



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

March 31, 2016

REPLY TO THE ATTENTION OF

E-19J

CERTIFIED MAIL

RETURN RECEIPT REQUESTED:

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: AP Goldshield, LLC (El Paso, Texas)
Docket No. FIFRA-05-2016-0005
Complaint Date: March 1, 2016
Total Proposed Penalty: \$24,750

Dear Judge Biro:

Enclosed is the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to this case.

If you have questions, please contact me at (312) 886-3713.

Sincerely,

A handwritten signature in blue ink that reads "LaDawn Whitehead".

LaDawn Whitehead
Regional Hearing Clerk

Enclosures

cc: Thomas Higgins, Chairman
AP Goldshield, LLC
9570 Pan American Drive
El Paso, Texas 79927

Susan Perdomo
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
Chicago, Illinois 60604
(312) 886-0557

In the Matter of: AP Goldshield, LLC (El Paso, Texas)
Docket No. FIFRA-05-2016-0005

Certificate of Service

I certify that I filed the original and one copy of the Respondent's Answer, and mailed the original copies and case file via certified mail to Ms. Sybil Anderson (MC: 1900R), U.S. EPA, Office of Administrative Law Judges, 1200 Pennsylvania Avenue, N. W. Washington, DC 20460. CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2640 6707

I certify that I emailed a copy of the Respondent's Answer by electronic mail to:

Susan Perdomo, Regional Counsel
Perdomo.Susan@epa.gov

Meghan Dunn
Dunn.Meghan@epa.gov

Ann Coyle, Regional Judicial Officer
coyle.ann@epa.gov

I also certify that I mailed a filed hard copy of the Respondent's Answer via certified mail to:

Thomas Higgins, Chairman
AP Goldshield, LLC
9570 Pan American Drive
El Paso, Texas 79927
CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2640 6714

On the 31 day of March 2016.



LaDawn Whitehead
Regional Hearing Clerk
Region 5



In the Matter of:

**AP Goldshield, LLC
El Paso, TX
Rodenticide**

**Docket No. FIFRA-05-2016-0005
Proceeding to Assess a Civil Penalty
Under Section 14 (a) of the Federal
Insecticide, Fungicide, and
Act, 7 U.S.C 136/(a)**

Respondent

Answer

This is an Answer by AP Goldshield, LLC, Respondent (GS), to the Complaint served upon Respondent by the Environmental Protection Agency Region 5 (EPA).

Count 1 Goldshield 75 – Misbranding Violation

Respondent denies Count 1 in its entirety.

GS is unaware of any statute requiring use of the phrase “when used as directed” in relationship to the contended misbranding statements. Furthermore, the label for GS’ product GS75 carries approved “Directions for Use” verbiage, and it would seem a matter of simple common sense and customary behavior that when a label carries Directions for Use that users are thereby by reference directed to use the product in accord with the Directions for Use so the phrase “when used as directed” is redundant, unnecessary, carries no weight greater than the Directions for Use themselves and serves no greater public interest.

Furthermore, the Complaint fails to mention (purposely disregards mention) of the fact that on October 3, 2014 and Inspector from Region 4 visited Respondent’s third party production facility for a routine inspection, inspected each and every product label of Respondent’s (and all other clients of the third party vendor) and rendered Respondent’s product labels in full compliance.

Count 2 Goldshield 75 – Claims Differ Violation

Respondent denies Count 2 in its entirety.

Respondent denies that our GS75 label “substantially differs” from the label submitted to and accepted by the EPA on or about July 6, 2012. Furthermore, the EPA has failed to state any specific language that would rise to the level of “substantial difference” with respect to the label. Mere references are insufficient to meet said standard of proof of “substantial differences.”

Furthermore, Respondent denies that our website “substantially differs” from the label copy submitted to and accepted by the EPA, as the EPA has failed to state any specific language that would rise to the level of “substantial difference” with respect to the website. Mere references are insufficient to meet said standard of proof of “substantial differences.” Furthermore, Respondent denies that any of the marketing and advertising language that populates the website rise to the level of “substantial difference.”

Count 3 Goldshield 5 – Claims Differ Violation

Respondent denies Count 3 in its entirety.

Respondent denies that our GS5 label “substantially differs” from the label submitted to and accepted by the EPA. Furthermore, the EPA has failed to state any specific language that would rise to the level of “substantial difference” with respect to the label. Mere references are insufficient to meet said standard of proof of “substantial differences.”

Furthermore, Respondent denies that our website “substantially differs” from the label copy submitted to and accepted by the EPA as the EPA has failed to state any specific language that would rise to the level of “substantial difference” with respect to the website. Mere references are insufficient to meet said standard of proof of “substantial differences.” Furthermore, Respondent denies that any of the marketing and advertising language that populates the website rise to the level of “substantial difference.”

Count 4 Goldshield 85 – Unregistered Pesticide Violation

Respondent denies Count 4 in its entirety without prejudice.

