



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837

FEB 26 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Cargille, President
Cargille Tab-Pro Corporation
4 East Frederick Place
Cedar Knolls, N.J. 07927

Re: In the Matter of Cargille Tab-Pro Corporation
Docket No. FIFRA-02-2008-5115

Dear Mr. Cargille:

Enclosed please find an Administrative Civil Complaint alleging violations documented under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA).

The United States Environmental Protection Agency (EPA) has records which indicate that your establishment is registered under Section 7 of FIFRA as a Pesticide-Producing Establishment with an EPA establishment registration number of 007137-NJ-001.

Under Section 7(c) of FIFRA, any producer operating an establishment registered with EPA under Section 7 is required to submit an annual pesticide production report to EPA, even if the registered establishment is not currently producing. Failure to submit a production report is a violation of FIFRA § 7(c) and § 12(a)(2)(L).

The Complaint alleges that you failed to submit annual production reports for the calendar year 2005. The complaint assesses a proposed civil penalty of Three Thousand Dollars (\$ 3,000). EPA considers failure to comply with FIFRA §7 (c) reporting requirements a serious violation, as it impacts the Agency's risk assessment capability, ability to determine what pesticides an establishment is producing, and the ability to target inspections.

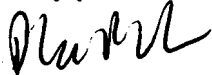
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U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11
2008 FEB 26 AM 11:51
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11
2008 MAR -3 AM 11:51
REGIONAL HEARING CLERK

It is the intention of the EPA to seek resolution of this Complaint in an equitable and mutually agreeable manner. As outlined in the Complaint, the Agency encourages the use of an informal conference to provide an opportunity for settlement discussions. You have been given ninety (90) days rather than the customary thirty (30) days to file an Answer to this Complaint. If you wish to attempt informal settlement, please do not file your Answer before a representative of the Division of Enforcement and Compliance Assistance (DECA) has contacted you to discuss the scheduling of an informal conference. Filing an Answer before discussions are held or at any point within these ninety (90) days will result in referral of your case to the Office of Regional Counsel.

We have enclosed copies of the Consolidated Rules of Practice (40 C.F.R. Part 22) and recent revisions published at 64 Fed. Reg. 40138 (July 23, 1999), as well as a copy of the appropriate Penalty Policy referenced in the Complaint. Also enclosed is a copy of the EPA Supplemental Environmental Projects Policy (SEP Policy) for your consideration. The Agency encourages the use of SEPs where appropriate, as part of the settlement.

A DECA representative will contact you shortly to discuss the possibility of scheduling an informal conference. If you have any questions regarding the Complaint or the settlement process, you or your staff should feel free to contact Mr. Michael Kramer at (732) 321-6610.

Sincerely yours,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II
2008 FEB 02 AM 11:50
REGIONAL HEARING CLERK

-----X
In the matter of :
:
Cargille Tab-Pro Corporation :
:
Respondent :
:
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended :
-----X

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Docket No. FIFRA-02-2008-5115

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II
2008 MAR -3 AM 11:51
REGIONAL HEARING CLERK

COMPLAINT

Complainant, as and for his Complaint against Respondent, hereby alleges:

1. This is a civil administrative proceeding instituted pursuant to Section 14 (a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), 7 U.S.C. § 1361(a) as amended, 7 U.S.C. § 136 et seq.
2. The Complainant, Dore LaPosta, Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is the Cargille Tab-Pro Corporation.
4. Respondent is a Corporation organized pursuant to the laws of the State of New Jersey.
5. Respondent is a "registrant", "wholesaler", "dealer" or "other distributor" within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1).

6. Respondent is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

7. Respondent is a "producer" of pesticides, as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. §136(w).

8. Respondent maintains an "establishment", as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), located at 4 East Frederick Place, Cedar Knolls, N.J. 07927.

9. Respondent's Facility is registered under Section 7 of FIFRA, 7 U.S.C. § 136e. Its assigned EPA Establishment Number is 007137-NJ-001.

10. Subsection 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), states in part that any producer operating an establishment registered under Section 7 shall submit annually to the EPA, as required under the applicable regulations, the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, has produced during the past year, and has sold or distributed during the past year.

