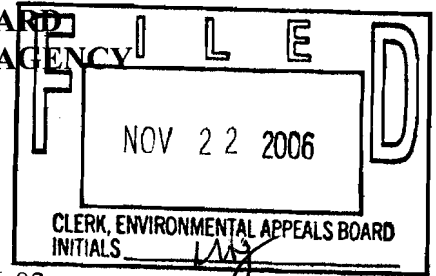


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re: _____)
Rhee Brothers, Inc. _____)
Docket No. FIFRA-03-2005-0028 _____)
_____)

FIFRA Appeal No. 06-02

ORDER SETTING BRIEFING SCHEDULE

On November 20, 2006, Region III of the U.S. Environmental Protection Agency filed with the Environmental Appeals Board ("Board") an appeal of Chief Administrative Law Judge Susan I. Biro's Initial Decision in the above-captioned case. The appeal consists of forty-one pages of arguments contending, among other things, that Judge Biro committed clear errors or abused her discretion by departing from the relevant Agency penalty policy in her penalty analysis and by making findings of fact and conclusions of law that are not supported by the record. Under the consolidated Rules of Practice that govern these appellate proceedings, any response to this appeal is due to be filed with the Board within twenty days of service of the appeal, plus an extra five days for service by mail, or, in this instance, by Friday, December 15, 2006. *See* 40 C.F.R. §§ 22.7(c), .30(a)(2).

Also on November 20, 2006, Region III and Rhee Brothers filed a "Joint Stipulation on Penalty Amount." In this document, the parties take "no position as to the appropriateness of the \$235,290 civil penalty" assessed in the Initial Decision, but they nonetheless report that they agree with, stipulate to, and request Board approval of the recommended penalty (i.e., \$235,290) because, in their view, such a stipulation is in their best interests and also in the interest of judicial economy. In light of this stipulation, the parties report that Rhee Brothers expects that it

will not file a substantive response to Region III's appeal. However, the parties indicate that if the Board is "disinclined to honor the stipulation in its Final Order" disposing of this case, they then would jointly request that the Board notify them in sufficient time to allow Rhee Brothers to file such a substantive response, possibly even past the normal time frame for filing such a response if necessary.

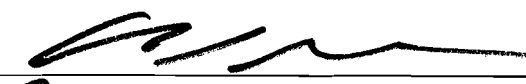
While the Board acknowledges and takes under advisement the parties' stipulation that the penalty assessed in the Initial Decision is "in their best interests," the Board is not in any way bound by such a stipulation in its analysis of this case. Instead, under the Consolidated Rules of Practice, the Board is authorized to adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the Initial Decision under review and may, in so doing, "assess a penalty that is higher or lower than the amount recommended to be assessed" in the Initial Decision. 40 C.F.R. § 22.30(f).

Accordingly, the Board hereby establishes December 15, 2006, as the date by which any response to Region III's appeal brief must be filed.

So ordered.

Dated: 11/22/06

ENVIRONMENTAL APPEALS BOARD

By: 
for Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Setting Briefing Schedule** in the matter of Rhee Brothers, Inc., FIFRA Appeal No. 06-02, were sent to the following persons in the manner indicated:

By Facsimile and First Class Mail:


Neil J. Bixler, Esq.
Bae & Bixler, L.L.C.
10019 Reistertown Road, Suite 301-A
Owings Mill, Maryland 21117
telephone: (410) 363-1703
facsimile: (410) 363-0595

Lowell M. Rothschild, Esq.
Venable L.L.P.
575 7th Street, N.W.
Washington, D.C. 20004-1601
telephone: (202) 344-4000
facsimile: (202) 344-8300

By Facsimile and EPA Pouch Mail:

Jennifer M. Abramson
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC10)
Philadelphia, Pennsylvania 19103
telephone: (215) 814-2066
facsimile: (215) 814-3113

Date: NOV 22 2006


Annette Duncan
Secretary