



Timothy D. Hoffman
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July 2, 2009

VIA FEDERAL EXPRESS

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

**Re: Miami Products & Chemical Company Response to Complaint
Docket No. FIFRA-05-2009-0015**

To Whom It May Concern:

Enclosed please find an original and two copies of the Answer of Respondent to Complaint and Proposed Civil Penalty. Please file and return one file-stamped copy for our files in the enclosed self-addressed stamped envelope provided for your convenience.

If you should have any questions or need anything further, please do not hesitate to contact me. Thank you in advance for your prompt attention to this matter.

Sincerely,



Timothy D. Hoffman

TDH:ksf/52901-1
Enclosures

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Miami Products & Chemical Company)
Dayton, Ohio 45403 ("Miami Products"))
)
Respondent.)
_____)

Docket No. FIFRA-05-2009-0015
Answer of Respondent
To Complaint and Proposed
Civil Penalty

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PROTECTION AGENCY,**

Preliminary Statement of Respondent

Respondent by and through its counsel answers the Complaint as follows. The facts and circumstances forming the basis of the allegations in the Complaint occurred over four (4) and in some counts almost five (5) years ago. A representative of the Ohio Department of Agriculture ("ODA"), an agent of Complainant, conducted an initial inspection at Respondent's Lonoke Street facility on February 14, 2005. That same representative from ODA returned on February 17, 2005 to investigate what has turned in to the allegations in Count 1 of the Complaint, producing a pesticide at the Respondent's Schwerman Drive facility, a facility that was not registered. . The allegations in that count were immediately addressed and corrected by Respondent on February 17, 2005 by submitting the proper forms to Complainant which were received by Complainant on February 18, 2005. Complainant acknowledged receipt and proper registration of the Schwerman Drive facility on that same day.

The same representative of ODA returned to the Lonoke Street facility on February 18, 2005 to collect records. Respondent did not hear from the ODA or Complainant again until a letter arrived from Complainant dated April 3, 2009, over four

(4) years later. It appears the records obtained on February 18, 2005 form the basis of the allegations in Counts 2 through 6. Respondent was not aware there were allegations in addition to the failure to register one of its facilities until receipt of the April 3, 2009 letter. Even then that letter did not contain specific allegations and it wasn't until a letter dated June 4, 2009 from Complainant was received along with the Complaint that Respondent then learned what the specific allegations were. The Respondent believes it has been prejudiced by the failure of Complainant to bring this matter to its attention in a more contemporaneous fashion. Respondent has had to try to reconstruct the events that are the subject of the Complaint in order to respond.

Answer of Respondent

1. No response is required by Respondent to Paragraph 1 of the Complaint as it is a statement of what the proceeding is.
2. Respondent admits the allegations in Paragraph 2 of the Complaint.
3. Respondent admits the allegations in Paragraph 3 of the Complaint.
4. No response is required by Respondent to Paragraphs 4 through 19 of the Complaint as they merely recite certain sections of law and policy related to the allegations in the Complaint.
5. Respondent admits the allegations in Paragraphs 17 through 20 of the Complaint.

Count 1

6. Respondent admits the allegations of paragraphs 21 through 26 but argues that its failure to register its Schwerman Drive facility was an oversight on its part. Respondent has not had any other compliance problems with FIFRA other than those associated with this Complaint. It has endeavored to comply with FIFRA in all respects and thought the registration requirement was by corporate entity not physical location which was incorrect. Respondent immediately corrected this situation upon being made aware of it by the inspector.

Count 2

7. No response is required to Paragraph 27 of the Complaint but if it is Respondent incorporates its previous answers to paragraphs 1 through 26 of the Complaint.

8. Respondent admits the allegations of Paragraphs 28 and 29 of the Complaint.

9. Respondent denies the allegations of Paragraph 30 of the Complaint. Although Respondent has not seen the label Complainant relies on, it is usually on a round container and Respondent believes the "Ingredient Statement" was there. Due to the label being on a round container, the definition of "front panel" would be another issue to address.

10. Respondent admits the allegations of Paragraph 31 of the Complaint but the inclusion of the words "Immersion Tanks, Etc." did not create a situation harmful to humans or the environment. In fact, that term was on a previously approved label by

EPA prior to the EPA approval given on October 3, 2003. Respondent inadvertently failed to remove that term once the October 3, 2003 approval was given.

11. Respondent admits the allegations of Paragraph 32 of the Complaint but states that a typographical error is the reason for the difference from the EPA accepted label. The difference did not create a situation harmful to humans or the environment and in fact, if the instruction was followed, created a safer Ph range.

12. Respondent admits the allegations of Paragraph 33 of the Complaint but states that a typographical error is the reason for the difference from the EPA accepted label. The difference did not create a situation harmful to humans or the environment. In fact, that term was also on a previously approved label by EPA prior to the EPA approval given on October 3, 2003.

