



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I – New England  
5 Post Office Square - Suite 100  
Boston, Massachusetts 02109-3912

RECEIVED

MAY 17 2017

EPA ORC  
Office of Regional Hearing Clerk

**BY HAND**

May 17, 2017

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environment Protection Agency, Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Re: In the Matter of: Ferti Technologies, Inc., Docket No. FIFRA-01-2017-0047

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Complaint and Notice of Opportunity for Hearing.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter DeCambre".

Peter DeCambre  
Senior Enforcement Counsel

Enclosures

cc: Daniel Dancause, Vice President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

In the Matter of: )  
)  
Ferti Technologies, Inc. )  
560 Chemin Rheaume )  
Saint- Michel QC JOL 2J0 )  
Canada )  
)  
Respondent. )  
)  
Proceedings under Section )  
14(a) of the Federal )  
Insecticide, Fungicide, and )  
Rodenticide Act, as amended )  
7 U.S.C. Section 136l(a). )  
)

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MAY 17 2017

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Office of Regional Hearing Clerk

Docket No. FIFRA-01-2017-0047

**COMPLAINT and NOTICE OF  
OPPORTUNITY FOR HEARING**

**COMPLAINT**

This Complaint and Notice of Opportunity for Hearing (the "Complaint") is being issued under Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. §136l(a)(1), and 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 ("Part 22" or the "Consolidated Rules"). This Complaint alleges that the Respondent, Ferti Technologies, Inc. ("Ferti" or the "Respondent"), has violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and the regulations promulgated pursuant to FIFRA at 40 C.F.R. Part 152 *et seq.* and 19 C.F.R. §§ 12.110 – 12.117. This Complaint provides written notice of the United States Environmental Protection Agency's ("EPA") proposal to assess administrative penalties for the violations alleged herein. This Complaint also provides notice of Respondent's opportunity to request a hearing on the proposed penalty. The

Complainant is, by lawful delegation, the Legal Enforcement Manager in the Office of Environmental Stewardship, EPA Region 1.

### **GENERAL ALIGATIONS**

1. The Respondent is Ferti Technologies, Inc., a Canadian corporation that imports into the United States, produces, distributes and sells fertilizers mixed with herbicides. Respondent's principal place of business is located at 560 Chemin Rheaume, Saint- Michel QC JOL 2J0, Canada. According to Respondent's website, Respondent also operates two facilities in the United States: 102 S. 29th Street, Phoenix, AZ 85034 ("South West Facility") and 111 McNess Road, Statesville, NC 28677 ("South East Facility").
2. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the regulations promulgated thereunder.
3. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines "to distribute or sell" 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."
4. Respondent's facility located in Canada (the "Ferti Facility") has been registered pursuant to Section 7(a) and (b) of FIFRA, 7 U.S.C. § 136e(a) and (b), and 40 C.F.R. § 167.20, as a pesticide-producing establishment. The Ferti Facility is assigned the EPA Establishment number ("EPA Est. No.") 87245-CAN-001.
5. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term "establishment" as "any place where a pesticide or device or active ingredient used in producing a pesticide is

produced, or held, for distribution or sale.” Accordingly, the Ferti Facility is an “establishment,” as defined under Section 2(dd) of FIFRA.

6. Respondent is a "producer" as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3. At all times relevant to the violations alleged in this Complaint, Respondent produced fertilizers mixed with herbicides at the Ferti Facility.

