



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I – New England  
5 Post Office Square - Suite 100  
Boston, Massachusetts 02109-3912

**BY HAND**

September 24, 2015

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, MA 02109-3912

RECEIVED

SEP 24 2015

EPA ORC *WS*  
Office of Regional Hearing Clerk

Re: In the Matter of Rolf C. Hagen (USA) Corporation., Docket No. FIFRA-01-2015-0059

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Complaint and Notice of Opportunity for Hearing, with Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Audrey Zucker".

Audrey Zucker  
Enforcement Counsel

Enclosures

cc: Rolf C. Hagen, President, Rolf C. Hagen (USA) Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

SEP 24 2015

EPA ORC  
Office of Regional Hearing Clerk

\_\_\_\_\_  
In the Matter of: )  
)  
Rolf C. Hagen (USA) Corporation )  
305 Forbes Boulevard )  
Mansfield, MA 02048 )  
)  
Respondent. )  
)  
Proceedings under Section )  
14(a) of the Federal )  
Insecticide, Fungicide, and )  
Rodenticide Act, as amended )  
7 U.S.C. Section 136l(a). )  
\_\_\_\_\_ )

Docket No. FIFRA-01-2015-0059

**COMPLAINT and NOTICE OF  
OPPORTUNITY FOR HEARING**

**COMPLAINT**

This Complaint and Notice of Opportunity for Hearing (the “Complaint”) is being issued under Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Part 22” or the “Consolidated Rules”). This Complaint alleges that the Respondent Rolf C. Hagen (USA) Corporation (“Hagen” or the “Respondent”) has violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and the regulations promulgated pursuant to FIFRA at 40 C.F.R. Part 152 *et seq.* and 19 C.F.R. §§ 12.110 – 12.117. This Complaint provides written notice of the United States Environmental Protection Agency’s (“EPA”) proposal to assess administrative penalties for the violations alleged herein. This Complaint also provides notice of Respondent’s opportunity to request a hearing on the proposed

penalty. The Complainant is, by lawful delegation, the Legal Enforcement Manager in the Office of Environmental Stewardship, EPA Region 1.

### **GENERAL ALLEGATIONS**

1. Respondent imports into the United States, distributes and sells pet-care products and specialty chemicals for pond and aquarium maintenance, including products that destroy algae and filter water in ponds and fish tanks. Respondent is a Massachusetts corporation located at 305 Forbes Boulevard, Mansfield, MA 02048.

2. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the regulations promulgated thereunder.

3. Respondent’s facility located in Mansfield, MA (the “Hagen Facility”) is registered by EPA under Section 7 of FIFRA, 7 U.S.C. § 136e, as a pesticide-producing establishment, and is assigned the EPA establishment number (“EPA Est. No.”) 39815-MA-001.

4. Respondent imports pesticidal devices that are manufactured at facilities in China and Italy at the following locations, respectively: Cheng Gao Plastic & Hardware Electricity, Dongguan, China (“Cheng Gao Facility”) and Askoll Due S.P.A., Dueville, Italy (“Askoll Due Facility”). Both the Cheng Gao Facility and the Askoll Due Facility are registered by EPA under Section 7 of FIFRA, as pesticide-producing establishments, and are assigned the following EPA establishment numbers: EPA Est. Nos. 79790-CHN-001 and 74504-ITA-001, respectively.

5. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.” Accordingly, each of the Hagen Facility, the Cheng Gao Facility and the Askoll Due Facility is an “establishment” under Section 2(dd) of FIFRA.

6. At all times relevant to the violations alleged in this Complaint, Respondent imported into the United States, distributed, sold, offered for sale, shipped, and/or delivered for shipment devices known by the following product names: “Laguna Pressure-Flo Clean Filters” manufactured at the Cheng Gao Facility and “Laguna UV Sterilizer/Clarifier” manufactured at the Askoll Due Facility.

7. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines the term “device” as “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.”

