

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

HEARING CLERK

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EPA REGION IV

IN THE MATTER OF:)
)
Warehouse 99 of Miami, Inc.)
(d/b/a Dollar Star Logistics))
)
)
Respondent.)
)
Docket No. FIFRA-04-2009-3001)
)
_____)

CIVIL COMPLAINT

A. Jurisdiction

1. This is a civil administrative complaint issued under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§136 *et seq.* (hereinafter "FIFRA").
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Warehouse 99 of Miami, Inc. (d/b/a Dollar Star Logistics) (hereinafter "Respondent") has violated Section 12 of FIFRA, 7 U.S.C. §136j.
3. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is authorized by the EPA Administrator and the EPA Regional Administrator for Region 4 to issue a complaint on behalf of the Agency to persons alleged to be in violation of FIFRA.
4. Respondent is a Florida corporation located at 16715 NW 20th Avenue, Miami Gardens, Florida 33056.

5. The Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. §136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
6. On or about August 2, 2006, the North Carolina Department of Agriculture and Consumer Services (NCDA) conducted a marketplace inspection at Dollar Star in Lumberton, North Carolina.
7. During the aforementioned inspection, the product “BestWin MOTH BALLS” was being offered for sale.
8. On or about February 22, 2006, Respondent imported “BestWin MOTH BALLS” from Zhejiang Bestwin Group Limited, Ningbo, China, for distribution and sale in the United States.
9. On or about July 3, 2006, Respondent supplied “BestWin MOTH BALLS” to the Dollar Star in Lumberton, North Carolina.
10. “BestWin MOTH BALLS” is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. §136(u), in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating a pest.
11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t) as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
12. Section 17(c) of FIFRA, 7 U.S.C. §136(o) and the regulations at 19 C.F.R. §12.110 - §12.117 require an importer desiring to import pesticides into the United States to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) (NOA), prior to the arrival of the shipment into the United States. The

Administrator shall complete the NOA, indicating the disposition to be made of the shipment of pesticides upon its arrival in the United States, and shall return the completed NOA form to the importer or his agent.

13. Section 12(a)(2)(N) of FIFRA states, “it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act.”
14. The regulations at 40 C.F.R. §169.1(e), promulgated under FIFRA Section 8, define “producer” as “the person, as defined by the Act, who produces or imports any pesticide or device or active ingredient used in producing a pesticide.”
15. Respondent is a “producer” as defined by 40 C.F.R. §169.1(e).
16. Producers shall maintain records, for two years, showing the receipt of pesticides, devices, and active ingredients used in producing pesticides, pursuant to the regulations at 40 C.F.R. §169.2(c). Record keeping requirements at 40 C.F.R. §169.2(d), provide that producers shall maintain shipping records for two years.
17. Section 12(a)(2)(B)(i) of FIFRA states, “it shall be unlawful for any person to refuse to prepare, maintain, or submit any records required by or under section 5, 6, 7, 8, 11, or 19.”
18. As packaged when offered for sale at Dollar Star in Lumberton, North Carolina, “Best Win MOTH BALLS” was a pesticide which was not registered with the EPA.
19. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person a pesticide that is not registered.
20. As packaged when offered for sale at Dollar Star in Lumberton, North Carolina, “Best Win MOTH BALLS” was misbranded in that it failed to bear information required by

EPA including, but not limited to, an EPA Establishment Number and an EPA Registration Number. A product is misbranded per Sections 2(q)(1)(D) of FIFRA, 7 U.S.C. §136(q)(1)(D) if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced. A product is misbranded per Section 2(q)(2)(C) of FIFRA, 7 U.S.C. §136(q)(2)(C), if its label does not bear a registration number.

21. 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 adulterated or misbranded.

B. Statement of Facts and Violations

COUNT 1

22. Complainant incorporates the provisions described in paragraphs 1 through 21 by reference.
23. Respondent imported “Best Win MOTH BALLS” without filing a Notice of Arrival of Pesticides and Devices form with EPA.
24. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §136j(a)(2)(N) by failing to file reports required under the Act or, in the alternative, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. §136j(a)(2)(B)(i) by failing to maintain any records required by or under Section 8 of FIFRA, 7 U.S.C. §136f.

COUNT 2

25. Complainant incorporates the provisions described in paragraphs 1 through 21 by reference.
26. Respondent distributed “Best Win MOTH BALLS,” an unregistered pesticide.

27. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A) by offering for distribution or sale an unregistered pesticide.

COUNT 3

28. Complainant incorporates the provisions described in paragraphs 1 through 21 by reference.

29. Respondent distributed “Best Win MOTH BALLS,” a misbranded pesticide.

30. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E) by offering for distribution or sale a misbranded pesticide.

