



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 19 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7666 6633

Mr. Bill Lingren
Trece, Inc.
P.O. Box 129
Adair, OK 74330

Consent Agreement and Final order, Docket No. FIFRA-05-2011-0012

Dear Mr. Lingren:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on May 19, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,000 is to be paid in the manner described in paragraph 38. Please be certain that the number **BD 2751145P012** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 18, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Joseph G. Lukascyk".

Joseph Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The term “distribute or sell” as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) delivered or offer to deliver.”

11. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3, and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

12. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

13. The importation (distribution/sale) of pesticides into the United States is governed by Section 17 of FIFRA, 7 U.S.C. § 136o, and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12.

14. 19 C.F.R. § 12.111 states, in pertinent part, that “all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, and under the regulations (40 C.F.R.

Part 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

15. Section 17 of FIFRA, 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112 state, in pertinent part, that “an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices prior to the arrival of the shipment to the United States.”

16. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136(a)(2)(N), states that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act.

17. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. §136(s).

19. Hoyt Shepston, Inc. (HSI), located at 161 A Starlite Street, South San Francisco, California 94080, is a broker/agent for Respondent.

20. On or about June 18, 2009, Respondent’s broker/agent, HSI, submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1 (June 18, 2009, NOA), to EPA for an import shipment of the product “DFM Pheromone,” EPA Reg. No. 47265-1.

21. Respondent was the importer of record on the June 18, 2009, NOA.

22. The product “DFM Pheromone,” EPA Reg. No. 47265-1 is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. Based on the June 18, 2009, NOA presented by HSI at the time of arrival of the shipment into the U.S., Respondent imported the pesticide “DFM Pheromone,” EPA Reg. No. 47265-1.

24. The U. S. Customs and Border Protection (U.S. CBP) assigned Entry Number 808-0578350-5 to the import shipment identified in paragraph 23.

25. On or about June 18, 2009, based on the June 18, 2009, NOA, Respondent was distributing and selling “DFM Pheromone,” EPA Reg. No. 47265-1 as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

26. On or about June 23, 2009, the EPA “Detained for Inspection” the import shipment identified on Respondent’s NOA of June 18, 2009.

27. On or about June 24, 2009, Respondent’s broker/agent, HSI, submitted a second NOA, dated June 18, 2009, to U.S. CBP for an import shipment of the product “E7, Z9 Dodecadienyl Acetate,” EPA Reg. No. 47265-1, under U.S. CBP Entry Number 808-0578350-5.

28. Respondent’s second NOA was an attachment to a June 24, 2009 e-mail from HSI, which stated:

“According to my importer the Brand Name I used is wrong. It should be E7, Z9 Dodecadienyl Acetate.... Please accept this new attached document as true and correct.”

29. The product, “E7, Z9 Dodecadienyl Acetate.” is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

30. The product, "E7, Z9 Dodecadienyl Acetate," is not registered with the EPA as EPA Reg. No. 47265-1.

31. The product, "E7, Z9 Dodecadienyl Acetate," is not a registered pesticide under the provisions of Section 3 of FIFRA, and under the regulations (40 C.F.R. Part 156.10).

32. On July 29, 2009, an inspector employed by the EPA and duly authorized to conduct inspections under FIFRA, conducted an inspection of the import shipment of "DFM Pheromone," EPA Reg. No. 47265-1 at Channel Distribution Corporation, located at 925 West Thorndale Avenue, Itasca, Illinois 60143, in order to determine compliance with Section 17 of FIFRA.

33. The EPA inspector determined that the import shipment identified by U.S. CBP Entry Number 808-0578350-5, consisted of one 1kg metal can of the unregistered pesticide product "E7, Z9 Dodecadienyl Acetate," and not the pesticide product "DFM Pheromone," EPA Reg. No. 47265-1, as presented on the original NOA of June 18, 2009.

34. Respondent's failure to submit an accurate NOA prior to the importation of E7, Z9 Dodecadienyl Acetate constitutes an unlawful act pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136(a)(2)(N).

35. On August 31, 2010, EPA issued a Notice of Intent to File a Civil Administrative Complaint against Respondent alleging certain violations of FIFRA discovered during the inspection of Respondent's import shipment.

36. On September 23, 2010, Respondent submitted to EPA a written response to the Notice of Intent to File a Civil Administrative Complaint.

Civil Penalty

37. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$4,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,000 civil penalty for the FIFRA violation by sending a cashier's or certified check by regular U.S. Postal Service mail, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note the case title (Trece, Inc.), the docket number of this CAFO, and the billing document number. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

J. Matthew Moore (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

28. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

29. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

30. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

31. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

32. The terms of this CAFO bind Respondent, its successors and assigns.

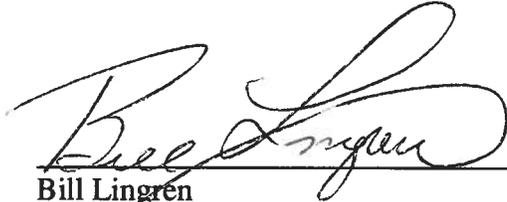
33. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

34. Each party agrees to bear its own costs and attorney's fees, in this action.

35. This CAFO constitutes the entire agreement between the parties.

Trece, Inc., Respondent

4/20/2011
Date



Bill Lingren
President
Trece, Inc.

U. S. Environmental Protection Agency, Complainant

5/13/11
Date



Richard C. Karl
Acting Director
Land and Chemicals Division

In the Matter of:
Trece, Inc.
Docket No. FIFRA-05-2011-0012

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-17-11
Date


Susan Hedman
Regional Administrator
U. S. Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
MAY 19 2011
OFFICE OF REGIONAL HEARING CLERK
REGION 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Trece, Inc., was filed on May 19, 2011, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and will be mailed no later than the next business day by Certified Mail, Receipt No. 7009 1680 0000 7666 6633, a copy of the original to the Respondents:

Mr. Bill Lingren
Trece, Inc.
P.O. Box 129
Adair, OK 74330

RECEIVED
MAY 19 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
J. Matthew Moore, Office of Regional Counsel, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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