



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG II
2009 JAN -5 AM 7:51
REGIONAL HEARING
CLERK

DEC 19 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Stephen Meyers
President
Anabec, Inc.
9393 Main Street
Clarence, NY 14031

Re: In the Matter of Anabec, Inc.
Docket No. FIFRA-02-2009-5201

Dear Mr. Meyers:

Enclosed is the Complaint and Notice of Opportunity for Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

You have the right to a formal hearing to contest any of the allegations in the complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written

Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk
Anthony Lamanno, NYSDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JAN -5 AM 7:51
REGIONAL HEARING
CLERK

-----X
: :
In the Matter of : COMPLAINT AND NOTICE OF
: OPPORTUNITY FOR HEARING
: :
Anabec, Inc., : :
: Respondent. : :
: :
Proceeding under The Federal : Docket No.
: FIFRA-02-2009-5201
Insecticide, Fungicide and : :
Rodenticide Act, as amended. : :
-----X

COMPLAINT

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

Predicate Allegations

1. This is a proceeding pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(1), to assess a civil penalty against Respondent for having committed acts made unlawful under the provisions of Section 12(a)(1) of FIFRA, 7 U.S.C. § 136j(a)(1).

2. This tribunal has jurisdiction over this administrative proceeding pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. § 22.1(a)(1).

3. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, in part, that "it shall be unlawful for any person in any State to distribute or sell to any person" a "pesticide" (as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3)¹ that has not been previously registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

4. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), "to distribute or sell" is defined 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."

¹ Unless specifically stated otherwise, terms or phrases defined by reference to specified statutory and/or regulatory definitions are subsequently used in this Complaint as so defined.

5. Pursuant to 40 C.F.R. § 152.3, to “[d]istribute or sell” is defined to “mean[s] the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

6. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), a pesticide includes, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest” (the term “pest” further defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and in 40 C.F.R. § 152.5).

7. Bacteria, microbes, mold and/or mildew (except for those on or in living humans and other living animals) constitute pests within the meaning of Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and in 40 C.F.R. § 152.5(d).

8. Under 40 C.F.R. § 152.15(a)(1), a substance is considered to be intended for a pesticidal purpose, and thus is deemed to be a pesticide requiring registration under Section 3 of FIFRA, 7 U.S.C. § 136a, if the person who sells or distributes said substance claims, states or implies (whether through the use of a label used in connection with such substance or otherwise) that it (either by itself or in combination with any other substance) can or should be used as a pesticide.

9. Any distribution or sale of a pesticide that has not previously been registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is made unlawful by (*i.e.* constitutes a prohibited act under) Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and thus constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

10. Pursuant to 40 C.F.R. § 152.15, “[n]o person may distribute or sell any pesticide product [defined in 40 C.F.R. § 152.3] that is not registered under [FIFRA]....”

11. Any distribution or sale of a pesticide that has not previously been registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is a prohibited act under 40 C.F.R. § 152.15 and thus constitutes a violation of 40 C.F.R. § 152.15.

12. A violation of 40 C.F.R. § 152.15 constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

13. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides, in part, that “[a]ny... wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter [subchapter II of FIFRA 7 U.S.C. §§ 136 - 136y] may be assessed a civil penalty by the Administrator [of EPA] of not more than \$5,000 for each offense.”

14. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104

Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), to \$6,500 for any violation occurring after March 15, 2004.

15. A violation of each of the following constitutes a violation of a provision of subchapter II of FIFRA, 7 U.S.C. §§ 136 -136y:

- a. 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and/or
- b. 40 C.F.R. § 152.15.

16. Complainant, the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2, has been duly delegated the authority to institute this proceeding.

17. Section 14(a)(3) of FIFRA, 7 U.S.C. 136l(a)(3), provides that “[n]o civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.”

18. This “COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING” (“Complaint”) constitutes the aforementioned (§ 17, above) notice.

Respondent’s Identity and Operations

19. Respondent is Anabec, Inc.

20. Respondent is a for-profit corporation organized, and existing since February 1996, under the laws of the State of New York.

