



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 01 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6488

Susan Hapak
Current Technologies, Inc.
P.O. Box 21
439 N. 525 E
Crawfordsville, Indiana 47933

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0020²²

RECEIVED
REGISTRATION DIVISION
JUL 01 2008

Dear Ms. Hapak:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on July 1, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,680 is to be paid in the manner described in paragraphs 24 and 25. Please be certain that the number **BD 2750845P020** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 31, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terence Bonace
for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

- cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
- ~~D.~~ Susan Perdomo ORC/C-14J (w/Encl.)
- Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Hapak Enterprises, Inc.)
Crawfordsville, Indiana,)

Respondent.)
_____)

Docket No. FIFRA-05-2008-002020.

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

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EPA REGION 5
MAY 14 2008

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Hapak Enterprises, Inc., also known as Current Technologies, a corporation doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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 to 136y.

Statutory and Regulatory Background

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

11. “Distribute and sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as “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.”

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is “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.

13. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

14. The Administrator of U.S. EPA may assess a civil penalty against any registrant who violates any provision of §136 of FIFRA of up to \$6,500 for each offense that occurred after

March 15, 2004, 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

15. On March 2, 2006, Kevin Neal, an inspector with the Office of the Indiana State Chemist, duly authorized to conduct inspections under FIFRA, conducted an inspection at Respondent's place of business in order to examine and collect samples of pesticides packaged, labeled, and released for shipment, as authorized under Section 9 of FIFRA, 7 U.S.C. § 136g .

16. During the March 2, 2006 inspection, the inspector collected a 16-ounce container of **Bleach Rite Disinfecting Spray with Bleach**, EPA Reg. No. 70590-2, that was packaged.

17. **Bleach Rite Disinfecting Spray with Bleach** is a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

18. Respondent "distributed or sold" the pesticides identified in paragraph 16, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that the pesticides collected were from pesticides packaged, labeled, and released for shipment or sale by Respondent's agents.

19. The label of Respondent's pesticide, **Bleach Rite Disinfecting Spray with Bleach**, states, among other things, "Thirty Second Kill Time for VRE, TB..." and "Bleach Rite® kills the following organisms with a 30-second contact time: Enterococcus faecium (VRE), Streptococcus pyogenes ATCC 19615, and Mycobacterium bovis BCB (B)."

20. A sample from a lot of **Bleach Rite Disinfecting Spray with Bleach**, collected during the March 2, 2006 inspection, was analyzed by the U.S. EPA Microbiology Laboratory in Ft. Meade, Maryland for efficacy against the microorganism *Mycobacterium bovis*.

21. Efficacy data results from this analysis revealed that **Bleach Rite Disinfecting Spray with Bleach** was ineffective against *Mycobacterium bovis*, when tested according to the AOAC Germicidal Spray Products Test in the presence of 5% horse serum for a contact time of 30 seconds.

22. Respondent's label was false and misleading in its claim of antimicrobial efficacy against *Mycobacterium bovis*.

23. The sale and distribution of the misbranded pesticide **Bleach Rite Disinfecting Spray with Bleach** constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

24. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$4,680. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,680 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note Hapak Enterprises, Inc., the docket number of this CAFO and the billing document number.

25. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

27. If Respondent does not pay the civil penalty timely, U.S. 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.

28. 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

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

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

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

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

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

34. 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.

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

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

Hapak Enterprises, Inc., Respondent

6-3-08
Date

Shan Payne (SHANNON PAYNE)
FOR: Susan Hapak, President
Hapak Enterprises, Inc.

United States Environmental Protection Agency, Complainant

6/25/08
Date

Margaret M. Guerriero, Jr.
Margaret M. Guerriero, Director
Land and Chemicals Division

RECEIVED
MARGARET M. GUERRIERO, JR.
JUN 25 11:08 AM '08

In the Matter of:
Hapak Enterprises, Inc.
Docket No. FIFRA-05-2008-0020 *25*

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.

6/26/08
Date



Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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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 Current Technologies, Inc., was filed on July 1, 2008 with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No.7001 0320 0005 8921 6488, a copy of the original to the Respondents:

Susan Hapak
Current Technologies, Inc.
P.O. Box 21
439 N 525 E
Crawfordsville, Indiana 47933

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick J. Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2008-002022*

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