



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 17 2008

Craig Swensen, President
Pipestone Products Co., Inc.
303 West 31st Street
P.O. Box 84
Yankton, SD 57078
DOCKET NO. : FIFRA-08-2008-0028

Dear Mr. Swensen:

Enclosed is a Penalty Complaint and Notice of Opportunity for Hearing seeking penalties for violations of the Federal Insecticide Fungicide and Rodenticide Act, ("FIFRA"), 7 U.S.C. §§ 136 to 136y. Pipestone Products has not filed its 2007 pesticide production report for its pesticide producing establishment located Yankton, South Dakota. This Complaint has been filed because of that violation.

Please note that under the Rules of Practice, you may just send in a check for that amount to settle the proceeding, without the need for a settlement agreement. 40 CFR section 22.18.

If you or a representative would like to discuss the complaint or any of the other documents enclosed in this letter, please call me at 303-312-6924.

Sincerely,

A handwritten signature in black ink, appearing to read "Eduardo Quintana".

Eduardo Quintana,
Senior Enforcement Attorney

Enclosures:

1. Complaint
2. CROP
3. FIFRA ERP
4. FIFRA ERP for Pesticide Producing Establishment Reporting Requirement
5. SBREFA Information Sheet

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 17 PM 1:43

In the Matter Of:)
)
Pipestone Products Co.)
EPA Est. No. 003536-SD-001)
Yankton, SD,)
)
Respondent.)

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

DOCKET NO. : FIFRA-08-2008-0028

EPA REGION VIII
HEARING CLERK

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. section 136l(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 failing to submit an annual pesticide production report, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. section 136l(a).

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 stated (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, Denver, Colorado 80202) within 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 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 (\$1,500) proposed in the 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. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

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

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 Eduardo Quintana at 1-800-227-8917; extension 6924 or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

ALLEGATIONS

The following general allegations apply to each count of this complaint:

8. EPA has jurisdiction over this matter pursuant to section 14(a)(1) of FIFRA, 7 U.S.C. section 136l(a)(1).

9. Respondent, Pipestone Products Co., is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. section 136(s), and is therefore subject to regulation.
10. Respondent operates a pesticide producing establishment ("the Establishment") at 303 West 31st. Street, Yankton, South Dakota.
11. Respondent is incorporated in the State of Minnesota.
12. Respondent is a registered pesticide producer as defined by section 2(w) of FIFRA.
13. FIFRA section 7(c)(1), 7 U.S.C. section 136e(c)(1), requires all registered pesticide producers to file an annual report "...of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides...." Further, regulations promulgated pursuant to FIFRA section 7 require such annual report to be filed on or before March 1 for the preceding calendar year. 40 C.F.R. section 167.85(d).
14. FIFRA section 12(a)(2)(L), 7 U.S.C. section 136j(a)(2)(L), provides, "it shall be unlawful for any person-- who is a producer to violate any of the provisions of section 136e [FIFRA section 7] of this title."
15. Respondent indicated in its 2006 pesticide production report that it would produce pesticides in 2007.
16. Respondent failed to file a 2007 annual pesticide production report for the pesticides produced at its Establishment by Respondent or any of its predecessor entities.
17. The Respondent, therefore, having failed to file an annual pesticide production report for 2007 on or before March 1, 2008, has violated section 12(a)(2)(L) of FIFRA, 7 U.S.C. section 136j(a)(2)(L).

PROPOSED CIVIL PENALTY

FIFRA authorizes the assessment of a civil penalty of up to \$6,500 for each offense of the Act. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established Agency policies that provide a rational and consistent method for applying statutory factors to the

circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint (Complainant's Exhibit 1), along with copies of the EPA policies. **For the FIFRA violation alleged in this complaint, EPA proposes a penalty of \$1,500.**

To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 303-312-6924 or 1-800-227-8917 (ext. 6924), or at the address below.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,

Complainant.