7. Among the products Respondent produces at the Ferti Facility are the following fertilizer-herbicide mixes, each of which is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and identified by the EPA registration number (“EPA Reg. No.”) assigned thereto:

- a. Nutrite Professional Turf Fertilizer with 0.37 Prodiamine Herbicide (Active Ingredient: Prodiamine 0.37%, 19-0-4 with XCU) (440 bags x 50 lbs = 22,000 lbs), EPA Reg. No. 53883-172-87245 and EPA Est. No. 87245-CAN-001;
- b. Nutrite Professional Turf Fertilizer with Dimension 0.125% Herbicide (Active Ingredient: Dithiopyr 0.125%, 18-0-4 with XCU) (440 bags x 50 lbs = 22,000 lbs), EPA Reg. No. 62719-483-87245 and EPA Est. No. 87245-CAN-001;
- c. Nutrite Professional Turf Fertilizer with Dimension 0.15% Herbicide (Active Ingredient: Dithiopyr 0.15%, 0-0-7) (80 bags x 50 lbs = 4000 lbs), EPA Reg. No. 62719-504-87245 and EPA Est. No. 87245-CAN-001; and,
- d. Nutrite Professional Turf Fertilizer with Dimension 0.1% Herbicide (Active Ingredient: Dithiopyr 0.1%, 35-0-7) (240 bags x 50 lbs = 12,000 lbs), EPA Reg. No. 62719-486-89773 and EPA Est. No. 87245-CAN-001.

8. On April 26, 2015, Ferti imported a single shipment of the four above-referenced pesticide products (collectively, the “Ferti Pesticides”) from Canada into the United States

through the Highgate Springs, Vermont Port of Entry. The shipment was held by United States Customs and Border Protection pending Respondent's submission of Notice of Arrivals ("NOA") to EPA and obtaining EPA approval of the NOAs for the Ferti Products.

9. On April 28, 2015, United States Customs and Border Protection, pursuant to Title 19 of US Customs Duties, 19 U.S.C. § 1304 and 19 C.F.R. §134.51(a), conditionally released the shipment of Ferti Products and issued a Notice to Redeliver the shipment back to United States Customs if Ferti failed to obtain required NOAs from EPA within 30 days.

10. On May 28, 2015, EPA received multiple Notice of Arrivals from Respondent for the single April 26<sup>th</sup> shipment of four Ferti Products. After review of Respondent's submission, on May 29, 2015 EPA Region 1 denied the NOAs for Respondent's failure to provide complete and accurate information. Subsequent to EPA's denial of the NOAs, Respondent informed EPA Region 1 that the April 26<sup>th</sup> shipment of the four Ferti Products covered by the NOAs had already been delivered to Respondent's wholesale customers in Holyoke, Massachusetts; Smithfield, Rhode island; and Plainville, Connecticut from where the Ferti Products had been further distributed and sold to end users.

11. At all times relevant to the violations alleged in this Complaint, by importing, distributing, selling, offering for sale, shipping, and/or delivering for shipment the Ferti Products, Respondent engaged in actions that fall within the scope of the term "to distribute or sell" as defined in Section 2(gg) of FIFRA. Accordingly, Respondent is a distributor for purposes of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

12. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is

unlawful “for any person ... who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this subchapter.”

13. The import of pesticides and devices into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 1360(c) and 1360(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA.

14. FIFRA Section 17(c), 7 U.S.C. § 1360(c), requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides and devices in the United States.

15. FIFRA Section 17(e), 7 U.S.C. § 1360(e), requires the Secretary of the Treasury, in consultation with the Administrator, to prescribe regulations for the enforcement of FIFRA Section 17(c).

16. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, acting through the United States Custom Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 12.110 – 12.117 (the “Pesticide/Device Import Regulations”).

17. The Pesticide/Device Import Regulations at 19 C.F.R. § 12.112(a) state, in pertinent part, that “an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1), hereinafter referred to as a Notice of Arrival, prior to the arrival of the shipment in the United States.”

18. Through the Notice of Arrival, the importer reports vital information to EPA regarding the pesticides or devices such as the major active ingredients, quantity, country of

origin, producing establishment number, carrier, port of entry, and points of contact. This information allows EPA to make informed decisions, before pesticides and devices arrive in the United States, as to whether such importation will pose unreasonable adverse risks to public health and the environment. The NOA also provides contact information in the event of an emergency related to the movement of potentially toxic pesticide materials.

