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ENVIR. APPEALS BOARD

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1341 "G" STREET NORTHWEST
SUITE 600
WASHINGTON, D.C. 20005

In the Matter of:	)
	)
AG-AIR FLYING SERVICES, INC.;	) Docket No. : FIFRA-10-2005-0065
	) (Judge Biro)
	)
Respondent.	) Appeal Docket No: TBA
	)
	) NOTICE OF APPEAL PURSUANT
	) TO 40 C.F.R. Part 22, Subpart F, Sec
	) 22.30
	)
	)
	)

COMES NOW the respondent, AG-AIR FLYING SERVICES, INC., a
Washington corporation, by and through its attorney of record, J.J. Sandlin, WSBA

Notice of Appeal - 1

1 #7392, of the Sandlin Law Firm, P.O. Box 1005, Zillah, Washington 98953
2 [telephone number (509) 829-3111/fax: 3100 and cell phone (206) 852-1004;
3 Internet address: Sandlinlaw@msn.com and sandlinlaw@nwinfo.net]; and hereby
4 files its NOTICE OF APPEAL of the Presiding Judge's default order apparently
5 signed January 27, 2006, (a) where the Honorable Susan L. Biro ruled that the
6 Respondent's delay in providing discovery regarding supplemental evidence
7 required the extraordinary sanction of entry of a default order, and (b) where the
8 Honorable Susan L. Biro discounted Respondent's counsel's explanation of his
9 extended illness, and (c) where the Honorable Susan L. Biro relied upon extra-
10 judicial discussions with her staff legal counsel as a basis for reaching the
11 conclusion that the extraordinary sanction of default was appropriate, and (d)
12 where the Honorable Susan L. Biro received *ex parte* communications from
13 counsel for Petitioner EPA regarding the substance of negotiations between the
14 parties, in the unilateral "status of negotiations" reports requested by Judge Biro
15 from Petitioner EPA (without input or participation by the Respondent or its
16 counsel, and without opportunity for objection to the characterization of the
17 parties' negotiating positions) together with ACCOMPANYING APPELLANT
18 BRIEF, and requests the following relief:
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Notice of Appeal - 2

SANDLIN LAW FIRM

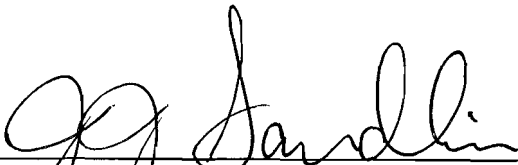
P.O. Box 1005
Zillah, Washington 98953
(509) 829-3111/fax: 3100
Sandlinlaw@aol.com and sandlinlaw@nwinfo.net

1. For an order of this Court REVERSING the presiding judge's default order;
and
2. GRANTING an extension of time for the Respondent to submit complete discovery regarding the SATLOC computer information and application data requested by Petitioner EPA; or, ALTERNATIVELY, STRIKING the Respondent's SATLOC evidence; and
3. REMANDING this case for adjudication upon the merits; and
4. ISSUING A CEASE AND DESIST ORDER prohibiting any further communications between counsel for Petitioner EPA and any presiding judge regarding the substance of settlement negotiations between Petitioner and Respondent; and
5. REASSIGNING this case for adjudication to an ALTERNATE PRESIDING JUDGE, based upon the Respondent's belief that the Appearance of Fairness Doctrine has been violated by the extra-judicial communications between the staff attorney for the presiding judge, Ms. Lisa Knight, and the presiding judge, the Honorable Susan L. Biro, Chief Administrative Law Judge, and the prejudicial communications between counsel for Petitioner EPA and the presiding judge, regarding the status of negotiations and the substance of those negotiating positions

1 of the parties, all of which should never have been introduced to the presiding
2 judge responsible for fact finding and final decision in this case.
3

4 Respectfully submitted this 1st day of March, 2006.

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9 J.J. SANDLIN, WSBA #7392, for Respondent AG-AIR FLYING
10 SERVICE, INC.
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Notice of Appeal - 4

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P.O. Box 1005
Zillah, Washington 98953
(509) 829-3111/fax: 3100
Sandlinlaw@qol.com and sandlinlaw@pwinfo.net

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ENVIR. APPEALS BOARD

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1341 "G" STREET NORTHWEST
SUITE 600
WASHINGTON, D.C. 20005

In the Matter of:

AG-AIR FLYING SERVICES, INC.;

Respondent.

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) Docket No. : FIFRA-10-2005-0065
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) APPELLANT BRIEF, FILED
) PURSUANT TO 40 C.F.R. Part 22,
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)

I. TABLE OF CONTENTS

<i>Topic</i>	<i>Page No.</i>
1. <i>Table of Contents</i>	1-2

Appellant Brief (Respondent Appeal) - 1

SANDLIN LAW FIRM

P.O. Box 1005
Zillah, Washington 98953
(509) 829-3111/fax: 3100
Sandlinlaw@aol.com and sandlinlaw@nwinfo.net

2.	<i>Authorities</i>	2
3.	<i>Statement of the Issues</i>	2
4.	<i>Statement of the Nature of the Case</i>	3-4
5.	<i>Facts Relevant to the Issues Presented for Review</i>	4-9
6.	<i>Argument on the Issues</i>	9-15
7.	<i>Conclusion with Requested Relief</i>	15-16
8.	<i>Proposed Alternative Findings of Fact, Conclusions</i>	17-18
9.	<i>Appendix</i>	19

II. AUTHORITIES

<i>Commodity Futures Trading Comm'n</i> , 67 F.3d at 771	10
<i>Hilao v. Estate of Ferdinand Marcos</i> , 103 F.3d 762, 763 (9th Cir. 12/17/1996)	10-11

III. STATEMENT OF THE ISSUES

- 3.1 *Was the extraordinary sanction of default excessive in this case?*
- 3.2 *If so, what should be the appropriate action?*
- 3.3 *Should this case be reassigned to another presiding judge?*
- 3.4 *Should a protective order be issued prohibiting extrajudicial discussions
between the presiding judge and staff regarding communications with the parties'*

1 *counsel, and prohibiting communications between the presiding judge and any*
2 *party regarding the substance of negotiations?*
3

4 IV. STATEMENT OF THE NATURE OF THE CASE

5 This is an enforcement action against the Respondent, for ostensibly
6 applying the pesticide *Warrior* in violation of its label, during aerial application on
7 a cornfield, where there are allegations that the aerial application also included
8 application over a vineyard located north of the cornfield. The major evidence to
9 be presented by the EPA is the landowner's testimony, and testimony regarding the
10 claim that an active ingredient in *Warrior* was found upon selected grape plants
11 from the vineyard (there had been a claim that a chicken had been killed, but it was
12 apparently abandoned in trial preparation).
13

14 The Respondent, AG AIR FLYING SERVICE INC., an agricultural aerial
15 application crop dusting business, vigorously opposes the claim made by EPA, and
16 in its defense offers (a) the testimony of the crop duster pilot who actually flew the
17 aircraft, and who is knowledgeable about the actual application of the pesticide and
18 the prevailing winds, and the impossibility that any such pesticide was applied to
19 the vineyard located north of the target cornfield, (b) the testimony of the assistant
20 who checked the pesticide loads and the mixtures used, (c) the testimony of an
21 expert witness, Carlton Layne, who is a contracted instructor for enforcement
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1 issues for EPA, and who is a former EPA enforcement officer, whose testimony
2 refutes any possible claims that there has been a FIFRA violation in this instance,
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4 (d) various photographs and other documents that refute the EPA's claims, and (e)
5 a SATLOC aircraft track that utilizes GPS data to record the actual releases of
6
7 *Warrior* upon the cornfield and that refutes any claim of *Warrior* release over the
8 vineyard. It is the EPA's follow-up requests for additional data from the SATLOC
9 records, and the delay in providing that information, that prompted the presiding
10 judge to issue a default order. It should be noted that the EPA's original claim was
11 that there was an illegal application of *Warrior* to the off-site vineyard, but after
12 the evidence was exchanged the EPA apparently amended its claims and now
13 claims that the *Warrior* drifted upon the vineyard, which flies in the face of the
14 evidence of the prevailing winds and other supporting defensive evidence.
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18 V. FACTS RELEVANT TO THE ISSUES FOR REVIEW

