



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

VIA CERTIFIED MAIL

Article No. 7007 2560 0002 6445 1702

July 2, 2008

Ref:8Enf-L

Alesia McCreeless
ACM-Texas, LLC.
1419 W. 29th Street
Loveland, CO 80538.

Dear Ms. McCreeless:

Enclosed is an administrative complaint, seeking penalties for violations of the Federal Insecticide Fungicide and Rodenticide Act, ("FIFRA"), 7 U.S.C. §§ 136 to 136y. ACM-Texas, LLC. has distributed or sold the pesticides NTC Pro Organic and CM Powdergard. FIFRA makes it unlawful to distribute or sell unregistered pesticides. This Complaint has been filed because of those violations.

If you or a representative would like to discuss the complaint or any of the other documents enclosed in this letter, please call me at 303-312-6924.

Sincerely,

Eduardo Quintana,
Senior Enforcement Attorney

Enclosures:

1. Complaint
2. CROP
3. FIFRA ERP
4. SBREFA Information Sheet



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2008 JUL -3 10:11:45

In the Matter of:

ACM-Texas, LLC.,
1419 W. 29th Street
Loveland, CO,

Respondent.

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**PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

DOCKET NO. : FIFRA-08-2008-0020

JURISDICTION

1. This civil administrative enforcement action is authorized by Congress in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. § 136(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated FIFRA by offering to sell, selling, or distributing unregistered pesticides. For these violations, EPA proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, 1595 Wynkoop Street (8RC), Denver, Colorado 80202, within thirty (30) days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN THIRTY (30) DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check, including the name and docket number of this case, payable to "Treasurer, United States of America," in care of:

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

A copy of the check must be mailed simultaneously to the attorney listed below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Senior Enforcement Attorney Eduardo Quintana at (303) 312-6924 or the address below. **Please note that calling or requesting a settlement conference does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

8. Respondent, ACM-Texas, LLC, is a Colorado limited liability company. Respondent is the owner and operator of a company located at 1419 W. 29th Street, Loveland, CO 80538.

9. FIFRA makes it unlawful to distribute or sell a pesticide that is unregistered. 7 U.S.C. § 136j (a)(1)(A).

10. Under FIFRA, the term "to 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).

11. Respondent has distributed or sold the pesticides "NIC Pro Organic and CM Powdergard."

12. The labels for NIC Pro Organic and CM Powdergard, make several pesticidal claims, including but not limited to directions regarding how to use the pesticide in order to kill or eliminate various pests.

13. The websites for NIC Pro Organic and CM Powdergard, make several pesticidal claims, including but not limited to the pesticides effectiveness against various pests.

14. NIC Pro Organic and CM Powdergard are unregistered pesticides.

15. Respondent is a "person" within the meaning of the statute, 7 U.S.C. § 136(s), and therefore subject to the requirements of the statute and/or regulations.

16. Respondent is a "producer" as defined by the statute, 7 U.S.C. §136(w), and a "distributor/seller" as defined by the statute, 7 U.S.C. §136(2)(gg), of a "pesticide" as defined by the statute, 7 U.S.C. §136(2)(u).

17. Respondent's distribution or sale of NIC Pro Organic, an unregistered pesticide, constitutes a violation of FIFRA. 7 U.S.C. 136j(a)(1)(A).

18. Respondent's distribution or sale of CM Powdergard, an unregistered pesticide, constitutes a violation of FIFRA. 7 U.S.C. 136j(a)(1)(A).

PROPOSED CIVIL PENALTY

19. FIFRA, 7 U.S.C. § 136/(a)(1), authorizes the assessment of a civil penalty of up to \$6,500.00 per violation. In arriving at the penalty proposed below, EPA, as required by the statute, 7 U.S.C. § 136/(a)(4), has taken into consideration, to the extent known, (1) the size of Respondent's business; (2) Respondent's ability to continue in business in light of the proposed penalty; and (3) the gravity of the alleged violations.

20. EPA's approach to calculating appropriate penalties is outlined in its Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), July 2, 1990 (enclosed), which provides a rational, consistent, and equitable method for applying these statutory factors to the facts and

circumstances of specific cases. Using the policies to apply the statutory factors to the facts of this case, **EPA proposes that a penalty of \$11,700 be assessed against Respondent for the violations alleged above.** EPA's penalty calculation/narrative is enclosed and incorporated as Complainant's Exhibit 1 to this complaint. Additionally, Complainant has enclosed a copy of "Information for Small Businesses."

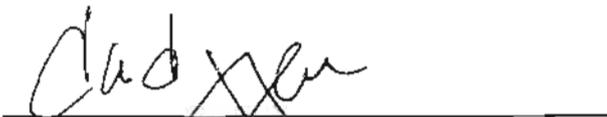
21. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

In the Matter of: ACM-Texas, LLC.
Docket No.: FTFRA-08-2008-0020

To discuss settlement or ask any questions you may have about this process, please contact the attorney indicated below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant

Date: 6/30/08 By: 
Mark Chalfant, Director
Technical Enforcement Program

Date: JUL - 1 2008 By: 
David J. Janik, Acting Director
Matt Cohn, Supervisory Attorney
Legal Enforcement Program

Date: 6/24/2008 By: 
Eduardo Quintana, Senior Enforcement Attorney
USEPA Region 8
1595 Wynkoop Street
Denver, CO 80202
303.312.6924
quintana.eduardo@epa.gov

In the Matter of: ACM-Texas, LLC.

Docket No.: FIFRA-08-2008-0020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits and enclosures were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wyncoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to the registered agent for ACM-Texas, LLC to the following address:

Alesia McCreeless
ACM-Texas, LLC.
1419 W. 29th Street
Loveland, CO 80538.

7/3/08
Date

Judith M. McTernan