

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF )  
 ) FIFRA 04-2014-3009  
 MTJ American, LLC )  
 )  
 Respondent )  
\_\_\_\_\_ )

COMPLAINANT'S MOTION TO DISMISS AND/OR STRIKE RESPONDENT'S  
COUNTERCLAIMS

COMES NOW Complainant, pursuant to 40 C.F.R. § 22.16(a) of the Consolidated Rules of Practice which govern the proceedings in this case, and hereby files this Motion to Dismiss and/or Strike Respondent's Counterclaims as set forth below. On May 5, 2015, MTJ American, LLC (Respondent) served on the U.S. Environmental Protection Agency, Region 4 (EPA or Complainant) a motion to dismiss EPA's Complaint, an answer to EPA's Complaint, and several counterclaims seeking compensatory, consequential, special and punitive damages for EPA's alleged bad faith in bringing this enforcement action. Complainant requests that the counterclaims be dismissed and/or stricken pursuant to Section 22.16(a) of the Consolidated Rules, on the grounds that this Court lacks subject matter jurisdiction over the counterclaims alleged by Respondent. Part 22 does not grant authority for, or permit an Administrative Law Judge to entertain as part of the EPA penalty action, a counterclaim for monetary damages or other such relief as sought by the Respondent. Nor does Part 22 authorize an Administrative Law Judge to issue any orders directing EPA to pay any monetary damages to a respondent in any such penalty enforcement action.

The jurisdiction of the Administrative Law Judges in federal environmental cases concerning violations of FIFRA is expressly set out in 40 C.F.R. § 22.1(a), and is limited to

determining whether EPA has met its burden to establish Respondent's liability for alleged violations of FIFRA, and if so, to determining an appropriate penalty, if any. Any such claims for monetary damages against EPA, as sought in Respondent's counterclaims, even assuming that such are cognizable as a valid cause of action under other federal statutes and are not barred by sovereign immunity, are not subject to adjudication in this EPA enforcement action seeking penalties for Respondent's alleged violations of FIFRA. To the extent such claims are cognizable under federal laws and are not barred by sovereign immunity, Respondent would be required to file an independent action elsewhere in the appropriate court in accordance with applicable statutory authorities.

Subject-matter jurisdiction is the requirement that the court have power to hear the specific kind of claim that is brought to that court. While the parties may waive personal jurisdiction and submit to the authority of the court, the parties may not waive subject-matter jurisdiction. In fact, the court may dismiss the case sua sponte for lack of subject-matter jurisdiction. *See, e.g.,* Fed. R. Civ. Proc. 12(b)(1). The requirement that a court have subject-matter jurisdiction means that the court can only assume power over a claim that the laws of the jurisdiction authorize it to hear. In the present matter, the Administrative Law Judge has not been granted authority by the Consolidated Rules or any other statutory or regulatory provisions to exercise power over the claims asserted in Respondent's counterclaims.

A federal court is presumed to lack subject matter jurisdiction and the party invoking federal jurisdiction bears the burden of persuasion on jurisdiction. "It is to be presumed that a cause lies outside of federal courts' limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); 13D Wright & Miller § 3522, pp. 104–07; 15

*Moore's Federal Practice* ¶ 102.14 (citing McNutt v. Gen. Motors Acceptance Corp. of Ind., Inc., 298 U.S. 178, 189 (1936)) (“The burden of proving all jurisdictional facts is on the party asserting jurisdiction.”) In this case, Respondent has not carried its burden, nor can it, since, as shown above, no such authority is provided under the Consolidated Rules or any other substantive or procedural statutory authority. Respondent has cited no authority by which the Administrative Law Judge in this FIFRA penalty proceeding can exercise jurisdiction over the counterclaims asserted by Respondent.

Additionally, Section 22.31 of the Consolidated Rules provides that the final order of the Administrative Law Judge shall resolve only those causes of action alleged in the complaint. An Administrative Law Judge has no authority under the Consolidated Rules to consider, adjudicate or include in a final order any additional issues such as those raised by the Respondent in its counterclaim seeking damages against EPA.

For the foregoing reasons, Complainant respectfully requests that the Court grant Complainant’s Motion to Dismiss and Strike the Respondent’s counterclaims from this case.

Respectfully submitted,

Date: 5/20/15

  
Robert W. Caplan  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, GA 30303  
(404) 562-9520

CERTIFICATE OF SERVICE

I certify that the foregoing Motion to Dismiss and/or Strike Respondent's Counterclaims was transmitted according to the manner specified, to the listed parties on the date provided below:

METHOD:

PDF filed electronically via  
OALJ Electronic Filing System

TO:

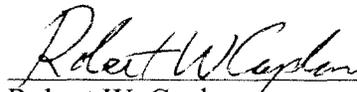
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Copy by first class mail

Matthew K. Rogers  
Law Offices of Matthew K. Rogers, PLLC  
Post Office Box 9096  
Hickory, North Carolina 28603

Date

5/20/15



Robert W. Caplan  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9520