

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

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In the Matter of)

Argent Chemical Laboratories, Inc.,)
Eliot Lieberman & Bertriz Shanahan,)

)
)
) Docket No. FIFRA-10-2004-0073
)
)

Order

The purpose of this Order is to direct the parties to exchange prehearing information in accordance with Rule 22.19 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). The parties are directed to provide the following information:

By Complainant and Respondents

1. Desired or required location for the hearing. See Rules 22.19(d) and 22.21(d).
2. A list of prospective witnesses, a brief summary of their anticipated testimony and a copy of each document or exhibit to be proffered in evidence to the extent not covered by specific requests below.

By Complainant

1. Explain the basis for seeking personal liability for the alleged violations against Respondents, Eliot Lieberman and Bertriz Shanahan.
2. Explain the purpose of reciting proceedings against Respondents dating to 1988 and 1993 (complaint, paragraphs 10 and 11), inasmuch as under the ERP only violations occurring within five years of the violations alleged herein are considered as compliance history.
3. Provide copies of Reports for Pesticide Producing Establishments submitted by Respondents referred to in paragraphs 13 through 16 of the complaint.
4. Provide a copy of the letter from Respondents, dated April 24, 1998, and a copy of any

letter or other document terminating the registration of Respondents' pesticide producing establishment on May 28, 1998, referred to in paragraphs 17 and 18 of the complaint, respectively.

5. Provide a copy of report of inspection of Argent conducted by WSDA in 1999, a copy of report of inspection conducted by WDE in April, 2001, and a copy of reports of inspection conducted by EPA , referred to in paragraph 23 of the complaint.

6. Paragraph 34 alleges that the Copper Control Algaecide bears EPA Reg No. 1812-3070-47677, while paragraph 35 alleges that Copper Control Algaecide bears EPA Reg. 1812-307-47677. Refer to paragraph 31 and state which registration numbers are correct. Provide a copy of invoices or other documents evidencing distributions alleged in paragraph 36 of the complaint.

7. Provide a copy of label for Argent's Copper Control Algaecide, EPA Reg. No. 1812-307-47677, referred to in paragraph 38 of the complaint.

8. Provide a copy of the letter, dated July 24, 1996, canceling the registration of Copper Control Granular . EPA Reg. No 47677-8, referred to in paragraph 41 of the complaint. Provide a copy of invoices or other documents evidencing sales or distributions alleged in paragraph 43 of complaint.

9. State the factual basis and provide any documents supporting the allegations of paragraph 47 that between approximately July 26, 1999, and January 15, 2003, Respondents manufactured, produced, sold or distributed Benzalkonium Chloride, 50% Germicidal Concentrate having labels bearing EPA Reg. No. 42943-6-47677 and EPA Est. No.47677-WA-01.

10. State the factual basis and provide any documents supporting the allegation in paragraph 49 that the distribution agreement with Sherex Chemical Company, which allowed Respondents to distribute Variquat 50 ME as Benzalkonium Chloride 50% Germicidal Concentrate under Registration No. EPA 42943-6-47677, was canceled on June 27, 1988. Provide any notices or other documents supporting the transfer of the registration of Variquat 50 ME from Witco Corporation to Goldschmidt Chemical Corporation as alleged in paragraph 50 of the complaint. State the factual basis for the allegation in paragraph 50 that after February 2000., EPA Reg. No. 42943-6 was no longer valid.

11. Provide a copy of the invoice or other document evidencing the shipment of Benzalkonium Chloride to Tahiti alleged in paragraph 57 of the complaint.

12. Respond to the allegation in paragraph 63 of the answer that Rotenone is routinely sold in stores and by many other companies including Ortho without any restricted use language.

13. Provide a copy of the report , dated December 5, 1994, referred to in paragraph 64 of

the complaint, wherein Argent specifically requested that its registrations for Rotenone 5% Emulsifiable Concentrate (EPA Reg No. 47677-3) and Rotenone 5% Fish Toxicant Powder (EPA Reg. No. 47677-4) be cancelled. Provide a copy of the letter, dated July 19, 1995, notifying Respondents that the mentioned registrations were cancelled. Include a copy of the published notice or notices by which the cancellations were effected.

14. Respondent admits that in 2001, it sold or distributed [Rotenone] 5% Emulsifiable Concentrate, but allegedly under EPA Reg. No. 1439-157 (answer, paragraph 68). State whether these sales or distributions were or could be authorized "supplemental distribution" within the meaning of 40 C.F.R. § 152.132.

