



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
April 28, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7649 4830

Mr. Carl Tanner
Liphatech, Inc.
3600 West Elm Street
Milwaukee, Wisconsin 53209

Consent Agreement and Final Order In the Matter of
Liphatech, Inc. Docket No. FIFRA-05-2014-0012

Dear Mr. Tanner:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on April 28, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 40 through 42. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by May 28, 2014 (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 "Estrella Calvo".

for Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

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. §§ 136-136y.

Statutory and Regulatory Background

10. 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 promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated at 40 C.F.R. § 162.10 by the Administrator, before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA Form 3540-1), prior to the arrival of the shipment in the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

14. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” 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.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” 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 living micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” to mean, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

19. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

20. The Administrator may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other 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

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

22. At all times relevant to this CAFO, Respondent was a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

23. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 3600 West Elm Street, Milwaukee, Wisconsin.

24. On or about February 28, 2014, Schenker, Inc. (Schenker), located at 330 E. Mahn Court, Suite 300, Oak Creek, Wisconsin 53154 was a broker/agent for Respondent for the import shipment under entry number 322-1049448-4.

25. On or about February 28, 2014, Schenker submitted a NOA to EPA for an import shipment of the pesticide “Metarex Slug & Snail Bait,” EPA Registration Number (EPA Reg. No.) 7173-257, from France under entry number 322-1049448-4.

26. The importer of record listed on the NOA for the shipment under entry number 322-1049448-4 was Liphatech.

27. The import shipment associated with entry number 322-1049448-4 entered the United States on or about March 10, 2014.

28. Respondent, as importer of record for “Metarex Slug & Snail Bait,” EPA Reg. No. 7173-257, and by doing business in the United States is subject to the requirements of FIFRA and the regulations promulgated thereunder.

29. “Metarex Slug & Snail Bait,” EPA Reg. No. 7173-257, is a registered pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

30. On or about March 10, 2014, Respondent “distributed or sold” the pesticide product “Metarex Slug & Snail Bait,” EPA Reg. No. 7371-257, as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

31. On September 18, 2013, the Office of Pesticide Programs, Registration Division issued an “accepted” label for “Metarex Slug & Snail Bait,” EPA Reg. No. 7173-257. The accepted label contained, among others, the following statements in the “Directions For Use” section (under Grass grown for seed):

- “Apply at a rate of 5 to 20 pounds of product per acre. Use the higher rate when pest pressure is high. The maximum application rate is 20 pounds of product per acre (0.8 lb ai/A) per application...”
- “(May include optional spreader setting chart in directions for grass grown for seed)...”

32. The label affixed to the bags of “Metarex Slug & Snail Bait,” EPA Reg. No. 7173-257, imported on or about March 10, 2014, under entry number 322-1049448-4, contained a spreader setting chart that provided manual or electric spreader settings which exceeded the maximum application rate of 20 pounds of product per acre (0.8 lb ai/A) per application set forth in the accepted label and due to its placement under the “Directions For Use” appeared to not be limited to “Grass grown for seed.”

33. The label affixed to the bags of “Metarex Slug & Snail Bait” imported on or about March 10, 2014, under entry number 322-1049448-4, were false or misleading as that term is defined at Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

Specific Allegations

34. Complainant incorporates by reference the allegations contained in paragraphs 1 through 33.

35. On or about March 10, 2014, Respondent distributed or sold the pesticide product “Metarex Slug & Snail Bait,” EPA Reg. No. 7173-257, with a label that bore a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading.

36. On or about March 10, 2014, Respondent distributed or sold the misbranded pesticide product “Metarex Slug & Snail Bait,” EPA Reg. No. 7173-257, which constitutes an unlawful act, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

37. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14 (a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

38. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the appropriateness of a penalty to the size of the business of the person charged, the effect on the person’s ability to continue in business, and the gravity of the violation, when determining the amount of the penalty for violations of FIFRA.

39. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated a civil penalty against Respondent in the amount of \$7,500.

40. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violation. 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

41. The check must note "In the Matter of Liphatech, Inc.," and the docket number of this CAFO.

42. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

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

45. 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

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

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

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

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

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

51. 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.

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

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

**In the Matter of:
Liphatech, Inc.
Docket No.**

Liphatech, Inc., Respondent

APRIL 14, 2014

Date



Carl Tanner
Chief Executive Officer
Liphatech, Inc.

United States Environmental Protection Agency, Complainant

4/22/2014

Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Liphatech, Inc.
Docket No. FIFRA-05-2014-0012

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.

4-24-2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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 Liphatech, Inc., was filed on April 28, 2014 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 7649 4830, a copy of the original to the Respondents:

Mr. Carl Tanner
Liphatech, Inc.
3600 West Elm Street
Milwaukee, Wisconsin 53209

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, 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

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