19. An NOA constitutes a report under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), that must be filed with the EPA Administrator prior to the arrival of each shipment of pesticides or devices in the United States.

20. Based upon the EPA's review of Respondent's records, United States Customs and Border Protection records, and further EPA investigation into Respondent's importation of the Ferti Products, EPA determined that Respondent imported and introduced into the stream of commerce for distribution or sale in the United States such Ferti Products prior to filing the required NOAs with EPA.

## **VIOLATIONS**

### **COUNT 1 – Failure to File Reports of Pesticide Import**

21. Paragraphs 1 through 20 are realleged and incorporated by reference.
22. Based upon the review of records and information from Respondent and the United States Customs and Border Protection, EPA documented that Respondent imported for distribution or sale each of the following pesticides:
  - a. Nutrite Professional Turf Fertilizer with 0.37 Prodiamine Herbicide (Active Ingredient: Prodiamine 0.37%, 19-0-4 with XCU) (440 bags x 50 lbs = 22,000 lbs), EPA Reg. No. 53883-172-87245 and EPA Est. No. 87245-CAN-001;

- b. Nutrite Professional Turf Fertilizer with Dimension 0.125% Herbicide (Active Ingredient: Dithiopyr 0.125%, 18-0-4 with XCU) (440 bags x 50 lbs = 22,000 lbs), EPA Reg. No. 62719-483-87245 and EPA Est. No. 87245-CAN-001;
- c. Nutrite Professional Turf Fertilizer with Dimension 0.15% Herbicide (Active Ingredient: Dithiopyr 0.15%, 0-0-7) (80 bags x 50 lbs = 4000 lbs), EPA Reg. No. 62719-504-87245 and EPA Est. No. 87245-CAN-001; and,
- d. Nutrite Professional Turf Fertilizer with Dimension 0.1% Herbicide (Active Ingredient: Dithiopyr 0.1%, 35-0-7) (240 bags x 50 lbs = 12,000 lbs), EPA Reg. No. 62719-486-89773 and EPA Est. No. 87245-CAN-001.

23. Based upon the EPA's review of the above-referenced records and information, EPA determined that on at least one occasion with respect to each of the four Ferti Products, Respondent imported for distribution or sale such Ferti Products prior to filing the required NOAs with EPA, as required by Section 17 of FIFRA, 7 U.S.C. § 136o, and 19 C.F.R. § 12.112(a).

24. Accordingly, by failing to file a Notice of Arrival for each of the four Ferti Products prior to their arrival in the United States, Respondent committed four (4) separate violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and the regulations promulgated pursuant to FIFRA at 19 C.F.R. §§ 12.110 – 12.117, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

#### **PROPOSED CIVIL PENALTY**

25. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes EPA to assess a civil

penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant thereto. Pursuant the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”) at 40 C.F.R. Part 19, this amount was increased to \$7,500 for violations occurring after January 12, 2009. *See* 78 Fed. Reg. 66643-48 (Nov. 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 (“2015 Penalty Inflation Act”), effective August 1, 2016, the \$7,500 maximum penalty was raised to \$18,750 for violations occurring after November 2, 2015 and, then, to \$19,057 for such violations where the penalties are assessed on or after January 15, 2017. *See* 28 U.S.C. § 2461 note; Pub. L.114-74, Section 701 (Nov. 2, 2015); 81 Fed. Reg. 43091-96 (July 1, 2016); 82 Fed. Reg. 3633 (January 12, 2017).

26. Based on the foregoing findings of violations of FIFRA, EPA seeks to assess a civil penalty of up to \$7,500 per violation for each of the violations alleged in Count 1 above. The assessment of a penalty for the violations is warranted because the violations are serious and involve importing pesticides or devices into the United States without submitting the required reports (i.e., NOAs) with EPA.

