



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837

SEP - 8 2011

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Article Number: 7001 0320 0004 9929 8680

Edward Piranian, President
Contact Industries
411 Wales Avenue
Bronx, NY 10454

Re: In the Matter of Contact Industries
Docket No. FIFRA-02-2011-5109

U.S. ENVIRONMENTAL
PROTECTION AGENCY
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REGIONAL HEARING
CLERK

Dear Mr. Piranian:

Enclosed please find an Administrative Civil Complaint alleging violations documented under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA).

The United States Environmental Protection Agency (EPA) has records indicating that your establishment is registered under Section 7 of FIFRA as a Pesticide-Producing Establishment with an EPA establishment registration number of 10806-NJ-001.

Under Section 7(c) of FIFRA, any producer operating an establishment registered with EPA under Section 7 is required to submit an annual pesticide production report to EPA, even if the registered establishment is not currently producing pesticide substances. Failure to submit a production report is a violation of FIFRA § 7(c) and § 12(a)(2)(L).

The Complaint alleges that you failed to submit an annual production report for the calendar years 2009 and 2010. The Complaint assesses a proposed civil penalty of Six Thousand Six Hundred Dollars (\$6,600). EPA considers failure to comply with FIFRA § 7(c) reporting requirements a serious violation, because it affects the Agency's risk assessment capability, its ability to determine what pesticides an establishment is producing, and its ability to target inspections.

It is the intention of the EPA to seek resolution of this Complaint in an equitable and mutually agreeable manner. As outlined in the Complaint, the Agency encourages the use of an informal conference to provide an opportunity for settlement discussions. You have been given ninety (90) days rather than the customary thirty (30) days to file an Answer to this Complaint. If you wish to informally discuss a settlement, please do not file your Answer before you contact a representative of the Division of Enforcement and Compliance Assistance (DECA) about scheduling an informal conference. The filing of an Answer before discussions are held, or at any point within these ninety (90) days, will result in the referral of your case to the Office of Regional Counsel.

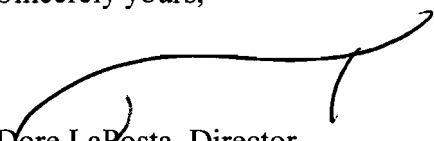
In order to further expedite a settlement of this matter, we are also authorized to give you an opportunity to settle this matter without an informal meeting or conference. Specifically, according to pertinent provisions of the Enforcement Response Policy (ERP), we may reduce the total proposed penalty from \$6,600 to \$3,300 for the violations substantiated in the Complaint, should you execute the enclosed Consent Agreement (CA) and return it to our office within thirty (30) days of receipt of the enclosed Complaint.

Please note that you may request termination of your establishment registration within twenty (20) calendar days after receipt of this Complaint, which may reduce the civil penalty to zero. If the establishment is re-registered during the five-year statute of limitation time period, any subsequent non-reporting violations are subject to a civil penalty without the option of the zero penalty reduction. Your reply should be addressed to the attention of Mr. Michael G. Kramer, FIFRA Enforcement Coordinator, at the following mailing address:

U.S. Environmental Protection Agency, Region 2
Building 205, MS 500
2890 Woodbridge Avenue
Edison, NJ 08837

Subsequent to receiving your executed CA, we will prepare a Final Order (FO) to formally close this matter, and copies of the Consent Agreement and Final Order (CAFO) will be mailed to you. If an expedited settlement is not possible, a representative from this office will contact you to discuss the possibility of scheduling an informal conference. If you have any questions regarding the Complaint or the settlement process, you or your staff should feel free to contact Mr. Michael Kramer at (732) 321-6610.

Sincerely yours,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

-----X
In the Matter of :
 :
Contact Industries, Inc. :
 :
Respondent :
 :
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended :
-----X

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No. FIFRA-02-2011-5109

COMPLAINT

Complainant, as and for her Complaint against Respondent, hereby alleges:

1. This is a civil administrative proceeding instituted pursuant to Section 14 (a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "the Act"), 7 U.S.C. § 1361(a) as amended, 7 U.S.C. § 136 et seq.
2. The Complainant, Dore LaPosta, Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is Contact Industries.
4. Respondent is a Corporation organized pursuant to the laws of the State of New York.
5. Respondent is a "registrant", "wholesaler", "dealer" or "other distributor" within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1).

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CLERK

17. Respondent was required to submit to the EPA a Report for calendar year 2010 on or before March 1, 2011.

18. Respondent did not submit to the EPA its Report for calendar year 2010 on or before March 1, 2011.

19. Respondent's failure to submit a Report as alleged in Paragraph 18, above, is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. 136j(a)(2)(L), and 40 C.F.R. § 167.85.

PROPOSED CIVIL PENALTY

In view of the above-cited findings and pursuant to the authority of Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Complainant herein proposes the assessment of a civil penalty in the amount of Six Thousand Six Hundred Dollars (\$6,600) against Respondent.

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), which authorizes the assessment of a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant thereto.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to adjust its penalties for inflation on a periodic basis. EPA has issued the Civil Monetary Penalty Inflation Adjustment Rule under which violations that occur on January 12, 2009, or later, are subject to a new statutory maximum civil penalty. The maximum civil penalty under Section 14(a) of FIFRA for such violations is \$7,500 per offense. (40 C.F.R. Part 19 (Vol. 73, No. 239, December 11, 2008)).

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires EPA to take into account the gravity of the violations. As to the violator, Section 14 of FIFRA requires EPA to take into account the appropriateness of the penalty to the size of the business and the effect of the penalty on its ability to continue in business.

To develop the proposed penalty in this Complaint, EPA has taken into account the particular facts and circumstances of this case, to the extent known at this time, with specific reference to EPA's "FIFRA 7(c) Enforcement Response Policy", enacted May 19, 2010, and its "Enforcement Response Policy For The Federal Insecticide, Fungicide, and Rodenticide Act", dated December 3, 2009, copies of which are available upon request. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases.

Complainant proposes, subject to receipt and evaluation of further and relevant information that Respondent be assessed the following civil penalty for the violations alleged in the Complaint:

Count 1:	Failure to Submit Section 7(c)(1) Report for 2009	\$3,300
Count 2:	Failure to Submit Section 7(c)(1) Report for 2010	\$3,300
TOTAL ASSESSMENT			\$6,600

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," and which are codified at 40 C.F.R. Part 22 (2000). A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. (40 C.F.R. § 22.15(a)). While that provision requires that an Answer must be filed within 30 days after service of a Complaint, EPA, Region 2, has administratively extended the deadline for such filing in this proceeding, and Respondent's Answer accordingly must be filed within 90 days of service of the Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. (40 C.F.R. § 22.15(a)).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- 4) Federal Reserve Bank of New York ABA routing number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Name of Respondent: Contact Industries.
- 7) Case Number: FIFRA-02-2011-5109

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Michael Kramer, FIFRA Section 7 Coordinator
Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-500)
Edison, NJ 08837

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Pursuant to 40 C.F.R. Section 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order. Issuance of this Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. Section 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.