



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 23 2009

REPLY TO THE ATTENTION OF:

LC-8J

**CERTIFIED MAIL**

**RECEIPT NO. 7001 0320 0006 0191 0448**

Mr. Fred J. Wehling  
President  
Amerilab Technologies, Inc.  
2765 Niagara Lane North  
Minneapolis, Minnesota 55447

Re: Amerilab Technologies, Inc., Docket No. **FIFRA-05-2010-0003**

Dear Mr. Wehling:

I have enclosed a Complaint filed by the U.S. Environmental Protection Agency, Region 5, against Amerilab Technologies, Inc. under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a).

As provided in the Complaint, if you wish to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Harriet Croke, Assistant Regional Counsel at (312) 353-4789.

Sincerely,

  
for Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

cc: Mr. Paul Liemandt, Minnesota Dept. of Agriculture

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2010-0003</b>
	)	
<b>Amerilab Technologies, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>New Hope, Minnesota</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent</b>	)	<b>Act, 7 U.S.C. § 136(a)</b>
<hr/>		

**RECEIVED**

NOV 23 2009

**Complaint**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (FIFRA), 7 U.S.C. § 136l(a).

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5 (EPA).

3. The Respondent is Amerilab Technologies, Inc., a corporation doing business in the State of Minnesota.

**Statutory and Regulatory Background**

4. In accordance with authority granted under Sections 7 and 25 of FIFRA, 7 U.S.C. §§ 136e and 136w, the Administrator of the EPA promulgated the "Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports" Final Rule on September 8, 1988 (53 Fed. Reg. 35055). The Final Rule became effective on August 9, 1989 (54 Fed. Reg. 32636). Requirements for establishment registration and production reports are codified at 40 C.F.R. Part 167.

5. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that no person shall produce any pesticide subject to FIFRA or any active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator. Also see 40 C.F.R. § 167.20(a).

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) requires any producer operating an establishment registered with the EPA under Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. Part 167 to inform the Administrator within 30 days after it is registered, and annually thereafter, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides (a) which the producer is currently producing, (b) which the producer has produced in the past year, and (c) which the producer has sold or distributed during the past year (Annual Pesticide Production Report). Also see 40 C.F.R. § 167.85.

7. 40 C.F.R. § 167.85(c) requires that the Annual Pesticide Production Report be made on forms supplied by the EPA (known as the "Pesticides Report for Pesticide-Producing Establishments" form, or EPA Form 3540-16). 40 C.F.R. § 167.85(c) specifies that it is the ultimate responsibility of companies to obtain, complete, and submit the forms for each year.

8. 40 C.F.R. § 167.85(d) requires the producer to submit the Annual Pesticide Production Report for the preceding year to the EPA on or before March 1 of each year, even if the producer has not produced any pesticidal product for that calendar year.

9. Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA, 7 U.S.C. § 136e.

10. The Administrator of the EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$5,500.00 for each offense that occurred from January 31, 1997,

through March 15, 2004, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

11. The Administrator of the EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$6,500.00 for each offense that occurred after March 15, 2004, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

### **General Allegations**

12. At all times relevant to this Complaint, the Respondent has been a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

13. At all times relevant to this Complaint, the Respondent has been a “producer” as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

14. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

15. On or about February 7, 1996, pursuant to Section 7(a) of FIFRA, 7 U.S.C. 136e(a), Respondent registered its establishment located at 3101 Louisiana Avenue North, New Hope, Minnesota 55427 with the EPA.

16. The EPA assigned Respondent’s establishment, EPA Establishment Number (EPA Est. No.) 069781-MN-001.

17. During calendar years 2004 through 2008, Respondent’s place of business, located at 3101 Louisiana Avenue North, New Hope, Minnesota 55427, was a registered

“establishment” as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

Count 1

18. Complainant incorporates by reference the allegations contained in paragraphs 1 through 17 of this Complaint.

19. Even if Respondent had not produced any pesticidal product for calendar year 2004, 40 C.F.R. § 167.85(d) required Respondent to submit to the EPA an Annual Pesticide Production Report for calendar year 2004 on or before March 1, 2005.

20. Respondent failed to submit to the EPA an Annual Pesticide Production Report for calendar year 2004, for EPA Est. No. 069781-MN-001, on or before March 1, 2005.

21. On August 7, 2009, Respondent received a Notice of Intent to File an Administrative Complaint from the EPA.

22. By letter dated August 13, 2009, Respondent submitted to the EPA an Annual Pesticide Production Report for calendar year 2004.

23. Respondent’s failure to submit the Annual Pesticide Production Report for EPA Est. No. 069781-MN-001 for calendar year 2004, until the EPA sent Respondent a Notice of Intent to File a Complaint, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

24. Respondent’s violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

### Count 2

25. Complainant incorporates by reference the allegations contained in paragraphs 1 through 17 of this Complaint.

26. Even if Respondent had not produced any pesticidal product for calendar year 2005, 40 C.F.R. § 167.85(d) required Respondent to submit to the EPA an Annual Pesticide Production Report for calendar year 2005 on or before March 1, 2006.

27. Respondent failed to submit to the EPA an Annual Pesticide Production Report for calendar year 2005, for EPA Est. No. 069781-MN-001 on or before March 1, 2006.

28. On May 2, 2006, Respondent submitted to the EPA an Annual Pesticide Production Report for EPA Est. No. 069781-MN-001 for calendar year 2005.

