

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)
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DAVID NORMAN and MIKE LANSDOWN,) Docket No. FIFRA-07-2006-0209
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Respondents)
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COMPLAINANT'S PRE-HEARING EXCHANGE

COMES NOW the United States Environmental Protection Agency (hereinafter EPA or Complainant), through one of its Attorneys, and respectfully submits the following Pre-hearing Exchange pursuant to the August 8, 2006, Pre-hearing Order, issued by the Honorable Carl C. Charneski, Administrative Law Judge.

I. LIST OF WITNESSES

Complainant intends to call the following fact witnesses at the administrative hearing:

1. John Colborne (Fact Witness), Pesticide Use Investigator, Department of Agriculture, State of Missouri. John Colborne, will testify regarding his investigations of the alleged sprayings/applications of a Chlordane product at a residence, 300A SW 3rd Avenue, Ava, Missouri, that was occupied by Tom Pronti, and owned by David Norman. Mr. Colborne will detail the information that he gleaned during his investigations, as well as the collection of documents and samples that were obtained. Mr. Colborne may further testify to other relevant and appropriate matters in this case.
2. Tom Pronti (Fact witness), Ava, Missouri. Tom Pronti, will testify to the sprayings/applications of a Chlordane product at the residence that he occupied at 300A SW 3rd Avenue, Ava, Missouri. Mr. Pronti may further testify to other relevant and appropriate matters in this case.
3. Kathy Molyneux (Fact Witness), Ava, Missouri. Kathy Molyneux, will testify that Mike Lansdown, on or about November 1, 2003, retrieved the Chlordane container and sprayer that were used in the applications of the Chlordane product at 300A SW 3rd Avenue, Ava, Missouri. Ms. Molyneux may further testify to other relevant and appropriate matters in this case.
4. Rodney Richardson (Fact witness), Richardson Pest and Termite, Gainsville, Missouri. Rodney Richardson, will testify to having treated/sprayed the

residence at 300A 3rd Avenue, Ava, Missouri, occupied by Tom Pronti and Kathy Molyneux. . Mr. Richardson may further testify to other relevant and appropriate matters in this case.

5. Mark K. Leshner (fact witness), Case Review Officer, U.S. Environmental Protection Agency, Region 7. Mr. Leshner, will testify regarding his review of the information and documents collected by John Colborne during his investigation of the applications/sprays of a Chlordane product at 300A SW 3rd Avenue, Ava, Missouri, and the violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), by the Respondents. Mr. Leshner may also testify regarding how the penalty was calculated. A memorandum from Mark K. Leshner to Rupert G. Thomas, explaining how the penalty was derived, is enclosed, identified as attachment A, and is incorporated herein. Mr. Leshner may further testify to other relevant and appropriate matter in this case.
6. Vicki Reedy (Expert Witness), Analyst, Hygenic Laboratory, The University of Iowa. Vicki Reedy, will testify to conducting the analysis, and the results of said analysis of the samples collected at 300A SW 3rd Avenue, Ava, Missouri, by John Colborne during Mr. Colborne investigation/inspection of the Chlordane application at 300A SW 3rd Avenue, Ava, Missouri. Ms. Reed may further testify to other relevant and appropriate matter in this case.
7. Randy J. Schademann (Expert Witness), On Scene Coordinator, U.S. Environmental Protection Agency. Randy J. schademann, will testify to the presence/existence of Chlordane at 300A SW 3rd Avenue, Ava, Missouri. Mr. Schademann may further testify to the cleanup activity at said address, a property owned by David Norman and rented to Tom Pronti, and occupied by Tom Pronti and Kathy Molyneux. Mr. Schademann may further testify to other relevant and appropriate matter in this case.

II. DOCUMENTS AND EXHIBITS

Copies of documents and exhibits which Complainant intends to introduce into evidence at the administrative hearing are attached hereto as "Complainant's Ex." (E.g. Complainant's 1). The following is a brief description of the documents and exhibits:

Complainant's Ex. 1. Notices of Inspection, dated November 14, and 18, 2003.

Complainant's Ex. 2. Photographs taken by John Colborne..

Complainant's Ex. 3. Voluntary Statements from Tom Pronti, Mike Lansdown, Rodney Richardson, and David Norman.

Complainant's Ex. 4. Invoice from Richardson Pest & Termite..

Complainant's Ex. 5. Receipts for Samples.

Complainant's Ex. 6. Written report by John Colborne.

Complainant's Ex. 7 Results of Analysis, and History of Official Samples..

Complainant's Ex. 8. On Scene Coordinator Report.

III. DETERMINATION OF THE PROPOSED PENALTY

The penalty is determined in the manner outlined in the document titled "FIFRA CIVIL PENALTY CALCULATION JUSTIFICATION". This document is attached and incorporated herein.

IV. ATTACHMENT

The FIFRA civil penalty calculation justification, explaining the determination and calculation of the penalty is included as an attachment, and is incorporated herein.

V. ESTIMATE OF TIME NEEDED TO PRESENT CASE.

Complainant estimate the time needed to present this case will be half of a day, not to exceed one day.

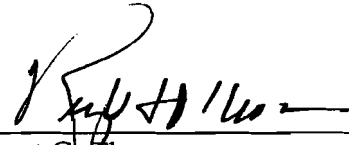
VI. PLACE OF HEARING

Complainant request that the administrative hearing takes place in Kansas City, Kansas; Kansas City, Missouri; Springfield, Missouri; or Joplin, Missouri.

VII. RESERVATION OF RIGHT

Complainant respectfully reserves the right to call all the witnesses called by Respondent; to call any of its witnesses in rebuttal, and to modify or supplement the names of witnesses and exhibits prior to the hearing, pursuant to 40 C.F.R. Part 22, and upon notice to the United States Administrative Law Judge, and the Respondent.

Respectfully submitted,
U.S. Environmental Protection Agency

By 
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ATTORNEY FOR COMPLAINANT

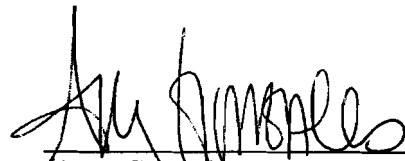
CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2006, I filed the original and one copy of Complainant's Pre-hearing Exchange, exhibits, and attachment, with the Regional Hearing Clerk, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, and mailed a copy U.S. Mail to the following:

Honorable Carl C. Charneski
United States Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20406

And

John W. Bruffett, Esq.
Attorney at Law
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Amy Gonzales