

9/4/96

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. IF&R-V-002-95
Roger Antkiewicz and)	
Pest Elimination)	
Products of America, Inc.))	
)	
Respondents)	

RULINGS ON MOTIONS
and
ORDER REINSTATING INDIVIDUAL RESPONDENT

Complainant has filed motions, dated August 9, 1996, for further discovery and to continue the trial date in this proceeding. Respondent has filed a response opposing those motions. Complainant filed a reply to Respondent's response and a renewal of its request for reconsideration of my ruling granting the motion of Roger Antkiewicz, the originally named Respondent in this proceeding, to dismiss this proceeding as to him. That ruling left only the corporation, Pest Elimination Products of America, Inc. ("PEPA"), as the Respondent in this proceeding. The ruling was based on Complainant's failure to respond to Respondent's motion to dismiss the Complaint as to the individual Respondent, Roger Antkiewicz.

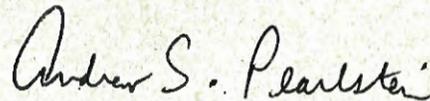
Complainant renews its concern that the corporate Respondent, PEPA, may only be a shadow corporation that may not be a "person" as defined in FIFRA, or may not be able to pay any penalty. Complainant did not intend to exercise its discretion to drop its Complaint against Mr. Antkiewicz, whom it still considers to be the true proper party Respondent.

The ruling of June 27, 1996 denying reconsideration was without prejudice to renewal if it appeared from the evidentiary material that complete relief could not be obtained from the corporate Respondent, PEPA. Upon review of the latest developments, that seems to be the case. PEPA itself has no assets, according to the corporate records submitted with Complainant's prehearing exchange (Attachment G). In response to a request for financial information, Respondent has stated that there are no tax returns for PEPA, but Respondent did submit returns in the name of Allstate Services, Inc., which Mr. Antkiewicz states did business as PEPA. Respondent has not further addressed the issue of corporate identity or financial status in his prehearing exchange, and now opposes Complainant's motion for further discovery on these matters.

In these circumstances, it is appropriate to reinstate Mr. Antkiewicz, the original named Respondent, as a co-Respondent with PEPA. It would be wasteful and inefficient to proceed to the hearing only to find that the real party in interest was not joined. Rejoining Mr. Antkiewicz only opens the possibility of finding joint and several liability of the two Respondents, if the facts adduced at hearing so warrant. If PEPA is a viable corporation, it could presumably pay any appropriate penalty that would satisfy any judgment and relieve Mr. Antkiewicz of personal liability. Therefore, my ruling of June 27, 1996 is reversed and Roger Antkiewicz is reinstated as a Respondent in this proceeding.

This does not mean, however, that Complainant's motions for further discovery and to postpone the hearing are granted. The factual issues concerning liability of the Respondents are not affected. The parties and witnesses are set to appear as scheduled on September 17-18, 1996 in Mt. Clemens, Michigan. Mr. Antkiewicz has expressed his desire to have Respondents' day in court as soon as possible. Due to the short time remaining before the hearing and Mr. Antkiewicz' reinstatement as a co-Respondent, Respondents may, however, change their position and agree to Complainant's request for a continuance. If Respondents now desire to postpone the hearing, they shall notify the Complainant and the undersigned no later than September 12, 1996. Otherwise, the hearing will proceed as scheduled.

Mr. Antkiewicz will have until September 13, 1996 to exchange his individual tax returns for the past three years, and/or any other financial statements he intends to introduce at the hearing if he intends to claim, on behalf of himself or PEPA, that the Respondent(s) are unable to pay the proposed penalty of \$29,500. Respondents' failure to produce such evidence may be considered a waiver of any objection to the appropriateness of the penalty on the ground of inability to pay. Other than as above directed, Complainant's motion for further discovery is denied.



Andrew S. Pearlstein
Administrative Law Judge

Dated: September 4, 1996
Washington, D.C.

In the Matter of Roger Antkiewicz and Pest Elimination Products
of America, Inc.
Docket No. IF&R-V-002-95

CERTIFICATE OF SERVICE

This will certify that the foregoing Rulings on Motions and
Order Reinstating Individual Respondent, dated September 4, 1996,
was sent in the following manner to the addressees listed below:

Regular Mail:

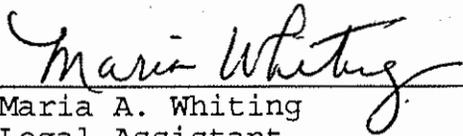
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Dated: September 4, 1996
Washington, D.C.