8. The FIFRA regulations at 40 C.F.R Part 152, Subpart Z enumerate the statutory and regulatory provisions that are applicable to devices. *See* 40 C.F.R § 152.500. Such provisions include, among others, the following:

- a. Labeling requirements under Section 2(q)(1) of FIFRA, 7 U.S.C. §136(q)(1), and 40 C.F.R. Part 156;
- b. Establishment registration and reporting requirements under FIFRA Section 7 U.S.C. § 136e, and 40 C.F.R. Part 167;
- c. Requirements relating to books and records and establishment inspections under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, and 40 C.F.R. Part 169;
- d. Importation requirements under FIFRA Section 17, 7 U.S.C. § 136o;
- e. Child-resistant packaging requirements under Section 25(c)(3) of FIFRA, 7 U.S.C. § 136w(c)(3); and,

f. Requirements relating to FIFRA violations, enforcement, and penalties under Sections 12, 13, and 14 of FIFRA, 7 U.S.C. §§ 136j, 136k, and 136l. *See* 41 Fed. Reg. 51065 (November 19, 1976).

9. The Laguna Pressure-Flo Clean Filters and the Laguna UV Sterilizer/Clarifier are instruments that are intended for trapping, destroying, or mitigating algae contained in the water that they are used to purify; therefore, the Laguna Pressure-Flo Clean Filters and Laguna UV Sterilizer/Clarifier are each a “device” as defined by Section 2(h) of FIFRA.

10. On or about October 24, 2014, a duly-authorized EPA inspector (the “EPA Inspector”) conducted a FIFRA inspection at the Hagen Facility pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, to review compliance with FIFRA (the “Inspection”).

11. During the Inspection, the EPA Inspector reviewed and copied documents maintained by Respondent concerning Respondent’s imports of pesticidal devices from China and Italy.

12. Pursuant to Section 12(a)(2)(N) of FIFRA, it is unlawful for “any person . . . who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this subchapter.”

13. At all times relevant to the violations alleged in this Complaint, by importing, distributing, selling, offering for sale, shipping, and/or delivering for shipment Laguna Pressure Flo-Clean Filters and Laguna UV Sterilizer/Clarifier devices, Respondent engaged in actions that fall within the scope of the term “to distribute or sell” as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg). Accordingly, Respondent is a distributor for purposes of Section 12(a)(2)(N) of FIFRA.

14. The import of pesticides and devices into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA.

15. FIFRA Section 17(c), requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides and devices in the United States.

16. FIFRA Section 17(e), requires the Secretary of the Treasury, in consultation with the Administrator, to prescribe regulations for the enforcement of FIFRA Section 17(c).

17. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, acting through the United States Custom Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 12.110 – 12.117 (the “Pesticide/Device Import Regulations”).

18. The Pesticide/Device Import Regulations at 19 C.F.R. § 12.112(a) state, in pertinent part, that “an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1), hereinafter referred to as a Notice of Arrival or “NOA,” prior to the arrival of the shipment in the United States.”

19. Through the NOA, the importer reports vital information to EPA regarding the pesticides or devices such as the major active ingredients, quantity, country of origin, producing establishment number, carrier, port of entry, and points of contact. This information allows EPA to make informed decisions, before pesticides and devices arrive in the United States, as to whether such importation will pose unreasonable adverse risks to public health and the

environment. The NOA also provides contact information in the event of an emergency related to the movement of potentially harmful pesticide materials or devices.

20. An NOA constitutes a report under Section 12(a)(2)(N) of FIFRA that must be filed with the EPA Administrator prior to the arrival of each shipment of pesticides or devices in the United States.

21. During the Inspection, the EPA Inspector reviewed documents that establish the import of the Laguna Pressure Flo-Clean Filters and Laguna UV Sterilizer/Clarifier devices into the United States by Respondent.

