



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7010 2780 0000 8388 6705

Date: SEP 24 2012

John Fry, CEO
Fry's Electronics, Inc.
600 E. Brokaw Road
San Jose, CA 95112

Re: Federal Insecticide, Fungicide, and Rodenticide Act
Complaint and Notice of Opportunity for Hearing
Docket No.: FIFRA-09-2012-0006

Dear Mr. Fry:

Enclosed is a Complaint and Notice of Opportunity for Hearing concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Specifically, the Complaint alleges that Fry's Electronics, Inc. violated Section 12(a)(1)(A) of FIFRA by selling or distributing an unregistered pesticide and Section 12(a)(2)(N) by failing to file reports (Notices of Arrival for pesticide imports) required by the Act.

You should be aware of the part of the Complaint entitled "Opportunity to Request a Hearing." You are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

Copies of the following rules and regulations are included for your information: (1) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and (2) EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

If you have any questions, please contact (or have your attorney contact) Mr. Edgar Coral, Assistant Regional Counsel, U.S. Environmental Protection Agency Region IX, ORC-2, 75 Hawthorne Street, San Francisco, California 94105. Mr. Coral can be reached by telephone at (415) 972-3898.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor". The signature is fluid and cursive, with the first name being the most prominent.

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Enclosures

Cc: Patrick Thalken, California Department of Pesticide Regulation
Alex Curotto, Esq.

FILED

2012 SEP 24 AM 9: 52

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the Matter of:) Docket No. FIFRA-09-2012-00 06
11)
12 Fry's Electronics, Inc.,) COMPLAINT AND NOTICE OF
13) OPPORTUNITY FOR HEARING
14 Respondent.)

15 I. AUTHORITY AND PARTIES

16 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
17 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(1), for the assessment
18 of a civil administrative penalty against Fry's Electronics, Inc. ("Respondent") for (1) the sale
19 and/or distribution of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7
20 U.S.C. § 136j(a)(1)(A), and (2) the failure by a retailer or distributor to file reports required by
21 FIFRA in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

22 2. Complainant is the Associate Director for Agriculture of the Communities and
23 Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional
24 Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation
25 Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further
26 delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture
27 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CIIG1,
28 dated June 9, 2005.

1 13. The importation of pesticides into the United States is governed by Sections 17(c)
2 and (e) of FIFRA, 7 U.S.C. §§ 1360(c) and 1360(e), and the regulations promulgated thereunder
3 by the Secretary of the Treasury in consultation with the Administrator of the EPA.

4 14. Section 17(c) of FIFRA, 7 U.S.C. § 1360(c), requires the Secretary of the Treasury to
5 notify the EPA Administrator of the arrival of pesticides and devices in the United States.

6 15. Section 17(e) of FIFRA, 7 U.S.C. § 1360(e), requires the Secretary of the Treasury,
7 in consultation with the Administrator, to prescribe regulations for the enforcement of Section
8 17(c) of FIFRA, 7 U.S.C. § 1360(c).

9 16. Pursuant to Section 17(e) of FIFRA, 7 U.S.C. § 1360(e), the Secretary of the
10 Treasury, acting through the United States Custom Service, prescribed regulations for the
11 enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 12.110 - 12.117 (the "Pesticide Import
12 Regulations").

13 17. The Pesticide Import Regulations at 19 C.F.R. § 12.112(a) state, in pertinent part,
14 that "an importer desiring to import pesticides or devices into the United States shall submit to
15 the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection
16 Agency Form 3540-1), hereinafter referred to as a Notice of Arrival, prior to the arrival of the
17 shipment in the United States."

18 18. Through the Notice of Arrival ("NOA"), the importer reports vital information to
19 EPA regarding the pesticides or devices such as the major active ingredients, quantity, country of
20 origin, producing establishment number, carrier, port of entry, and points of contact. This
21 information allows EPA to make informed decisions, before pesticides and devices arrive in the
22 United States, as to whether such importation will pose unreasonable adverse risks to public
23 health and the environment. The NOA also provides contact information in the event of an
24 emergency related to the movement of potentially toxic pesticide materials.