19 On August 19, 2005 the Respondent delivered its Prehearing Statement, a
20 copy of which is attached in Part IX of this memorandum, in the Appendix. On
21 November 22, 2005 the EPA moved the presiding judge for additional discovery,
22 relating to data for the Respondent's SATLOC evidence provided in August, 2005.
23
24 The motion was unopposed, and the presiding judge issued an order on December
25 19, 2005 that required the Respondent to provide additional data regarding the
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1 SATLOC track not later than January 6, 2006. Pursuant to a previously planned
2 shut-down of the Sandlin Law Firm, the Respondent's counsel closed his law
3 offices for the period December 20, 2005 through January 23, 2006, for vacation
4 and for personal health reasons. The Respondent did not comply with the deadline
5 for the discovery of the additional data requested regarding the SATLOC track.
6 EPA filed a motion for default upon shortened notice, apparently on January 20,
7 2006, the same date that the Respondent answered the discovery requests regarding
8 the SATLOC computer evidence. The EPA remained silent about the completeness
9 of the requested discovery, and therefore Respondent's counsel engaged EPA's
10 counsel in a telephonic conference regarding what, if any, further discovery was
11 needed. The computer controlling the SATLOC information was in DOS computer
12 language, and the Respondent had experienced difficulty in downloading the
13 information in a readable format, and IT consultants had been retained in order to
14 retrieve that information, but it was not available by January 27, 2006.

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21 On December 19, 2005 Judge Biro ordered EPA as follows: "Complainant
22 shall file a report of the status of settlement efforts on or before **January 20,**
23 **2006.**" This was in consonance with it previous rulings, all of which called for the
24 EPA to advise the presiding judge as to the status of settlement efforts, in itself a
25 benign request. But EPA took advantage of this invitation to share with the
26
27

1 presiding judge the EPA's characterization of the status of negotiations, and the
2 differing positions of the parties in those negotiations for settlement, and this was
3 inappropriate and probably contributed to the apparent bias the presiding judge
4 expressed in her formal order of default issued on January 27, 2006.
5

6
7 In the January 27, 2006 order of default, Judge Biro referenced
8 conversations between her legal staff and this counsel, an obvious reference to
9 extrajudicial discussions that should have been discarded and never brought into
10 the presiding judge's default decision, without at least affording the Respondent
11 and this counsel to share with the judge the facts discussed with the judge's legal
12 counsel, Attorney Lisa Knight. Clearly, there has been a difficult personality clash
13 between Attorney Knight and Attorney Sandlin, and none of those discussions
14 should have been shared with Judge Biro, since they did not relate to the material
15 issues before the presiding judge, and were not intended to be shared with Judge
16 Biro, since they related to scheduling and other matters that were not substantive
17 matters in this case. Consider, for example, the following footnote issued by Judge
18 Biro in her default order:
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24 "It is the understanding of this Tribunal that despite Complainant's request,
25 Respondent's counsel has indicated an unwillingness to stipulate to anything in
26 regard to this case. *[Incorrect. Respondent was unwilling to stipulate to material*
27 *evidentiary matters where the chain of custody of samples, the proper sampling*
28 *techniques, the proper laboratory testing methods, and other material aspects of*

1 *the EPA case were unclear and unproved, lacked proper authentication and/or*
2 *foundation, and were unreliable for admissibility. But none of this was ever*
3 *considered by Judge Biro, because Judge Biro received these extrajudicial*
4 *communications from Attorney Lisa Knight, her biased law clerk, and from EPA's*
5 *counsel, apparently under the guise of reporting upon the status of settlement*
6 *negotiations.] Furthermore, Respondent has not presented a cooperative attitude in*
7 *communications with this Tribunal's staff."* Order of Default, January 27, 2006, fn.
8 11 at p. 8. See, Appendix at A-38 .

