

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

<b>In the Matter of:</b>	)	<b>DOCKET NO. FIFRA-07-2023-0135</b>
	)	
	)	
	)	
<b>Timothy Wilson, d/b/a</b>	)	
<b>Wilson's Pest Control</b>	)	<b>COMPLAINANT'S MOTION FOR</b>
	)	<b>ACCELERATED DECISION AS TO</b>
<b>Respondent.</b>	)	<b>LIABILITY</b>
_____	)	

**COMPLAINANT'S MOTION FOR ACCELERATED DECISION AS TO LIABILITY**

COMES NOW, the U.S. Environmental Protection Agency, Region 7 ("Complainant"), through its undersigned counsel, and respectfully submits the following Motion for Accelerated Decision as to Liability. The attached Memorandum details the factual and legal basis in support of this Motion.

Pursuant to Rule 22.20(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.20(a), the Presiding Officer may render an accelerated decision as to all or any part of the proceeding at any time "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law." As in federal practice, the purpose of such a motion is to pierce the pleadings and assess the proof in order to see whether there is a genuine issue for trial. A party may not rest upon mere denials of the adverse party's pleadings when opposing such a motion. *In the Matter of Gerald Strubinger, et. al.*, 2002 WL 2005525 at \*3-4 (Docket No. CWA-3-2001-001) (Aug. 22, 2002); *In re Labarge, Inc.*, Docket No. CWA-VII-91-W-0078 (Feb. 2, 1996).

If the non-moving party fails to address the moving party's assertions of fact—or establish there is a genuine factual dispute—by citing to specific materials in the record, the court may grant an accelerated decision. *In re Polo Development Inc., et. al.* Docket No. CWA-

05-2015-0003, 2015 WL 627637 at \*7, (Feb. 6, 2015). Likewise, with respect to affirmative defenses raised by the Respondent, the non-moving party must overcome the moving party's claims that the defenses lack factual support by citing to specific evidence in the record. *Id.* If unable to demonstrate a genuine factual dispute concerning affirmative defenses, the court may strike the defenses. *Id.*

Here, the evidence in the record demonstrates that there is no genuine issue of material fact with respect to Timothy Wilson's, d/b/a Wilson's Pest Control ("Respondent") liability for violations of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Therefore, pursuant to 40 C.F.R. § 22.20, EPA is entitled to an accelerated decision that Respondent is liable under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii) for the sale of unregistered and/or illegally packaged pesticides, the sale of misbranded pesticides, and refusal to allow inspection any establishment or other place where pesticides are held for distribution or sale, as alleged in the Complaint.

For the reasons explained in the attached Memorandum in Support of Motion for Accelerated Decision as to Liability, Complainant hereby respectfully requests that this Motion for Accelerated Decision as to Liability be granted.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of October, 2024.

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