27. The FIFRA requirement to submit NOA reports to EPA prior to importing a pesticide or device into the United States protects against unreasonable risks to human health or the environment by providing EPA with vital information regarding the pesticide or device before its arrival into the United States for distribution or sale. NOAs provide important information regarding any pesticide or device entering the United States—including active ingredients, quantities, countries of origin, identity of producing establishments, carriers, and

ports of entry— and enable EPA to make informed decisions about whether importation will pose unreasonable adverse risks to public health or the environment. NOAs also provide critical contact information in the event of an emergency related to the movement of potentially toxic pesticide materials.

28. In determining the amount of the penalty to be assessed under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), EPA will take into account the statutory factors listed in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which include the appropriateness of the penalty to the size of the business of the person charged, the effect of the penalty on the person's ability to continue in business, and the gravity of the violation. EPA will also take into account the "FIFRA Enforcement Response Policy" issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, dated December 2009, a copy of which accompanies this Complaint.

29. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for Respondent's FIFRA violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules (enclosed).

30. Neither assessment nor payment of any administrative penalty shall affect Respondent's continuing obligation to comply with FIFRA and its implementing regulations.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

31. As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and in accordance with 5 U.S.C. § 554 and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the

appropriateness of the proposed penalty. To avoid being found in default and having a penalty assessed without further proceedings, Respondent must file a written Answer **within thirty (30) days** of receipt of this Complaint. The Answer should (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense, and (3) specifically request an administrative hearing (if desired). The denial of any material fact or raising any affirmative defense(s) shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint will constitute an admission of the undenied allegations. The original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, must be sent to:

Wanda I. Santiago  
Regional Hearing Clerk (Mail Code: DRA 18-1)  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

32. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action to Peter DeCambre, the attorney assigned to represent EPA and designated to receive service on behalf of Complainant in this matter, at:

Peter DeCambre  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Office of Environmental Stewardship (OES04-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
(617) 918-1890  
(617) 918-1809 (paper fax)  
(617) 918-0890 (electronic fax)

33. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules may be filed and served by e-mail, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

34. The hearing that will be held upon Respondent’s request will be conducted in accordance with the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*) and the Consolidated Rules.

35. If Respondent fails to file a written Answer within thirty (30) days of the service of this Complaint, pursuant to 40 C.F.R. § 22.17(a) Respondent may be found in default, which constitutes an admission of all the facts alleged in this Complaint and a waiver of the right to a hearing, and the above cited penalties may be assessed without further proceedings.

#### **INFORMAL SETTLEMENT CONFERENCE**

36. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or the proposed penalties, and/or the possibility of settlement. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order, signed by Complainant and Respondent, would be binding as to all terms and conditions specified therein. Any requests for an informal conference, and any other questions that Respondent may have regarding this Complaint, should be directed to

the above-referenced EPA attorney, Peter DeCambre.

37. A request for an informal settlement conference does not extend any deadline in this proceeding, including the thirty (30) day period for the submission of a written Answer to this Complaint.

38. If Respondent has any questions concerning the settlement process, or wishes to arrange for an informal conference, Respondent should contact Peter DeCambre at (617) 918-1890.



\_\_\_\_\_  
Joanna Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship

Date: May 16, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Complaint and Notice of Opportunity for Hearing was delivered in the following manner to the addresses listed below:

Original and One Copy by  
Hand Delivery to:

Wanda I. Santiago  
Regional Hearing Clerk  
Environmental Protection Agency  
5 Post Office Square, Suite 100 (DRA 18-1)  
Boston, MA 02109-3912

One Copy by Certified Mail  
Return Receipt Requested to:

Daniel Dancause,  
Vice President  
Ferti Technologies, Inc.  
560 Chemin Rheaume  
Saint- Michel QC JOL 2J0  
Canada

Date : 5/17/2017

Signed: 

Peter DeCambre  
Senior Enforcement Counsel  
Office of Environmental Stewardship (OES04-1)  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912