29. Respondent's late Annual Pesticide Production Report submittal for EPA Est. No. 069781-MN-001 for calendar year 2005 to the EPA constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

30. Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

### Count 3

31. Complainant incorporates by reference the allegations contained in paragraphs 1 through 17 of this Complaint.

32. Even if Respondent had not produced any pesticidal product for calendar year 2006, 40 C.F.R. § 167.85(d) required Respondent to submit to the EPA an Annual Pesticide Production Report for calendar year 2006 on or before March 1, 2007.

33. Respondent failed to submit to the EPA an Annual Pesticide Production Report for calendar year 2006, for EPA Est. No. 069781-MN-001, on or before March 1, 2007.

34. On August 7, 2009, Respondent received a Notice of Intent to File an Administrative Complaint from the EPA.

35. By letter dated August 13, 2009, Respondent submitted to the EPA an Annual Pesticide Production Report for calendar year 2006.

36. Respondent's failure to submit the Annual Pesticide Production Report for EPA Est. No. 069781-MN-001 for calendar year 2006, until the EPA sent Respondent a Notice of Intent to File a Complaint, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

37. Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### Count 4

38. Complainant incorporates by reference the allegations contained in paragraphs 1 through 17 of this Complaint.

39. Even if Respondent had not produced any pesticidal product for calendar year 2007, 40 C.F.R. § 167.85(d) required Respondent to submit to the EPA an Annual Pesticide Production Report for calendar year 2007 on or before March 1, 2008.

40. Respondent failed to submit to the EPA an Annual Pesticide Production Report for calendar year 2007, for EPA Est. No. 069781-MN-001, on or before March 1, 2008.

41. On August 7, 2009, Respondent received a Notice of Intent to File an Administrative Complaint from the EPA.

42. By letter dated August 13, 2009, Respondent submitted to the EPA an Annual Pesticide Production Report for calendar year 2007.

43. Respondent's failure to submit the Annual Pesticide Production Report for EPA Est. No. 069781-MN-001 for calendar year 2007, until the EPA sent Respondent a Notice of Intent to File a Complaint, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

44. Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 5

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 17 of this Complaint.

46. Even if Respondent had not produced any pesticidal product for calendar year 2008, 40 C.F.R. § 167.85(d) required Respondent to submit to the EPA an Annual Pesticide Production Report for calendar year 2008 on or before March 1, 2009.

47. Respondent failed to submit to the EPA an Annual Pesticide Production Report for calendar year 2008, for EPA Est. No. 069781-MN-001, on or before March 1, 2009.

48. On August 7, 2009, Respondent received a Notice of Intent to File an Administrative Complaint from the EPA.

49. By letter dated August 13, 2009, Respondent submitted to the EPA an Annual Pesticide Production Report for calendar year 2008.

50. Respondent's failure to submit the Annual Pesticide Production Report for EPA Est. No. 069781-MN-001 for calendar year 2008, until the EPA sent Respondent a Notice of Intent to File a Complaint, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

51. Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Proposed Civil Penalty**

Complainant proposes that the Administrator assess a civil penalty against Respondent for the FIFRA violations alleged in this Complaint as follows:

**Count 1**

Failure to submit Annual Pesticide Production Report for EPA Est. No. 069781-MN-001 for calendar year 2004 7 U.S.C. § 136j(a)(2)(L)	\$1,500
---	---------

**Count 2**

Late Annual Pesticide Production Report submittal for EPA Est. No. 069781-MN-001 for calendar year 2005 7 U.S.C. § 136j(a)(2)(L)	\$1,500
--	---------

**Count 3**

Failure to submit Annual Pesticide Production Report for EPA Est. No. 069781-MN-001 for calendar year 2006 7 U.S.C. § 136j(a)(2)(L)	\$6,500
---	---------

Count 4

Failure to submit Annual Pesticide Production Report for  
EPA Est. No. 069781-MN-001 for calendar year 2007  
7 U.S.C. § 136j(a)(2)(L) \_\_\_\_\_ \$6,500

Count 5

Failure to submit Annual Pesticide Production Report for  
EPA Est. No. 069781-MN-001 for calendar year 2008  
7 U.S.C. § 136j(a)(2)(L) \_\_\_\_\_ \$7,139

Total Proposed Civil Penalty \_\_\_\_\_ \$23,139

Complainant determined the proposed civil penalty according to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). In determining the penalty amount, Complainant considered the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations. Complainant also considered the EPA's *Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement*, dated June 2007, a copy of which is enclosed with this Complaint.

**Rules Governing this Proceeding**

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

**Filing and Service of Documents**

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Harriet Croke, Assistant Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Croke at (312) 353-4789. Her address is:

Harriet Croke (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

**Terms of Payment**

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check, payable to "Treasurer, United States of America," to:

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

Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Croke at the addresses given above, and to:

Joseph G. Lukascyk (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

### **Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which this Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the Answer on the other parties.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;

- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

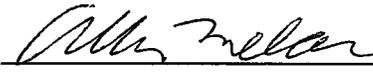
**Settlement Conference**

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Joseph G. Lukascyk at (312) 886-6233.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the proposed penalty because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with FIFRA and any other applicable federal, state or local law.

  
\_\_\_\_\_  
for Margaret M. Guerriero  
Director  
Land and Chemicals Division

11/23/09  
\_\_\_\_\_  
Date

**RECEIVED**  
NOV 23 2009

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint involving Mr. Fred J. Wehling, was filed on November 23, 2009, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7001 0320 0006 0191 0448, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Mr. Fred J. Wehling  
Amerilab Technologies, Inc.  
2765 Niagara Lane North  
Minneapolis, Minnesota 55447

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Harriet Croke, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2010-0003

**RECEIVED**  
NOV 23 2009  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY