



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

FEB 04 2009

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL
RECEIPT NO. 7001 0320 0006 0182 9979

Douglas A. Kern, President
Northern Frozen Foods, Inc.
d/b/a Northern Haserot
21500 Alexander Road
Cleveland, Ohio 44146

Re: In the Matter of Northern Frozen Foods, Inc. d/b/a Northern Haserot,
Cleveland, Ohio **FIFRA-05-2009-0004**

Dear Mr. Kern:

I have enclosed a Complaint filed against Northern Frozen Foods, Inc. d/b/a Northern Haserot, under Section 14 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136l. The Complaint alleges a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits the sale or distribution of misbranded pesticides, and arises from your establishment's sale of "Klear Guard Tub & Tile Foaming Germicidal Cleaner" EPA Reg. No. 47371-89-41633."

As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this Complaint, the Presiding Officer may issue a default order and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Susan Prout, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 353-1029.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures (3): Administrative Complaint
Enforcement Response Policy
Civil Administrative Rules of Practice

RECEIVED
FEB - 4 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

| | | |
|------------------------------------|---|--|
| In the Matter of: |) | Docket No. FIFRA-05-2009-0004 |
| |) | |
| Northern Frozen Foods, Inc. |) | |
| d/b/a Northern Haserot |) | Proceeding to Assess a Civil Penalty |
| Cleveland, Ohio 44146 |) | Under Section 14(a) of the Federal |
| |) | Insecticide, Fungicide, and Rodenticide |
| Respondent. |) | Act, 7 U.S.C. § 136l(a) |
| _____ |) | |

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (FIFRA), 7 U.S.C. § 136l(a).

2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region 5.

3. The Respondent is Northern Frozen Foods, Inc. d/b/a Northern Haserot, a corporation doing business in the state of Ohio.

Statutory And Regulatory Background

4. 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).

5. The term "distribute or sell" means "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." 7 U.S.C. § 136(gg).

6. According to the Regulations at 40 C.F.R. § 152.132, supplemental distribution is permitted upon written notification to EPA by both the registrant and the distributor, provided that all of the conditions in 40 C.F.R. § 152.132 are met by both the registrant and the distributor.

Supplemental distribution allows the registrant to distribute or sell the registered product under another person's name and address, and such distribution and sale is termed "supplemental distribution," and the product is referred to as "distributor product." 40 C.F.R. § 152.132.

7. According to the Regulations at 40 C.F.R. § 152.132(d)(3), the registration number of the registered product must be followed by a dash, followed by the distributor's company number.

8. According to 40 C.F.R. § 152.132(d), the label of the distributor product must be the same as that of the registered product, except that: 1) the product name of the distributor product may be different, 2) the name and address of the distributor may appear instead of that of the registrant, 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, 4) the establishment number must be that of the final establishment at which the product was produced, and 5) specific claims may be deleted, provided that no other changes are necessary.

9. The term "misbranded" is defined in Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), which states a pesticide is misbranded if "the label accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment."

10. The term "misbranded" is further defined in Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), which states that a pesticide is misbranded if "the label does not contain a warning or caution statement which may be necessary and if complied with, together with any

requirements imposed under Section 136(a)(d) of this title is adequate to protect health and the environment.”

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

General Allegations

12. Respondent is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

13.. Respondent is either a wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

14. Respondent “distributed” or “sold” pesticides, as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

15. “Klear Guard Tub & Tile Foaming Germicidal Cleaner,” EPA Reg. No. 47371-89-41633 is a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

16. On March 17, 2005, an inspector employed by the Ohio Department of Agriculture (ODA) and duly authorized to conduct inspections under FIFRA, conducted an inspection at Respondent’s establishment located at 21500 Alexander Road, Cleveland, Ohio 44146, under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, to examine and collect samples of any pesticides packaged, labeled, and released for shipment.

17. During the March 17, 2005 inspection, the ODA inspector collected documentary samples of distributor pesticide product labels and shipping invoices.

18. In a letter from EPA to the registrant, H&S Chemicals Division c/o Lonza, Inc., dated November 20, 2003, the registrant as well as any supplemental distributors were instructed to make the following label modifications before releasing the product for shipment:

1) Under the heading **Precautionary Statements**, the following should appear:

"Harmful if absorbed through the skin or inhaled. Causes moderate eye irritation. Avoid contact with skin, eyes or clothing. Avoid breathing vapor or spray. Wash thoroughly with soap and water after handling."

First Aid Statements:
FIRST AID

IF IN EYES: Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye.

IF ON SKIN OR CLOTHING: Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes.

IF INHALED: Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible.

Call a poison control center or doctor for treatment or advice. Have the product container or label with you when calling a poison control center or doctor, or going for treatment:"

2) Revise the "Storage and Disposal" section as follows:

A. After the heading STORAGE AND DISPOSAL, add the following statement:

Do not contaminate water, food, or feed by storage or disposal.

B. Add the subheading **PESTICIDE STORAGE** before the sentence "Store in areas inaccessible to children."

C. Revise the last three sentences of the "Container Disposal" section as follows:

Before offering for recycling, empty the can by using the product according to the label. If recycling is not available, replace cap and discard container in trash. Do not incinerate or puncture.

3) In the "Disinfection Directions for Kennels ..." on page 3 of the label, reinsert the word in italics in the following sentence. The product is not to be used to disinfect food contact surfaces.

19. The pesticide product label of "Klear Guard Tub & Tile Foaming Germicidal Cleaner," EPA Reg. No. 47371-89-41633, that was collected during the March 17, 2005 inspection, failed to contain the required modifications, as described in paragraph 18 above, which was submitted to EPA by the registrant, H&S Chemicals Division c/o Lonza, Inc, and "Accepted" in support of the registration of this pesticide product.

20. On or about March 17, 2005, Respondent distributed or sold the misbranded pesticide product "Klear Guard Tub & Tile Foaming Germicidal Cleaner," EPA Reg. No. 47371-89-41633.

21. On or about January 20, 2005, Respondent distributed or sold the misbranded pesticide product "Klear Guard Tub & Tile Foaming Germicidal Cleaner," EPA Reg. No. 47371-89-41633, to Cleveland Playhouse Club.

Count 1

22. Complainant incorporates paragraphs 1 through 21 of this complaint, as if set forth in this paragraph.

23. According to evidence obtained by the EPA, Respondent offered for distribution or sale the misbranded pesticide product “Klear Guard Tub & Tile Foaming Germicidal Cleaner,” EPA Reg. No. 47371-89-41633, on or about March 17, 2005.

24. Respondent failed to insure its pesticide product label for “Klear Guard Tub & Tile Foaming Germicidal Cleaner,” EPA Reg. No. 47371-89-41633, was in agreement with the label EPA “Accepted” on November 20, 2003, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(F) and (q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(F) and (q)(1)(G).

25. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §136l(a).

Count 2

26. Complainant incorporates paragraphs 1 through 21 of this complaint, as if set forth in this paragraph.

27. According to evidence obtained by the EPA, Respondent distributed or sold the misbranded pesticide product “Klear Guard Tub & Tile Foaming Germicidal Cleaner,” EPA Reg. No. 47371-89-41633, on or about January 20, 2005 to Cleveland Playhouse Club, located at 8501 Carnegie Avenue, Cleveland, Ohio 44106.

28. Respondent failed to insure that its distributor pesticide product label for “Klear Guard Tub & Tile Foaming Germicidal Cleaner,” EPA Reg. No. 47371-89-41633, was in agreement with the “Accepted” label of November 20, 2003, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(F) and (q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(F) and (q)(1)(G).

29. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

Proposed Civil Penalty

30. Complainant proposes that the Administrator assess a civil penalty against Respondent for the FIFRA violations alleged in this Complaint as follows:

Count 1

Distribution/sale of the misbranded pesticide, “Klear Guard Tub & Tile Foaming Germicidal Cleaner,” EPA Reg. No. 47371-89-41633 on March 17, 2005:

7 U.S.C. § 136j(a)(1)(E).....\$6,500

Count 2

Distribution/sale of the misbranded pesticide, "Klear Guard Tub & Tile Foaming Germicidal Cleaner," EPA Reg. No. 47371-89-41633 on January 20, 2005:

7 U.S.C. § 136j(a)(1)(E).....\$6,500
Total Proposed Civil Penalty \$13,000

Complainant determined the proposed civil penalty according to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). In determining the penalty amount, Complainant considered the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violation[s]. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990, a copy of which is enclosed with this Complaint.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

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

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Susan Prout, Assistant Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Prout at (312) 353-1029.

Her address is:

Susan Prout (C-14J)
Office of Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check, payable to "Treasurer, United States of America," to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Regional Hearing Clerk and Ms. Prout at the addresses given above, and to:

Joseph G. Lukascyk (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which this Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the Answer on the other parties.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;

- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

Settlement Conference

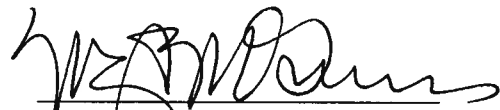
Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Joseph G. Lukascyk, Enforcement Case Officer at 312-886-6233.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the proposed penalty because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with FIFRA and any other applicable federal, state, or local law.

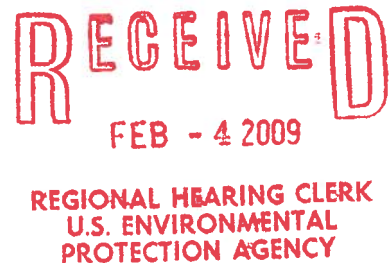
2/4/09
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

CERTIFICATE OF SERVICE


I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving Northern Frozen Foods, Inc., d/b/a Northern Haserot, Cleveland, Ohio, was filed on February 4, 2009, 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 0006 0182 9979 a copy of the original to the Respondent:

Douglas A. Kern, President
Northern Frozen Foods, Inc.
d/b/a Northern Haserot
21500 Alexander Road
Cleveland, Ohio 44146



and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Susan Prout, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2009-0004