



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

AUG 04 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No 7001 0320 0006 0189 4069

Mr. B. Scott Kern
Northern Frozen Foods, Inc.
d/b/a Northern Haserot
Cleveland, Ohio 44146

Northern Frozen Foods, Inc. d/b/a Northern Haserot Docket No. FIFRA-05-2009-0004

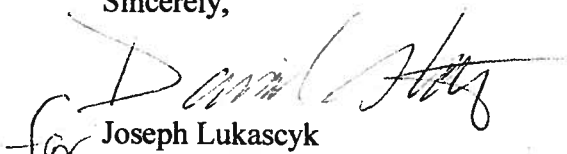
Dear Mr. Kern:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on August 4, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,280 is to be paid in the manner described in paragraphs 42 and 43. Please be certain that the number **BD 2750945P016** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 3, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for 
Joseph Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Northern Frozen Foods, Inc.)
d/b/a Northern Haserot)
Cleveland, Ohio 44146)
)
Respondent.)
_____)

Docket No. FIFRA-05-2009-0004

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

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Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

2. On February 4, 2009, EPA filed the Complaint in this action against Respondent Northern Frozen Foods. The Complaint alleges that Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), at its facility in Cleveland, Ohio, by offering for sale and distribution a misbranded pesticide.

3. On February 26, 2009, Respondent filed an Answer and requested a hearing under Section 14 of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R. § 22.15.

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint, other than those admitted in its Answer.

5. In this matter, Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that it is complying fully with FIFRA, 7 U.S.C. § 136 *et seq.* and the regulations at 40 C.F.R. § 156.10.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's culpability, attitude and good faith efforts to comply with FIFRA, Complainant agrees to mitigate the proposed penalty of \$13,000 to \$7,280.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$7,280 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

for checks sent by regular U.S. Postal Service mail:

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

for checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must state "In the Matter of Northern Frozen Foods," the docket number of this CAFO, and the billing document number (BD Number).

11. A transmittal letter stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

Joseph G. Lukascyk (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

12. This civil penalty is not deductible for federal tax purposes.

13. If Respondent does not pay the civil penalty timely, EPA may refer this matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

14. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

15. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

16. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

17. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

18. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

19. The terms of this CAFO bind Respondent, its successors, and assigns.

20. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

21. Each party agrees to bear its own costs and attorney's fees in this action.

22. This CAFO constitutes the entire agreement between the parties.

Northern Frozen Foods, Respondent

7-23-09
Date

B. Scott Kern
B. Scott Kern
V.P. General Counsel
Northern Frozen Foods

United States Environmental Protection Agency, Complainant

7/30/09
Date

Ally Zella
for Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Northern Frozen Foods
Docket No.**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7/31/09
Date

Walter W. Kambick
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY

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PROTECTION AGENCY
JUL 24 2009
OFFICE OF REGIONAL
COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the CAFO in resolution of the civil administrative action involving Northern Frozen Foods, Inc. d/b/a Northern Haserot., was filed on August 4, 2009, with the Regional Hearing Clerk (E-19J), 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 0189 4069, a copy of the original to the Respondents:


Mr. B. Scott Kern
V.P. General Counsel
Northern Frozen Foods, Inc.
d/b/a Northern Haserot
Cleveland, Ohio 44146

and that I mailed a correct copy by first class United States mail, addressed as follows:

Honorable Judge Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900L/Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Susan Prout, Counsel for Complainant/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 60604-3590

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PROTECTION AGENCY,**