UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Steven L. Tuttle,	)	**Docket No. FIFRA 10-2004-0056**
	)	
Respondent[1]	)	

DEFAULT ORDER

Introduction. This proceeding arises under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "Act"), 7 U.S.C. § 136*l*(a), and is administered under the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("Rules of Practice"), 40 C.F.R. Part 22. On September 30, 2004, the Environmental Protection Agency ("EPA" or "Complainant") filed a motion for default on the basis of Respondent's failure to file a prehearing exchange. For the reasons that follow, the Court grants EPA's Motion, finds the Respondent liable for each of the violations cited in the Complaint, and assesses the $14,850 civil penalty proposed by EPA.

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1 By a separate Order issued May 6, 2005 the Court granted EPA's Motion to Amend the Complaint, which only had the effect of removing "Tuttle Engineering and Tuttle Apiary Laboratories" as Respondents. In all other respects the original and amended complaint are indistinguishable. References to the "Complaint" in this Order, refer to the Amended Complaint.

Background.

The Complaint alleges five violations of FIFRA stemming from the Respondent's sale and distribution of Mite Solution Concentrate and Herbal Bee Calmer Gel, which products, EPA maintains, are pesticides. Specifically, the Complaint alleged that: in January 2004 Respondent sold or distributed a pesticide named "Mite Solution Concentrate" ("Mite Solution") without having registered the product under FIFRA ("Violation # 1"); the January 2004 sale or distribution also violated FIFRA in that the product did not have an "EPA approved label containing directions for use, an ingredient statement, or other statements and information ("Violation #2); in January 2004 Respondent sold or distributed "Herbal Bee Calmer Gel" ("Bee Gel") which product, as with the Mite Solution Concentrate, was not registered under FIFRA ("Violaton #3); the such Bee Gel was also misbranded in that the label lacked the required information as set forth for Violation #2; and that Respondent is the producer of the Mite Solution and Bee Gel but that this production establishment is not registered with EPA, as required by FIFRA.

This is not the first time the Respondent has been charged with violating FIFRA. In March 1996 EPA filed a Complaint alleging two counts of violating FIFRA in that the Respondent offered the unregistered pesticide "Mite Solution" for sale and sold that product. Federal Administrative Law Judge Stephen J. McGuire found, after a hearing, that the violations had been established and assessed a civil penalty of $ 3,780. Initial Decision, September 30, 1997, FIFRA docket number 10-96-0012, 1997 WL 738081 (E.P.A.).

Respondent filed an Answer to the present Complaint. In that Answer Respondent

denied that EPA had jurisdiction to bring this action under FIFRA, stating that his "residence is on Federally granted and patented property, which is held in Allodia, and upon which the USEPA has not shown jurisdiction. Respondent also asserted that this matter had been previously adjudicated and that, per Judge McGuire's decision, he no longer makes overt claims that his product is a pesticide. Respondent's Answer also asserted that his product has no "dilitarious (sic) effects" and that, as the product presented no unreasonable risk, there was no jurisdiction under FIFRA. Respondent also disputed that his annual income from these products is $200,000, stating that "TWO THOUSAND DOLLARS IS MORE LIKE IT." Last, the Respondent denied effective service of the Complaint, stating "Your service is bogus; your document was found on the ground. Go get a job where the citizens don't hate you, and where your (sic) not known for accepting bribes from big chemical companies."

This Case was assigned to the Court in June 2004. At that time the Court issued a Prehearing Order, which Order required the parties to submit their initial prehearing exchanges by August 4, 2004. In June 2004, the Respondent filed a letter in response to the Court's Prehearing Order. In that letter the Respondent, who is acting *pro se*, asserted that bee grooming, which he contended that his product Mite Solution promotes, has the effect of reducing mites in bee hives. The letter also denied the "Corporate Existence" of the United States, the U.S. EPA, and a host of other entities including the U.S. Internal Revenue Service, and the states of Oregon and Washington. Further, the Respondent contended that EPA was now forbidding that which was "specifically authorized" by Judge McGuire. In his letter, the Respondent also maintained that FIFRA does not apply to his product because it ingredients contain no pesticides and present no unreasonable risk. The Respondent additionally contends

that while his product does no environmental harm, "large chemical companies" have been able to obtain approval to place their "poisons" in bee hives. Finally, the Respondent included a number of demands in connection with this proceeding, seeking the appointment of an attorney, a jury, the presence of the media at the hearing and that a "real federal judge" preside in the case. No other correspondence was received from the Respondent and Mr. Tuttle did not respond to the EPA Motion for Default. In a letter dated October 13, 2004, EPA informed the Court that Mr. Tuttle had refused service of its Motion for Default and that the envelope was returned to counsel for EPA. A copy of the envelope which contained the Motion for Default was attached to the October 13th letter from EPA. The Court notes that a hand-printed response appears on the envelope, stating "Return to Sender [Default of Jurisdiction]."

Discussion.

EPA's Motion for Default is based on the Respondent's asserted failure to file a prehearing exchange. It notes that, per 40 C.F.R. § 22.19(a), each party *shall* file a prehearing exchange in accordance with the presiding officer's prehearing information exchange order. The same section sets forth the information which must be exchanged. The section obligates each party to identify expert and other witnesses it intends to call at the hearing, together with a brief summary of the expected testimony from such witnesses. The parties are also required under this provision to exchange all documents and exhibits intended to be offered at the hearing. EPA complied with the Court's Prehearing Order, while the Respondent has not provided any information concerning witnesses or intended exhibits, submitting only the aforementioned June 2004 letter.

EPA observes that under 40 C.F.R. §§ 22.17(a) and 22.19(g), the Court *may, in its*

discretion, infer "that the information would be adverse to the party failing to provide it," exclude the information that was not exchanged, or "[i]ssue a default order under § 22.17(c)." *See* 40 C.F.R. §§ 22.19(g). Section 22.17(a) of the Rules of Practice provides that a party *may* be found in default for, among other reasons, "failure to comply with the information exchange requirements of § 22.19(a)." If the Court determines that default has occurred, then a default order is to be issued, unless the record shows "good cause why a default order should not be issued." 40 C.F.R. §§ 22.17(c). Where the Court finds that Default has occurred, such default constitutes "an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. §§ 22.17(a).

On May 20, 2005, the Court issued an Order to Show Cause. That Order noted the Respondent's failure to comply with the Court's Prehearing Order, noting that the Respondent had been non-responsive to it by failing to list witnesses for the hearing, by not providing copies of exhibits, or otherwise responding to the Order. The Show Cause Order afforded the Respondent an opportunity to explain his failure to respond to the Prehearing Order. It was sent to the Respondent by certified and regular mail and advised that he must respond within fifteen days. As a courtesy to the Respondent, the Court also included in the Show Cause mailing a copy of EPA's Motion for Default, EPA's Motion to Amend the Complaint, its Amended Prehearing Exchange and a copy of the EPA Procedural Rules, 40 C.F.R. Part 22, and a reminder that, although the government has no obligation to provide an attorney in civil proceedings, he could retain an attorney on his own. Both the certified and regular mailings from the Court were returned, and both had the handwritten notation "Return to sender" on the envelopes. The mailing that was sent by regular mail had an additional written message on the envelope that was

indistinguishable from the "Return to sender" writing. A line followed the "Return to sender" inscription and it expanded into a circle around the additional message. That message provided in its entirety:

> The EPA has been defaulted by an "Affidavit of Denial of Corporate Existence" even an appology (sic) for damage done by EPA to the beekeepers in America and to the agricultural Environment is not acceptable. For 14 years "no harm no fowl" while beekeepers claim only 'Mite Solution' has saved their bees; EPA approved poisons have proven to be no solution. So KEEP YOUR JUNK MAIL.

Exterior notation from Returned Envelope containing Show Cause Order.

Respondent has failed to offer good cause for this failure, as evidenced by his refusal to accept the Court's mailings of its Order to Show Cause and by the combative handwritten response on those mailings. As the above recounting amply demonstrates, the Respondent is found to be in default for failure to comply with this Court's prehearing order. The Complaint sets forth the factual basis for the prima facie elements for each of the five violations cited therein.[2] The Respondent's Default constitutes an admission of all facts alleged in the Complaint. EPA's motion for Default specifies the penalty sought and the factual grounds for the relief requested. The record does not provide any basis to show why the default order should not be issued. This Default Order resolves all outstanding issues and claims in the proceeding and constitutes the Initial Decision. The relief, namely the assessment of a civil penalty in the

[2]The Amended Complaint as well as the EPA Prehearing Exchange and the Amended Prehearing Exchange are incorporated by reference in this Default Order.

amount of $14,850, is hereby imposed against the Respondent in this proceeding, Steven L. Tuttle, for Docket No. FIFRA 10-2004-0056.

So Ordered.

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William B. Moran
United States Administrative Law Judge

Dated: July 15, 2005
Washington, D.C.