



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007

APR 26 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2011 APR 28 A 8:09
REGIONAL HEARING
CLERK

Dr. Judah Gerstein, President
Lamina, Division of Bio-Scientific Specialty
197 North Main Street
Freeport, New York 11520

Re: In the Matter of Lamina, Division of Bio-Scientific Specialty
Docket No. FIFRA-02-2009-5202

Dear Dr. Gerstein:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) that resolves the above referenced matter.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely yours,

Karen L. Taylor, Esq.
Assistant Regional Counsel
Office of Regional Counsel
Waste and Toxic Substance Branch

Enclosures

cc: Karen Maples, Regional Hearing Clerk
Maureen Serafini, NYSDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2011 APR 28 A 8:09
REGIONAL HEARING
CLERK

-----X
In the Matter of :
 :
 :
 Lamina, Division of : **CONSENT AGREEMENT**
 Bio-Scientific Specialty, : **AND FINAL ORDER**
 Respondent :
 :
 : Docket No. FIFRA-02-2009-5202
 Proceeding under the Federal :
 Insecticide, Fungicide, and :
 Rodenticide Act, as amended :
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 136 l(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. (“FIFRA” or “the Act”). Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (“EPA”), Region 2, issued a Complaint and Notice of Opportunity for Hearing to Respondent, Lamina, Division of Bio-Scientific Specialty, located at 197 N. Main Street, Freeport, New York 11520.

The Complainant charged Respondent with one (1) violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and 40 C.F.R. § 167.85, the requirements under FIFRA governing the submission of an annual Pesticide Report for Pesticide-Producing Establishments (“Pesticide Report”). Said violation is unlawful under FIFRA §12(a)(2)(L), 7 U.S.C. § 136j (a)(2)(L).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Consent Agreement is being entered by Respondent on behalf of Lamina, Division of Bio-Scientific Specialty, and the Respondent is authorized for purposes of this

Consent Agreement to bind Lamina, Division of Bio-Scientific Specialty.

2. The respondent is a “producer” of pesticides, as that term is defined by Section 2(w) of FIFRA.

3. The Respondent operates an “establishment” as defined in Section 2 (dd) of FIFRA, located at 197 North Main Street, Freeport, New York 11520.

4. Respondent's establishment is registered under Section 7 of FIFRA, 7 U.S.C. § 136e. Its assigned EPA Establishment Number is 068665-NY-001.

5. Pursuant to Section 7(c) of FIFRA and 40 C.F.R. § 167.20(f), any producer operating an establishment registered under Section 7 shall submit annually to the EPA a report on the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, has produced during the past year, and has sold or distributed during the past year.

6. Title 40 C.F.R. § 167.85 provides that a producer operating an establishment must submit the annual pesticide production report (the “Report”) on or before March 1st of each year, even if the producer has produced no pesticides and pesticide products for that reporting year.

7. Respondent failed to submit annual pesticide production reports for 2007 by the regulatory due date.

8. Respondent violated Section 7(c)(1) of FIFRA, Section 12(a)(2)(L) of FIFRA, and 40 C.F.R. § 167.85.

9. The EPA initiated this matter against Respondent by issuing a Complaint and Notice of Opportunity For Hearing pursuant to Section 14(a)(1) of FIFRA. In the Complaint, the EPA charged that the Respondent, as a producer operating an establishment registered under Section 7 of FIFRA, violated Section 12(a)(2)(L) of FIFRA and 40 C.F.R. § 167.85 by failing to submit to the EPA an annual report concerning its pesticides and pesticide products for the year 2007. The

EPA proposed a civil administrative penalty of \$3,000.

10. The complaint was filed with the Regional Hearing Clerk and served on the Respondent by certified mail, return receipt requested, on March 26, 2009. The Complaint advised the Respondent that the Rules of Practice, 40 C.F.R. Part 22, govern these proceedings.

11. Respondent has submitted the required Reports, indicating zero pesticide production, has submitted a letter certifying that no production of its pesticidal product Septedex has occurred, and has submitted a written request for termination of its establishment registration.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent agrees to waive any jurisdictional objections regarding proper service of the complaint and/or any other questions concerning acquisition of personal jurisdiction of Lamina, Division of Bio-Scientific Specialty.
3. Respondent shall comply at all times with the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e and the applicable regulations.
4. Respondent neither admits nor denies the specific factual allegations set forth in the Findings of Fact and the Conclusions of Law in this Consent Agreement.
5. Complainant agrees to waive all penalties assessed in the Complaint due to Respondent's termination of its establishment registration and submission of zero pesticide production reports. Such waiver is consistent with the provisions of the FIFRA Enforcement Response Policy.
6. Respondent's establishment registration will be inactivated.
7. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other environmental laws.

8. Nothing in this Consent Agreement and Final Order shall preclude Complainant from further enforcement action, including the assessment of civil penalties, arising from the violation of any environmental laws.

9. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon the accuracy of Respondent's representations and certification in this proceeding) the civil and administrative claims alleged in the Complaint and Notice of Opportunity for Hearing in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement and Final Order, finds it reasonable, and consents to its issuance and its terms.

10. Respondent explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

11. Respondent waives any right it may have pursuant to 40 C.F.R. Section 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. This Consent Agreement shall be binding on both parties to this action, their officers, directors, employees, successors, and assigns.

13. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement and bind that party to it.

14. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

RESPONDENT: Lamina, Division of Bio-Scientific Specialty

BY: [Signature]
Authorized Signature

NAME: J. GEASSTEIN
(PLEASE PRINT)

TITLE: President

DATE: 4/8/2011

COMPLAINANT:

[Signature]
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: April 19, 2011

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: April 26, 2011

In the Matter of Lamina, Division of Bio-Scientific Specialty
Docket No. FIFRA-02-2009-5202

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement and Final Order the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Hand:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Certified Mail
Return Receipt Requested

Dr. Judah Gerstein, President
Lamina, Division of Bio-Scientific Specialty
197 North Main Street
Freeport, New York 11520

Dated: APR 26 2011
New York, New York

Smidreel N. Bay