

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

<b>In the matter of</b>	)	
	)	
<b>Richard Roger Thomas</b>	)	<b>Docket No. FIFRA-04-2002-3035</b>
<b>d/b/a Albermarle Plantation,</b>	)	
	)	
<b>Respondent</b>	)	

**ORDER ON CROSS-MOTIONS FOR DISCOVERY**

Complainant United States Environmental Protection Agency (“EPA”) and respondent Richard Roger Thomas d/b/a Albermarle Plantation (“Richard Roger Thomas”) have filed cross-motions for discovery. Each of the motions has been opposed. The motions are *granted* to the extent set forth below. In all other respects, the motions are *denied*.

**I. Complainant’s Discovery Request**

A. “Individual Ability to Pay Claim - Financial Data Request Form (Attachment A)”

In its reply to respondent’s opposition to this discovery request, EPA states that “Respondent did ultimately provide Complainant with a portion of the discovery requested, namely the Individual Ability to Pay Claim Form for Respondent Richard Roger Thomas.” Compl. Reply at 2. EPA, however, states that Richard Roger Thomas did not include his “Household Living Expenses,” and that without this information complainant cannot properly evaluate respondent’s claim that he cannot pay the proposed penalty.

This discovery request is *denied*. EPA has not shown a specific need for the household living expense information. In fact, it appears that respondent already has provided EPA with substantial financial information that may be taken into account in an ability-to-pay analysis. If EPA wants more information, it must justify its request.

B. “Financial Statements, relative to the most recent 3 years, for Corporate & Estate Analysts, Inc. (of which respondent is sole shareholder;) Oxbow Farms Partnership (of which Respondent is a 46 percent general partner;) and Albermarle Plantation (of which Respondent is understood to be the sole proprietor.”

To the extent that such Financial Statements exist, they are to be provided to EPA. If such statements do not exist, but the equivalent financial information does exist, that information must be provided to EPA.

- C. “Company asset depreciation schedules, cumulative for the most recent 3 years, for Corporate & Estate Analysts, Inc.; Oxbow Farms Partnership; and Albermarle Plantation.”

To the extent that such Company Asset Depreciation Schedules exist, they are to be provided to EPA. If such schedules do not exist, but the equivalent financial information does exist, that information must be provided to EPA.

## **II. Respondent’s Discovery Request**

- A. “All documents within Complainant’s possession relating to any investigations conducted by U.S. EPA, the U.S. Fish and Wildlife Service, the Georgia Department of Agriculture, the Georgia Department of Natural Resources or any other governmental agency relating to the poisoning of eggs and/or the baiting of quail predators by Richard Roger Thomas or at Albermarle.”

This request is *granted*. EPA has offered no reason why Richard Roger Thomas should be limited, in preparing his defense, to those items that complainant has identified in its prehearing exchange. Nor has EPA offered any other reason why this discovery request should not be granted. Respondent merely asks only for information within the possession of EPA and it has identified a specific place and time as to which the information applies. Nonetheless, while neither party has raised the matter of investigatory privilege, this Tribunal is concerned that such may be the case here. In that regard, to the extent that EPA believes that investigatory privilege applies, within 3 business days of the date of this order it shall so inform this Tribunal. In such a case, within 5 days of the date of this order EPA shall provide to this Tribunal for an *in camera* inspection all documents to which it asserts a privilege.

- B. “All documents within Complainant’s possession relating to Complainant’s delegation of FIFRA enforcement authority to the State of Georgia.”

This request is *granted*, but only to the extent that any such delegation of authority is not a matter of public record.

- C. “Any and all correspondence between Complainant and Respondent.”

This request is *denied*. First, it is overly broad. Second, respondent itself should be in the possession of the requested correspondence.

- D. “Any and all correspondence between Complainant and any other state or federal agency related to the investigation of and [*sic*] this

enforcement action against Richard Roger Thomas and Albermarle.”

This request is *denied*. It is overly broad.

Accordingly, as set forth above, the parties are directed to comply with this order no later than October 24, 2003. In the event that any party cannot meet this timetable, they shall so inform this Tribunal.

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Carl C. Charneski  
Administrative Law Judge

Issued: October 16, 2003  
Washington, D.C.