



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2020 DEC -3 PM 1:00
REGIONAL HEADQUARTERS
EPA REGION VI

IN THE MATTER OF:)
)
)
AMERICAN HONEY BEE)
PROTECTION AGENCY)
AUSTIN, TEXAS)
)
RESPONDENT)
_____)

DOCKET NO. FIFRA-06-2020-0311

STOP SALE, USE, OR REMOVAL ORDER

This Stop Sale, Use, or Removal Order (SSURO) is issued pursuant to Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136k(a). Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), authorizes the Administrator of EPA to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of FIFRA, or the pesticide or device has been or is intended to be, distributed or sold in violation of any provision of FIFRA.

The authority to issue this SSURO has been delegated to the Director, Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 6, by EPA Region 6 Delegation No. R6-5-12 dated June 14, 2017 and the April 17, 2019 Region 6 Realignment – General Redeflegation.

BASIS OF ISSUANCE OF STOP SALE, USE OR REMOVAL ORDER

A. PRELIMINARY ALLEGATIONS

1. The Respondent is American Honey Bee Protection Agency, a corporation incorporated under the laws of the state of Texas.

2. "Person" is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as meaning "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."

3. The Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

4. The Respondent owns and/or operates a business, which is currently located at 6500 Tracor Lane, Austin, Texas 78725.

5. The Respondent distributes or sells or has distributed and sold the following product: Epic Honey Bug Off Insect Repellent.

6. The product identified in Paragraph 5 is intended to prevent, destroy, repel, or mitigate insects.

7. "Pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as meaning "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under [Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1)]."

8. Insects are a "pest" as that term is defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

9. "Pesticide" is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as meaning "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer. . . ."

10. The product identified in Paragraphs 5 and 6 is intended to prevent, destroy, repel, or mitigate the pest identified in Paragraph 8.

11. The product identified in Paragraphs 5 and 6 is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

12. “Pesticide products” is defined in 40 C.F.R. § 152.3 as meaning “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.”

13. The product identified in Paragraphs 5 and 6 is a “pesticide product” as that term is defined in 40 C.F.R. § 152.3.

14. On or about September 12, 2019, EPA representatives conducted an inspection at Natural Grocers located in Coppell, Texas (“Inspection”).

15. On or about September 12, 2019, a written statement as to the reasons for the inspection was given to a representative of Natural Grocers, as required by Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g.

16. During the inspection, the EPA inspector observed the product identified in Paragraphs 5 and 6, as being offered for sale and distribution.

B. VIOLATIONS

Distributing or Selling Unregistered Pesticides

17. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that “except as provided by [Section 12(b) of FIFRA, 7 U.S.C. § 136j(b)], it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under [Section 3 of FIFRA, 7 U.S.C. § 136a] or whose registration has been cancelled or suspended, except to the

extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.”

18. 40 C.F.R. § 152.15 provides that no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or

(2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or

(b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

19. The Respondent states or implies (by labeling or otherwise) that the product identified in Paragraphs 5 and 6 can or should be used as a pesticide (*i.e.*, prevent, destroy, repel, or mitigate insects).

20. The Respondent has actual or constructive knowledge that the product identified in Paragraphs 5 and 6 will be used, or are intended to be used, for a pesticidal purpose (*i.e.*, prevent, destroy, repel, or mitigate insects).

21. The exemptions from registration provided by 40 C.F.R. §§ 152.20, 152.25, and 152.30 are not applicable to the pesticide product identified in Paragraphs 5 and 6.

22. The pesticide product identified in Paragraphs 5 and 6 were required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

23. The pesticide product identified in Paragraphs 5 and 6 were not registered with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

24. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as meaning “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

25. During the inspection, EPA observed and documented that the Respondent’s product in Paragraphs 5 and 6 was being offered for sale at Natural Grocers located in Coppell, TX.

26. The distribution or sale of the pesticide product identified in Paragraphs 5, 6, and 25 were not authorized by the Administrator of EPA.

27. Therefore, based on the foregoing, EPA has reason to believe that the Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling unregistered pesticides.

ORDER

28. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under [Section 3 of FIFRA, 7 U.S.C. § 136a].

29. EPA has determined that the pesticide product identified in Paragraphs 5 and 6 is an unregistered pesticide. Thus, it is unlawful for this product to be distributed or sold, as those words are defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

30. Therefore, by the authority of Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA hereby **ORDERS** Respondent, American Honey Bee, to immediately cease the sale, use, or removal of the pesticide products identified in Paragraphs 5 and 6, which are under its ownership, control, or custody, wherever such pesticide products are located, except in accordance with the provisions of this SSURO.

31. This SSURO shall apply to all types of products identified in Paragraphs 5, 6, and 25 controlled or within the custody of the Respondent intended for sale or distribution.

32. This SSURO extends to the offering for sale, or sale, of the pesticide product identified in Paragraphs 5, 6, and 25, at an Internet web site or any other source of advertising.