25 19. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), "it shall be
26 unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail
27 to file reports required by this Act."
28

1 failures to file reports required pursuant to Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), and 19
2 C.F.R. § 12.112(a).

3 29. By failing to file reports required by FIFRA on six separate occasions prior to the
4 arrival of imported shipments of the pesticide "Cambre Game On Dirt Rags Gaming Wipes" on
5 July 17, July 20, July 21, July 22, July 23, and July 27, 2009, Respondent committed six
6 violations of Section 12(a)(1)(N) of FIFRA, 7 U.S.C. § 136j(a)(1)(N).

7 IV. PROPOSED CIVIL PENALTY

8 Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty
9 Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the assessment of a civil administrative
10 penalty of up to \$7,500 for each violation of FIFRA occurring after January 12, 2009. For
11 purposes of determining the amount of the civil penalty to be assessed, FIFRA Section 14(a)(4)
12 requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to
13 continue in business and the gravity of the violations alleged. Accordingly, Complainant
14 requests that after consideration of these statutory assessment factors, the Administrator assess
15 Respondent a civil administrative penalty of up to \$7,500 for each of the 224 violations of
16 FIFRA set forth above.

17 V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

18 You have the right to request a formal hearing to contest any material fact set forth in this
19 Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will
20 be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and
21 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties
22 and the Revocation or Suspension of Permits (the "Consolidated Rules of Practice"), 40 C.F.R.
23 Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

24 **You must file a written Answer within thirty (30) days of receiving this Complaint to**
25 **avoid being found in default, which constitutes an admission of all facts alleged in the**
26 **Complaint and a waiver of the right to a hearing, and to avoid having the above penalty**
27 **assessed without further proceedings.** If you choose to file an Answer, you are required by the
28 Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual

1 allegations contained in this Complaint to which you have any knowledge. If you have no
2 knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny
3 any of the allegations in this Complaint will constitute an admission of the undenied allegation.

4 The Answer shall also state the circumstances and arguments, if any, which are alleged to
5 constitute the grounds of defense, and shall specifically request an administrative hearing, if
6 desired. If you deny any material fact or raise any affirmative defense, you will be considered to
7 have requested a hearing. The Answer must be filed with:

8 Regional Hearing Clerk (ORC-1).
9 U.S. Environmental Protection Agency, Region IX
10 75 Hawthorne Street
11 San Francisco, CA 94105

12 In addition, please send a copy of the Answer and all other documents that you file in this action
13 to:

14 Edgar P. Coral
15 Office of Regional Counsel (ORC-2)
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 You are further informed that the Consolidated Rules of Practice prohibit any *ex parte*
20 (unilateral) discussion of the merits of any action with the Regional Administrator, Regional
21 Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the
22 decision of the case, after the Complaint is issued.

23 VI. INFORMAL SETTLEMENT CONFERENCE

24 EPA encourages all parties against whom a civil penalty is proposed to pursue the
25 possibility of settlement through informal conferences. Therefore, whether or not you request a
26 hearing, you may confer informally with EPA through Mr. Coral, the EPA attorney assigned to
27 this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility
28 of settlement. **An informal settlement conference does not, however, affect your obligation
to file an Answer to this Complaint.**

VII. ALTERNATIVE DISPUTE RESOLUTION

The parties also may engage in any process within the scope of the Alternative Dispute
Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts.

1 Dispute resolution using alternative means of dispute resolution does not divest the Presiding
2 Officer of jurisdiction nor does it automatically stay the proceeding.

3 **VIII. CONSENT AGREEMENT AND FINAL ORDER**

4 EPA has the authority, where appropriate, to modify the amount of the proposed penalty
5 to reflect any settlement reached with you in an informal conference or through alternative
6 dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement
7 and Final Order. A Consent Agreement signed by both parties would be binding as to all terms
8 and conditions specified therein when the Regional Judicial Officer signs the Final Order.

9
10
11 Dated at San Francisco, California on this 20 day of September, 2012.

12
13 
14 _____

15 KATHERINE A. TAYLOR
16 Associate Director for Agriculture
17 Communities and Ecosystems Division
18 U.S. Environmental Protection Agency, Region IX
19 75 Hawthorne Street
20 San Francisco, California 94105

