



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

JAN 09 2009

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RECEIPT NO. 7001 0320 0006 1562 3297

LC-8J

Mr. John Johnson
President
CHS Inc.
5500 Cenex Drive
Dakota, Minnesota 55077

RECEIVED
JAN 12 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of: CHS Inc., Docket No. **FIFRA-05-2009-0003**

Dear Mr. Johnson:

I have enclosed the Complaint filed by the United States Environmental Protection Agency (U.S. EPA), Region 5, against CHS Inc. under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 1361(a).

As provided in the Complaint, if you wish to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Sherry Estes, Associate Regional Counsel, at (312) 886-7164.

Sincerely,

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

cc: Mr. Paul Liemandt, Minnesota Department of Agriculture

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2009-0003
)	
CHS Inc.)	Proceeding to Assess a Civil Penalty
Inner Grove Heights, Minnesota)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

Complaint

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1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a). CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY
2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. The Respondent is CHS Inc., a corporation doing business in the State of Minnesota.

Statutory and Regulatory Background

4. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), requires that no person produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with the EPA Administrator.
5. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticidal product that it is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

6. 40 C.F.R. § 167.85(d) requires that a producer operating an establishment submit an initial report no later than 30 days after the first registration of each establishment the producer operates, and that, thereafter, the producer must submit an annual report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

7. 40 C.F.R. § 167.3 defines “produce” as to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of the pesticide or device.

8. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

9. Under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2004), the Administrator of U.S. EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997, through March 15, 2004, and may assess a civil penalty of up to \$6,500 for each offense of FIFRA that occurred after March 15, 2004.

General Allegations

10. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, CHS Inc. registered as a company engaged in the production of pesticides at 1149 S Street, Tracy, Minnesota (48013-MN-025) on or about December 3, 1999.

11. On or about July 15, 1936, CHS Inc. incorporated in the State of Minnesota.

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

13. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).
14. Respondent operates an “establishment” as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.
15. On or about February 18, 2005, Respondent submitted an annual report on pesticide production for Respondent’s establishment, failing to report on production during calendar year 2004 of Extra, EPA Reg. No. 241-405, Trust, EPA Reg. No. 9779-303, and Prowl 3.3 EC, EPA Reg. No. 241-337.
16. On or about February 27, 2006, Respondent submitted an annual report on pesticide production for Respondent’s establishment, failing to report on production during calendar year 2005 of Buccaneer Plus, EPA Reg. No. 524-454-55467 and Trust, EPA Reg. No. 9779-303.
17. Extra, Trust, Prowl 3.3 EC and Buccaneer Plus are registered pesticides, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
18. On April 4, 2006, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA, conducted an inspection under Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), at Respondent's Tracy, Minnesota, establishment to have access to and copy records showing the delivery, movement, or holding of pesticides or devices.
19. During the April 4, 2006 inspection, the inspector obtained copies of pesticide production records for calendar years 2004 and 2005 at Respondent’s Tracy, Minnesota, establishment.

Count I

20. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth fully in this paragraph.

21. On or about February 18, 2005, Respondent submitted a pesticide production report for Respondent's establishment showing pesticide production of Outlook, EPA Reg. No. 7969-156, Surpass EC, EPA Reg. No. 62719-267, and Roundup Ultra Max, 524-512, in calendar year 2004.

22. Respondent's establishment also repackaged and sold Extreme, EPA Reg. No. 241-405; Trust, EPA Reg. No. 9779-303, and Prowl 3.3 EC, EPA Reg. No. 241-337 in calendar year 2004.

23. In addition, Respondent's report of production of Roundup UltraMax was incorrect. Instead of producing Roundup UltraMax, 524-512, Respondent produced Roundup Weathermax, EPA Reg. No 524-537

24. Respondent's failure to report to U.S. EPA the types and amounts of Extreme, Trust and Prowl, and its failure to correctly report Roundup Weathermax, that it produced, sold and/or distributed during calendar year 2004 violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and was an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Count II

25. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth fully in this paragraph.

26. On or about February 27, 2006, Respondent submitted a pesticide production report for Respondent's establishment showing pesticide production of Roundup Weathermax, No. 524-537; Surpass EC, EPA Reg. No. 62719-367; and Outlook, EPA Reg. No. 7969-156 in calendar year 2005.

27. Respondent's establishment produced Buccanneer Plus, EPA Reg. No. 524-454-55467, and Trust, EPA Reg. No.9779-303, in calendar year 2005.

28. Respondent's establishment produced pesticides during calendar year 2005 that it did not report to EPA.

29. Respondent's failure to report to U.S. EPA the types and amounts of Buccanneer Plus and Trust that it produced, sold and/or distributed during calendar year 2005 violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and was an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Proposed Civil Penalty

Complainant proposes that the Administrator assess a civil penalty against Respondent for the FIFRA violation[s] alleged in this Complaint as follows:

Count I

Failure to Report Pesticide Production.....\$3,000

Count II

Failure to Report Pesticide Production\$3,000

Total Proposed Civil Penalty.....\$6,000

Complainant determined the proposed civil penalty according to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). In determining the penalty amount, Complainant considered the size of

Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violation[s]. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990, a copy of which is enclosed with this Complaint.

Rules Governing this Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the U.S. EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Sherry Estes to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone her at (312) 886-7164. Her address is:

Sherry L. Estes (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check, payable to "Treasurer, United States of America," to:

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

Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Estes at the addresses given above, and to:

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

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which this Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and

must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the Answer on the other parties.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal

conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Mr. Bonace at (312) 886-3387.

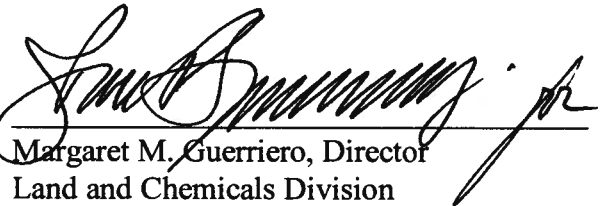
Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. However, the Complainant will not reduce the proposed penalty because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with FIFRA and any other applicable federal, state or local law.

Date

1/2/09


Margaret M. Guerriero, Director
Land and Chemicals Division


CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving CHS Inc., was filed on January 12, 2009, with the Regional Hearing Clerk (E-13J), 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 1562 3297, a copy of the original to the Respondents:

John Johnson, President
CHS Inc.
5500 Cenex Drive
Dakota, Minnesota 55077

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Sherry L. Estes, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2009-0003

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