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REGION 10

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HEARINGS CLERK
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In the matter of:)	
)	DOCKET NO. FIFRA-10-2004-0056
)	
Steven Tuttle, Tuttle Tool)	
Engineering, and Tuttle Apiary)	AMENDED PREHEARING EXCHANGE
Labs)	
)	
Respondents.)	
_____)	

Complainant, the United States Environmental Protection Agency, Region 10 ("EPA") submits this statement and attachments as its Amended Prehearing Exchange. Exhibits already identified and produced in the Prehearing Exchange are not included in this filing.

WITNESSES

1. Christian F. Gebhardt. Mr. Gebhardt is an Environmental Protection Specialist in the Pesticide Program with EPA Region 10. He will testify regarding the facts supporting the alleged violations. He will also testify regarding his calculation of the penalty proposed in the Complaint, which is summarized in his Penalty Memorandum, Exhibit C-7.
2. Chad Schulze. Mr. Schulze is an Environmental Protection Specialist in the Pesticide Program with EPA Region 10. He will testify regarding his purchase of "Mite Solution" from Mr. Tuttle. He will also describe the regulatory process for pesticide registration and, in particular, the exemptions to registration requirements.
3. Lloyd Oatis. Mr. Oatis is a financial analyst with EPA Region 10. Mr. Oatis will testify regarding Mr. Tuttle's ability to pay the proposed penalty should Mr. Tuttle pursue this

defense.

EXHIBITS

For purposes of the list of documents below, "Complainant's Exhibit No." is abbreviated as "C-." The documents themselves are labeled "Complainant's Exhibit No."

- C-1 In the Matter of Steven Tuttle, Tuttle Tool Engineering, and Tuttle Apiary Laboratories, Docket No. FIFRA 10-96-0012, Initial Decision, (ALJ McGuire, September 30, 1997).
- C-2 Copies of advertisements for Mite Solution from Bee Culture Magazine dated January 1997, July 1998, October 1998, May 2000, March 2001, October 2001, and February 2002.
- C-3 Copies of January 14, 2004 check for \$29.00 to Tuttle Apiary Labs; handwritten note requesting Mite Solution; and mailing envelope for the order.
- C-4 Answers to Common Questions About Mite Solution Oil and Jelly by Steve Tuttle, President of Tuttle Apiary Labs.
- C-5 Complaint, Docket No. FIFRA-10-2004-0056, dated March 18, 2004.
- C-6 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) dated July 2, 1990.
- C-7 Memo by Christian F. Gebhardt, "Proposed Penalty - Steven Tuttle/Tuttle Apiary Labs," Docket No. FIFRA 10-2004-0056 (August 4, 2004).
- C-8 Christian F. Gebhardt resume.
- C-9 Chad Schulze resume.
- C-10 Lloyd Oatis resume.

PROPOSED PENALTY

The penalty proposed in this case was calculated by Mr. Gebhardt in conformance with the "*Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*," (July 2, 1990). The memorandum explaining Mr. Gebhardt's application of this

policy is attached as Exhibit C-7.

PAPERWORK REDUCTION ACT

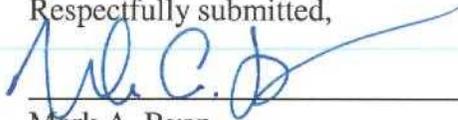
Item 4 in the Prehearing Order instructs the Complainant to state whether there are any relevant Paperwork Reduction Act ("PRA") issues in this case. The PRA requires an Office of Management and Budget ("OMB") approval number for certain information collected by an agency. The PRA applies only to agency information requests made pursuant to regulation.¹ It does not apply to statutory requirements. Most of the alleged violations in the Complaint resulted from a violation of the statute. The only count in the Complaint that alleges failure to comply with a regulation is set forth in paragraphs 27 and 49, which allege that Respondent failed to comply with the labeling requirements of 40 C.F.R. § 156.10(a). That section has been assigned the OMB control number 2070-0060.²

PLACE OF HEARING

Respondent resides in Woodland, Washington, which is just north of Portland, Oregon. Complainant does not object to conducting the hearing in Portland. Alternately, Complainant proposes holding the hearing in Seattle, Washington, where the EPA Region 10 offices are located.

Dated this 30th day of September, 2004

Respectfully submitted,



Mark A. Ryan
Assistant Regional Counsel

¹See 44 U.S.C. § 3507.

²40 C.F.R. § 9.1.

CERTIFICATE OF SERVICE

I certify that the "Amended Prehearing Exchange," was sent to the following persons, in the manner specified, on the date below:

Original and one copy, via pouch mail:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101.

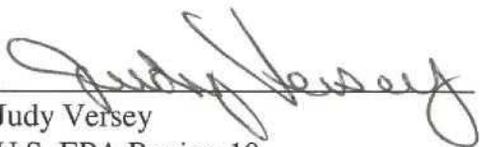
A true and correct copy by U.S. Mail to:

Honorable William B. Moran
Administrative Law Judge
EPA Office of Administrative Law Judges
Mail Code 1900L
Aerial Rios Building
Washington, D.C. 20460.

A true and correct copy, by U.S. mail to:

Mr. Steven L. Tuttle
3030 Lewis River Road
Woodland, WA 98674.

Dated: 10/1/04



Judy Versey
U.S. EPA Region 10