9 With all due respect to Judge Biro, this counsel is dumbfounded that any
10 judge would issue such conclusions without at least having given the accused
11 attorney an opportunity to be heard. Frankly, the personality clash between
12 Attorney Lisa Knight and this counsel was obviously quite severe, but this counsel
13 believed both of us could be professional and work around that clash. Obviously
14 not. I consider Ms. Lisa Knight to be over-bearing, officious, and frustrated that
15 she is a law clerk and not a trial lawyer or a judge, and very dangerous because of
16 the potential for her abuse of her position where she can influence a presiding
17 judge upon the outcome of a case, without allowing the victimized litigant or
18 attorney an opportunity to be heard. Judge Biro's statements in her default order
19 prove this counsel's assertions that extrajudicial conversations materially
20 influenced the outcome of this case, and this appellant Tribunal should reverse
21 Judge Biro's decision and reassign this case for evidentiary hearing upon the
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1 EPA's original complaint¹.

2 Also, Judge Biro referenced an email from Respondent's counsel to EPA's
3 counsel, and concluded from the text of that message between counsel that
4 Respondent's counsel evidenced "a disrespect as well as a disregard for the
5 procedural rules of this Tribunal."² See fn. 8 of order of default at p. 6. This is
6 simply more evidence of the apparent bias Judge Biro has developed against the
7 Respondent's counsel. Note, also, that Judge Biro ordered that Respondent's
8 answer to the motion for default, issued on January 24, 2006, be filed on January
9 26, 2006. Respondent exercised good faith and diligence, but could not comply
10 with such a short timeline (Judge Biro noted that even though the Respondent's
11 objections to default were *mailed* on January 26, 2006 the documents were not
12 received on that date, and that the email of those documents on January 27, 2006

18 ¹ "Drift" was not an issue in the original EPA complaint, which has not been
19 amended, and therefore the SATLOC track, although helpful to prove the
20 Respondent is innocent of these claimed violations, is not necessary for a complete
21 adjudication in this instance. If required, the SATLOC evidence proposed by the
22 Respondent could be stricken from the record. This would have been a reasonable
23 solution for Judge Biro to use in balancing the parties' litigation interests.

24 ² Perhaps the most frustrating part of this entire matter is Judge Biro's conclusion
25 that this counsel either disrespects or disregards the Tribunal's procedural rules.
26 This counsel has never met Judge Biro, has never had an opportunity to present a
27 case in a contested hearing before her, and she obviously has been adversely
28 influenced by her conversations with the one-sided reports from Attorney Lisa
Knight, her law clerk, and the prejudicial settlement status reports issued to her by
EPA's counsel, without ever having a hearing on such a serious issue.

1 was insufficient). Based upon Judge Biro's analysis, this counsel would have had
2 to receive the January 24, 2006 order for shortened time and compliance with the
3 January 26, 2006 with virtually no time to respond. But EPA and the Respondent
4 had stipulated to a continuance of the February 14, 2006 contested hearing date, so
5 what was the rush for the filing of the Respondent's objections to default? Judge
6 Biro simply was cleaning her docket, and her failure to grant the stipulated
7 continuance (after Attorney Lisa Knight had suggested that such a stipulation
8 should be filed by the parties) played into her decision to cut off any reasonable
9 response time for the Respondent to file and serve its objections to default in this
10 instance.
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15 Judge Biro had before her a signed stipulation for a continuance of the
16 February 14, 2006, while she was considering the EPA's motion for default during
17 the week of January 23, 2006. This counsel was just returning to full-time legal
18 practice on January 23, 2006, and was engaged in various hearings that week.
19 There was a window of time of less than one day to respond to the EPA's motion
20 for default, during a hectic, heavily scheduled work week, and there simply was
21 insufficient time to adequately respond, and this shortened timeline was
22 unnecessary since the parties had stipulated to a continuance of the contested
23 evidentiary hearing scheduled for February 14, 2006.
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1 VI. ARGUMENT ON ISSUES PRESENTED

2 6.1 **The proper sanction:** The appropriate sanction, if any, was to either
3 grant an extension of time for both parties to develop the technical evidence
4 available from the SATLOC computer, after it has been retrieved from the DOS
5 software, or alternatively simply strike the SATLOC evidence that was being
6 offered by the Respondent. There was no factual basis, free from bias or other
7 unfair influences, that fairly supports the extraordinary sanction of default and
8 dismissal of the Respondent's defenses in this action.
9

