

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

2010 APR 12 PM 3:11
HEARING CLERK
EPA REGION 4

In the Matter of:)
)
) CIVIL COMPLAINT
) and
Pan American Growers Supply, Inc.) NOTICE OF OPPORTUNITY
) FOR HEARING
)
) Docket No. FIFRA-04-2010-3029
Respondent.)
_____)

I. CIVIL COMPLAINT

A. Jurisdiction

1. This is a Civil Administrative Complaint (hereinafter "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. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is authorized by the Administrator of the EPA 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.
3. The Respondent is Pan American Growers Supply, Inc., located at 7225 NW 25th Street, Suite No. 217, Miami, Florida.
4. This Complaint serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

B. Preliminary Statements

5. Respondent is a Florida corporation, doing business at all relevant times in Florida.
6. 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.
7. Section 17(e) of FIFRA, 7 U.S.C. § 136o(c), provides that the Secretary of Treasury, in conjunction with the Administrator, shall prescribe regulations for the enforcement of subsection (c) of this section entitled Importation of Pesticides and Devices.
8. The Secretary of Treasury, through the United States Customs Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), at 19 C.F.R. §§ 12.110 through 12.117 entitled Special Classes of Merchandise – Pesticides and Devices.
9. 19 C.F.R. § 12.110 specifies that, except as otherwise provided, the terms used in Sections 12.110 through 12.117 shall have the meanings set forth for those terms in FIFRA, as amended (7 U.S.C. § 136 *et seq.*). The term Administrator shall mean the Administrator of the EPA.
10. 19 C.F.R. § 12.112(a) specifies 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 (EPA form 3540-1), prior to the arrival of the shipment in the United States. The Administrator completes the Notice of Arrival, indicating the disposition to be made of the shipment of pesticides, and returns the completed Notice of Arrival form to the importer or his agent.

11. The Notice of Arrival of Pesticides and Devices (hereinafter "NOA") is a report, required by FIFRA, that must be filed with the Administrator, prior to the arrival of a pesticide shipped into the United States.

B. Statement of Facts and Violations

COUNT 1

12. Complainant repeats the allegations set forth in paragraphs 1 through 11 above.
13. On or around December 1, 2005, EPA Region 4 received an NOA from Dolphin Brokerage acting as an agent for Respondent to import two (2) drums of Daminozide 85%. EPA Region 4 denied entry of this shipment on or around December 1, 2005.
14. Daminozide 85% is a pesticide, as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
15. EPA Region 4 requested that the Florida Department of Agriculture and Consumer Services conduct an inspection at the Respondent's facility.
16. On or around December 8, 2005, the Florida Department of Agriculture and Consumer Services conducted an inspection at the Respondent's facility.
17. The Florida Department of Agriculture and Consumer Services documented that Respondent had imported Daminozide 85% on two occasions from a foreign producing establishment in China.
18. The first purchase of Daminozide 85% occurred through a purchase order dated February 25, 2005, and was received in Miami on or after May 11, 2005.
19. Respondent imported 121 kilograms of Daminozide 85%.
20. Respondent exported the Daminozide 85% to South America.

21. EPA has no record of Respondent filing an NOA for the Daminozide 85% ordered from the manufacturer in China on or around February 25, 2005 (Purchase Order #6464).
22. Respondent did not submit an NOA to EPA prior to the arrival of the shipment of Daminozide 85% ordered from the manufacturer in China on or around February 25, 2005 (Purchase Order #6464).
23. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), by failing to file a report required by Section 17(e) of FIFRA, 7 U.S.C. § 136o(e) and 19 C.F.R. § 12.112(a).

COUNT II

24. Complainant repeats the allegations set forth in paragraphs 1 through 23 above.
25. On or around December 8, 2005, the Florida Department of Agriculture and Consumer Services conducted an inspection at Respondent's facility.
26. The Florida Department of Agriculture and Consumer Services documented that the Respondent had imported Daminozide 85% on two occasions from a foreign producing establishment in China.
27. The second importation occurred on or around October 22, 2005. Respondent submitted an NOA to EPA Region 4 for this importation on around November 29, 2005.
28. EPA Region 4 denied entry for this importation on or around December 1, 2005. However, Respondent had received this shipment on or around November 2, 2005.
29. The Daminozide 85% was a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Columbia.

33. Respondent distributed or sold a pesticide that was not registered with EPA.
34. An unregistered pesticide, or a pesticide whose registration has been cancelled or suspended, may be distributed or sold, or otherwise transferred to the extent described by the exemptions at 40 C.F.R. § 152.30.
35. EPA has published a policy which clarifies when unregistered pesticides may be imported for export. This policy is "Pesticide Registration (PR) Notice 99-1: Import of Unregistered Pesticides Intended for Export" (hereinafter "PR Notice 99-1").
36. One requirement in PR Notice 99-1 is that the foreign producing establishment must be registered under FIFRA Section 7.
37. Respondent's distribution of the unregistered pesticide was not in compliance with 40 C.F.R. § 152.3 or with PR Notice 99-1.
38. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1) when it sold or distributed an unregistered pesticide.