33. This SSURO is effective immediately upon receipt by the Respondent, and shall remain in effect unless and until revoked, terminated, suspended, modified, or released by EPA.

34. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I) provides that it is unlawful for any person to violate a Stop Sale, Use, or Removal Order. Any person violating the terms or provisions of this SSURO may be subject to penalties prescribed by Section 14 of FIFRA, 7 U.S.C. § 136l. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that “any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of [FIFRA] may be assessed a civil penalty by the Administrator of not more than

\$19,936 for each offense.”¹ A knowing violation of this SSURO may also subject a person to criminal penalties pursuant to Section 14(b) of FIFRA, 7 U.S.C. § 136l(b).

35. The pesticide products identified above in Paragraphs 5, 6, and 25 shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, offered for delivery, moved, or removed for disposal from any facility or establishment owned or operated by the Respondent, for any reason, unless approved by the EPA in writing. Any proposal for movement of the pesticide products shall be submitted to the following:

Chuck Ruple
Pesticides Enforcement Officer (ECDST)
Toxics Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA – Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
(214) 665-8042
acosta.gerardo@epa.gov

and shall include, at a minimum:

- (a) the purpose for which the movement is being requested;
- (b) an accounting of the quantities of products to be moved, including location(s), quantities from each location and container size for the products to be moved; and
- (c) the destination location to which the products will be moved.

¹ The amount of penalty that can be assessed under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) was increased to \$19,936 by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 for violations that occurred after November 2, 2015 and assessed on or after January 15, 2019.

36. Within 10 days of receipt of this SSURO, the Respondent shall submit to the EPA an accounting of all pesticide products subject to this SSURO. The report shall be submitted to the following:

Chuck Ruple
Pesticides Enforcement Officer (ECDST)
Toxics Enforcement Section
Enforcement and Compliance Assurance Division
U.S. EPA – Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
ruple.chuck@epa.gov

and shall include a description of all existing products identified above in Paragraphs 5, 6, and 25, inventory for the products, including the location(s) where the products are held, and the quantities.

37. The Respondent shall comply with all applicable laws relating to the disposition of the pesticide products, and shall submit records of any disposition (e.g., reformulation, repackaging, relabeling, disposal, etc.) to EPA upon request. Such records must include information on the method, the quantity, and the location of the disposition and/or disposal.

38. You may, if you desire, assert a business confidentiality claim for all or part of the information submitted in accordance with 40 C.F.R. Part 2. The information qualifying as business confidential material will be disclosed by EPA only to the extent and by the procedures set forth in 40 C.F.R. Part 2, Subpart B. Unless you make a claim at the time that you submit the information, it may be made available to the public by EPA without further notice to you. If you do assert a business confidentiality claim, you must follow the procedures set forth in the attached Exhibit A.

39. In all instances in which this SSURO requires submissions to EPA, each submission must be accompanied by the following certification signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

40. The issuance of this SSURO shall not constitute a waiver by the EPA of its remedies, either judicial or administrative, under FIFRA or any other federal environmental law to address this matter or any other matters or unlawful acts not specified in this SSURO.

41. If any provision or provisions of this SSURO is/are subsequently held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and they shall remain in full force and effect.

OTHER MATTERS

42. The Respondent may seek judicial review of this SSURO pursuant to Section 16(a) of FIFRA, 7 U.S.C. § 136n(a).

43. For any additional information about this SSURO, please contact Chuck Ruple, Pesticides Enforcement Officer, at (214) 665-6534 or by e-mail ruple.chuck@epa.gov

Date: 11/25/19



Cheryl T. Seager
Director
Enforcement and Compliance
Assurance Division

EXHIBIT A

INSTRUCTIONS FOR ASSERTING A CLAIM OF BUSINESS CONFIDENTIALITY

If you wish to assert a claim of business confidentiality, you must clearly mark each page of each document included in your claim with a legend such as “trade secret”, “proprietary”, or “company confidential.” If you claim information submitted in response to this Request as confidential, you must also provide a redacted version of the information with all confidential business information deleted. For any document in which you assert a claim of business confidentiality, please answer the following questions:

- a. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph, and sentence when identifying the information subject to your claim.
- b. For what period of time do you request that the information be maintained as confidential, *e.g.*, until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you have specified.
- c. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
- d. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
- e. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
- f. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
- g. Is there any other explanation you deem relevant to EPA’s determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish comments to the above questions concurrent with your response to this Request if you have claimed any information as business confidential. *See* 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. EPA will construe your failure to furnish timely comments as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December 2019, that the original and one copy of this Stop Sale, Use, and Removal Order were sent to the following persons by the method indicated below:

Certified Mail – Return Receipt Requested

 _____ :

Walter Schumacher
Principal Owner
American Honey Bee
6500 Tracor Lane.
Austin, Texas 78725
