



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ELDON C. STUTSMAN, INC.,) DOCKET NO. FIFRA-07-2006-0210
)
)
)
RESPONDENT)

PREHEARING ORDER

In an Order dated July 6, 2006 the parties were directed to hold a settlement conference on this matter and to file a report concerning the conference and the status of settlement. Additionally, Respondent, who had not requested a hearing in its letter answer, was directed to file a statement clarifying its position as to whether a hearing before an Administrative Law Judge is requested. The parties now report that a settlement has not been reached, and Respondent has requested a hearing.

As such, the parties shall strictly comply with the requirements of this order and prepare for a hearing. The parties are advised that extensions of time will not be granted absent a showing of good cause. See Section 22.7(b) of the Rules of Practice, 40 C.F.R. § 22.7(b). The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the prehearing requirements or to meet the schedule set forth in this Prehearing Order. Of course, the parties are encouraged to initiate or continue to engage in settlement discussions during and after preparation of their prehearing exchange.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, it is directed that the following prehearing exchange takes place:

1. Each party shall submit:
 - (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness' expected testimony, or a statement that no witnesses will be called; and
 - (b) copies of all documents and exhibits which each party intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and
 - (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case. In the Complaint, Complainant alleges that Respondent is a corporation qualified to do business in the state of Iowa and is located in Hills, Iowa. Complaint at ¶ 4. In accordance with the Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Federal Insecticide, Fungicide, and Rodenticide Act, 40 C.F.R. § 22.35(b), the hearing shall be held in the county, parish, or incorporated city of the residence of the Respondent, unless otherwise agreed in writing by all parties. Thus, Respondent should state whether it wishes the hearing to be held in Hills, Iowa, and/or otherwise the parties should designate the city as the place of hearing of this matter.

See Sections 22.19(a), (b), (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), (d); see also Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.

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3. Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If Respondent intends to take the position that it is unable to pay the proposed penalty or that payment will have an adverse effect on its ability to continue to do business, Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.
4. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. §§ 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

The prehearing exchange delineated above shall be filed in *seriatim* manner, according to the following schedule:

- November 7, 2006 - Complainant's Initial Prehearing Exchange
- December 7, 2006 - Respondent's Prehearing Exchange, including any direct and/or rebuttal evidence
- December 21, 2006 - Complainant's Rebuttal Prehearing Exchange (if necessary)

Respondent has indicated that it wants a hearing pursuant to Section 554 of the Administrative Procedure Act (APA), 5 U.S.C. § 554. If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section 556(d) of the APA provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, Respondent has the right to defend itself against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Respondent is entitled to elect any or all three means to pursue its defense. If Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondent shall

serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including the Respondent's statement of election only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a). The prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001
Telephone: 202-564-6281


Barbara A. Gunning
Administrative Law Judge

Dated: September 21, 2006
Washington, DC

**In the Matter of *Eldon C. Stutsman, Inc.*, Respondent.
Docket No. FIFRA-07-2006-0210**

CERTIFICATE OF SERVICE

I certify that the foregoing **Prehearing Order**, dated September 21, 2006, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Kathy Robinson
Regional Hearing Clerk
U.S. EPA, Region VII
901 North 5th Street
Kansas City, KS 66101
Fx: 913.551.7925

Copy by Facsimile and Pouch Mail to:

Rupert G. Thomas, Esq.
Assistant Regional Counsel
U.S. EPA, Region VII
901 North 5th Street
Kansas City, KS 66101
Fx: 913.551.7925

Copy by Facsimile and Regular Mail to:

Steve Meyerholz
Agronomy Manager
Eldon C. Stutsman, Inc.
P.O. Box 250
Hills, IA 52235
Fx: 319.679.2900

**Dated: September 21, 2006
Washington, D.C.**

Date: 9/21/06

From the office of: Judge Barbara Gunning

Judge Carl Charneski

To: Kathy Robinson, ~~CA~~ RHC

Fax: 913. 551. 7925

Of: U.S. EPA, Region III

To: Rupert Flowers, CA

Fax: 913. 551. 7925

Of: U.S. EPA, Region III

To: Steve Muehlenberg

Fax: 319. 679. 2570

Of: Agromony Nungl

To:

Fax:

Of:

In Re: Clodon C. Peterson, Inc.

Docket No. FIRK-07-786-0210

- Urgent
- For Review
- For Your Information /Files

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