COUNT III

39. Complainant repeats the allegations set forth in paragraphs 1 through 38 above.
40. On or around December 8, 2005, the Florida Department of Agriculture and Consumer Services conducted an inspection at Respondent's facility.

41. The Florida Department of Agriculture and Consumer Services documented that the Respondent had imported Daminozide 85% on two occasions from a foreign producing establishment in China.
42. The second importation occurred on or around October 22, 2005. Respondent submitted an NOA to EPA Region 4 for this importation on around November 29, 2005.
43. EPA Region 4 denied entry for this importation on or around December 1, 2005. However, Respondent had received this shipment on or around November 2, 2005.
44. Respondent repackaged some of the Daminozide 85% and exported the product to Columbia.
45. The repackaged Daminozide 85% was not labeled with the required language, "Not Registered for Use in the United States of America."
46. Pursuant to Section 2(q)(1)(H), an unregistered pesticide intended for export is misbranded when the label does not contain, in words prominently placed thereon with conspicuousness, the following: "Not Registered for Use in the United States of America."
47. Respondent violated Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E) when it sold or distributed a misbranded pesticide.

COUNT IV

48. Complainant repeats the allegations set forth in paragraphs 1 through 47 above.
49. At the time of the inspection, there were not copies of statement(s) signed by the foreign purchaser(s) of the exported unregistered Daminozide 85% acknowledging that the

purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States.

50. 40 C.F.R. § 169.2(h)(3) requires for unregistered pesticides, maintenance of copies of a statement signed by the foreign purchaser of the pesticide acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States under the Act.
51. Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i) when it did not prepare, maintain, or submit records required by Section 8 of FIFRA, 7 U.S.C. § 136f, and 40 C.F.R. § 169.2(h)(3).

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 of up to \$6,500 for each violation. The EPA proposes to assess a total civil penalty of \$18,053 against the Respondent for the above-described violations.

D. Appropriateness of Proposed Penalty

52. The proposed penalty has been derived in accordance with the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter "Policy") 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 14, 2004, 69 Fed. Reg. 7121 (February 13, 2004) and before January 12, 2009.

53. 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.
54. 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, to include but may not be limited to, the last three years of corporate tax returns.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

55. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (hereinafter "Consolidated Rules"), published at 40 C.F.R. Part 22 govern this proceeding. 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 the proposed penalty.

56. You must file a written Answer within 30 days of your receipt of this Complaint to avoid being found in default. Default constitutes an admission by you of all facts alleged in the Complaint, a waiver of your right to contest such factual allegations, and may result in having the above-cited penalty assessed without further proceedings.
57. 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 of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the 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 must be sent to:

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

A copy of the Answer must also be sent to the EPA attorney assigned to this matter, at the address below:

Ms. Michiko Kono
U.S. EPA, Region 4
61 Forsyth Street, SW.
Atlanta, Georgia 30303-8960
(404) 562-9558.

...ingment to the written answer to the Complaint.

59. 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 (hereinafter "CAFO"). A CAFO signed by EPA and the Respondent would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Judicial Officer. 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

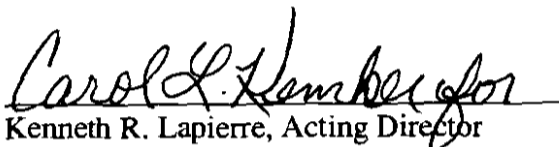
60. If Respondent chooses not to contest any of the allegations set forth in this Complaint by filing a written Answer, within 30 days of receipt of the Complaint, an authorized official should sign and submit an Affidavit of Compliance, in lieu of an Answer, that the

violations have been corrected and pay the proposed penalty via cashier's or certified check. The Affidavit should be sent to the Regional Hearing Clerk, EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8960. The check for payment of the penalty must be made payable to the "Treasurer, United States of America," and sent to the banking address:

U.S. Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, MO 63197-9000.

The check must include on its face the docket number and the Respondent's name as stated on page one of this Complaint.

3/11/10
Date


Kenneth R. Lapierre, Acting Director
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW.
Atlanta, Georgia 30303-8960

Hearing Clerk, Region 4. Furthermore, I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of this Civil Complaint and Notice of Opportunity for Hearing, and a copy of 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 to the following:

Rosa Giatan
Pan American Growers Supply Inc.
2423 SW 147 Avenue
#368
Miami, Florida 33185

(Via Certified Mail, Return Receipt
Requested)

A copy of this Administrative Complaint was also sent via EPA's internal mail to the following:

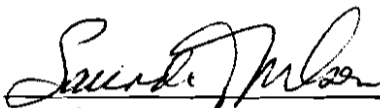
Mark Bloeth, Enforcement Officer
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Michiko Kono, Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Date: 3/12/10



Saundi J. Wilson, Paralegal Specialist
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303