

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

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ENVIR. APPEALS BOARD

In the Matter of: /  
/   
Martex Farms, S.E. /  
Rd. No. 1, Km. 96.2 /  
Santa Isabel, Puerto Rico 00757 /  
/   
Respondent /  
..... /  
US EPA Docket No. /  
FIFRA 02-2005-5301 /  
Before the Hon. Susan L. Biro, /  
Chief Administrative Law Judge /  
..... /  
Proceeding under Section 14(a) of the /  
Federal Insecticide, Fungicide and /  
Rodenticide Act ("FIFRA"), as amended, /  
7 U.S.C. §1361(a) /  
////////////////////////////////////

FIFRA Appeal No.

**MOTION TO REQUEST AN EXTENSION  
OF TIME TO FILE THE APPEAL BRIEF**

TO THE HONORABLE ENVIRONMENTAL APPEALS BOARD (EAB):

COMES NOW the Respondent, Martex Farms, S.E., through the undersigned attorney and respectfully states and prays as follows:

1. On this date Martex Farms, S.E. is filing a Notice of Appeal pursuant to Rule 22.30(a) of the Consolidated Rules of Practice (CROP), 40 C.F.R. §22.30(a), notifying the same as requested by the EAB's Practice Manual of June, 2004. This Notice of Appeal is timely submitted to petition the review of the Initial Decision issued by the Hon. Susan L. Biro dated January 19, 2007, faxed to the Respondent on the same date of issuance, and subsequently delivered (USPS, certified mail) to appearing party on January 25, 2007.

2. Since the above mentioned Initial Decision was served by first class mail, but not by overnight or same-day delivery, Rule 22.7(c) of the CROP extends the deadline for filing the Notice of Appeal and the Appeal Brief, thus allowing 5 additional days over the 30-day period to file both documents. 40 C.F.R. §22.7(c). Therefore, the new deadline to submit a Notice of Appeal and the Appeal Brief should expire on or about February 23, 2007. However, for the foregoing reasons, Martex Farms, S.E. respectfully requests a two-week extension of time to file the Appeal Brief in this case.

3. Pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136(a)(1), the United States Environmental Protection Agency ("EPA" or "Agency"), filed a Complaint against the appearing party on January 28, 2005. In its origin, the complaint claimed that Martex Farms, S.E. committed 338 violations of FIFRA's "Workers Protection Standards" (WPS), 40 C.F.R. Part 170. However, the EPA later twice amended the same, claiming 336 alleged violations and submitting the same for adjudication. The trial was held in San Juan, Puerto Rico, from the 24<sup>th</sup> day of October through October 28, 2005, both inclusive.

4. In addition to the Complaints filed by the EPA and related answers submitted by the appearing party, several pre-hearing motions and documents were timely filed before the trial was held, among others, the following: (1) Complainant's Initial Prehearing Exchange, dated May 26, 2005; (2) Respondent's Initial Prehearing Exchange, dated June 15, 2005; (3) Complainant's Motion For Findings Of Fact And Conclusions Of Law And Complainant's Motion For Partial Accelerated Decision As To Liability (And Memorandum Of Points And Authorities In Support Of...) both dated July 25, 2005; (4) Respondent's Motion In Opposition Of Complainant's Motion For Findings Of Fact And Conclusions Of Law And Complainant's Motion For Partial

Accelerated Decision As To Liability" dated August 29, 2005; (5) Joint Prehearing Stipulations, dated August 19, 2005; (6) Motion *In Limine*, filed by Martex Farms, S.E. on August 31, 2005; (7) Motion To Amend Information Exchange, filed by Martex Farms, S.E. and dated August 31, 2005; (8) Motion Requesting That The Order Denying Respondent's Motion To Amend Information Exchange Be Certified To The Environmental Appeals Board, dated October 3, 2005; (9) Motion To Request That The Order On Complainant's Motion For Findings Of Fact And Conclusions Of Law And For Partial Accelerated Decision As To Liability Be Certified To The Environmental Appeals Board, dated October 10, 2005; and (10) Motion To Request That The Order Denying Respondent's Motion Requesting Recommendation For Interlocutory Review Of Order On Accelerated Decision Be Certified To The Environmental Appeals Board (EAB); Alternatively, To Reconsider Its Order, dated October 20, 2005.

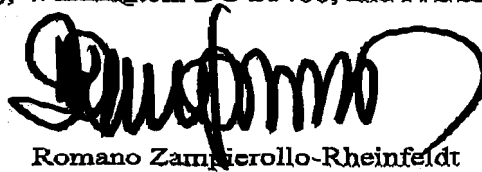
5. Both parties also submitted and marked a substantial number of documents as evidence, and the administrative record shows that the same were extensively addressed in the course of the trial. As of today, a thorough review of all the documents listed in the preceding paragraph, those marked as evidence as noted, and the transcripts of the trial --five volumes containing over 1,700 pages-- is already underway. However, additional time will be required to summarize the facts and applicable law to be in a position to prepare and submit an adequate brief for the consideration of this Appeals Board.

6. Upon consultation with EPA's counsel, no objections were raised as to this petition for an extension of time.

THEREFORE, having timely filed the Notice of Appeal and instant motion, and for the reasons set forth above, Respondent respectfully requests that this EAB grant the time extension requested to submit its Appeal Brief.

RESPECTFULLY SUBMITTED. In San Juan, Puerto Rico. February 13, 2007.

CERTIFICATE OF SERVICE: I certify the mailing (USPS, Express Mail) of the original and five copies of this motion to: U.S. Environmental Protection Agency, Clerk of the Board, Environmental Appeals Board, Colorado Building, 1341 G. Street, N.W., Suite 600, Washington, D.C. 20005, and FAXED to (202) 233-0121; two copies sent (first class mail) to Ms. Sybil Anderson, Headquarters Hearing Clerk, US EPA, Office of Administrative Law Judges, 1099 14<sup>th</sup> Street, N.W., Suite 350, Washington, DC 20005, and FAXED to (202) 565-0044; one copy sent to the Hon. Susan L. Biro, US EPA, Office of Administrative Law Judges, 1099 14<sup>th</sup> Street, N.W., Suite 350, Washington, DC 20005, and FAXED to (202) 565-0044; one copy sent to Mr. Eduardo Quintana, Esq., Legal Enforcement Program (8ENFL), USEPA, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado 80202-2466, and FAXED to (303) 312-6953; and one copy sent to Ms. Danielle Fidler, Esq., Special Litigation and Projects Division, Office of Regulatory Enforcement, US EPA, 1200 Pennsylvania Ave. NW (MC-2248A), Washington, DC 20460, and FAXED to (202) 564-0010.



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