



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837

AUG 20 2004

CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Mr. Robert Rosenwasser
Director, Regulatory Affairs
The Hartz Mountain Corporation
400 Plaza Drive
Secaucus, NJ 07094

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 AUG 21 PM 12:27
REGIONAL HEARING
CLERK

Re: In the Matter of the Hartz Mountain Corporation
Docket No. FIFRA-02-2009-5103

Dear Mr. Rosenwasser:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency, Region 2.

Thank you for your cooperation in this matter. If you have any questions, please contact me at (732) 321-6610.

Sincerely,

Michael Kramer
Pesticides Team
Division of Enforcement & Compliance Assistance

Enclosure

ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
In the Matter of :
 :
The Hartz Mountain Corporation : **CONSENT AGREEMENT**
 : **AND FINAL ORDER**
 :
Respondent. :
 : Docket No. FIFRA-02-2009-5103
 :
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended. :
-----X

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 136 l(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. ("FIFRA" or "the Act"). Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, issued an Administrative Civil Complaint to the Hartz Mountain Corporation, located at 400 Plaza Drive, Secaucus, NJ 07094.

The Complainant charged Respondent with one violation of 7 U.S.C. § 136e(c)(1) and 40 C.F.R. § 167.85, the requirements under FIFRA governing the submission of an annual Pesticide Report for Pesticide-Producing Establishments ("Pesticide Report"). The Complainant charges that said violations are unlawful under FIFRA § 12(a)(2)(L), 7 U.S.C. § 136j (a)(2)(L).

The Parties consent to the entry of this Consent Agreement and Final Order (CAFO) and agree to comply with its terms.

The Parties agree to commence and conclude this case by issuing this Consent Agreement and the attached proposed Final Order as prescribed by 40 CFR Part, 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Parties to this Consent Agreement agree that the title to this proceeding should properly read "In the Matter of The Hartz Mountain Corporation."

2. This Consent Agreement is being entered by Respondent on behalf of The Hartz Mountain Corporation, and the Respondent is authorized for purposes of this Consent Agreement to bind The Hartz Mountain Corporation.

3. Respondent's establishment is registered under Section 7 of FIFRA, 7 U.S.C. § 136e. Its assigned EPA Establishment Numbers is 002596-NJ-003.

4. Pursuant to Section 7(c) of FIFRA and 40 C.F.R. § 167.20(f), any producer operating an establishment registered under Section 7 shall submit annually to the EPA 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.

5. Title 40 C.F.R. § 167.85 provides that a producer operating an establishment must submit the annual pesticide production report (the "Report") on or before March 1st of each year, even if the producer has produced no pesticidal product for that reporting year.

6. Respondent provided Federal Express delivery confirmation (tracking number 799809068158) of a document delivered to the USEPA in Edison, New Jersey on February 26, 2008.

7. Solely for purposes of settlement, the parties stipulate that Respondent provided documentation demonstrating submission a 2007 Annual Pesticide Production Report to the USEPA in satisfaction of 40 C.F.R. § 167.85 however, the FIFRA Section 7 Coordinator did not locate the Report prior to issuance of the Civil Complaint.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent agrees to waive any jurisdictional objections regarding proper service of the complaint and/or any other questions concerning acquisition of personal jurisdiction of The Hartz Mountain Corporation.
3. Respondent shall comply at all times with the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e and the applicable regulations through mail courier or certified restricted delivery of Annual Pesticide Production Reports directly to the FIFRA Section Seven Coordinator.
4. It is the USEPA's conclusion that Respondent provided documentation stipulating compliance with 40 C.F.R. § 167.85 for 2007. The penalty is reduced to zero.
5. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other environmental laws.
6. Nothing in this Consent Agreement shall preclude Complainant from further enforcement action, including the assessment of civil penalties, arising from the violation of any environmental laws.
7. This Consent Agreement is being entered into by the parties in full settlement of all civil liabilities that might have been attached as a result of the allegations in the Complaint. Each of the parties have read the Consent Agreement and Final Order, finds it reasonable, and consents to its issuance and its terms.

8. Respondent explicitly waives its right under FIFRA Section 14 (a) (3) to request a hearing on the Complaint, this Agreement, or the attached Final Order.

9. This Consent Agreement and Final Order shall be binding on both parties to this action, their officers, directors, employees, successors, and assigns.

10. The undersigned representative of each party to this Consent Agreement and Final Order certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement and bind that party to it.

11. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

12. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

13. Unless otherwise provided in this Consent Agreement and Final Order, this Consent Agreement requires notice or submission of reports, information or documents to EPA, such information shall be submitted to:

Michael G. Kramer
FIFRA Section 7 Coordinator
US EPA Region 2
Building 205, MS 500
Edison, NJ 08837

14. This Consent Agreement and Final Order completely settles all civil claims or civil causes of action between the Parties with respect to the allegations in this Consent Agreement and Final Order.

15. This Consent Agreement and Final Order solely resolves the issues described in this Consent Agreement and Final Order and are not intended to characterize Respondent's conduct in regards to (i) any violation of other laws or regulations or (ii)

other wrongdoing.

16. This Consent Agreement shall bind the Parties in full effect upon execution of the attached Final Order by the USEPA Regional Administrator.

RESPONDENT: The Hartz Mountain Corporation

BY: William P. Fornshell

Authorizing Signature

NAME: WILLIAM P. FORNSHELL

(PLEASE PRINT)

TITLE: VP, SECRETARY & GENERAL COUNSEL

DATE: May 29, 2009

COMPLAINANT:

[Signature]

Dore LaPosta, Director

Division of Enforcement and Compliance Assistance

U.S. Environmental Protection Agency - Region 2

290 Broadway

New York, NY 10007

DATE: JULY 23, 2009

In the Matter of The Hartz Mountain Corporation

Docket No. FIFRA-02-2009-5103

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



George Pavlou

Acting Regional Administrator

U.S. Environmental Protection Agency - Region 2

290 Broadway

New York, New York 10007

DATE: 7/27/09

In the Matter of The Hartz Mountain Corporation

Docket No. FIFRA-02-2009-5103

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement Final Order the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

by Interoffice Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,

Return Receipt Requested:

Mr. Robert Rosenwasser
Director, Regulatory Affairs
The Hartz Mountain Corporation
400 Plaza Drive
Secaucus, New Jersey 07094

Dated: August 20, 2009



Edison, NJ