

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.II

REGION 2

2013 JUN 28 P 3:12

REGIONAL HEARING CLERK

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In the Matter of :
:
American Hygiene Industries :
:
Respondent :
:
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended :
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COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Docket No. FIFRA-02-2013-5107

COMPLAINT

Complainant, as and for her Complaint against Respondent, hereby alleges:

1. This is a civil administrative proceeding instituted pursuant to Section 14 (a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), 7 U.S.C. 1361(a) as amended, 7 U.S.C. 136 et seq.
2. The Complainant, Dore LaPosta, Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (EPA), has been duly delegated the authority to institute this action.
3. Respondent is American Hygiene Industries.
4. Respondent is a Corporation organized pursuant to the laws of the State of New Jersey.
5. Respondent is a registrant, wholesaler, dealer or other distributor within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. 1361(a)(1).

6. Respondent is a person within the meaning of Section 2(s) of FIFRA, 7 U.S.C. 136 (s).

7. Respondent is a producer of pesticides, as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. 136(w).

8. Respondent maintains an establishment, as defined in Section 2(dd) of FIFRA, 7 U.S.C. 136(dd), located at 456 Washington Avenue, Carlstadt, New Jersey 07072.

9. Respondent's facility is registered under Section 7 of FIFRA, 7 U.S.C. 136e. Its assigned EPA Establishment Number is 075586-NJ-001.

10. Subsection 7(c)(1) of FIFRA, 7 U.S.C.136e(c)(1) states in part that any producer operating an establishment registered under Section 7 shall submit annually to the EPA, as required under the applicable regulations, the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, has produced during the past year, and has sold or distributed during the past year.

11. 40 C.F.R. 167.85 provides that a producer operating an establishment must submit the information mentioned in Paragraph 10, above, in an annual report (Report) on or before March 1 of each year, even if the producer has produced no pesticide products for that reporting year.

COUNT ONE

12. Complainant realleges each allegation contained in Paragraphs 1 through 11, inclusive, as if fully set forth herein.

13. Respondent was required to submit to the EPA a Report for calendar year 2010 on or before March 1, 2011.

14. Respondent did not submit to the EPA its Report for calendar year 2010 on or before March 1, 2011.

15. Respondent's failure to submit a Report as alleged in Paragraph 14, above, is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. 136j(a)(2)(L), and 40 C.F.R. 167.85.

COUNT TWO

16. Complainant realleges each allegation contained in Paragraphs 1 through 11, inclusive, as if fully set forth herein.

17. Respondent was required to submit to the EPA a Report for calendar year 2011 on or before March 1, 2012.

18. Respondent did not submit to the EPA its Report for calendar year 2011 on or before March 1, 2012.

19. Respondent's failure to submit a Report as alleged in Paragraph 18, above, is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. 136j(a)(2)(L), and 40 C.F.R. 167.85.

PROPOSED CIVIL PENALTY

In view of the above-cited findings and pursuant to the authority of Section 14(a) of FIFRA, 7 U.S.C.1361(a), Complainant herein proposes the assessment of a civil penalty in the amount of Six Thousand Six Hundred Dollars (\$6,600) against Respondent.

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C.1361(a), which authorizes the assessment of a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant thereto.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust its penalties for inflation on a periodic basis. EPA has issued the Civil Monetary Penalty Inflation Adjustment Rule under which violations that occur on January 12, 2009, or later, are subject to a new statutory maximum civil penalty. The maximum civil penalty under Section 14(a) of FIFRA for such violations is \$7,500 per offense. (40 C.F.R. Part 19 (Vol. 73, No. 239, December 11, 2008)).

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires EPA to take into account the gravity of the violations. As to the violator, Section 14 of FIFRA requires EPA to take into account the appropriateness of the penalty to the size of the business and the effect of the penalty on its ability to continue in business.

To develop the proposed penalty in this Complaint, EPA has taken into account the particular facts and circumstances of this case, to the extent known at this time, with specific reference to EPA's FIFRA 7(c) Enforcement Response Policy, enacted May 19, 2010, and its "Enforcement Response Policy For The Federal Insecticide, Fungicide, and Rodenticide Act", dated December 3, 2009, copies of which are available upon request. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases.

