



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

February 8, 2008

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 0009

Jeffrey A. Schillo, Vice President
Litehouse Products LLC
11052 Pearl Road
Strongsville, OH 44136

FIFRA-05-2008-0009

Consent Agreement and Final Order, Docket No. _____

Dear Mr. Schillo:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on February 8, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,200 is to be paid in the manner prescribed in paragraphs 25 through 26. Please be certain that the number BD 2750845P010 and the docket number are written on both the transmittal letter and on the face of the check. Payment is due by March 9, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph G. Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

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

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) a pesticide is “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular.

11. Pursuant to Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A), it shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under FIFRA.

12. Pursuant to 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

13. The Administrator of U.S. EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA up to \$6,500 for each offense that occurred after March 15, 2004, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

14. At all times relevant to this CAFO, Respondent is a "person" as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

15. At all times relevant to this CAFO, Respondent did "distribute or sell" a pesticide, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

16. At all times relevant to this CAFO, the Respondent has been a registrant, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

17. On or about August 2, 2006, an inspector employed by the Ohio Department of Agriculture (ODA) and authorized to conduct inspections under FIFRA, conducted an inspection under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, at Respondent's establishment, located at 9428 Mentor Avenue, Mentor, Ohio 44060, to examine and collect samples of any pesticides packaged, labeled, and released for shipment, and to inspect and obtain copies of those records specified in Section 8 and 40 C.F.R. Part 169.

18. During the August 2, 2006 inspection, the ODA inspector observed and collected a documentary sample of the label of the pesticide product "LITEHOUSE POOLS CHLORINATING 3" TABLETS," EPA Reg. No. 7124-18-37312.

19. During the inspection of August 2, 2006, the ODA inspector noted that the label of the Respondent's pesticide product "LITEHOUSE POOLS CHLORINATING 3" TABLETS," EPA Reg. No. 7124-18-37312, had been altered/defaced by crossing out the wording "CHLORINATING 3" TABLETS" with a black marker, and substituting the wording "1" TABS".

20. Such action constitutes altering/defacing, in whole or in part, of the labeling

required under the Act according to Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A).

21. In that "LITEHOUSE POOLS CHLORINATING 3" TABLETS," EPA Reg. No. 7124-18-37312 was packaged, labeled, and released for shipment or sale, Respondent was considered to have "distributed or sold" this pesticide product.

22. Respondent's distribution or sale of a misbranded pesticide product constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

23. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$6,500. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (ERP)*, dated July 2, 1990.

24. Consistent with the provisions of the FIFRA ERP, Complainant has adjusted the penalty downward \$1,300 for "good attitude," and cooperation. Accordingly, Complainant agrees to mitigate the proposed civil penalty from \$6,500 to \$5,200.

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,200 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:
for a check sent by regular U.S. Postal Service mail:

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

for a check sent by express mail:

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

The check must note the case title, the docket number of this CAFO and the billing document number.

26. A transmittal letter, stating, Respondent's name, the case title, Respondent's 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-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Peter Felitti (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604]

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

28. If Respondent does not pay the civil penalty timely, U.S. EPA may refer the 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.

29. 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 amount overdue 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

30. This CAFO resolves only Respondent's liability for federal civil penalties for the violation and facts alleged in the CAFO.

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

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

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

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

35. 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.

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

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

Litehouse Products, LLC, Respondent

1-17-08
Date


JEFFREY A. SCHILLO
~~President~~ VP + CEO
Litehouse Products, LLC

United States Environmental Protection Agency, Complainant

2/4/08
Date


Margaret M. Guerriero, Director
Land and Chemicals Division

FIFRA-05-2008-0009

In the Matter of:
Litehouse Products, LLC
Docket No. FIFRA-05-2008-0009

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.

Date

2/6/09


Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
FEB -8 PM 3:20

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Litehouse Products LLC, was filed on February 8, 2008, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0005 8931 8694, a copy of the original to the Respondent:

Jeffrey A. Schillo, Vice President
Litehouse Products LLC
11052 Pearl Road
Strongsville, OH 44136

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Peter Filitti, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Ann Miklusak
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

FIFRA-05-2008-0009

Docket No. _____

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