13. Respondent denies the allegations of Paragraph 34 of the Complaint.

14. Respondent denies the allegations of Paragraph 35 of the Complaint.

15. Respondent denies the allegations of Paragraph 36 of the Complaint.

16. Respondent admits the allegations of Paragraph 37 of the Complaint.

17. Respondent denies the allegations of Paragraph 38 of the Complaint.

18. Respondent denies the allegations of Paragraph 39 of the Complaint.

Count 3

19. Respondent incorporates its answers to Paragraphs 1 through 39 of the Complaint as if set forth in this Paragraph.

20. Respondent admits the allegations of Paragraph 41 of the Complaint.

21. Respondent denies the allegations of Paragraph 42 of the Complaint.

22. Respondent denies the allegation of Paragraph 43 of the Complaint.

Count 4

23. Respondent incorporates its answers to Paragraphs 1 through 43 of the Complaint as if set forth in this Paragraph.

24. Respondent admits the allegations of Paragraph 45 of the Complaint.

25. Respondent denies the allegations of Paragraph 46 of the Complaint.

26. Respondent denies the allegations of Paragraph 47 of the Complaint.

Count 5

27. Respondent incorporates its answers to Paragraphs 1 through 47 of the Complaint as set forth in this Paragraph.

28. Respondent admits the allegations of Paragraph 49 of the Complaint.

29. Respondent denies the allegations of Paragraph 50 of the Complaint.

30. Respondent denies the allegations of Paragraph 51 of the Complaint.

Count 6

31. Respondent incorporates its answer to Paragraphs 1 through 51 of the Complaint as if set forth in this Paragraph.

32. Respondent admits the allegations of Paragraph 53 of the Complaint.

33. Respondent denies the allegations of Paragraph 54 of the Complaint.

34. Respondent denies the allegations of Paragraph 55 of the Complaint.

Proposed Civil Penalty

Respondent believes the proposed civil penalty is inappropriate even if all the allegations in the Complaint are found to be true. Respondent believes the proposed penalty was arrived at using Complainant's Enforcement Response Policy ("ERP") but it has not seen the penalty calculation worksheet. Respondent believes the penalty calculations arrived at by use of the ERP limits the discretion of the Complainant and is not consistent with a full analysis of the statutory penalty criteria. Use of the ERP is "designed to provide a fair and equitable treatment of the regulated community by ensuring that similar enforcement responses and comparable penalty assessments will be made for comparable violations". The ERP is also "designed to provide for swift resolution" and Respondent's issue with the timing of this matter has already been noted in its preliminary statement. Preliminary review of the resolution of other cases would not support the level of the proposed penalties assessed in this case.

In addition, Respondent provided Complainant with financial information in April, 2009 which identifies the size of the Respondent and its recent financial performance which has not been good. Although the size of the proposed penalty may not arguably impact Respondent's ability to continue in business it would have a serious impact on Respondent.

The gravity of the violations and Respondent's response to the alleged violation it knew about at the time of the initial inspections also do not warrant the maximum statutory penalty being proposed for each count. This is especially so for the alleged "misbranding" allegations where the discrepancies noted on the label from the Respondent's EPA approved were not substantially different from claims made for the

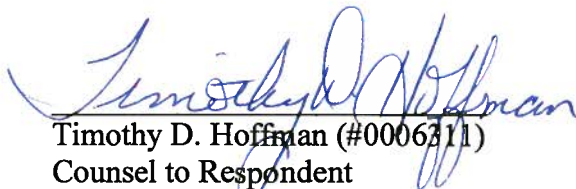
product or significant enough to jeopardize human health and the environment. In fact, use of the product pursuant to the instructions containing the typographical errors on the label would have no significant impact on the results of that use for the applications it was approved for. Respondent immediately corrected the situation with its facility that was not registered as explained in its answer above. Respondent was cooperative and responsive each time it was asked for information in connection with this matter yet the statutory maximums were still proposed for each count. Respondent is hopeful that this matter can be resolved by an informal settlement conference or conferences in which an appropriate penalty can be mutually arrived at. Respondent reserves its right to further respond to the amount of the proposed civil penalty if a settlement cannot be reached in this fashion.

Request For Hearing

In the event the parties are unable to resolve this matter by negotiation

Respondent respectfully requests that a hearing be held.

Respectfully submitted:



Timothy D. Hoffman (#0006311)
Counsel to Respondent
1100 Courthouse Plaza SW
10 N. Ludlow Street
Dayton, OH 45402

Date 7/2/09

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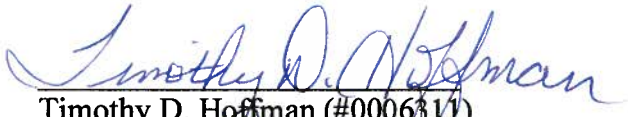
Certificate of Service

I hereby certify that the original Answer and one copy was sent by Fed Ex to the Regional Hearing Clerk on July 2, 2009, and a copy sent by regular first class mail to Jeffrey M. Trevino.

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

and forwarded copy to:

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


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Counsel to Respondent
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