

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1 – NEW ENGLAND  
1 Congress Street, Suite 1100 (SEL)  
Boston, MA 02114-2023

OFFICE OF  
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ  
direct: (617) 918-1867

BY HAND

*April 16, 2008*

Wanda I. Santiago, Acting Regional Hearing Clerk  
EPA Region 1 (New England)  
One Congress St., Suite 1100 (RCH)  
Boston, MA 02114-2023

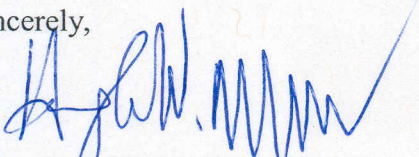
Re: *In the Matter of Spectrowax Corporation*, Docket No. FIFRA-01-2008-0034  
Complaint and Notice of Opportunity for Hearing; Certificate of Service

Dear Ms. Santiago:

Please find enclosed for filing in the above-entitled case, the original and one copy of the Complaint and Notice of Opportunity for Hearing (“Complaint”). I hereby certify that, on this date, I served a copy of the Complaint on Respondent, by certified mail, return receipt requested.

Thank you for your assistance.

Sincerely,



Hugh W. Martinez, Senior Enforcement Counsel  
Regulatory Legal Office  
EPA Region 1

Enclosures

cc: Arnold H. Rosenberg, President, Spectrowax Corporation  
Kan S. Tham, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

**IN THE MATTER OF:**

Spectrowax Corporation  
70 Hichborn Street  
Brighton, MA 02135  
  
Respondent.  
  
Proceedings under Section  
14(a) of the Federal  
Insecticide, Fungicide, and  
Rodenticide Act, as Amended,  
7 U.S.C. § 136l(a).

EPA Docket No.  
FIFRA-01-2008-0034

**COMPLAINT and NOTICE OF  
OPPORTUNITY FOR HEARING**

**COMPLAINT**

This Complaint and Notice of Opportunity for Hearing (“Complaint”) is being issued under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136l(a). This Complaint alleges that Spectrowax Corporation (“Spectrowax” or “Respondent”), has violated FIFRA Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), and provides written notice of the United States Environmental Protection Agency’s proposal to assess administrative penalties. The Complainant is, by lawful delegation, Manager of the Enforcement Office, Office of Environmental Stewardship, United States Environmental Protection Agency - Region 1 (“Complainant” or “EPA Region 1”).

**Statutory and Regulatory Authority**

1. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations codified at 40 C.F.R. Part 167, Subpart E require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, which it

produced during the past year, and which it sold or distributed during the past year.

2. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing, and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. Producers must submit this information to EPA on or before March 1 of the year following the calendar year which is the subject of the report (the “reporting year”).

3. Section 12(a)(2)(L) of FIFRA provides that it is unlawful and a violation of FIFRA for any person who is a pesticide producer to fail to submit the pesticide production report, as required by Section 7 of FIFRA, 7 U.S.C. § 136e.

4. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated at 40 C.F.R. Parts 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004. *See* 69 Fed. Reg. 7121-7127 (February 13, 2004).

#### **General Allegations**

5. Respondent is a corporation organized under the laws of Massachusetts and, therefore, is a “person” within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s). Respondent maintains its principal place of business at 70 Hichborn Street in Brighton, Massachusetts.

6. Respondent manufactures, sells and distributes detergents, soaps, and specialty cleaning products. Respondent is a "producer" as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.

7. Respondent's facility at 70 Hichborn Street in Brighton, Massachusetts (the "Brighton Establishment") is an "establishment" as that term is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

8. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, Respondent registered the Brighton Establishment as a pesticide-producing establishment, on or about May 13, 1976. EPA subsequently assigned EPA Establishment Number 017217-MA-001 to the Brighton Establishment.

9. On or about July 10, 2003, pursuant to Sections 12(c)(2)(L) and 14(a) of FIFRA, EPA Region 1 issued a civil administrative complaint for penalties against Respondent (the "2003 Complaint") for failure to submit a Section 7 pesticide production report for reporting year 2002 on or before the due date of March 1, 2003. EPA and Spectrowax resolved that administrative proceeding, entitled *In re: Spectrowax Corp.*, Docket No. FIFRA-01-2003-0031, through a mutually agreed-upon settlement set forth in a Consent Agreement and Final Order that was signed on August 13, 2003 by Respondent's President, Arnold H. Rosenberg, and became effective on September 8, 2003. Under that settlement Spectrowax agreed, among other things, to pay a civil penalty of \$3,300 and neither admitted nor denied liability for the violation alleged in the 2003 Complaint.

