

2/28/96

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

1996 FEB 28 11 09 39
EPA/HE
HEM

IN THE MATTER OF)
)
Brulin & Company, Inc.,) Docket No. FIFRA-95-H-17
)
Respondent)

ORDER OF DESIGNATION
AND
ORDER ESTABLISHING PROCEDURES

The undersigned is hereby designated to preside in this proceeding under Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 1361(a)), pursuant to Section 22.21(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (Rules) (40 C.F.R. 22.21(a)).

Agency policy encouraging settlement is set out in Section 22.18(a) of the Rules, 40 C.F.R. Section 22.18(a). Settlement discussions in this proceeding may already be in progress. If those discussions are currently underway, the parties are to be commended for taking the initiative to resolve this matter informally. If settlement discussions have not yet commenced, the parties are encouraged to undertake those discussions in an attempt to resolve this matter by settlement. The benefits of a negotiated settlement may far outweigh the uncertainty, the time and the expense associated with a litigated proceeding. To keep the undersigned apprised of the parties' settlement efforts, Counsel for Complainant is directed to file on or before July 26, 1996 a statement with respect to the status of settlement negotiations. If the case is settled, the Consent Agreement and Final Order signed by the parties should be filed no later than August 9, 1996, with a copy sent to the undersigned.

If the case is not settled by August 9, 1996, the parties shall prepare for trial. On September 9, 1996, a prehearing exchange of documents shall take place between the parties. In the prehearing exchange each party shall submit the names of the expert and other witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony, and copies of all documents and exhibits intended to be introduced into evidence. See Section 22.19(b) of the Rules. Replies to the initial prehearing exchanges shall be filed on or before October 7, 1996.

Failure of the Complainant to meet the deadline for the initial prehearing exchange may result in a dismissal of the case for failure to prosecute or, in the case of Respondent's failure, the waiver of its right to present direct evidence at the hearing.

In light of the period of time this matter has been pending, I expect both parties to meet the deadlines set by this order. A further extension of time will not be granted absent a showing of good cause. The desire to continue settlement discussions or an averment that a settlement in principle has been reached will not constitute good cause. Of course, the parties, if they choose, may continue their discussions after the service of the prehearing exchange.

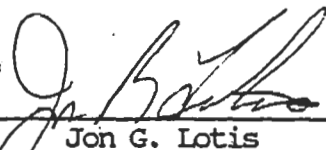
If the case is not settled, the undersigned may designate another Administrative Law Judge to preside in this proceeding. The above-described prehearing exchange shall be subject to such further supplemental requirements as the Presiding Administrative Law Judge may direct at a subsequent date.

Some words of caution to the parties—every motion filed in this proceeding must be served in sufficient time to permit a response by opposing counsel and to permit the issuance of an order before the deadlines set by this order or any subsequent order. EPA rule 22.16(b), 40 C.F.R. Section 22.16(b) allows a ten-day response period for answers to motions. Rule 22.07(c), 40 C.F.R. Section 22.07(c), further provides that where a pleading or document is served by mail, an additional five days is added to the ten-day period.

Counsel are encouraged to obtain the consent of opposing counsel when seeking an extension and so indicate in the moving papers. However, the concurrence of opposing counsel does not assure favorable action on the parties' request.

The original of all pleadings, statement and documents (with any attachments) required or permitted to be filed in this order shall be sent to the Regional Hearing Clerk and copies (with any attachments) shall be sent to the undersigned or such other Administrative Law Judge as may be assigned.

If a settlement is reached, counsel for the Complainant shall send a copy of the ratified Consent Agreement and Final Order to the Presiding Judge.



Jon G. Lotis
Chief Administrative Law Judge

Dated: February 28, 1996

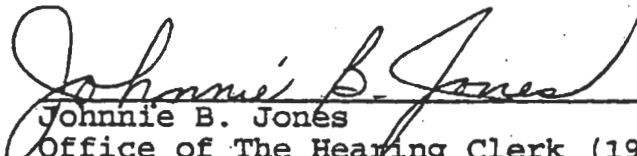
Washington, D. C.

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing Order Of Designation and Order Establishing Procedures was filed in re Brulin & Company, Inc.; Docket No. FIFRA 95-H-17 and that exact copies of the same were mailed to the following:

(Interoffice) Mark Garvey, Esq.
Toxics & Pesticides Enforcement
Division (2245A)
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

(1st Class Mail) Fred W. Wagner, Esq.
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, D.C. 20005


Johnnie B. Jones
Office of The Hearing Clerk (1900)
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Dated: February 28, 1996