

United States Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:) Docket No. FIFRA -05-2009-0004
)
Northern Frozen Foods, Inc.) Proceeding to Assess a Civil Penalty
d/b/a Northern Haserot) Under Section 14(a) of a Federal
Cleveland, Ohio 44146) Insecticide, Fungicide, and Rodenticide
) Act, 7 U.S.C. §136l(a)
)

Answer

And now, this 26 day of February, 2009 comes Northern Frozen Foods, Inc. d/b/a Northern Haserot with this Answer to the Complaint as follows:

First Defense

Paragraphs 1, 2 and 3 are admitted.

Paragraphs 4 through 11 are conclusions of law to which no response is required. To the extent that a response is required, paragraphs 4 through 11 are denied in that statutes referred to paragraphs 4 through 11 speak for themselves.

Paragraphs 12 through 14 are admitted.

Paragraph 15 is denied in that Respondent is without sufficient knowledge or information at this time to admit or deny paragraph 15. Strict proof thereof will be demanded.

Paragraphs 16 and 17 are admitted to the extent that an Ohio Department of Agriculture inspector conducted an inspection of Respondent's premises and collected documentary samples. The remainder of paragraphs 16 and 17 are denied in that respondent is without sufficient knowledge or information to admit or deny the remaining allegations. Strict proof thereof will be demanded.

Paragraph 18 is denied and strict proof thereof will be demanded.

Paragraph 19 is admitted in part. It is admitted that the sample collected during the March 17th inspection did not contain modifications outlined in paragraph 18. The remainder of paragraph 19 is denied.

Paragraphs 20 through 24 are denied and strict proof thereof will be demanded. Specifically, it is denied that Respondent sold any product in violation of any active law or regulation and strict proof thereof will be demanded.

Paragraph 25 is an improper conclusion of law and is denied.

Paragraphs 26 through 28 are denied and strict proof thereof will be demanded. Specifically, it is denied that Respondent sold any product in violation of any active law or regulation and strict proof thereof will be demanded

Paragraph 29 is an improper conclusion of law and is denied.

Paragraph 30 requests civil penalties and does not require a response. However, to the extent a response is required, the civil penalties requested are not justified by the facts and circumstance of this case.

Second Defense

Respondent is a wholesale broad line food service distributor selling products to commercial food service businesses and institutions. It purchases product from manufacturers and packers and sells them to other businesses.

On May 14, 2008 Respondent received the first direct notification from the Environmental Protection Agency of an alleged violation discovered from an inspection which took place more than three years prior. The allegations in that notification have led to this formal action.

The lapse in time from notification of the alleged violation is indicative of the nature and severity of the alleged violations. It was never necessary for corrective action to be ordered and the labels on that product have been in undisputable compliance for many years.

In addition, Respondent believes the product the inspector cites as a basis for the alleged violation may have not been for sale but was older stock for use at Respondent's facility, and that the product offered for sale at that time was in undisputable compliance with the labeling regulations.

Third Defense

It is believed and therefore averred that Respondent did not sell Klear Guard Tub & Tile cleaner in violation of any law or regulation. If the markings and modifications referred to in Complainant's allegations (paragraphs 18) were required, and if Northern sold that product absent such markings, the product was sold during a permissible "sell through" period as authorized by 40 CFR 152.130. The March 17, 2005 inspection took place only 16 months after the November 16, 2003 letter.

Request for Relief and/or a Hearing

Respondent hereby requests, based upon the equity and lack of support for the allegations made in the complaint, that the Complaint be dismissed in its entirety. If the Complaint is not dismissed, Respondent hereby requests a settlement conference and adjudicatory hearing if necessary.

Respectfully Submitted,



B. Scott Kern, V.P., General Counsel
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing Answer was served on February 26, 2009 via First Class United States mail postage pre-paid as follows:

Susan Prout (C-14J)
Office of Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respectfully Submitted,



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