## Violations

### Count I: Non-Reporting Violation (Reporting Year 2005)

10. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
11. On or about November 29, 2005, EPA Headquarters mailed EPA Form No. 3540-16, entitled *Pesticide Report for Pesticide-Producing and Device-Producing Establishments* ("Form 3540-16"), to Respondent using the Brighton Establishment address and in the manner described at 40 C.F.R. § 167.85(c).
12. During calendar year 2005, the Brighton Establishment was registered with EPA as a pesticide-producing establishment under Section 7 of FIFRA and 40 C.F.R. Part 167.
13. Notwithstanding the March 1 due date, the notice from EPA Headquarters mailed to Respondent as described in paragraph 11, and Respondent's previous noncompliance with Section 7 of FIFRA described in paragraph 9 herein, Respondent did not submit its pesticide production report for the 2005 reporting year until on or about June 6, 2006.
14. Respondent's failure to submit the required information to EPA for the reporting year 2005 on or before March 1, 2006 constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and is a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

### Count II: Non-Reporting Violation (Reporting Year 2006)

15. Paragraphs 1 through 14 are realleged and incorporated herein by reference.
16. On or about December 4, 2006, EPA Headquarters mailed Form 3540-16 to

Respondent using the Brighton Establishment address and in the manner described at 40 C.F.R. § 167.85(c).

17. During calendar year 2006, the Brighton Establishment was registered with EPA as a pesticide-producing establishment under Section 7 of FIFRA and 40 C.F.R. Part 167.

18. On or about June 15, 2006, EPA Region 1 contacted Spectrowax President, Arnold Rosenberg, in writing, about a meeting EPA Region 1 had requested to discuss, among other things, the status of Respondent's compliance with the annual pesticide production reporting requirements under Section 7 of FIFRA and the regulations at 40 C.F.R. Part 167.

19. On or about June 21, 2006, EPA Region 1 representatives met with Mr. Rosenberg and discussed, *inter alia*, FIFRA Section 7 reporting requirements, generally, and Respondent's own pesticide production reporting, in particular.

20. Notwithstanding the March 1, 2007 reporting deadline, the notice to Respondent from EPA Headquarters described in paragraph 16 herein, the June 21, 2006 meeting between EPA Region 1 and Respondent, and Respondent's previous noncompliance with Section 7 of FIFRA described in paragraph 9 herein, Respondent failed to submit its pesticide production report for the 2006 reporting year by the March 1, 2007 due date. As of the date of filing this Complaint, EPA Region 1 has not received Respondent's pesticide production report for reporting year 2006.

21. Respondent's failure to submit the required information to EPA Region 1 for the reporting year 2006, on or before March 1, 2007, constitutes a violation of Section 7(c)(1) of

FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and is a violation for which penalties may be assessed pursuant to FIFRA Section 14(a) of FIFRA.

Count III: Non-Reporting Violation (Reporting Year 2007)

22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. On or about December 3, 2007, EPA Headquarters mailed Form 3540-16 to Respondent using the Brighton Establishment address and in the manner described at 40 C.F.R. § 167.85(c).

24. During calendar year 2007, the Brighton Establishment was registered with EPA as a pesticide-producing establishment under Section 7 of FIFRA and 40 C.F.R. Part 167.

25. Notwithstanding the March 1, 2008 reporting deadline, the notice to Respondent from EPA Headquarters described in paragraph 23 herein, the June 21, 2006 meeting described in paragraph 19 herein, and Respondent's previous noncompliance with Section 7 of FIFRA described in paragraph 9 herein, Respondent failed to submit its pesticide production report for the 2007 reporting year by the March 1, 2008 due date. As of the date of filing this Complaint, EPA Region 1 has not received Respondent's pesticide production report for reporting year 2007.

26. Respondent's failure to submit the required information to EPA Region 1 for the reporting year 2007, on or before March 1, 2008 constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and is a violation for which penalties may be assessed pursuant to FIFRA

Section 14(a) of FIFRA.

**Proposed Civil Penalty**

27. For purposes of determining the amount of any civil penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to take into account the gravity of the violations. As to the violator, Section 14(a)(4) requires EPA to take into account the appropriateness of the penalty to the size of the business of the person charged and the effect of the penalty on the person's ability to continue in business.