15. Provide a copy of the label for Tifa Limited's Chem Fish Toxicant Regular Rotenone 5% Liquid (EPA Reg. No. 1439-157) referred to in paragraphs 70-72 of the complaint. Provide copies of invoices or other documents supporting sales alleged in paragraphs 74, 76, and 78 of the complaint. Provide support for the allegation that the vendees in the mentioned sales were not certified applicators.

16. Provide invoices or other documents evidencing the sales of Rotenone 10% Powder alleged in paragraphs 82 and 86 of the complaint. Provide copies of reports of inspections conducted by HDA, referred to in paragraphs 83 and 87 of the complaint, and a copy of labels for the Rotenone products observed during the inspections. Include a copy of any reports of analyses demonstrating Rotenone concentration of the products as alleged in paragraphs 84 and 88 of the complaint. Provide a copy of the "EPA Alert" referred to in paragraph 92 of the complaint.

17. State whether the registration for Chem Fish Toxicant Regular Rotenone 5%, Liquid (EPA Reg. No. 1439-157) is still in effect.

18. Provide a copy of the label for Aqua Bacta Aid (A.B.A.) and a copy of the letter, dated September 20, 1999, wherein EPA warned Argent that the product A.B.A. was considered to be an unregistered pesticide.

19. Provide a copy of invoices referred to in paragraph 99 of the complaint representing sales or distributions of A.B.A.

20. Provide a copy of the label for the product "No Foam" referred to in paragraph 100 of the complaint. Respond to the assertion that the claim "reduces scum" is not directed at algae and thus is not a pesticidal claim.

21. Provide a copy of invoices referred to in paragraph 105 of the complaint representing sales or distribution of "No Foam".

22. Provide a copy of labels and promotional materials for "Kontak Aquarium Algaecide" referred to in paragraph 106 of the complaint.

23. Provide documents supporting the shipment of Kontak Aquarium Algaecide referred to in paragraphs 110 and 111 of the complaint.

24. Inasmuch as the unit of violation in FIFRA § 12(a)(1) is the “distribution or sale”, explain how the same distribution or sale may be a violation of § 12(a)(1)(A), making it unlawful to distribute and sell an unregistered pesticide, and of § 12(a)(1)(E), making it unlawful to distribute or sell a pesticide which is adulterated or misbranded.

25. Specify the amount of the penalty proposed and provide a copy of the civil penalty worksheets specifying the manner of calculating the proposed penalty.

By Respondents

1. Refer to 40 C.F.R. § 167.3 and explain Respondents’ apparent position that the repackaging or re labeling of a pesticide is not the production of a pesticide.

2. Provide a copy of the label for Argent’s Copper Control Algaecide (EPA Reg. 1812-307-4677), referred to in paragraphs 36 and 38 of the answer.

3. Explain the basis for the denial of the allegation that the supplemental distribution agreement with Sherex Chemical Company referred to in paragraph 49 of the complaint was canceled.

4. Explain the distinction in Respondents’ view between a product advertised, sold and distributed as a “fish toxicant” and a pesticide.

5. Provide a copy of labels or a summary of label language under which Rotenone is routinely sold in stores without restricted use language.

6. Provide a copy of the label for Rotenone 10% Powder referred to in paragraph 81 of answer.

7. Provide a copy of the original and revised labels and advertising for Aqua Bacta (A.B.A.), referred to in paragraph 93 of answer.

8. State the basis for the denial of the allegation in paragraph 107 of the complaint that the assertion Kontak Aquarium Algaecide controls algae is a pesticidal claim.

9. If Respondents are contending that assessment of a substantial penalty would jeopardize their ability to continue in business, provide financial statements, copies of income tax returns or other data to support such contention

Responses to this Order shall be served on the Regional Hearing Clerk, the other party and the ALJ on or before **May 20, 2005**.

Upon receipt of and review of the responses, I will be in telephonic contact with the parties for the purpose of scheduling this matter for hearing.

Dated this 21st day of April, 2005.



Spencer T. Nissen
Administrative Law Judge

* In accordance with Rule 22.5(c)(4), the parties are directed to promptly notify the Regional Hearing Clerk, the other party and the ALJ of any change in address and/or telephone number.

** The parties are informed that the use of E-Mail to communicate with this office is considered to be inappropriate.

In the Matter of *Argent Chemical Laboratories, Inc., Eliot Lieberman & Bertriz Shanahan*, Respondents.
Docket No. FIFRA-10-2004-0073

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order**, dated April 21, 2005, was sent in the following manner to the addressees listed below.



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Legal Staff Assistant

Original and One Copy by Pouch Mail to:

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