



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 29, 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0189 9354

Mr. Joseph R. Robinson
Lonza Inc.
90 Boroline Drive
Allendale, New Jersey 07401

Lonza Group, Inc., Docket No. FIFRA-05-2010-0009

Dear Mr. Robinson:

Enclosed is a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on March 29, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 33 and 34. Please be certain that the number BD 2751045P009 and the docket number are written on both the transmittal letter and on the check. Payment is due by April 28, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section
Chemicals Management Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Lonza Group, Inc.)
Allendale, New Jersey)
Respondent.)
_____)

Docket No. FIFRA-05-2010-0009
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

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MAR 29 2010

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Lonza Group, Inc. (Lonza), a corporation doing business at 90 Boroline Road, Allendale, New Jersey 07401.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that to the best of its knowledge, it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that “all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.”

12. 19 C.F.R. § 12.112 states, in pertinent part, that “an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States.” See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for

any person in any state to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

14. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean “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.”

15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).”

16. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

17. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

18. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

19. Respondent is, and was at all times relevant to this CAFO, a corporation and

therefore, is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. On or about January 5, 2010, UTC Overseas, Inc., located at 420 Doughty Boulevard, Inwood, New York 11096, was a broker/agent for Respondent.

21. On or about January 5, 2010, Respondent submitted a NOA to EPA for an import shipment of a product “Hyamine 1622 Crystals,” EPA Registration Number (EPA Reg. No.) 6836-91, from Japan.

22. Lonza was the importer of record listed on the NOA for this shipment of “Hyamine 1622 Crystals,” EPA Reg. No. 6836-91.

23. Respondent, as the importer of record of pesticide products, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated there under.

24. “Hyamine 1622 Crystals,” EPA Reg. No. 6836-91, is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is intended to repel or mitigate a pest.

25. On September 25, 2003, EPA, Office of Pesticide Programs, Registration Division issued a “label accepted with comments” for “Hyamine 1622 Crystals,” EPA Reg. No. 6836-91.

26. The labels on the shipment of “Hyamine 1622 Crystals,” EPA Reg. No. 6836-91, that entered into the United States on January 5, 2010 at the Cleveland, Ohio port of entry substantially differed from the September 25, 2003 label accepted as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

27. On or about January 5, 2010, Respondent was distributing or selling the pesticide product “Hyamine 1622 Crystals,” EPA Reg. No. 6836-91, as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count I

28. Complainant incorporates by reference the allegations contained in paragraphs 1 through 27 of this CAFO.

29. On or about January 5, 2010, Respondent distributed or sold a registered pesticide with claims on its label that substantially differed from claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

30. Respondent's violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

31. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

32. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

33. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or

certified check, payable to the "Treasurer, United States of America," to:

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

34. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15

handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

41. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

42. The terms of this CAFO bind Respondent, its successors, and assigns.

43. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorney fees in this action.

45. This CAFO constitutes the entire agreement between the parties.

46. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5, Chicago, Illinois.

Respondent:
Lonza Group, Inc.
Allendale, New Jersey

March 12, 2010
Date

Joseph R. Robinson
Joseph R. Robinson
Vice President
Commercial Regulatory Services
Lonza Group, Inc.

Complainant:
Region 5
U.S. Environmental Protection Agency

3/15/10
Date

Margaret M. Guerriero for
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Lonza Group, Inc.
Docket No. FIFRA-05-2010-0009

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3/25/10
Date

Walter W. Kordulak
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

MAR 2 2010

OFFICE OF REGIONAL
COUNSEL

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PROTECTION AGENCY

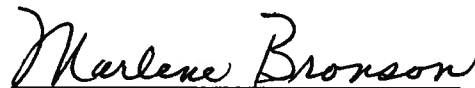
CERTIFICATE OF SERVICE

I hereby certify that an original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Lonza Group, Inc. was filed on March 29, 2010, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0189 9354, a second original signed copy to Respondent:

Mr. Joseph R. Robinson
Lonza Inc.
90 Boroline Drive
Allendale, New Jersey 07401

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Marlene Bronson
Chemicals Management Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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Docket No. _____