

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2007 SEP 27 10:25:20

Docket No. FIFRA-08-2007-0013

In the Matter of:

American Biotech Labs, LLC., )  
80 West Canyon Crest Road )  
Alpine, Utah, )  
 )  
Respondent. )

**PENALTY COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**JURISDICTION**

1. This civil administrative enforcement action is authorized by Congress in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. § 136(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated FIFRA by selling or distributing a misbranded pesticide and failing to produce documents required by law. For these violations, EPA proposes the assessment of a civil penalty as more fully explained below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, 1595 Wynkoop Street (8RC), Denver, Colorado 80202, within thirty (30) days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of

the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN THIRTY (30) DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

### **QUICK RESOLUTION**

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check, including the name and docket number of this case, payable to "Treasurer, United States of America," in care of:

US Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000

A copy of the check must be mailed simultaneously to the attorney listed below.

### **SETTLEMENT NEGOTIATIONS**

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Senior Enforcement Attorney Eduardo Quintana at (303) 312-6924 or the address below. **Please note that calling or requesting a settlement conference does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

### **GENERAL ALLEGATIONS**

8. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(B).

9. Under FIFRA, a pesticide is misbranded if its labeling contains any statement that is false or misleading. 7 U.S.C. § 136 (q)(1)(A).

10. Respondent, a Utah limited liability company, is the owner and operator of a company located at 80 West Canyon Crest Road, Alpine, Utah 84004.

11. Respondent produces the pesticide "ASAP-AGX-32," EPA registration number 73499-2.

12. The label of this pesticide product claims that it is a hospital disinfectant effective against the pathogenic organisms *Pseudomonas aeruginosa* and *Staphylococcus aureus*.

13. On at least 29 occasions during the month of February 2006, Respondent distributed or sold the pesticide.

14. EPA tested the effectiveness of the pesticide in 2006.

15. The product was not effective against the pathogenic organisms *Pseudomonas aeruginosa* and *Staphylococcus aureus*.

16. Respondent is a "person" within the meaning of the statute, 7 U.S.C. § 136(s), and therefore subject to the requirements of the statute and/or regulations.

17. Respondent is a "producer" as defined by the statute, 7 U.S.C. §136(w), and a "distributor/seller" as defined by the statute, 7 U.S.C. §136(2)(gg), of a "pesticide" as defined by the statute, 7 U.S.C. §136(2)(u).

18. Respondent's 29 distributions or sales of ASAP-AGX-32, EPA registration number 73499-2, with a label claiming it was effective against *Pseudomonas aeruginosa* and *Staphylococcus aureus*, constitutes 29 violations of FIFRA. 7 U.S.C. 136j(a)(1)(F).

19. Under FIFRA, a pesticide producer is required to keep records showing shipment information of pesticides produced. 7 U.S.C. § 136 (f), 40 C.F.R. § 169.

20. On March 23, 2007, the EPA requested shipment information. Specifically, EPA requested the names and addresses of consignees, dates, and quantities shipped of Respondent's ASAP-AGX-32 pesticide associated with the 2006 effectiveness test.

21. As of the date of this complaint, Respondent has not submitted the requested shipment information to EPA. Respondent's failure to provide the shipment information of ASAP-AGX-32, constitutes one violation of FIFRA. 7 U.S.C. 136j(a)(2)(B)(i).

## PROPOSED CIVIL PENALTY

22. FIFRA, 7 U.S.C. § 136/(a)(1), authorizes the assessment of a civil penalty of up to \$6,500.00 per day for each violation. In arriving at the penalty proposed below, EPA, as required by the statute, 7 U.S.C. § 136/(a)(4), has taken into consideration, to the extent known, (1) the size of Respondent's business; (2) Respondent's ability to continue in business in light of the proposed penalty; and (3) the gravity of the alleged violations.

23. EPA's approach to calculating appropriate penalties is outlined in its Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), July 2, 1990 (enclosed), which provides a rational, consistent, and equitable method for applying these statutory factors to the facts and circumstances of specific cases. Using the policies to apply the statutory factors to the facts of this case, **EPA proposes that a penalty of \$157,300 be assessed against Respondent for the violations alleged above.** EPA's penalty calculation/narrative is enclosed and incorporated as Complainant's Exhibit 1 to this complaint. Additionally, Complainant has enclosed a copy of "Information for Small Businesses."

24. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

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To discuss settlement or ask any questions you may have about this process, please contact the attorney indicated below.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice, Complainant

Date: 9/26/07 By: Mark CR Chalfant  
Mark Chalfant, Director  
Technical Enforcement Program

Date: 9.26.2007 By: David J. Janik  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program

Date: 9/26/2007 By: Eduardo Quintana  
Eduardo Quintana, Senior Enforcement Attorney  
USEPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202  
303.312.6924  
quintana.eduardo@epa.gov

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wyncoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

Scott Moeller  
Registered Agent  
American Biotech Labs, LLC  
80 W. Canyon Crest Road  
Alpine, UT 84004

and a courtesy copy, also by certified mail to:

Michael T. Novak, Esq.  
Keller and Heckman LLP.  
1001 G. Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

9/26/2007  
Date



A handwritten signature in cursive script, appearing to read "M. Novak", is written over a horizontal line.