

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
Agrimor Int'l Co.)
Respondent.)
_____)

Docket No. FIFRA-04-2010-3002
**FIRST AMENDED
CIVIL COMPLAINT
NOTICE OF
OPPORTUNITY FOR HEARING**

2009 OCT 22 PM 4:10
HEARING CLERK
EPA REGION 4

I. CIVIL ADMINISTRATIVE COMPLAINT

A. Jurisdiction

1. This amended civil administrative complaint is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "FIFRA").
2. The original civil administrative complaint was filed on October 9, 2009, with the Regional Judicial Officer and a copy was served by U.S. mail and received by Respondent on October 16, 2009.
3. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency (hereinafter "EPA"), Region 4, is authorized by the Administrator of EPA and by the Regional Administrator of EPA, Region 4, to issue a complaint on behalf of EPA to persons alleged to be in violation of FIFRA. The Administrator of EPA delegated this authority under FIFRA to the Region 4 Administrator by EPA Delegation 5-14, dated May 11, 1994. The Region 4 Administrator delegated this authority to the Director, Air, Pesticides and Toxics Management Division by EPA Region 4 Delegation 5-14, dated September 7, 2005.

4. Respondent is Agrimor Int'l Co., currently located at 20900 Northeast 30th Avenue, Suite 607, Aventura, Florida 33180. Respondent is a Florida corporation, doing business at all relevant times in Florida.
5. Respondent was previously located at 18305 Biscayne Boulevard, Suite 304, Aventura, Florida 33160 and 210-174th Street, Sunny Isles Beach, Florida 33160.
6. This Complaint serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

B. Statutory and Regulatory Authority

7. Complainant incorporates by reference paragraphs 1-6 above.
8. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
9. A "pesticide" is defined by Section 2(u) of FIFRA to include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. A "pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as 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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
11. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations prescribed thereunder.
12. FIFRA Section 17(c) requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides in the United States.

13. FIFRA Section 17(e), 7 U.S.C. 136136o(e) requires the Secretary of the Treasury, in consultation with the Administrator, to prescribe regulations for the enforcement of FIFRA Section 17(c).
14. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, through the United States Customs Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 12.110 - 12.117.
15. 19 C.F.R. §12.112(a) requires an importer desiring to import pesticides or devices into the United States to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) (hereinafter "Notice of Arrival"), prior to the arrival of the shipment in the United States.
16. Through the Notice of Arrival, the importer reports vital information to EPA such as the major active ingredients, quantity, country of origin, carrier, port of entry, and points of contact. This information allows EPA to make informed decisions, before pesticides arrive in the United States, as to whether such importation will pose unreasonable adverse risks to public health and the environment. The Notice of Arrival also provides contact information in the event of an emergency related to the movement of potentially toxic pesticide materials.
17. The Notice of Arrival is a report, required by FIFRA, that must be filed with the Administrator, prior to the arrival of each pesticide in the United States.
18. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

19. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. 136a.
20. “To distribute or sell” pesticides is defined in Section 2(gg) to mean “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.”

C. Factual Allegations

21. Complainant incorporates by reference herein paragraphs 1-20 above.
22. On or about December 10, 2004, an inspector with the Florida Department of Agriculture and Consumer Services (FDACS), duly appointed by the EPA Administrator, conducted an import-related inspection at Respondent’s facility, previously located at 210-174th Street, Sunny Isles Beach, Florida 33160, in response to a reported spill of a pesticide (Endosulfan) that had been imported by Respondent and was traveling by rail through Hialeah, Florida.
23. Documentary evidence collected by FDACS during the inspection showed that on July 25, 2004, Respondent arranged to purchase the following three pesticides from Qinfeng Pesticides Co., Ltd., Shenzhen, China (Purchase Order #AG-119-04): Endosulfan 35% EC (16,000 kgs.), Cymoxanil 80% WP (1,500 kgs.), and Fosetyl-al 80% WP (1,000 kgs.).
24. Copies of Respondent’s Material Safety Data Sheets collected during the FDACS inspection for each of the pesticides purchased, identify the products as pesticides under FIFRA.
25. Endosulfan is described as an “insecticide” / “organochlorine pesticide”; Cymoxanil is

described as a “Fungicide for downy mildew”; and Fosetyl Aluminum is described as a “Bactericide, systemic fungicide.”

