FL 33185

Ines Dominguez
Pan American Growers Supply, Inc.
957 SW 136 Place
Miami, FL 33185