22. On information and belief, at all times relevant to the violations alleged in this Complaint, Respondent failed to file the required NOAs for the Laguna Pressure Flo-Clean Filters and Laguna UV Sterilizer/Clarifier devices that Respondent imported into the United States.

23. Based upon the EPA Inspector's review of documentation provided by Respondent during the Inspection, and further investigation by EPA, Respondent imported shipments of Laguna Pressure Flo-Clean Filters and Laguna UV Sterilizer/Clarifier devices into the United States for distribution or sale without filing the required NOA with EPA on numerous occasions between 2010 and 2014.

**COUNT 1 – Failure to File Report for Device Imports**

24. Paragraphs 1 through 23 are realleged and incorporated by reference.

25. Based upon the Inspection, including a review of Respondent's records, EPA's Inspector documented that Respondent imported for distribution or sale Laguna Pressure Flo-Clean Filters and Laguna UV Sterilizer/Clarifier devices.

26. Based upon the Inspection, including a review of Respondent's records, EPA determined that between 2010 and 2014, Respondent failed to file reports (*i.e.*, NOAs) with EPA for the import of Laguna Pressure Flo-Clean Filters and Laguna UV Sterilizer/Clarifier devices as required by Section 17 of FIFRA and 19 C.F.R. § 12.112(a), on numerous separate occasions.

27. Accordingly, on numerous separate occasions Respondent violated Section 12(a)(2)(N) of FIFRA and the regulations promulgated pursuant to FIFRA at 19 C.F.R. §§ 12.110 – 12.117, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

#### **PROPOSED CIVIL PENALTY**

28. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes EPA to assess a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant thereto. Pursuant the Debt Collection Improvement Act of 1996 ("DCIA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996), and EPA's Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder and codified at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004 and to \$7,500 for violations occurring after January 12, 2009. *See* 78 Fed. Reg. 66643 (November 6, 2013).

29. Based on the forgoing findings of violations of FIFRA, EPA seeks to assess a civil penalty of up to \$7,500 per violation for each of the violations alleged in Count 1 above. The assessment of a penalty is warranted because the Laguna Pressure Flo-Clean Filters and Laguna UV Sterilizer/Clarifier devices were imported into the United States on numerous occasions without Respondent filing the required reports (*i.e.*, NOAs) with EPA. The FIFRA requirement to submit reports (*i.e.*, NOAs) to EPA prior to the importation into the United States



of a pesticide or device protects against unreasonable risk to human health or the environment by providing EPA with vital information regarding the pesticides or devices before they arrive in the United States for distribution or sale. In order to effectively regulate the importation of pesticides and devices, it is essential to know when the pesticides or devices arrive in the United States such that the appropriate officials may act promptly to prevent any adverse impacts, as necessary.

30. In determining the amount of the penalty to be assessed under Section 14(a) of FIFRA, EPA will take into account the statutory factors listed in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which include the appropriateness of the penalty to the size of the business of the person charged, the effect of the penalty on the person's ability to continue in business, and the gravity of the violation. EPA will also take into account the "FIFRA Enforcement Response Policy" issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, dated December 2009 (the "Penalty Policy"), a copy of which is enclosed with this Complaint.

31. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for Respondent's FIFRA violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules (enclosed).

32. Neither assessment nor payment of any administrative penalty shall affect Respondent's continuing obligation to comply with FIFRA and its implementing regulations.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

33. As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and in accordance with 5 U.S.C. § 554 and 40 C.F.R. § 22.14, Respondent has the right to request a

In the Matter of Rolf C. Hagen (USA) Corporation, Docket No. FIFRA-01-2015-0059, *Complaint and Notice of Opportunity for Hearing*

formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To avoid being found in default and having a penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of receipt of this Complaint. The Answer should (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense, and (3) specifically request an administrative hearing (if desired). The denial of any material fact or raising any affirmative defense(s) shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint will constitute an admission of the undenied allegations. The original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, must be sent to:

Wanda I. Santiago  
Regional Hearing Clerk (Mail Code: ORA 18-1)  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

34. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action to Audrey Zucker, the attorney assigned to represent EPA and designated to receive service on behalf of Complainant in this matter at:

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency  
Office of Environmental Stewardship (OES 04-2)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
(617) 918-1788

35. The hearing that will be held upon Respondent's request will be conducted in accordance with the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*) and the Consolidated Rules.

36. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules may be filed and served by e-mail, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which is provided with the Complaint.

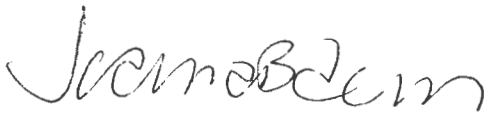
37. If Respondent fails to file a written Answer within thirty (30) days of the service of this Complaint, pursuant to 40 C.F.R. § 22.17(a) Respondent may be found in default, which constitutes an admission of all the facts alleged in this Complaint and a waiver of the right to a hearing, and the above-referenced penalties may be assessed without further proceedings.

#### **INFORMAL SETTLEMENT CONFERENCE**

38. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or the proposed penalties, and/or the possibility of settlement. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order, signed by Complainant and Respondent, would be binding as to all terms and conditions specified therein.

39. A request for an informal settlement conference does not extend any deadline in this proceeding, including the thirty (30) day period for the submission of a written Answer to this Complaint.

40. If Respondent has any questions concerning the settlement process, or wishes to arrange for an informal conference, Respondent should contact Audrey Zucker at (617) 918-1788 or [zucker.audrey@epa.gov](mailto:zucker.audrey@epa.gov).



Joanna B. Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship

Date: 9/22/15

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Complaint and Notice of Opportunity for Hearing was delivered in the following manner to the addressees listed below:

Original and One Copy by  
Hand Delivery to:

Wanda I. Santiago  
Regional Hearing Clerk  
Environmental Protection Agency  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

One Copy by Certified Mail  
Return Receipt Requested to:

Rolf C. Hagen, President  
Rolf C. Hagen (USA) Corporation  
305 Forbes Boulevard  
Mansfield, MA 02048

Date : 9/24/15

Signed: Audrey Zucker  
Audrey Zucker  
Enforcement Counsel  
Office of Environmental Stewardship (OES04-2)  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

IN THE MATTER OF:	)	
	)	
Electronic Submission of Documents	)	EPA Docket No.
	)	01-2015-0001
	)	
	)	

**STANDING ORDER AUTHORIZING FILING AND SERVICE BY E-MAIL  
IN PROCEEDINGS BEFORE THE REGION 1 REGIONAL JUDICIAL OFFICER**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, set forth at 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), state that "[t]he Presiding Officer... may by order authorize... electronic filing, subject to any appropriate conditions and limitations." 40 C.F.R. §22.5(a)(1), (b)(2). Note, however, that rulings, orders and decisions must be filed and served in accordance with 40 C.F.R. § 22.6, and complaints must be served in accordance with 40 C.F.R. § 22.5(b)(1). Accordingly, pursuant to this authority, the filing and service of documents, *other than the complaint, rulings, orders, and decisions*, in all cases currently before or subsequently filed with the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by e-mail.<sup>1</sup> See 40 C.F.R. §§ 22.5(a), (b)(1), (b)(2) & 22.6.

Note that this Standing Order does not require the use of e-mail for filing or service in lieu of other methods for filing and/or service. Rather, it authorizes the use of e-mail *in addition to* those methods already authorized in the Consolidated Rules of Practice. 40 C.F.R. § 22.5(b)(2).

In addition, the following conditions and limitations to facilitate filing and service by email are hereby adopted.