10 This is not a case where there is no explanation as to why the discovery was
11 not sufficiently completed, it is not a case where there was blatant refusal to
12 participate in discovery, and it should be noted that there was never a conference
13 initiated by the EPA counsel for discussion of the needed items to satisfy the
14 discovery request. EPA simply filed its motion for default, upon shortened
15 timelines. Consider the Ninth Circuit's extraordinary sanction imposed upon
16 Ferdinand and Imelda Marcos:
17

18 "Even if we assume, without deciding, that Appellants have appealed the
19 discovery sanction,^{*fn5} the district court did not abuse its discretion. The sanction
20 imposed is one explicitly authorized by Rule 37 for failure to appear at a
21 deposition, and Appellants do not contest their failure to appear. For a sanction this
22 severe, we have required that the party's failure must have been willful or in bad
23 faith. *Commodity Futures Trading Comm'n*, 67 F.3d at 771. *The fact that*
24 *Appellants have made no attempt to explain or excuse their failure to appear*
25

1 *suggests that the failure was deliberate.* We conclude that the district court did not
2 err in deeming the allegations of Hilao's motions for contempt to be established.”
3 *Hilao v. Estate of Ferdinand Marcos*, 103 F.3d 762, 763 (9th Cir. 12/17/1996)
4 (emphasis added).

5 But even with the egregious discovery violations in the *Marcos* case, the federal
6 court did not grant the extraordinary sanction of dismissal of the defendant's case
7 in chief, but simply ruled that the “designated facts shall be taken as established.”
8 This in itself was a severe sanction, but it is far overshadowed by the oppressive
9 sanction issued in the instant case before this Tribunal, *where there is no evidence*
10 *of deliberate, bad faith violation of discovery orders.*
11

12
13 **6.2 The proper sanction:** The SATLOC GPS track was offered as evidence
14 by the Respondent. The EPA really has no defense against this evidence, and the
15 allegations that expert witness Bird could somehow turn the evidence around to be
16 favorable to EPA is speculation, and would be based upon a “drift” analysis that
17 was not part of the original complaint, and for which the prevailing winds shall out
18 trump any speculative conclusions offered by EPA. The EPA moved for default
19 based upon the delay of receipt of the technical data from the SATLOC computer;
20 thus, if there must be a sanction it should be either the extension of time for
21 submission of the technical data (which must be retrieved by computer technicians
22 at great expense to the Respondent), or alternatively, the SATLOC evidence should
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1 simply be stricken from the record, and the matter should proceed to trial upon the
2 merits.
3

4 **6.3 Reassignment is appropriate:** By examination of the order of default, it is
5 clear that Judge Biro is biased against the Respondent and/or its counsel:
6

7 a. Judge Biro has encouraged the Respondent to sue its counsel for legal
8 malpractice. *Order of Default*, at pages 9-10 (“*If an attorney’s conduct falls*
9 *substantially below what is reasonable in the circumstances, the client’s remedy*
10 *against the attorney is a suit for malpractice*”).
11

12 b. Judge Biro, through her staff law clerk, Attorney Lisa Knight,
13 encouraged the parties to stipulate to a continuance of the February 14, 2006
14 contested hearing. But after receipt of the signed stipulation for the continuance,
15 Judge Biro elected to ignore the stipulation for continuance and used the
16 impending contested hearing date of February 14, 2006 as a basis to implement the
17 severe sanction of dismissal of the Respondent’s case in chief.
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21 c. Taking Respondent’s written arguments against default out of context,
22 Judge Biro concluded Respondent’s counsel disrespected and disregarded the
23 procedural rules of her Tribunal. But see the comments, within context:
24

25 “...Based upon all of the above, the EPA should not be granted a default
26 order, and if there is additional evidence needed to reach the substance of these
27 claims and defenses, then Judge Biro should grant both parties the opportunity to
28

1 discover the evidence. Thus far, the respondent has been working the laboring oar,
2 here, and has been encumbered with procedural hocus-pocus when the parties
3 simply need to settle down and try this case on the facts. The facts support a claim
4 that there is no violation of FIFRA here. Respondent should NOT be found liable
5 for the violation alleged in the *Complaint*, and this Court should dismiss these
6 claims against the Respondent, *sui generis*.

