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

_____)	
IN THE MATTER OF:)	DOCKET NO. FIFRA-09-2008-0027
)	
99 CENTS ONLY STORES,)	
)	COMPLAINANT’S UNOPPOSED
Respondent.)	REQUEST FOR EXTENSION OF
)	TIME TO FILE NOTICE OF
_____)	APPEAL AND APPELLATE BRIEF

COMES NOW THE COMPLAINANT in the above-entitled action, the Director of the Air Division, United States Environmental Protection Agency, Region IX (“Complainant” or “EPA Region 9”), pursuant to the authority set forth at 40 C.F.R. § 22.16(a), and moves the Environmental Appeals Board for an order extending the time for the Complainant to file a notice of appeal and appellate brief in this action as authorized under 40 C.F.R. § 22.30(a).

I. BACKGROUND

This matter concerns the enforcement of the prohibition against sale or distribution of unregistered pesticides set forth at section 12(a)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136 *et seq.* On September 30, 2008, and under the authority of section 14(a) of FIFRA, 7 U.S.C. § 136l(a), EPA Region 9 filed an administrative Complaint against 99 Cents Only Stores, (“99 Cents” or “Respondent”), charging 99 Cents with

166 violations of FIFRA. Specifically, Complainant alleged one count of sale or distribution of the unregistered pesticide, “Farmer’s Secret Berry & Produce Cleaner” (“Farmer’s Secret Cleaner”), 164 counts of sale or distribution of the unregistered pesticide, “Bref Limpieza Y Desinfección Total con Densicloro®” (“Bref”), and one count of sale or distribution of the misbranded pesticide, “PiC® BORIC ACID Roach Killer III” (“Roach Killer”), and proposed that an administrative penalty of \$969,930 be assessed against 99 Cents to address these violations. On June 2, 2009, Chief Administrative Law Judge Susan L. Biro issued an Order on Motion for Partial Accelerated Decision and Request for Oral Argument (“AD Order”) which granted Complainant’s request for a finding of liability on all 166 counts alleged in the Complaint, and denying Respondent’s request for hearing on liability.

An evidentiary hearing was held on June 23-24, 2009, in Los Angeles, California, regarding the issue of appropriate penalty to be assessed 99 Cents for the violations in this matter. On June 24, 2010, Judge Biro issued the Initial Decision in this matter, which ordered the assessment of a civil penalty of \$409,490 for the 166 violations alleged in the Complaint.

II. REQUEST

Complainant was served with the Initial Decision in this matter by Pouch Mail on June 24, 2010. According to 40 C.F.R. § 22.30(a), any party may appeal any adverse order or ruling of the Presiding Officer by filing a notice of appeal and appellate brief within 30 days after the initial decision is served. Consequently, and pursuant to computation of time rules set forth at 40 C.F.R. § 22.7(a), the deadline for filing a notice of appeal and accompanying brief in this matter is July 26, 2010. Complainant hereby seeks a 30-day extension of time to file a notice of appeal and appellate brief to August 25, 2010. This extension of time would permit Complainant to

consult with the appropriate Agency officials in Washington, D.C. and the other EPA Regions and to take all other actions required by the current Environmental Appeals Board coordination procedures which are precedent to filing an appeal.

Respondent does not oppose this request for extension of time, and this request is not intended to prejudice and should not prejudice Respondent in any way.

Respectfully submitted on this 23rd day of July,
2010,

/s/ [electronic signature]

Brian P. Riedel
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Request for an Extension of Time to File Notice of Appeal and Appellate Brief was filed electronically via the Central Data Exchange with

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

and that a true and correct copy of the said document was sent by First Class United States Mail, addressed to the following:

Patrick J. Cafferty, Jr., Esq.
Munger, Tolles & Olson LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, CA 94105-2907

and personally served on the Regional Hearing Clerk, Region 9.

Dated: _____

By: _____
Office of Regional Counsel
USEPA, Region 9