Respondent denies it is selling an unregistered pesticide. Respondent refers to its label and website whereon and wherein no language or references rise to the level of an unregistered pesticide violation as a matter of fact.

In particular with respect to the EPA’s statements in Paragraph 71 thru 77, Respondent denies in absolute terms ALL set forth allegations and respectfully draws attention to the unmotivated “entrapment” the EPA chose to initiate to underpin its claims which clearly proves unwarranted pre-meditation.

In fact Respondent upon information and belief believes Ms. Meghan Dunn, either on her own or in concert with others conspired to conduct what in lay terms amounted to a covert operation on an unknowing, in training, 24 year old GS sales agent totally inexperienced in any such matters.

Furthermore, Ms. Meghan Dunn, *Environmental Scientist, Enforcement Officer Pesticides and Toxics Compliance*, as stated in Paragraph 71, initiated contact with a GS sales agent trainee with questionable, pre-meditated motivations of to date unknown origin.

Ms. Meghan Dunn correctly states that said GS trainee represented himself as a Business Development Manager of Respondent. However, Ms. Meghan Dunn fails to state the *when she initiated the initial phone call to Respondent she DID NOT identify herself in her capacity as an Environmental Scientist, Enforcement Officer Pesticides and Toxics Compliance Division of the EPA from Region 5, but instead, and intentionally so, identified herself as with a family-owned janitorial service company in Utica, NY who had heard about GS products and would like more information related thereto.*

As paragraphs 72 through 77 make clear, the ensuing conversation and email exchanges were all prompted by Ms. Meghan Dunn's probing and probing and uncustomary action in the industry for someone seeking the truth.h

GIVEN THE ABOVE, RESPONDENT REQUESTS THE SUBJECT COMPLAINT IN IT'S ENTIRETY BE DISMISSED. FURTHER:

- 1) THAT THE EPA BE REQUIRED TO NOT ONLY LIST THE WORDS, ETC. IT DEEMS MUST BE DELETED OR ADDED TO THE GS75 AND GS5 PRODUCT LABEL AND WEBSITE TO BE COMPLIANT, BUT THAT THE EPA ALSO BE REQUIRED TO STATE THE RULE/REGULATION BY SPECIFIC REFERENCE THAT SUPPORTS ITS DEMAND FOR MODIFICATION. OTHERWISE SUCH REQUEST COULD SIMPLY BE A SINGLE PERSON'S INTERPRETATION OF WHIM REQUEST FOR CHANGE. RESPONDENT WILL ABSOLUTELY MAKE SAID CHANGE/S IN ITS WHOLEHEARTED DESIRE TO ALWAYS BE IN COMPLIANCE WITH EPA STANDARDS.***
- 2) FURTHER THAT THE EPA BE REQUIRED TO DROP ALL ACTION WITH RESPECT TO GS85 AS EPA HAS NO JURISDICTION OVER A NON-EPA SUBMITTED PRODUCT.***

Count 5 Stop, Sale Use and Removal Order Violation

Respondent denies Count 5 in its entirety.

By example, Paragraph 87 refers to Respondent having made the following claim on its website in violation of the April 6, 2012 Order which constitutes an unlawful act.

Paragraph 87 states, quote: "In the International and Industrial (I&I) sector, Goldshield would have significant application in combating "sick building syndrome" – acute health symptoms caused by microorganisms such as viruses, mold, mildew and fungi."

The above quoted language does not appear on Respondent's current website as alleged in the Complaint as far as Respondent is concerned. Exhibit F in the Complaint submitted by the EPA in support of its Complaint claim appears silent with respect to this quoted statement allegedly in violation.

Proposed Civil Penalty

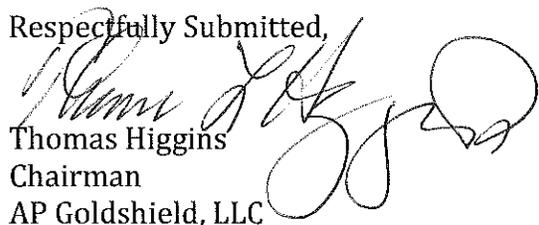
Respondent requests each and every penalty be voided on these bases:

- 1) See ALL CAPS bold italic paragraphs immediately above.
- 2) The assessed penalties are arbitrary having nothing to do with the magnitude of the infractions even if the infractions themselves were deemed true which Respondent denies out of hand with the factual support provided throughout.
- 3) With respect to Count 4, Respondent reserves its rights against the EPA, Ms. Meghan Dunn, any and all others involved in the entrapment and does so under conditions of all such others similarly situated.

Request for Hearing

Respondent hereby requests a formal hearing of the matter before an Administrative Law Judge.

Respectfully Submitted,


Thomas Higgins
Chairman
AP Goldshield, LLC

AP Goldshield, LLC
9570 Pan American Drive
El Paso, TX 79927