7 The EPA has had this discovery, and still seeks a default order, obviously
8 because the EPA understands its substantive evidence shall not support a finding
9 there was a FIFRA violation here..." *Respondent's Memorandum, Opposing*
10 *Default*, dated January 26, 2006.

11 Judge Biro's focus upon Respondent's counsel, and her determination that this
12 counsel is disrespectful, is of great concern to this counsel on several levels: (1) it
13 is an affront to this counsel's professional reputation, and is not supported by the
14 years of professional reputation developed in trial practice, and it is certainly not
15 this counsel's intention to disrespect Judge Biro or this legal process; (2) it causes
16 the Respondent to be concerned that the Appearance of Fairness Doctrine is being
17 violated here, and that the Respondent shall not be afforded a fair hearing before
18 Judge Biro because of her disdain for Respondent's counsel; (3) it places
19 Respondent and its counsel in a potential conflict of interest position, that requires
20 independent legal advice for the Respondent before continued litigation
21 representation may occur.

22 d. Judge Biro's willingness to accept the *ex parte* allegations of her staff
23 law clerk, Attorney Lisa Knight, concerning conversations between Ms. Knight
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1 and this counsel, without affording this counsel an opportunity to be heard and to
2 confront Ms. Knight's accusations against him. *See*, Order of Default, fn. 11. (Just
3 what does Judge Biro mean when she suggests that this counsel "has not presented
4 a cooperative attitude in communications with this Tribunal's staff?" What is she
5 referring to? What recourse does the Respondent have, and what recourse does this
6 counsel have, when these types of extrajudicial conversations become part of a
7 dispositive judicial order?)

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11 e. Judge Biro has accepted extrajudicial communications from EPA's
12 counsel or some other third party, unknown to this counsel and undisclosed by
13 Judge Biro, and based upon those extrajudicial communications has determined
14 that "despite [EPA's] request, Respondent's counsel has indicated an
15 unwillingness to stipulate anything in regard to this case." There has been no
16 judicial inquiry to this counsel, nor has there been any hearing or status conference
17 that supports Judge Biro's findings, and yet Judge Biro has included these findings
18 as factual support to impose the extraordinary sanction of dismissal of the
19 Respondent's case in chief, and the entry of a default order, in the face of
20 meritorious, persuasive evidence calling for the dismissal of the EPA claim that a
21 FIFRA violation occurred in this case.
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1 **6.4 Proper remedy for abuse:** The above facts all support a reassignment
2 of this case for trial before a different presiding judge. Also, the facts clearly
3 support an order of this Tribunal prohibiting any party from revealing or otherwise
4 discussing the negotiating positions of either the EPA or the Respondent in this
5 action (this should not have to be stated, but unfortunately the abuses evidenced in
6 this case require a protective order to prevent further abuse by EPA).
7
8

9 VII. CONCLUSION AND RELIEF REQUESTED

10
11 The Respondent has provided clear and compelling arguments for *reversal*
12 of the presiding judge's order of default. The evidence before the Tribunal, as
13 presented by the Respondent, strongly suggests that a contested hearing is not
14 required, and that the presiding judge should dismiss the action on its own motion.
15 The Respondent has not acted in bad faith, nor has there been a deliberate violation
16 of the presiding judge's discovery orders. The evidence to be presented without the
17 SATLOC track documentation is more than sufficient to defend against the EPA
18 claim of FIFRA violation. Thus, the proper discovery sanction should be either (a)
19 the grant of an extension of time for both the EPA and Respondent to fully develop
20 the SATLOC computer information (especially since *both parties* had stipulated to
21 a continuance of the contested hearing), or alternatively, (b) simply strike the
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1 SATLOC evidence altogether, and proceed to trial on the merits of the parties'
2 claims.
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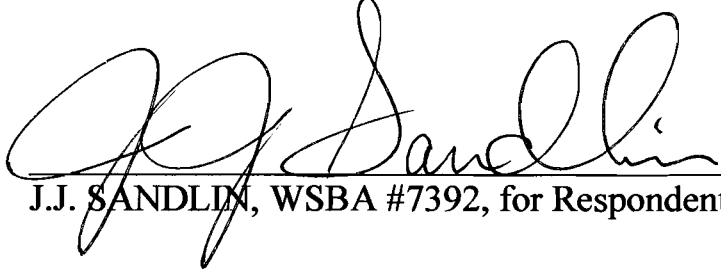
4 In either case, the presiding judge in this matter should be removed and an
5 alternate presiding judge should be assigned to hear the contested matters to be
6 presented by EPA and the Respondent. The Appearance of Fairness Doctrine
7 supports this relief, and out of respect for the judicial process and to Judge Biro,
8 this counsel encourages Judge Biro to join in such a suggestion, as being in the
9 interests of justice and proper resolution of these most difficult issues.
10
11