26. Endosulfan 35%, Cymoxanil 80% , and Fosetyl-al 80% are “pesticides” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that they are substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating a pest.
27. The Endosulfan 35%, Cymoxanil 80% , and Fosetyl-al 80% pesticides imported by Respondent as described above were not registered with EPA under Section 3 of FIFRA, 7 U.S.C. 136a.
28. A Certificate of Origin dated September 27, 2004, collected during the FDACS inspection, identified “Shenzhen Qinfeng Pesticides Co., Ltd., via Agrimor Int’l Co.” as the Exporter, “Agrimor Int’l c/o Lufran Int’l Corp.” as the Consignee, and state “Products for Use in Agriculture – In Transit to Honduras – Total Four Hundred and Twenty Five Packages Only.”
29. The FDACS inspector also collected a Bill of Lading (#EURFF049I0926MIM), dated September 29, 2004, prepared by Eurasia Freight Service, Inc., a freight forwarder, listing Agrimor as the shipper and consignee, that reflects the port of loading of the aforementioned pesticides as Port of Shanghai, China, the port of discharge as the Port of Long Beach, California, for final destination to the Port of Miami, Florida, for eventual transit of “Four Hundred and Twenty Five Packages Only” from Miami to Honduras.
30. Subsequent to the filing of the Complaint, EPA received additional documentation from the Florida Department of Environmental Protection which included, in part, Commercial Invoice #AG-120-04A and related Packing Lists #AG-120-04A1 thru #AG-120-04A3 from Agrimor Int’l Co. to Suragroh Honduras dated October 25, 2004.

31. The aforementioned Commercial Invoice and Packing Lists also reference Bill of Lading #EURFF04910926MIM and describe Four Hundred Twenty Five (425) Packages of the following eleven unregistered pesticides: "Acetamiprid" (4,000 kgs.), "Endosulfan" (16,000 lbs.), "Cymoxanil" (1,500 kgs.), "Paraquat" (16,000 lbs.), "Fenpropathrin" (5,000 lbs.), "Abamectin" (2000 lbs.), "Lambda-Cyhalothrin (1,000 lbs.), "Oxamyl" (2,000 lbs.), "Fosetyl Al" (1,000 kgs.), "Metamidofos" (3,000 lbs.), and "Dimethomorph" (500 kgs.).
32. Commercial Invoice #AG-120-04A also states as to the Terms of Payment, "Post-Dated U.S. Bank Check – 150 Days After Arrival of Product in Miami, Florida – Make Check To: Agrimor Int'l Co."
33. On or after October 22, 2004, the eleven aforementioned pesticides arrived in the Port of Long Beach, California. On or after October 22, 2004, the pesticides were transported by rail to the Port of Miami. When the train carrying the pesticides arrived at the Hialeah (Miami) rail yard sometime after October 22, 2004, some quantity of the Endosulfan pesticide was discovered to have spilled or leaked from a container on a railcar necessitating a cleanup by the transport company.
34. The pesticides were subsequently transported from Miami to Port Everglades, Florida where they arrived on or about January 5, 2005.
35. A Notice of Arrival was not submitted to EPA for any of the eleven imported pesticides referenced at paragraph 31, prior to their arrival in the United States at the Port of Long Beach, California.

D. Allegations of Violations; Counts 1-11

36. Complainant incorporates by reference herein paragraphs 1-35 above.

37. Respondent distributes pesticides and is, therefore, a distributor subject to the requirements of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).
38. Respondent violated FIFRA Section 12(a)(2)(N) by failing to file reports required by FIFRA Section 17(e) and 19 C.F.R. § 12.112(a).
39. Respondent failed to file Notices of Arrival with EPA for the eleven unregistered pesticides referenced at paragraph 31 prior to their arrival in the United States.
40. By failing to file a Notice of Arrival for each of the eleven unregistered pesticides prior to their arrival in the United States, Respondent committed eleven separate violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

E. Allegations of Violations; Counts 12-22

41. Complainant incorporates by reference herein paragraphs 1-40 above.
42. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling pesticides that were not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
43. By distributing eleven unregistered pesticides in the United States, Respondent committed eleven separate violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

F. Proposed Penalty

Section 14 of FIFRA, 7 U.S.C. § 136l(a)(1), in conjunction with the Civil Monetary Inflation Adjustment Rule, 40 CFR Part 19, authorizes EPA to assess a civil penalty not to exceed \$6,500 for each violation that occurred on or after March 15, 2004 through

January 12, 2009. EPA proposes to assess a total civil penalty of \$143,000 against the Respondent for the violations set forth in Counts 1-22 above.

