UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
BUG BAM PRODUCT, LLC,	)	DOCKET NO. FIFRA-09-2009-0013
FLASH SALES, INC.	)	
	)	
RESPONDENTS	)	

PREHEARING ORDER

As you previously have been notified, I have been designated by the November 5, 2009 Order of the Chief Administrative Law Judge to preside in the above captioned matter. This proceeding arises under the authority of Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136*l*(a), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits and the Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Federal Insecticide, Fungicide, and Rodenticide Act (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32, 22.35. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

United States Environmental Protection Agency ("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 parties are free to initiate or continue to engage in settlement discussions during and after preparation of their prehearing exchange. However, the parties are advised that extensions of time will not be granted absent a showing of good cause. The pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the prehearing requirements or to meet the schedule set forth in this Prehearing Order.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, it is directed that the following prehearing exchange takes

place:

1. Each party[1] shall submit:

   (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness' expected testimony, or a statement that no witnesses will be called; and

   (b) copies of all documents and exhibits which each party intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondents'" exhibit,[2] as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and

   (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case. In the Amended Complaint, Complainant alleges that Respondent Bug Bam Product, LLC, is a corporation located in Hermosa Beach, California and Respondent Flash Sales, Inc., is a corporation located in Miami, Florida. Amd. Compl. at ¶¶ 3-4. In accordance with the Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Federal Insecticide, Fungicide, and Rodenticide Act, 40 C.F.R. § 22.35(b), the hearing shall be held in the county, parish, or incorporated city of the residence of the Respondent, unless otherwise agreed in writing by all parties. Thus, Respondents should state

---

[1] Respondents Bug Bam Product, LLC, and Flash Sales, Inc., filed separate Answers and are not represented by the same counsel. These Respondents may choose to file a joint prehearing exchange, or each Respondent may file separately.

[2] If Respondents Bug Bam Product, LLC, and Flash Sales, Inc., choose to file separate prehearing exchanges, the proposed exhibits should be identified as "Respondent Bug Bam's" or "Respondent Flash Sales's" exhibit.

whether they wish the hearing to be held in Hermosa Beach, California or Miami, Florida, and/or otherwise the parties should designate a different city as the place of hearing of this matter.[3]

See Sections 22.19(a),(b),(d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a),(b),(d); *see also* Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.

3. Each Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If either Respondent intends to take the position that it is unable to pay the proposed penalty or that payment will have an adverse effect on its ability to continue to do business, that Respondent shall furnish supporting documentation such as certified copies of financial statements or tax returns.

4. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. §§ 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

The prehearing exchanges delineated above shall be filed *in seriatim* manner, according to the following schedule:

May 28, 2010 - Complainant's Initial Prehearing Exchange

June 25, 2010 - Respondents' Prehearing Exchange(s),

---

[3] As an alternative, the parties may propose to participate in the hearing by video teleconference. Should the parties desire this format, they should state so in writing.

including any direct and/or rebuttal evidence

July 9, 2010 - Complainant's Rebuttal Prehearing Exchange (if necessary)

If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 556. Section 556(d) of the APA provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, Respondents have the right to defend themselves against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Each Respondent is entitled to elect any or all three means to pursue its defense.

If a Respondent elects only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, that Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including a Respondent's statement of election only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. *See* Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

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 prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows when using the U.S. Postal Service:

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001

Hand-delivered packages transported by Federal Express or another delivery service which 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.

Barbara A. Gunning
Administrative Law Judge

Dated: April 23, 2010
Washington, DC

In the Matter of *Bug Bam Product, LLC, Flash Sales, Inc.*, Respondents.
Docket No. FIFRA-09-2009-0013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Prehearing Order**, dated April 23, 2010, was sent this day in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Steve Armsey
Acting Regional Hearing Clerk
U.S. EPA / Region IX
75 Hawthorne Street
San Francisco, CA 94105
Fx: 415.947.3571

Copy by Facsimile and Pouch Mail to:

Ivan Lieben, Esq.
Assistant Regional Counsel (ORC-3)
ORC, U.S. EPA / Region IX
75 Hawthorne Street
San Francisco, CA 94105
Fx: 415.947.3570

Copy by Facsimile and Regular Mail to:

Martha E. Marrapese, Esq.
Keller & Heckman, LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001
Fx: 202.434.4646

Copy by Regular Mail to:

Jacob Levy, President
Flash Sales, Inc.
4401 NW 167th Street
Miami, FL 33055

Dated: April 23, 2010
Washington, D.C.