11. 40 C.F.R. § 167.85 provides that a producer operating an establishment must submit the information mentioned in Paragraph 10, above, in an annual report (the "Report") on or before March 1st of each year, even if the producer has produced no pesticidal product for that reporting year.

COUNT ONE

12. Complainant realleges each allegation contained in Paragraphs 1 through 11, inclusive, as if fully set forth herein.

13. Respondent was required to submit to the EPA a Report for the calendar year 2005 on or before March 1, 2006.

14. Respondent did not submit to the EPA its Report for the calendar year 2005 on or before March 1, 2006.

15. Respondent's failure to submit a Report as alleged in Paragraph 14 above is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. 136j(a)(2)(L), and 40 C.F.R. § 167.85.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," and which are codified at 40 C.F.R. Part 22 (2000). A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. (40 C.F.R. § 22.15(a)) While that provision requires that an Answer must be filed within 30 days after service of a Complaint, EPA, Region 2, has administratively extended the deadline for such filing in this proceeding, and Respondent's Answer accordingly must be filed within 90 days of service of the Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. (40 C.F.R. § 22.15(a))

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. (40 C.F.R. § 22.15(b)) Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. (40 C.F.R. § 22.15(b)) The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing. (40 C.F.R. § 22.15(b))

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. (40 C.F.R. § 22.15(c)) If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. (40 C.F.R. § 22.15(c))

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. (40 C.F.R. § 22.15(d)) If Respondent fails to file a timely (*i.e.*, in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. (40 C.F.R. § 22.17(a); extended to 90 days for this Complaint) Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint. (40 C.F.R. § 22.17(a)) Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued.

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). (40 C.F.R. § 22.17(d)) If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. (40 C.F.R. § 22.27(d))

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within 30 days after the initial decision is served." (40 C.F.R. § 22.30(a)) Pursuant to 40 C.F.R. § 22.07(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations (40 C.F.R. § 22.18(b)). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Mr. Michael Kramer, Environmental Scientist
USEPA Region 2
Pesticides Team (MS-500)
2890 Woodbridge Ave.
Edison, NJ 08837
(732) 321-6610

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. (40 C.F.R. § 22.18(b)(1)) Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. (40 C.F.R. § 22.18(b)(2)) In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. (40 C.F.R. §

22.18(b)(2)) In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. (40 C.F.R. § 22.18(b)(3))

Respondent's entering into a settlement through the signing of such Consent Agreement terminates this administrative litigation and civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. (40 C.F.R. § 22.18(a)) Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF CARGILLE TAB-PRO CORPORATION*, and shall bear thereon the Docket Number FIFRA-02-2008-5115. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- 4) Federal Reserve Bank of New York ABA routing number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Name of Respondent: Cargille Tab-Pro Corporation
- 7) Case Number: FIFRA-02-2008-5115

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Michael Kramer, FIFRA Section 7 Coordinator
Environmental Protection Agency, Region 2
2890 Woodbridge Ave (MS-500)
Edison, New Jersey 08837


and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Pursuant to 40 C.F.R. Section 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. Section 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: February 26, 2008
New York, New York

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S.E.P.A. - Region 2

TO: Cargille Tab-Pro Corporation
4 East Frederick Place
Cedar Knolls, N.J. 07927

In the Matter of Cargille Tab-Pro Corporation, Docket No. FIFRA-02-2008-5115

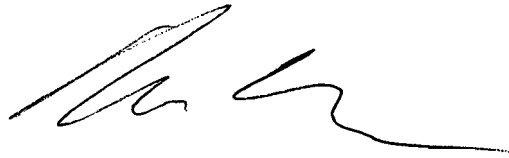
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number FIFRA-02-2008-5115, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (2005), by certified mail, return receipt requested, to:

Cargille Tab-Pro Corporation
4 East Frederick Place
Cedar Knolls, N.J. 07927

I forwarded the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: February 29, 2008
New York, New York

A handwritten signature in black ink, appearing to be a stylized name, possibly "A. K.", written over a horizontal line.