12 Finally, a protective order prohibiting the types of extrajudicial
13 communications that have occurred thus far in this case should be issued, with this
14 appellate Tribunal retaining jurisdiction to enforce the protective orders.
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17 Respectfully submitted this 1st day of March, 2006.

18 SANDLIN LAW FIRM

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J.J. SANDLIN, WSBA #7392, for Respondent

1 VIII. PROPOSED ALTERNATIVE FINDINGS OF FACT,
2 CONCLUSIONS OF LAW OR DISCRETION

3 The Respondent proposes that the following findings of fact be incorporated
4 into alternative findings of fact in this matter:
5

6 1. The Respondent's counsel reported he was suffering from an extended
7 illness and that his office was closed from December 20, 2005 through January 23,
8 2006. This evidence is unrefuted.
9

10 2. The Respondent did supply SATLOC data to EPA, in response to the
11 December 19, 2006 discovery order, before the presiding judge ruled upon the
12 motion to default in January, 2006.
13

14 3. The Respondent had retained computer specialists to retrieve the DOS
15 language data from the SATLOC computer, but that evidence was not yet available
16 at the time of the default consideration in January, 2006.
17

18 4. The EPA and the Respondent had stipulated to a continuance of the
19 scheduled contested hearing of February 14, 2006, before the presiding judge ruled
20 upon the EPA motion for default in January, 2006.
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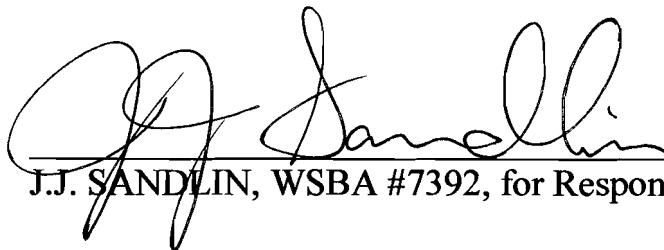
22 5. The presiding judge had extrajudicial or *ex parte* communications with EPA
23 and her staff law clerk that affected the presiding judge's deliberations concerning
24 the appropriate sanction for EPA's claims of discovery violations.
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1 Based upon the above proposed findings of fact, the Respondent proposes
2 the following conclusions of law or discretion:
3

- 4 1. The EPA motion for default is denied.
- 5 2. The Respondent is ordered to supplement the Respondent's discovery
6 regarding the SATLOC evidence within 60 days; or ALTERNATIVELY, The
7 Respondent's SATLOC evidence is stricken and shall not be considered at the time
8 of trial in this case.
9
- 10 3. The contested hearing upon the EPA complaint shall be scheduled for a
11 reasonable period of time, not less than six days.
12
- 13 4. The case shall be reassigned to another presiding judge.
- 14 5. No person shall have extrajudicial or *ex parte* communications with the
15 presiding judge concerning this action, nor shall any person discuss the parties'
16 negotiating positions with the presiding judge.
17
18

19 Respectfully submitted this 1st day of March, 2006.
20

21 SANDLIN LAW FIRM

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25 J.J. SANDLIN, WSBA #7392, for Respondent
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IX. APPENDIX

Document

page

1. Prehearing Statement and Exchange of Evidence A-1 through A-18
2. Order on Complainant's Motion for Accelerated Decision, etc. A-19 through A-28
3. Order on Complainant's Motion for Leave to File out of Time and to Shorten Time for Responsive Pleadings A-29 through A-30
4. Order Granting Complainant's Motion for Default A-31 through A-42