G. Appropriateness of Proposed Penalty

The proposed penalty has been derived in accordance with the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for a Category I Respondent and in accordance with the Debt Collection Improvement Act of 1996, and the Civil Monetary Inflation Adjustment Rule, 61 Fed. Reg. 69,360 (December 31, 1996), which provides for a 10% increase in the statutory maximum for violations of federal statutes after January 31, 1997, and a subsequent increase of 10% for violations occurring after March 15, 2004, 69 Fed. Reg. 7121 (February 13, 2004) and before January 12, 2009.

Respondent was placed in Category I (total business revenues of greater than \$1,000,000 per year). If this categorization is incorrect, the proposed penalty will be adjusted upon the submission of reliable financial information indicating another category is appropriate.

As set forth in the policy and Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), in determining the amount of the penalty, Complainant must take into consideration the size of the Respondent's business, the effect on the Respondent's ability to continue in business, and the gravity of the violation. Complainant will consider Respondent's financial condition in mitigating the proposed penalty, insofar as is necessary to permit Respondent to continue in business. In order to have its financial condition considered, Respondent must submit certified financial information.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.” 40 CFR Part 22 (Consolidated Rules) govern the procedures of the hearing. A copy of the Consolidated Rules accompanies this Amended Complaint. Under these rules, you have the right to request a formal hearing to contest any material fact set forth in this Amended Complaint and/or to contest the appropriateness of the proposed penalty.

You must file a written Answer within 20 days of your receipt of this Amended Complaint to avoid being found in default. Default constitutes an admission by you of all facts alleged in the Amended Complaint, waives your right to a hearing, and results in having the above-cited penalty assessed without further proceedings.

Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Amended Complaint with regard to which you have knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Your Answer must also briefly state all facts and circumstances, if any, which constitute grounds for a defense and specifically request an administrative hearing (if desired). If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

Your written Answer to the Amended Complaint should be sent to:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Telephone: (404) 562-9511.

A copy of the Answer should also be sent to:

Mr. Robert Caplan
Senior Attorney
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Mr. Mark Bloeth
Enforcement Officer
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303.

B. Informal Settlement Conference

Whether or not you request a hearing, you may confer informally with Mr. Caplan at (404) 562-9520 to discuss the facts of this case, the amount of the proposed penalty, or the possibility of settlement. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Amended Complaint.

EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order (CAFO). A CAFO signed by EPA and the Respondent would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Judicial Officer.

Please be advised that after the Complaint is issued, pursuant to Section 22.8 of the Consolidated Rules, any *ex parte* discussion of the merits of any action with the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any person likely to advise these officials in the decision of the case, is prohibited. *Ex parte* discussion as used herein means communicating to any of the above officials by one party to a proceeding without notice to, and in the absence of, the other party.

C. Payment of Penalty

If Respondent chooses not to contest any of the allegations set forth in this Amended

Complaint by filing a written Answer, an authorized official of Respondent should sign and submit an Affidavit of Compliance (in lieu of an Answer) within 30 days stating that the violations have been corrected and pay the proposed penalty. The Affidavit of Compliance should be sent to the Regional Hearing Clerk, EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303. The check must be payable to the "Treasurer, United States of America," and sent to the following Regional Hearing Clerk banking address:

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

The check shall reference on its face the Docket Number FIFRA-04-2010-3002.

10/22/2009
Date



Kenneth R. Lapierre, Acting Director
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303.

CERTIFICATE OF SERVICE

I certify that on the date noted below, I hand delivered the original and one copy of the foregoing First Amended Administrative Complaint, Docket No. FIFRA-04-2010-3002, to the Regional Hearing Clerk, Region 4. Furthermore, I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of this Administrative Complaint, and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 to the following:

Mr. Peter Tirosch
Registered Agent
Agrimor Int'l. Co.
20900 Northeast 30th Avenue
Suite 607
Aventura, FL 33180

(Via Certified Mail, Return Receipt Requested)

A copy of this First Amended Administrative Complaint was also sent via EPA's internal mail to the following:

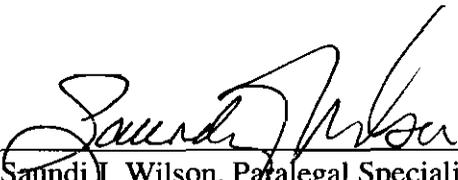
Mr. Mark Bloeth, Enforcement Officer
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Robert Caplan, Senior Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Date: 10/22/09


Saundi J. Wilson, Paralegal Specialist
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303