21. Since its formation in February 1996, Respondent has been, and continues to be, a “person” (as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s)).

22. Starting in approximately February 1996, Respondent has been, and continues to be, the owner and operator of a facility located at 9393 Main Street in Clarence (Erie County), New York (hereinafter, “Respondent’s facility”).

23. Starting in approximately February 1996 Respondent, at Respondent’s facility, has been engaged (in whole or in part) in the business, and continues to be so engaged, of distributing or selling pesticides.

24. Respondent’s facility constitutes an “establishment” (as defined by Section 2(dd) of

FIFRA, 7 U.S.C. § 136(dd)).

25. On each of the following dates, an employee of the State of New York duly designated by the Administrator of EPA inspected Respondent's facility:

- a. November 30, 2007 (hereinafter, the "November 2007 inspection"); and
- b. January 15, 2008 (hereinafter, the "January 2008 inspection").

26. Each of the aforementioned (¶ 25, above) inspections was conducted pursuant to and in accordance with the provisions of Section 9(a)(1) of FIFRA, 7 U.S.C. § 136g(a)(1).

COUNT 1: Anabec Anashield Plus

27. Complainant repeats and realleges each of paragraphs 1 through 26, above, as if fully set forth below.

28. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent offered for sale, held for sale, held for distribution and/or held for shipment a substance (or mixture of substances) in five-gallon containers, with the label on such containers identifying the contents as "Anabec Anashield Plus" (hereinafter said contents referred to as "AAP").

29. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent intended that AAP be used for preventing, destroying, repelling or mitigating pests, *viz.* microbes.

30. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding AAP or through product literature, including on Respondent's website) that AAP can or should be used as a pesticide.

31. The aforementioned (¶ 30, above) claims, express statements or implied assertions included that AAP:

- a. is a "Microbial Barrier for Finished Building Surfaces";
- b. is "a permanent microbial shield"; and
- c. "creates a new surface that shields against microbial attack."

32. AAP constitutes a pesticide.

33. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register AAP with the EPA.

34. At least up to the time of the November 2007 inspection, Respondent had never registered AAP with the EPA.

35. Respondent's aforementioned (¶ 28, above) offering to sell and/or holding for sale, distribution or shipment AAP without having registered AAP with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

COUNT 2: Anabec Advanced Cleaning Solution

36. Complainant repeats and realleges each of paragraphs 1 through 26, above, as if fully set forth below.

37. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent offered for sale, held for sale, held for distribution and/or held for shipment a substance (or mixture of substances) in five-gallon containers, with the label on such containers identifying the contents as "Anabec Advanced Cleaning Solution" (hereinafter said contents referred to as "AACS").

38. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent intended that AACS be used for preventing, destroying, repelling or mitigating pests, *viz.* bacteria, microbes, viruses and fungi.

39. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding AACS or through product literature, including on Respondent's website) that AACS can or should be used as a pesticide.

40. The aforementioned (¶ 39, above) claims, express statements or implied assertions included that AACS:

- a. is "[s]pecially designed to remove microorganisms"; and

b. has “oxidizing agents and scrubbing detergents [that] successfully disrupt fungal, bacterial and viral microorganisms.”

41. AACS constitutes a pesticide.

42. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register AACS with the EPA.

43. At least up to the time of the November 2007 inspection, Respondent had never registered AACS with the EPA.

44. Respondent’s aforementioned (§ 37, above) offering to sell and/or holding for sale, distribution or shipment AACS without having registered AACS with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and

b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

COUNT 3: Anabec Carpet Protector

45. Complainant repeats and realleges each of paragraphs 1 through 26, above, as if fully set forth below.

46. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent offered for sale, held for sale, held for distribution and/or held for shipment a substance (or mixture of substances) in five-gallon containers, with the label on such containers identifying the contents as “Anabec Carpet Protector” (hereinafter said contents referred to as “ACP”).

47. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent intended that ACP be used for preventing, destroying, repelling or mitigating pests, viz. bacteria and mold.

48. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding ACP or through product literature, including on Respondent’s website) that ACP can or should be used as a pesticide.

49. The aforementioned (§ 48, above) claims, express statements or implied assertions included that ACP “Shields and Protects Carpeting & Upholstery Surfaces From Mold and

Bacteria For Up to 5 Years!”.

50. ACP constitutes a pesticide.

51. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register ACP with the EPA.

52. At least up to the time of the November 2007, Respondent had never registered ACP with the EPA.

53. Respondent’s aforementioned (¶ 46, above) offering to sell and/or holding for sale, distribution or shipment ACP without having registered ACP with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

COUNT 4: Anabec NewBuild 30

54. Complainant repeats and realleges each of paragraphs 1 through 26, above, as if fully set forth below.

55. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent offered for sale, held for sale, held for distribution and/or held for shipment a substance (or mixture of substances) in five-gallon containers, with the label on such containers identifying the contents as “Anabec NewBuild 30” (hereinafter said contents referred to as “ANB 30”).

56. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent intended that ANB 30 be used for preventing, destroying, repelling or mitigating pests, *viz.* bacteria, microbes, algae, mildew and mold.

57. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding ANB 30 or through product literature, including on Respondent’s website) that ANB 30 can or should be used as a pesticide.

58. The aforementioned (¶ 57, above) claims, express statements or implied assertions included that ANB 30:

- a. is a “Cleaner & Microbial Barrier for New Construction”;
- b. “Fights the growth of stain and odor causing bacteria, mold and mildew on treated surfaces”;
- c. “Shields and shelters new construction materials from bacteria, mold and mildew on treated surfaces”; and
- d. “Cleans & Removes Mold, Mildew Algae and Bacteria Growth on Surfaces.”

59. ANB 30 constitutes a pesticide.

60. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register ANB 30 with the EPA.

61. At least up to the time of the November 2007 inspection, Respondent had never registered ANB 30 with the EPA.

62. Respondent’s aforementioned (¶ 55, above) offering to sell and/or holding for sale, distribution or shipment ANB 30 without having registered ANB 30 with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, which authorizes the assessment of a civil penalty of up to \$6,500 for each violation of “any provision of” subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y.

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA “shall consider the appropriateness of such 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.” Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, with specific reference to EPA’s “Enforcement Response Policy for The Federal Insecticide,

Fungicide and Rodenticide Act (FIFRA),” dated July 2, 1990 (hereinafter referred to as the “ERP”). A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>. This guidance policy provides rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria enumerated above to particular cases.

Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in this Complaint:

Distribution and/or Sale of FOUR Unregistered Pesticides
Subsequent to March 15, 2004, @ \$6,500. each:.....\$26,000

Total Penalty Assessment.....\$26,000

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), codified at 40 C.F.R. Part 22 (July 1, 2007), entitled, “CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS.” A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain

each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the EPA's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)] pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the EAB, Respondent must do so "within 30 days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by "first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the FIFRA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA Assistant Regional Counsel listed below:

Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

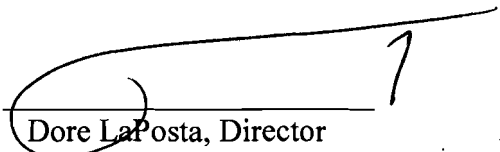
Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk, Region 2 (at the New York address noted above). 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "**Treasurer, United States of America,**" in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified previously.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

Dated: December 18, 2008
New York, New York


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007-1866

TO: Stephen Meyers, President
Anabec, Inc.
9393 Main Street
Clarence, New York 14031

CERTIFICATE OF SERVICE

This is to certify that on this day set forth below, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING," captioned *In the Matter of Anabec, Inc.*, and bearing Docket Number FIFRA-02-2009-5201 (hereinafter referred to as the "Complaint"), together with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Stephen Meyers, President
Anabec, Inc.
9393 Main Street
Clarence, New York 14031

Dated: DEC 31 2008
New York, New York

Smiddeel N. Baas