28. The proposed penalty takes into account the statutory factors listed in the preceding paragraph and is calculated using EPA's June 2007 *Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement* (the "Policy"), a copy of which accompanies this Complaint. Under the Policy, a producer's failure to submit the required Section 7 production report within thirty (30) days after the March 1 due date is considered a "non-reporting" violation whereas a failure to submit such report within 30 or fewer days is considered a "late reporting" violation. *See* Policy, at 8-9. The Policy states that EPA uses the information from FIFRA Section 7 reports for compliance, risk assessment, and risk reduction activities and that the information is "important to protecting human health and the environment and maintaining the integrity of the pesticide program." *See* Policy, at 4.

29. Under the Policy, the gravity-based penalty is determined by the seriousness of the violation and takes into account prior compliance history, length of the violation, and the size of the Respondent's business. *See* Policy, at 11-12. Once the penalty has been calculated, further



adjustments may be made based on the violator's ability to continue in business (ability to pay) and good faith efforts to comply with FIFRA. *See Policy*, at 13-15.

30. Based on information available to EPA concerning Respondent's size of business, EPA has determined that Spectrowax is a Category II Business. *See Policy*, at 12.

31. Consistent with the Policy and the penalty matrix found on page 13 thereof, the appropriate penalty for the FIFRA violations alleged in this Complaint is \$16,000. Specifically, and subject to EPA's receipt and evaluation of further relevant information, Complainant proposes to assess a civil penalty of \$3,000 for the violation set forth in Count I and a civil penalty of \$6,500 for each of the violations set forth in Counts II and III, all in view of the facts presented, the gravity of violations alleged, the size of the Respondent's business, Respondent's ability to continue in business, and the authority of Section 14(a) of FIFRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules"). A copy of the Consolidated Rules is enclosed with this Complaint.

32. Under 40 C.F.R. § 22.18(a) of the Consolidated Rules governing proceedings such as that initiated by the filing of this Complaint, Respondent has the option of resolving this matter at any time by paying the full \$16,000 penalty proposed in this Complaint. Respondent may pay this penalty by certified or cashier's check payable to the "Treasurer of the United States of America", and remit the check to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Copies of the check must be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (Mail Code RAA)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

and

Kan S. Tham, FIFRA Enforcement Coordinator  
U.S. Environmental Protection Agency  
Region 1 (Mail Code SEP)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

33. A transmittal letter identifying the name of this proceeding and the docket number (*In the Matter of Spectrowax Corporation*, FIFRA-01-2008-0034) should accompany both the remittance and the copy of the check. If Respondent remits full payment of the penalty proposed in this Complaint within 30 days after receiving this Complaint, then no answer need be filed. *See* 40 C.F.R. § 22.18(a).

**OPPORTUNITY TO REQUEST A HEARING**

34. As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. 136l(a)(3), and in accordance with the Administrative Procedures Act at 5 U.S.C. § 554, you have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness

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*In The Matter Of Spectrowax Corporation, FIFRA-01-2008-0034*  
*Complaint and Notice of Opportunity for Hearing*

of the proposed penalty. To avoid being found in default and having the above-cited penalty assessed without further proceedings, you must file a written answer **within thirty (30) days** of your receipt of this Complaint. Your answer should (a) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, (b) briefly state all facts and circumstances, if any, which constitute grounds for a defense, and (c) specifically request an administrative hearing (if desired). The denial of any material fact or raising of any affirmative defense(s) shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint will constitute an admission of the undenied allegations. The answer must be forwarded to:

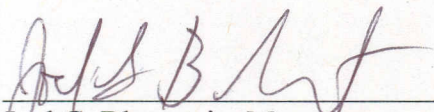
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (Mail Code RAA)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

The hearing which will be held upon your request will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and the Consolidated Rules at 40 C.F.R. Part 22. If you fail to file a written answer and request for hearing within thirty (30) days of the service of this Complaint, a Default Order may be issued pursuant to 40 C.F.R. § 22.17(a).

#### **Informal Settlement Conference**

35. Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be

finalized by the issuance of a written Consent Agreement and Final Order. To explore the possibility of settlement in this matter, contact Hugh W. Martinez, EPA Region 1 Senior Enforcement Counsel, at (617) 918-1867. Mr. Martinez is the attorney assigned to represent EPA in this matter and designated to receive service on behalf of Complainant. Please note that a request for an informal settlement conference does not extend the thirty (30) day period for the submission of a written answer.



Joel G. Blumstein, Manager  
Enforcement Office  
Office of Environmental Stewardship  
EPA Region 1

4/15/08  
Date