

BEFORE THE ENVIRONMENTAL APPEALS BOARD U.S. E.P.A.
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.

NOTICE OF APPEAL

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. Instant Notice of Appeal is filed by Martex Farms, S.E. pursuant to Rule 22.30(a) of the Consolidated Rules of Practice (CROP), 40 C.F.R. §22.30(a), and the same is notified as requested by the EAB's Practice Manual of June, 2004.

2. 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. Since the 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 should expire on or about February 23, 2007, and this motion is filed within the prescribed time limitations.

3. This Notice of Appeal conforms to the requirements of Section 22.5(c) of the CROP, 40 C.F.R. § 22.5(c), and the issues to be submitted to the EAB's attention have been raised during the course of the proceeding. 40 C.F.R. §22.30(c)

4. 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.

5. The trial was held in San Juan, Puerto Rico, from the 24th day of October through October 28, 2005, both inclusive. After the trial and having reviewed all post trial motions, the Hon. Susan L. Biro, Chief Administrative Law Judge, held Martex Farms, S.E. liable for 170 counts, assessing monetary penalties for failure to display information to (agricultural) workers, and for failure to provide decontamination supplies and personal protective equipment to pesticide handlers.

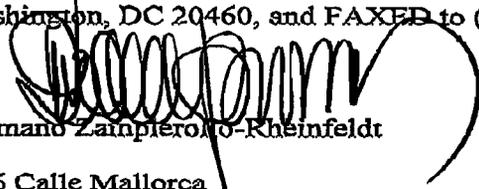
6. Among other matters and of seminal importance to this appeal, is the accuracy of certain stipulation included in the Joint Prehearing Stipulations, dated August 19, 2005. Due to an

erroneous interpretation of its meaning and extension, the same has been challenged by the appearing party almost from its inception.

THEREFORE, having timely filed the Notice of Appeal, Respondent respectfully requests that this EAB accepts the same, granting a time extension to submit the accompanying Appeal Brief as requested in the separate motion also filed on this date.

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 14th 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 14th 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 18th Street, Suite 300, Denver, Colorado 80202-2466, and FAXED to (303) 312-6953; and one copy sent to Ms. Daniclle 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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