C. Proposed Penalty

Section 14 of FIFRA, 7 U.S.C. §136l, in conjunction with the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701, and the regulations promulgated at 40 C.F.R. Part 19, authorizes the issuance of this Complaint for the assessment of a civil penalty. EPA proposes to assess a civil penalty against the Respondent of \$6,500 for each of the above described violations as set forth in Counts 1-3, for a total proposed civil penalty of \$19,500.

Appropriateness of Proposed Penalty

The proposed penalty has been derived in accordance with the July 2, 1990, Enforcement Response Policy for FIFRA for the violations cited for a Category I Respondent and in accordance with the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Inflation Adjustment Rule, 61 Fed. Reg. 69,360 (December 31, 1996), which provide for a 10% increase in the statutory maximum for violations of federal statutes after January 31, 1997, and a subsequent increase of 10% for violations occurring after March 15, 2004, 69 Fed. Reg. 7121 (February 13, 2004).

Respondent was placed in Category I (total business revenues over \$1,000,000). If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable

financial information indicating that another category is appropriate. As set forth in the policy and Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a)(4), in determining the amount of the penalty, Complainant must take into consideration the size of Respondent's business, the effect on the Respondent's ability to continue in business, and the gravity of the violation.

Complainant will consider Respondent's financial condition in mitigating the proposed penalty, insofar as is necessary to permit Respondent to continue in business. In order to have its financial condition considered, Respondent must submit certified financial information.

NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, as amended," 40 C.F.R. Part 22 (Consolidated Rules) govern the procedures of the hearing. A copy of the Consolidated Rules accompanies this Complaint. Under these rules, you have the right to request a formal hearing to contest any material fact set forth in this Complaint and/or to contest the appropriateness of proposed penalty.

You must file a written Answer within 30 days of your receipt of this Complaint (unless a Consent Agreement and Final Order resolving this matter is filed within the 30 days) to avoid being found in default. Default constitutes an admission by you of all facts alleged in the Complaint, waives your right to a hearing, and results in having the above-cited penalty assessed without further proceedings.

Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which you have knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to admit, deny, or explain any material factual allegation contained in the complaint constitutes an

admission of allegation. Your Answer must also briefly state all facts and circumstances, if any, which constitute grounds for a defense and specifically request an administrative hearing (if desired). If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. Your written Answer to the Complaint should be sent to:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Telephone: (404) 562-9511

A copy of the Answer should also be sent to:

Jennifer M. Lewis
Associate Regional Counsel
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Mr. Mark Bloeth
Enforcement Officer
U.S. EPA, Region 4
Pesticides & Toxic Substances Branch
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

B. Informal Settlement Conference

Whether or not you request a hearing, you may confer informally with Ms. Jennifer Lewis at (404) 562-9518 or Mr. Mark Bloeth at (404) 562-9013 to discuss the facts of this case, the amount of the proposed penalty, or the possibility of a settlement. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.

EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by EPA and yourself would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Administrator.

Please be advised that after the Complaint is issued, pursuant to Section 22.8 of the Consolidated Rules, any *ex parte* discussion of the merits of any action with the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any person likely to advise these officials in the decision of the case is prohibited. *Ex Parte* discussion as used herein means communicating to any of the above officials by one party to a proceeding without notice to and in the absence of the other party.

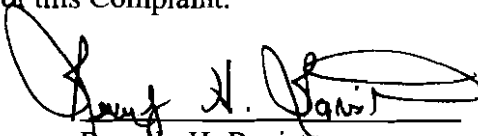
C. Payment Of Penalty

If Respondent chooses not to contest any of the allegations set forth in this Complaint by filing a written Answer, within 30 days of receipt of the Complaint, an authorized official should sign and submit an Affidavit (in lieu of an Answer) that the violations have been corrected and pay the proposed penalty. The Affidavit of Compliance should be sent to the Regional Hearing Clerk, U.S. EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8960. The check must be payable to the Treasurer, United States of America and sent to the following banking address:

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

The check must include on its face the Docket Number (FIFRA-04-2009-3001) and the Respondent's name as stated on the first page of this Complaint.

10-15-08
Date


Beverly H. Banister
Director
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing, In the Matter of: Warehouse 99 of Miami, Inc. (d/b/a Dollar Star Logistics), FIFRA-04-2009-3001, on the parties listed below in the manner indicated.

Mark Bloeth
PCB & Chemical Products
Management Section
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

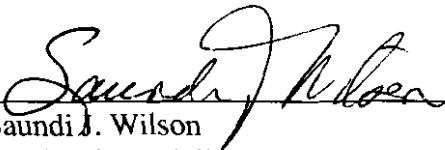
Jennifer Lewis
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Ronald M. Gache
Registered Agent
Warehouse 99 of Miami, Inc.
One North Clematis Street
Suite 500
West Palm Beach, FL 334012

(Via Certified Mail, Return Receipt
Requested)

Date: 10-23-07


Saundi J. Wilson
Paralegal Specialist
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303