



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
May 14, 2013

REPLY TO THE ATTENTION OF:
EC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7676 8474

Mr. Robert Wooten
Mytech, Inc.
4813 Carsons Pond Rd.
Charlotte, North Carolina 28226

Consent Agreement and Final Order In the Matter of
Mytech, Inc. Docket No. **FIFRA-05-2013-0009**

Dear Mr. Wooten:

Enclosed you will find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on May 14, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by June 13, 2013, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Mytech Inc.)
Charlotte, North Carolina)
)
Respondent.)
_____)

Docket No. FIFRA-05-2013-0009
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

RECEIVED
MAY 14 2013

Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Mytech Inc. (Mytech), a corporation doing business in the State of North Carolina.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

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, and its implementing regulations set forth at 19 C.F.R. Part 12 and 40 C.F.R. Parts 150 – 180.

Statutory and Regulatory Background

10. An importer desiring to import a shipment of a pesticide product into the United States shall submit to EPA a “Notice of Arrival of Pesticides and Devices” (NOA) (EPA Form 3540-1). 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112(a).

11. Pesticide products imported into the United States shall comply with FIFRA and its implementing regulations. 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.117.

12. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person a pesticide product which is misbranded.

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

14. 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. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

15. The term “pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

16. The term “misbranded,” means, *inter alia*, the pesticide label does not contain the necessary warning or caution statements which if complied with are adequate to protect health and the environment. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F); and 40 C.F.R. § 156.10(a).

17. The contents of the label must show clearly and adequately, *inter alia*, the prescribed precautionary statements for human hazards, the prescribed precautionary statements for environmental hazards, and the prescribed precautionary statements for physical and chemical hazards. 40 C.F.R. §§ 156.10(a), 156.70, 156.78, and 156.80.

18. The required label shall be securely attached to each immediate container of the pesticide or outside wrapper. 40 C.F.R. § 156.10(a)(4).

19. The Administrator of EPA may assess a civil penalty against a 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

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

21. “Heze Huayi 56 Disinfecting Granules” is a registered pesticide (EPA Reg. No. 83936-1), with an EPA accepted label.

Count 1

22. This Count incorporates by reference the allegations contained in paragraphs 1 through 21 of this CAFO.

23. On or about March 16, 2013, Respondent imported 38 supersacks each containing 1,000 kilograms of the pesticide “Heze Huayi 56 Disinfecting Granules” from China into the United States through the Port of Chicago under the NOA entry number KJW-0014605-0.

24. None of the supersacks was attached with a label containing, *inter alia*, the prescribed precautionary statements for human hazards, the prescribed precautionary statements for environmental hazards, and/or the prescribed precautionary statements for physical and chemical hazards, required by Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F); and 40 C.F.R. § 156.10(a).

25. Examples of the lacking precautionary statements include, but are not limited to: “causes irreversible eye damage and skin burns,” “may be fatal if inhaled,” “toxic to fish and aquatic organisms,” “do not use ABC or other dry chemical extinguishers since there is the potential for violent reaction,” and “contamination with moisture, organic material, or other chemicals may start a chemical reaction with generation of heat, liberation of hazardous gases, and possible fire and explosion.”

26. On or about March 16, 2013, Respondent distributed or sold a misbranded pesticide, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 2

27. On or about March 28, 2013, Respondent imported 57 supersacks each containing 1,000 kilograms of the pesticide “Heze Huayi 56 Disinfecting Granules” from China into the United States through the Port of Chicago under the NOA entry number KJW-0014654-8.

28. One or more of the supersacks was not attached with a label containing, *inter alia*, the prescribed precautionary statements for human hazards, the prescribed precautionary statements for environmental hazards, and/or the prescribed precautionary statements for

physical and chemical hazards, required by Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F); and 40 C.F.R. § 156.10(a).

29. Examples of the lacking precautionary statements include, but are not limited to: “causes irreversible eye damage and skin burns,” “may be fatal if inhaled,” “toxic to fish and aquatic organisms,” “do not use ABC or other dry chemical extinguishers since there is the potential for violent reaction,” and “contamination with moisture, organic material, or other chemicals may start a chemical reaction with generation of heat, liberation of hazardous gases, and possible fire and explosion.”

30. On or about March 28, 2013, Respondent distributed or sold a misbranded pesticide, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

31. Complainant has determined the appropriate penalty to settle this action is \$15,000, based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4).

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

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

The check must note “In the Matter of Mytech Inc.” and the docket number of this CAFO.

33. A transmittal letter stating Respondent’s name, the case title, Respondent’s complete address and the case docket 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 Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Eaton Weiler (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

35. If Respondent does not pay the civil penalty timely, 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.

36. 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

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

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

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

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

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

42. 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.

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

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

**In the Matter of:
Mytech Inc.**

Mytech Incorporated, Respondent


4-29-13
Date

Robert Wooten
Robert Wooten
President
Mytech Inc., Respondent

**In the Matter of:
Mytech Inc.**

United States Environmental Protection Agency, Complainant

5/08/2013
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Mytech Inc.
Docket No. FIFRA-05-2013-0009

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.

5-9-13

Date



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


MAY 14 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 Mytech, Inc, was filed on May 14, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7676 8474, a copy of the original to the Respondent:

Mr. Robert Wooten
Mytech, Inc.
4813 Carsons Pond Rd.
Charlotte, North Carolina 28226

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Eaton Weiler, Regional Judicial Officer, 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

Docket No. FIFRA-05-2013-0009



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