- A document is considered filed when the Regional Hearing Clerk receives it. 40 C.F.R. § 22.5(a)(1). All filed documents must be signed, accompanied by a certificate of service, and submitted to the Regional Hearing Clerk for filing in person, or by mail, courier, commercial delivery service, or email.
- Documents filed with the Regional Hearing Clerk by email after 11:59 p.m. Eastern Time will be treated as having been filed the next business day.
- For documents filed through non-electronic means, the inked date stamp physically applied by the Regional Hearing Clerk to the paper copy of the documents will continue

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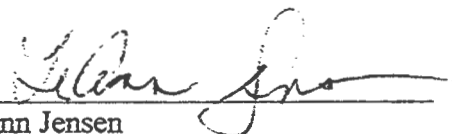
<sup>1</sup> This Order *shall not* apply to proceedings under other provisions in Title 40 that do not expressly incorporate the Part 22 procedures.

to serve as the official record of the date and time of filing. The Regional Hearing Clerk is open to receive such paper filings between 8:00 a.m. and 5:00 p.m. Eastern Time, Monday through Friday.

- Any party choosing to submit a document to the Regional Hearing Clerk by e-mail for filing must address the e-mail to R1\_Hearing\_Clerk\_Filings@epa.gov (note: there are “\_” underscore characters between each word). The subject line of the electronic transmission shall include the name and docket number of the proceeding. Documents submitted electronically must be in Portable Document Format (“PDF”), and contain a contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. *All* documents submitted for filing, regardless of submission method, must be signed and accompanied by a certificate of service in accordance with 40 C.F.R. § 22.5(a)(3).
- Documents submitted by email for filing shall be deemed to constitute both the original and one copy of the document in satisfaction of the duplicate-filing requirement at 40 C.F.R. § 22.5(a)(1).
- This authorization terminates as to any particular proceeding when an answer is filed pursuant to 40 C.F.R. § 22.15. In addition, this authorization does *not* apply in proceedings under 40 C.F.R. § 22.13(b), or to consent agreements and final orders filed with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.18(b) and Memorandum from Susan L. Biro, Chief Administrative Law Judge, OALJ, Amendment of Hearing Clerk Pilot Procedures as to CAFOS (March 14, 2013) (available at [http://www.epa.gov/oalj/orders/HrgClerk\\_PilotProject\\_Memo\\_Amendment.pdf](http://www.epa.gov/oalj/orders/HrgClerk_PilotProject_Memo_Amendment.pdf)).
- Documents filed after an answer is filed must comply with the Chief Administrative Law Judge’s Standing Order Authorizing Filing and Service By E-Mail in Proceedings Before the Office of Administrative Law Judges (November 21, 2013) (available at [http://www.epa.gov/oalj/orders/2013/Standing\\_Order\\_2013-11-21\\_E-Mail\\_Filing\\_&\\_Service\\_Signed.pdf](http://www.epa.gov/oalj/orders/2013/Standing_Order_2013-11-21_E-Mail_Filing_&_Service_Signed.pdf)) and the Chief Administrative Law Judge’s Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges (August 11, 2014) (available at [http://www.epa.gov/oalj/orders/2014/2014-08-11%20-%20E-Filing\\_Standing\\_Order\\_Final.pdf](http://www.epa.gov/oalj/orders/2014/2014-08-11%20-%20E-Filing_Standing_Order_Final.pdf)).
- This authorization applies only in proceedings in which the complaint clearly provides notice of the availability of electronic filing and service, and in which the complaint is accompanied by a copy of this notice and order. Prior to utilizing electronic service, the parties shall confer and reach agreement regarding acceptable electronic addresses and other logistical issues.
- The conditions and limitations set forth herein may be amended or revoked generally or in regard to a specific case or group of cases by further order of the Regional Judicial Officer in her sole discretion at any time. In addition, the Regional Judicial Officer may issue an order modifying these conditions and limitations if deemed appropriate in her discretion.

**SO ORDERED.**

Dated: October 9, 2014

A handwritten signature in black ink, appearing to read "LeAnn Jensen", written over a horizontal line.

LeAnn Jensen  
Acting Regional Judicial Officer