

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR



IN THE MATTER OF )  
 )  
FRM CHEM, INC., ) DOCKET NO. FIFRA-07-2008-0035  
 )  
 )  
RESPONDENT )

**ORDER ON RESPONDENT'S ANSWER AND DIRECTING SETTLEMENT CONFERENCE**

As you previously have been notified, I have been designated by the August 18, 2009 Order of the Chief Administrative Law Judge to preside in the above captioned matter.<sup>1/</sup> This proceeding arises under the authority of Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l, and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

On June 26, 2009, the United States Environmental Protection Agency (the "EPA") filed a Complaint against Respondent, FRM Chem, Inc., charging 56 separate violations, between 2004 and 2008, of Section 12(a)(1) of FIFRA, 7 U.S.C. § 136j(a)(1), which prohibits, *inter alia*, the unauthorized sale of unregistered or misbranded pesticides. In its Complaint, the EPA seeks a civil administrative penalty of \$364,000 against Respondent. Respondent<sup>2/</sup> sent

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<sup>1/</sup> Following an inquiry from this office, neither party opted to participate in the Alternate Dispute Resolution ("ADR") process offered by this office.

<sup>2/</sup> The Respondent in this case is not represented by an  
(continued...)

Complainant's counsel a two-sentence letter stating: "Frm Chem Inc. is no longer in business. I am 87 years old, retired and living on my Social Security Income." See *Letter by Respondent to Complainant*, July 24, 2009 ("Respondent's Letter"). Respondent's Letter was construed as an answer and was referred to the Office of Administrative Law Judges.

Respondent's Letter does not meet the requirements for filing an answer under the Rules of Practice. Under Rule 22.15 of the Rules of Practice, where the respondent contests any material fact upon which the complaint is based, its answer must clearly and directly admit, deny or explain each of the factual allegations in the complaint, or, where the respondent has no knowledge of a particular factual allegation, it must so state in the answer and the allegation will be deemed denied.<sup>3/</sup> The respondent must also state the circumstances or arguments which are alleged to constitute the grounds of any defense. See Section 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b). Although Respondent's Letter possibly implies an inability to pay issue, Respondent did not admit or deny any of the 56 Counts contained in the Complaint nor did it delineate any grounds for any defense. As such, Respondent's Letter must be considered non-responsive.

In view of Respondent's failure to address clearly and directly each of the factual allegations contained in the Complaint, or deny knowledge of particular factual allegations, Respondent is directed to file an Answer with the Regional Hearing Clerk that responds to the allegations in the Complaint. Such Answer by Respondent shall be filed on or before **September 22, 2009**.

Under Rule 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b), the answer must also state whether a hearing is requested. However, subsection (c) of Section 22.15 further provides that if the respondent does not request a hearing, a hearing may be held by the Administrative Law Judge if issues appropriate for adjudication are raised in the answer. See *In re Green Thumb Nursery, Inc.*, FIFRA Appeal No. 95-4a, 6 E.A.D. 782, 786-94 (EAB, Mar. 6, 1997).

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<sup>2/</sup> (...continued)  
attorney and is appearing *pro se*.

<sup>3/</sup> Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation. Section 22.15(d) of the Rules of Practice, 40 C.F.R. § 22.15(d).

Respondent, in its two-sentence response to the EPA, did not request a hearing. In view of Respondent's failure to state whether a hearing is requested, Respondent is directed to clarify its position as to whether a hearing before an Administrative Law Judge is requested. Such clarification statement by Respondent shall be included in its Answer, which shall be filed on or before **September 22, 2009**.

EPA policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

Although the record indicates that the parties have been in contact with each other, there has been no settlement. The parties are directed to hold a settlement conference on this matter on or before **September 29, 2009**, to attempt to reach an amicable resolution of this matter. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **October 8, 2009**.

The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The statements and information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, if sent by mail, shall be addressed as follows:

The Honorable Barbara A. Gunning  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Hand-delivered packages transported by Federal Express or another delivery service that x-rays their packages as part of their routine security procedures, may be delivered directly to

the Offices of the Administrative Law Judges at 1099 14th Street, NW, Suite 350, Washington, DC 20005.

Telephone contact may be made with my legal staff assistant, Mary Angeles at (202) 564-6281. The facsimile number is (202) 565-0044.

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Barbara A. Gunning  
Administrative Law Judge

Dated: August 26, 2009  
Washington, DC