

FILED

2011 SEP 22 PM 3:24

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

NANCY MARVEL
Regional Counsel
United States Environmental Protection Agency, Region IX

IVAN LIEBEN
Assistant Regional Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3914

Attorneys for Plaintiff

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)	Docket No. FIFRA-09-2011-0021
)	
Carimex International Trading Co., Inc. d/b/a SHCP Baltimore)	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
)	
Respondent)	
)	

AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Carimex International Trading Co., Inc. d/b/a SHCP Baltimore ("Carimex" or "Respondent"), for the sale and distribution of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Associate Director for Agriculture of the Communities and

Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is a California Corporation with its headquarters located at 4601 S. Soto Street, Vernon, California 90058.

APPLICABLE STATUTES AND REGULATIONS

1. The term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s).
2. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . ." 7 U.S.C. § 136(u).
3. The term "pest" means "any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro organism. . . ." 7 U.S.C. § 136(t).
4. The term "distribute or sell" 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) deliver or offer to deliver." 7 U.S.C. § 136(gg).
5. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

ALLEGED VIOLATIONS

6. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
7. From March 7, 2007 through September 13, 2008, Respondent maintained an office located at 2000 Washington Blvd., Baltimore, Maryland.
8. Respondent owns and/or operates the facility located at 2000 Washington Blvd., Baltimore, Maryland.
9. From March 7, 2007 through September 13, 2008, Respondent "distributed or sold" the product, Fresh Scent Disinfectant Wipes – 40 ct ("Disinfectant Wipes") from its Maryland office, as those terms are defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
10. Through a letter dated May 13, 2009, Respondent provided to EPA Region III a list of distributions or sales of Disinfectant Wipes from its Maryland office during the calendar years 2007 and 2008.
11. All Disinfectant Wipes products that Respondent sold from March 7, 2007 through September 13, 2008 contained a label with the claim "Disinfectant."
12. The term "disinfectant" means any chemical agent used to destroy or inhibit the growth of harmful organisms, such as bacteria.
13. "Bacteria" are "pests," as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

14. Consequently, all Disinfectant Wipes products that Respondent sold from March 7, 2007 through September 13, 2008 were “pesticides,” as this term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
15. From March 7, 2007 through September 13, 2008, the pesticide, Disinfectant Wipes, was not registered under Section 3 of FIFRA.
16. From March 7, 2007 through September 13, 2008, Respondent distributed or sold Disinfectant Wipes in 118 separate transactions.
17. Respondent’s sales or distributions of Disinfectant Wipes from March 7, 2007 through September 13, 2008 constitute 118 violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the assessment of a civil administrative penalty of up to \$6,500 for each violation of FIFRA occurring before January 12, 2009. For purposes of determining the amount of the civil penalty to be assessed, FIFRA Section 14(a)(4) requires EPA to consider the size of Respondent’s business, the effect on Respondent’s ability to continue in business and the gravity of the violations alleged. Based on the violations alleged in this Complaint, and after consideration of the statutory factors enumerated above, Complainant requests that the Administrator assess against the Respondent a civil administrative penalty of up to \$6,500 for each violation of Section 12(a)(1)(A) of FIFRA.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Administrative Hearing

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Renovation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to:

Ivan Lieben
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3)

whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under the Consolidate Rules of Practice and FIFRA Section 14(a)(3). The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

Settlement Conference

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

To explore the possibility of settlement in this matter, address your correspondence to:

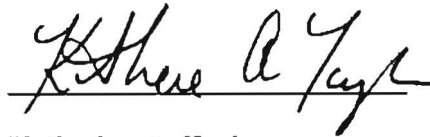
Ivan Lieben
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

His telephone number is (415) 972-3914.

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to pay the proposed penalty. In order to do this, please contact Mr. Ivan Lieben to arrange for the preparation of a Consent Agreement and Final Order.

After this Complaint is issued, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Dated at San Francisco, California on this 22 day of Sept, 2011.

A handwritten signature in cursive script, appearing to read "Katherine A. Taylor", written over a horizontal line.

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
USEPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Amended Complaint and Notice of Opportunity for Hearing was hand delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy of the Amended Complaint; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the FIFRA Enforcement Response Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Andy Yoon
Carimex International Trading Co., Inc. d/b/a SHCP Baltimore
2000 Washington Blvd., Baltimore, MD 21230

Dated: SEP 22 2011

By:



Ekho Lim
U.S. Environmental Protection Agency, Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7010 2780 0000 8388 5791

Date: SEP 22 2011.

Mr. Andy Yoon, President
Carimex International Trading Co., Inc.
d/b/a SHCP Baltimore
2000 Washington Blvd.,
Baltimore, Maryland 21230.

Re: Federal Insecticide, Fungicide, and Rodenticide Act
Complaint and Notice of Opportunity for Hearing
Docket No.: FIFRA-09-2011-0021

Dear Mr. Yoon:

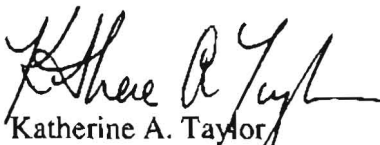
Enclosed is a Complaint and Notice of Opportunity for Hearing concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Specifically, the Complaint alleges that Carimex International Trading Co., Inc. violated Section 12(a)(1)(A) of FIFRA by selling or distributing unregistered pesticides.

You should be aware of the part of the Complaint entitled "Opportunity to Request a Hearing." You are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

Copies of the following rules and regulations are included for your information: (1) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and (2) EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

If you have any questions, please contact (or have your attorney contact) Mr. Ivan Lieben, Assistant Regional Counsel, U.S. Environmental Protection Agency Region IX, ORC-2, 75 Hawthorne Street, San Francisco, California 94105. Mr. Lieben can be reached by telephone at (415) 972-3914.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor". The signature is fluid and cursive, with a long horizontal stroke at the end.

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Enclosures

Cc: Patrick Thalken, California Department of Pesticide Regulation
Fatima El Abdaoui, US EPA Region 3, Pesticides and Asbestos Branch