

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

RECEIVED BY OALJ
2015 MAY 19 PM 2:44

IN THE MATTER OF)
) FIFRA-04-2014-3009
MTJ American, LLC)
)
Respondent)
_____)

COMPLAINANT'S RESPONSE TO RESPONDENT'S
MOTION TO DISMISS

COMES NOW Complainant, by and through counsel, and submits this response to a motion to dismiss filed by Respondent in the document it filed with the Regional Hearing Clerk at the time it filed its Answer. The Respondent's motion does not state the grounds therefor, with particularity, and therefore, does not satisfy 40 C.F.R. § 22.16(a)(2). Consequently, a response from Complainant may not be required, but Complainant files this response within fifteen days to ensure that its objection to the motion is preserved. Complainant opposes Respondent's motion.

Respondent's Motion Does Not Meet Part 22 Requirements.

40 C.F.R. § 22.16 identifies the requirements for motions. 40 C.F.R. § 22.16(a) states:

§22.16 Motions.

(a) *General.* Motions shall be served as provided by §22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds therefor, with particularity;
- (3) Set forth the relief sought; and

(4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

Respondent's Motion to Dismiss does not meet the requirement of 40 C.F.R. § 22.16(a)(2); it does not "[s]tate the grounds therefore, with particularity." Respondent's Motion to Dismiss is contained on page 1, and says:

The plain reading of materials referenced by the EPA Complaint shows that (a) the EPA does not have authority pursuant to FIFRA and no standing to bring action against Respondent; and (2) there is no violation of FIFRA, without limitation that MTJ does not nor has made any pesticidal or "public health claim" in violation of FIFRA and (3) the statements cited in the Complaint support nothing more than MTJ's products being inclusive in express exceptions of FIFRA. The Complaint should be dismissed pursuant to Rule 12(b)(6) and all similar rules set forth in the Administrative Procedure Act.

Respondent MTJ American, LLC's Motion to Dismiss, Affirmative Defenses and Answer to the Civil Administrative Complaint and Request for Hearing at 1. The motion is vague and general and does not state the grounds therefore, "with particularity." The motion is also unsupported by evidence from Respondent and does not meet the requirement of 40 C.F.R. § 22.16(a)(4).

Material Facts Are in Dispute.

Respondent's Motion indicates that material facts are in dispute. The Complaint alleges that Respondent made pesticidal and "public health claims" in violation of FIFRA. Complainant disagrees with the conclusions of Respondent. As material facts are in dispute, Respondent's motion should be denied. Moreover, the Complaint should not be dismissed because it does not fail to state a claim upon which relief can be granted, and Respondent has not established sufficient facts to support dismissal of the Complaint.

Conclusion

Respondent's Motion to Dismiss should be denied because it is insufficient as a matter of law.

Respondent has not articulated sufficient grounds to warrant granting the Motion to Dismiss. Therefore,

Respondent's Motion to Dismiss should be denied.

Respectfully submitted,

Date:

May 14, 2015



Michiko Kono
U.S. EPA Region 4
61 Forsyth Street
Atlanta, GA 30303

(404) 562-9558

CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Response to Respondent's Motion to Dismiss was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy by EPA
pouch mail:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Copy by EPA pouch mail

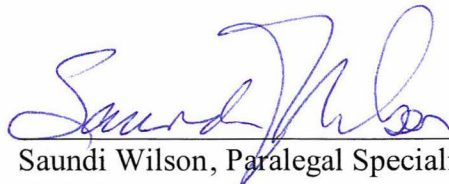
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900R
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Copy by first class mail

Matthew K. Rogers
Law Offices of Matthew K. Rogers, PLLC
P.O. Box 9096
Hickory, NC 28603

Date

5-15-15



Saundi Wilson, Paralegal Specialist
EPA Region 4
61 Forsyth Street
Atlanta, GA 30303