



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Everyday Group, LLC,) Docket No. FIFRA-02-2012-5201
)
Respondent.)

ORDER ON RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

The United States Environmental Protection Agency ("EPA" or "Agency"), Region 2 ("Complainant"), initiated this proceeding on October 11, 2012, by filing a Complaint and Notice of Opportunity for Hearing against Everyday Group, LLC ("Respondent"). The Complaint alleges in three counts that Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and 40 C.F.R. § 152.15 by engaging in the distribution or sale of unregistered pesticides. Through counsel, Respondent filed an Answer on November 9, 2012.

By Prehearing Order dated January 4, 2013, the undersigned established deadlines for a number of prehearing procedures, including the filing of a status report regarding the status of settlement negotiations between the parties and a prehearing exchange of information. On January 30, 2013, Complainant filed a Status Report and Motion for Extension of Time ("Motion"), wherein Complainant requested a two-month extension of the deadlines for the prehearing exchange of information on account of the parties' ongoing settlement negotiations. Had the undersigned granted the Motion in its entirety, the filing deadline for Respondent's Prehearing Exchange would have been extended to May 15, 2013. However, by Order dated January 31, 2013, the undersigned extended the deadlines for the prehearing exchange of information by only 30 days. Accordingly, Respondent was directed to file its Prehearing Exchange on or before April 15, 2013.

As of April 22, 2013, Respondent had failed to comply with this requirement or file a motion requesting an extension of the filing deadline. Consequently, the undersigned issued an Order to Show Cause directing Respondent to show good cause on or before May 3, 2013, as to why it failed to file its Prehearing Exchange as directed by the Order of January 31, 2013, and why a default order should not be entered against it.

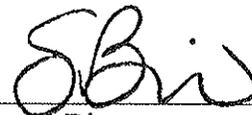
On April 29, 2013, the undersigned received Respondent's Response to Order to Show Cause ("Response") and Respondent's Prehearing Exchange. At Respondent's request, these documents were rejected from the record in their entirety, and Respondent resubmitted the documents on May 1, 2013. Respondent also asserted a claim of business confidentiality with respect to certain information contained in its Prehearing Exchange.

In its Response, Respondent claims that its failure to comply with the Order of January 31, 2013, resulted from "its good-faith misunderstanding as to the correct filing date of its [Prehearing Exchange]." Specifically, Respondent represents that it did not receive a copy of the January 31 Order and that it, therefore, was unaware of the undersigned's ruling on the Motion. Respondent further represents that its counsel "erroneously calendared the due date for filing its [Prehearing Exchange] based upon the May 15, 2013 date originally requested" by Complainant and that "[i]t was not until Friday, April 19, 2013, when opposing counsel called to determine why Respondent's [Prehearing Exchange] had not been received by its office, that counsel for Respondent learned of the *Order*."

Requesting that the undersigned accept its Prehearing Exchange as timely, Respondent argues that such a ruling would not prejudice the undersigned or Complainant as only eight business days have elapsed since the April 15, 2013 filing deadline; the schedule of this proceeding would not be significantly impacted because no substantive motions have been filed and no date for the hearing has been scheduled; counsel for Complainant had originally requested an extension of the filing deadline until May 15, 2013; and acceptance of the Prehearing Exchange would further the parties' efforts to exchange information as part of their ongoing settlement negotiations. Conversely, Respondent contends, it would be severely prejudiced if the undersigned rejected its Prehearing Exchange and issued a default order against it, and that such an outcome would be excessive in view of the circumstances resulting in the delayed filing.

Upon consideration, the undersigned agrees with Respondent that nothing in the record suggests that acceptance of Respondent's Prehearing Exchange as timely will cause prejudice to Complainant or to this proceeding. Moreover, given the circumstances described by Respondent in its Response, the undersigned does not find the drastic remedy of rejecting Respondent's Prehearing Exchange and issuing a default order against it to be appropriate here. Accordingly, Respondent's Prehearing Exchange is hereby accepted. Complainant shall file its Rebuttal Prehearing Exchange on or before **May 17, 2013**. Thereafter, the undersigned will schedule this matter for hearing.

SO ORDERED.



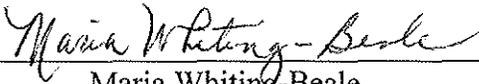
Susan L. Biro
Chief Administrative Law Judge

Dated: May 2, 2013
Washington, D.C.

In the Matter of Everyday Group, LLC, Respondent
Docket No. FIFRA-02-2012-5201

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Respondent's Response To Order To Show Cause**, dated May 2, 2013 was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: May 2, 2013

Original And One Copy To:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

Copy By Regular Mail And E-Mail To:

Lee Spielmann, Esquire
Office of Regional Counsel
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866
spielmann.lee@epa.gov

Clarence J. Erickson, Esquire
Meichelle R. MacGregor, Esquire
Don M. Obert, Esquire
Cowan Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036
cje@cfl.com