Date: 9/11/2008

By: 
Mark A. R. Chalfant, Director
Technical Enforcement Program

Date: 9/16/08

By: 
David Janik, Director
Legal Enforcement Program

Date: 9/10/2008

By: 
Eduardo Quintana, Senior Attorney
Legal Enforcement Program

RESPONDENT: Pipestone Products Co. (003536-SD-001)
Address: P.O. Box 84
Yankton, SD 57078

**COMPLAINANT'S
EXHIBIT NO. 1**

Docket Number:
Prepared by: Amy Hambrick
Date: 08/13/2008

FIFRA Section 7 (c) Civil Penalty Matrix

Type of Violation	Second Time Violator
Non-Reporting	C-III- \$1,500
Total Penalty	\$1,500

Penalty Calculation Narrative:

1. To ensure a uniform and consistent enforcement response and application of the statutory penalty criteria in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the U.S. Environmental Protection Agency (EPA) developed the June 2007 Enforcement Response Policy for Pesticide Producing Establishment Reporting Requirement (2007 Policy).
2. According to the 2007 Policy, the appropriate enforcement response for failing to file EPA Form 3540-16, the annual pesticide production report for a second time violator is a civil penalty.
3. FIFRA Section 14(a)(4) requires EPA to "consider 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 when calculating the civil penalty amount."
4. Following the guidance in the 2007 Policy, EPA calculates a proposed civil penalty using the following process. First, the gravity of the offense is identified Table 1 in the 2007 Policy. Table 1 identifies a violation of FIFRA section 12(a)(2)(L) to be 'Non Reporting.'
5. Second, according to the 2007 policy, the respondent's compliance history is evaluated. Table 1 identifies Pipestone Products Co. to be a second time violator. Pipestone Products Inc. was issued a NOW for submitting a late report for the 2006 reporting year.
6. Third, according to the 2007 policy, the size of business is taken into account. The size of business is determined from the company's gross revenues from all revenue sources during the prior calendar year. Pipestone Products Co. is determined to be Category III having annual gross sales revenues of 10 million or less.
7. Fourth, according to the 2007 policy adjustment for specific penalty factors are taken into account. The following factors are particularly relevant to adjusting the penalty for violations of FIFRA 7(c) reporting requirements for: (1) the violator's ability to continue in business (ability to pay) and (2) good faith efforts to comply with FIFRA. No penalty adjustments are made at this time.
8. In sum, EPA arrived at a total penalty of \$1,500 for Pipestone Products Co.'s violations of FIFRA sections 12(a)(2)(L) by considering all of the FIFRA Section 14(a)(4) penalty criteria through the use of the 2007 Policy.

CERTIFICATE OF SERVICE

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

Craig Swensen, President
Pipestone Products Co., Inc.
303 West 31st Street
P.O. Box 84
Yankton, SD 57078

9/17/08
Date

Judith M. McTernan

1st Page only

ENFORCEMENT RESPONSE POLICY
FOR THE
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)

Office of Compliance Monitoring
Office of Pesticides and Toxic Substances
U.S. Environmental Protection Agency

July 2, 1990

will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]
- 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
- 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public



United States
Environmental Protection Agency
June 2007

Office of Enforcement and Compliance Assurance
Office of Civil Enforcement
Waste and Chemical Enforcement Division

**ENFORCEMENT RESPONSE POLICY
FOR FIFRA SECTION 7(c)
PESTICIDE PRODUCING ESTABLISHMENT
REPORTING REQUIREMENT
June 2007**



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers:
www.epa.gov/clearinghouse

Pollution Prevention Clearinghouse
www.epa.gov/opptintr/library/ppicindex.htm

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
www.epa.gov

Small Business Assistance Program
www.epa.gov/ttn/sbap

Compliance Assistance Home Page
www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance
www.epa.gov/compliance

Small Business Ombudsman
www.epa.gov/sbo

Innovative Programs for Environmental Performance
www.epa.gov/partners

