



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Timothy Wilson, d/b/a) **Docket No. FIFRA-07-2023-0135**
Wilson's Pest Control,)
)
Respondent.)

**ORDER ON COMPLAINANT'S MOTIONS
FOR ADDITIONAL DISCOVERY AND EXTENSION OF TIME**

Currently pending before this Tribunal are Complainant's Motion for Additional Discovery, or in the alternative, Motion in Limine, and Complainant's Motion for Extension of Time to File Dispositive Motions Regarding Liability. For good cause shown, both motions are **GRANTED**.

A. Complainant's Motion for Additional Discovery

On June 21, 2024, Complainant, the Director of the Enforcement and Compliance Assurance Division of Region 7 of the United States Environmental Protection Agency ("EPA"), filed a Motion for Additional Discovery, or in the alternative, Motion in Limine ("Discovery Motion"). Complainant's request for additional discovery relates to information concerning the ability of Respondent Timothy Wilson, d/b/a Wilson's Pest Control, to pay the proposed penalty. Disc. Mot. 1. Specifically, Complainant asks that Respondent be ordered to produce within 30 days "true, accurate and complete copies of at least the last three years of filed and signed and dated U.S. income tax returns of Respondent, including all associated schedules and attachments; and the last three years of income statements and balance sheet reports." Disc. Mot. 3. Complainant further requests that if Respondent fails to timely provide such information, it be barred at hearing from "proffering any testimony, documents, or other evidence relating to the issue of Respondent's ability to pay the proposed penalty or the proposed penalty's potential economic impact on Respondent or its business." Disc. Mot. 3.

In support of its request, Complainant recalls that in the Prehearing Order dated March 20, 2024, this Tribunal directed Respondent to provide material in support of any inability to pay claim in its Prehearing Exchange. Disc. Mot. 5 (citing Prehearing Order at 5 ("[I]f Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise

factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.”)). Complainant advises that despite requesting the assessment of no penalty in its Answer, Respondent neither raised the issue of its ability to pay nor provided any financial information in support thereof in its Prehearing Exchange submitted on May 24, 2024. Disc. Mot. 5-6 (citing Answer at 9).

Complainant further represents that on numerous occasions, it informally, as well as formally in the Complaint, advised Respondent of the right to have its ability to pay the proposed penalty considered and requested that Respondent provide it with documentation and information to support any claim of an inability to pay. Disc. Mot. 2 (citing CX 23 at 3; CX 24 at 1; CX 26 at 1; CX 25; Complaint ¶ 73). Complainant states that Respondent acknowledged in its Answer that “EPA has notified Respondent of his right to submit or decline financial information relating to ability to pay the proposed civil penalty.” Disc. Mot. 2 (citing Answer at 9). Nevertheless, to date, Respondent has not provided any financial information that Complainant could use to analyze its ability to pay. Disc. Mot. 5. Therefore, Complainant seeks an order requiring Respondent to do so, lest it be deemed to have waived the right to raise the issue at hearing, citing for support, among other precedent, *New Waterbury, Ltd.* Disc. Mot. 6-7 (citing *New Waterbury*, 5 E.A.D. 529, 542 (EAB 1994) (“[I]n any case where ability to pay is put in issue, the Region must be given access to the respondent’s financial records before the start of such hearing.”)).

Complainant served its Discovery Motion on Respondent by email on June 21, 2024. No response to the Discovery Motion from Respondent has been timely received by this Tribunal. 40 C.F.R. § 22.16(b) (“A party’s response to any written motion must be filed within 15 days after service of such motion Any party who fails to respond within the designated period waives any objection to the granting of the motion.”). Therefore, Respondent has waived any objection to the Discovery Motion.

A party may move for additional discovery following the prehearing exchange. 40 C.F.R. § 22.19(e)(1). “The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought.” *Id.* The requested discovery may be ordered only if it:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the nonmoving party;
- (ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
- (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

Id.

The prehearing exchange in this case has been completed. Complainant seeks an order directing Respondent to produce certain documents, namely, the last three years of its federal income tax returns, income statements, and balance sheet reports. Disc. Mot. 3. Ordering such discovery will not unreasonably delay this proceeding as a hearing has not yet been scheduled, nor will it unreasonably burden Respondent as the discovery request is both specific and limited. Complainant seeks information that is most reasonably obtained from Respondent as it relates to Respondent's financial condition, information that Respondent has refused to provide voluntarily. Further, the information sought has significant probative value on a disputed issue of material fact relevant to the relief sought, as Complainant seeks a penalty for the alleged violations, the appropriateness of which Respondent disputes, and "[i]n determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation." 7 U.S.C. § 136l(a)(4).

Thus, for the reasons outlined above, Complainant's Motion for Additional Discovery is **GRANTED**. As requested, Respondent shall file and serve on Complainant within 30 days of this Order true, accurate, and complete copies of the last three years of his filed, signed, and dated U.S. income tax returns, including all associated schedules and attachments, as well as the last three years of income statements and balance sheet reports for the business entity Wilson's Pest Control. Should such documentary evidence not be fully and/or timely produced, this Tribunal may find that Respondent has waived its right to contest at hearing Complainant's proposed penalty based on an alleged inability to pay.

B. Complainant's Motion for Extension of Time

On July 5, 2024, Complainant filed a Motion for Extension of Time to File Dispositive Motions Regarding Liability ("Extension Motion"). In the Extension Motion, Complainant requests that the July 7, 2024 deadline set in this Tribunal's Prehearing Order for filing dispositive motions be extended 60 days, until September 5, 2024, citing the pendency of its Motion for Additional Discovery. To date, Respondent has not responded to the Extension Motion, but no response is deemed necessary, as the deadline for filing dispositive motions expired before the Tribunal had an opportunity to rule on the pending motions. Therefore, Complainant's Extension Motion is **GRANTED**, and the parties shall have until September 5, 2024, to file any dispositive motions in this matter.

ORDER

Upon consideration of the foregoing, it is hereby **ORDERED** as follows:

- a. Complainant's Motion for Additional Discovery, or in the alternative, Motion in Limine is hereby **GRANTED**;

- b. Respondent shall file and produce within 30 days of the date of this Order true, accurate, and complete copies of the last three years of his filed, signed, and dated U.S. income tax returns, including all associated schedules and attachments, as well as the last three years of income statements and balance sheet reports for his business, Wilson's Pest Control. **Should such documentary evidence not be fully and/or timely produced, this Tribunal may issue an Order finding that Respondent has waived its right to contest at hearing Complainant's proposed penalty based on an alleged inability to pay.**

- c. Complainant's Motion for Extension of Time to File Dispositive Motions Regarding Liability is hereby, **GRANTED**. The parties shall have until September 5, 2024, to file any dispositive motions in this matter.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: July 10, 2024
Washington, D.C.

In the Matter of Timothy Wilson, d/b/a
Wilson's Pest Control, Respondent
Docket No. FIFRA-07-2023-0135

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order on Complainant's Motions for Additional Discovery and Extension of Time dated July 10, 2024, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



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Dated: July 10, 2024
Washington, D.C.