

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Advanced Products Technology, Inc.
Washington, Missouri

Respondent

) Docket No. FIFRA-07-2008-0036
)
) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
)
)
)

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136f.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.
4. The Respondent is Advanced Products Technology, Inc., a pesticide producer and distributor, located at 50 Highline Drive, Washington, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Missouri corporation qualified to do business in the state of Missouri.

Section III

Statutory & Regulatory Background

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).
6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.
8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to 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.
9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.
10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

Section IV

Factual Allegations

11. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA granted a registration to Intercon Chemical Company (the registrant) for a pesticide known as STERI-DINE DISINFECTANT, EPA Registration Number (EPA Reg. No.) 48211-70. In accordance with 40 C.F.R. Section 152.132, the registrant subsequently entered into one or more agreements to supplementally distribute the registrant’s product. One such agreement was made with a Missouri corporation,

FRM Chem, Inc. (FRM Chem), to distribute the product STERI-DINE DISINFECTANT, using EPA Reg. No. 48211-70-10366. On July 19, 1995, the registration of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70, was cancelled, as were all supplemental distribution agreements. Sales of existing stock by the registrant and supplemental distributors were prohibited after January 15, 1996.

12. Both FRM Chem and the Respondent, Advanced Products Technology, Inc., were, at all times referred to in this Complaint, Missouri corporations qualified to do business in the state of Missouri.

13. At all times referred to in this Complaint, both FRM Chem, and the Respondent listed as corporate officers Raymond E. Kastendieck, President, and Ann P. Kastendieck, Secretary, according to Missouri Secretary of State records.

14. On or about December 21, 2005 and December 28, 2005, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at the facility shared by Respondent and FRM Chem in Washington, Missouri, to determine the status of FRM Chem's compliance with FIFRA.

15. During the inspections referenced in paragraph 14, the MDA representative documented that FRM Chem was holding for sale or distribution STERI-DINE DISINFECTANT, the cancelled pesticide product referenced in paragraph 11.

16. On or about May 20, 2008, EPA requested information from L W Chemicals, Inc. of Mt. Olive, Illinois, regarding purchases of the pesticide referenced in paragraph 11 from FRM Chem and any other distributors. On or about May 27, 2008, L W Chemicals, Inc. responded to EPA's request for information and documented multiple sales by the Respondent of the pesticide STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, referenced in paragraph 11.

Violations

17. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

Count 1

18. The facts stated in paragraphs 11 through 16 are realleged and incorporated as if fully stated herein.

19. On or about August 27, 2007, Respondent sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemical, Mt. Olive, Illinois.

20. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of

FIFRA, 7 U.S.C. § 136a.

21. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

22. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 18 through 21, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 2

23. The facts stated in paragraphs 11 through 16 are realleged and incorporated as if fully stated herein.

24. On or about September 28, 2007, Respondent sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemical, Mt. Olive, Illinois.

25. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

26. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

27. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 23 through 26, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 3

28. The facts stated in paragraphs 11 through 16 are realleged and incorporated as if fully stated herein.

29. On or about October 3, 2007, Respondent sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemical, Mt. Olive, Illinois.

30. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

31. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or

distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 28 through 31, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 4

33. The facts stated in paragraphs 11 through 16 are realleged and incorporated as if fully stated herein.

34. On or about December 19, 2007, Respondent sold or distributed a quantity of STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, to L W Chemical, Mt. Olive, Illinois.

35. On the date of the sale and/or distribution to L W Chemicals the pesticide product STERI-DINE DISINFECTANT, EPA Reg. No. 48211-70-10366, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

36. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

37. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 33 through 36, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Section V

Total Proposed Penalty

38. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the issuance of this Complaint for the assessment of a civil penalty for each violation. For any such violation occurring on or after March 15, 2004, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). EPA proposes to assess a total civil penalty of \$26,000 against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

39. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in

business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

40. For purposes of calculating the proposed penalty, Respondent was placed in Category I size of business (total business revenues in excess of \$1,000,000 per year) when Complainant was unable to obtain specific information as to Respondent's gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

41. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

42. The proposed penalty constitutes a demand only if Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final penalty.

43. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought to the attention of Complainant at the earliest opportunity in this proceeding.

44. Payment of the total penalty - \$26,000 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

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

45. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and a copy to:

Chris R. Dudding
Assistant Regional Counsel
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section VI

Answer and Request for Hearing

46. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must file a written answer and request for hearing with the EPA Region 7 Regional Hearing Clerk, at:

Regional Hearing Clerk
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- A. The circumstances or arguments that are alleged to constitute the grounds of defense;
- B. The facts that Respondent intends to place at issue; and
- C. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

47. Any hearing that is requested shall be held and conducted in accordance with 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," 40 C.F.R. Part 22.

48. If Respondent fails to file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under FIFRA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

49. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, members of the Environmental Appeals Board, the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

Section VII

Settlement Conference

50. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's business, the gravity of the violation, and the effect of the proposed penalty on Respondent's ability to continue in business. Additionally, the proposed penalty may be adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:

Chris R. Dudding
Assistant Regional Counsel
EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7524

51. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

52. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

6-26-09
Date

for Karen A. Flourney
William A. Spratlin
Director
Water, Wetlands and Pesticides Division

CRD
Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

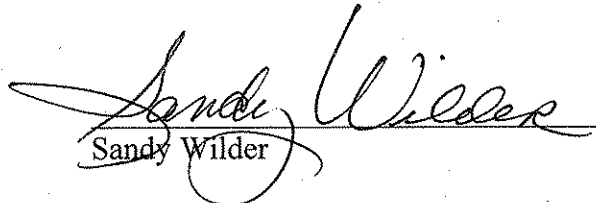
CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of 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, 40 C.F.R. Part 22; a copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; a copy of the FIFRA Civil Penalty Calculation Worksheet; the SBREFA Fact Sheet; and the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, to the following:

Ann P. Kastendieck
Registered Agent for Advanced Products Technology, Inc.
P.O. Box 207
50 Highline Drive
Washington, MO 63090

6/26/09
Date


Sandy Wilder