From: Lesher, Mark
To: Teter, Royan
Cc: Dudding, Chris
Subject: FW: Response to your Februry 22, 2013, e-mail to EPA
Date: Wednesday, March 13, 2013 9:50:49 AM
Attachments: ATT00001.txt

Royan,

See information from respondent (Mr. Stephen Smith, Agri-Gro Marketing, Inc., Doniphan, MO) below. Looks like a reasonable request. May I grant an extension to Fri. March 29, 2013, or Mon. April 1, 2013?

Mark

Mark K. Lesher
Environmental Scientist
Toxics and Pesticides Branch
Water, Welands, and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219
913-551-7054
lesher.mark@epa.gov

From: Stephen Smith [mailto:Stephen@agrigro.com]
Sent: Wednesday, March 13, 2013 9:17 AM
To: Lesher, Mark
Subject: RE: Response to your Februry 22, 2013, e-mail to EPA

Hello Mark,

If possible, I would like to request an extension to respond to your email. The original response date you set below was set for March 15th but if I could get a little more time to respond it would be most appreciated.

The reason for this request is my daughter (who also happens to work in our companies accounting department) was recently diagnosed with Anti NMDA Receptor Encephalitis. She spent 48 days straight in the hospital from January – February and was just recently released. She will have to spend the next few months staying in our home with my wife and I as she is still not well enough to live on her own and resume work. No excuses, but her illness and having to move back in with my wife and I has turned our world upside down. We are grateful she is recovering and thankful we can be there to help but the reality is that her illness has caused me to fall a little behind in my work including being able to timely address and respond to your letter of March 1.

Again, if you could please allow me an extra week or two to respond, I would be most grateful.

StephenEmailSig

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From: Lesher, Mark [mailto:Lesher.Mark@epa.gov]
Sent: Friday, March 01, 2013 4:41 PM
To: Stephen@agrigro.com
Cc: Lesher, Mark; Dudding, Chris; Teter, Royan
Subject: Response to your Februry 22, 2013, e-mail to EPA

Dear Mr. Smith:

On February 22, 2013, I received an email from you in response to letter of February 1, 2013, in which we had specified information to be supplied by Agri-Gro Marketing, Inc. (Agri-Gro) in order to address the violations identified in the Notice of Warning issued to Agri-Gro on November 15, 2012. In your email, you explain your company's position, provide various attachments (including labels for your products), and request for further compliance assistance. From our review of your email and attached documents, in addition to your company's websites, it appears that multiple violations remain which must be addressed in order for Agri-Gro to be in compliance with FIFRA.

From an additional review of your websites: http://www.agrigro.com and http://www.bountiful-harvest.com, it appears that multiple products continue to be marketed with pesticidal claims and/or include pesticidal active ingredients, as noted in the Notice of Warning. For example, the Ignites2 product webpage shows that the product is being marketed as a pesticide as that term is defined by the FIFRA statute, in that the website and the brochure linked therein make plant regulator claims including "contains … plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." You may find further examples of such claims listed in the Notice of Warning.

As stated in the Notice of Warning, FIFRA defines a pesticide as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant. Marketing a product as "plant stimulant" or "growth stimulant" or with claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates are indications that a product is intended as a plant regulator, and thus is regulated as a pesticide, as opposed to a general nutrient or fertilizer. Similarly, claims that a product increases resistance to disease or increases a plant's defense systems are indicators of a product's fungicidal intent. Unless exempt, products that are plant regulators or fungicides are subject to registration under FIFRA.

As we discussed in our telephone conversation on February 14, 2013, your Bio Turf Formula product may be exempt from the FIFRA registration requirements as a "vitamin hormone product" as referenced at the regulation at 40 C.F.R. § 152.6(f). That regulation states that certain products consisting of a mixture of plant hormones and nutrients are "vitamin hormone products" that are not considered to be plant regulators as defined under Section 2(v) of FIFRA, provided certain criteria are met, including that the product is not intended for use on food crop sites, and is labeled accordingly. Since the Bio Turf Formula product is not clearly identified on its label as not intended for use on food crop sites, it currently is not exempt from regulation under FIFRA as a vitamin hormone product.

As noted in our letter of February 1, 2013, and as further explained in our telephone conversation, the insertion of a disclaimer statement where a product is being marketed with pesticidal claims or which includes pesticidal active ingredients in its formula is insufficient to remove or exempt such a product from regulation under FIFRA. Regardless of a product's formula, the marketing of a product with pesticidal claims such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth stimulants not found in ordinary fertilizers," "increases root mass," and the other examples listed in the November 15, 2012, Notice of Warning, would subject a product to regulation as a pesticide under FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, for each of the products identified in the Notice of Warning, a signed statement explaining the actions that you have taken to ensure compliance with FIFRA. Such actions may include removal of the product as currently formulated from your catalog and advertising pending registration as a pesticide with the EPA, revision of your website and marketing materials for the product to ensure that pesticidal claims are removed, reformulation of the product to remove any ingredients intended as pesticidal, and/or, in the case of vitamin hormone products not intended for use on food crops, appropriate relabeling to comply with the exemption described at 40 C.F.R. § 152.6(f).

The sale, distribution, or offering for sale or distribution of unregistered pesticide products that are not otherwise exempt from FIFRA constitutes a violation of the statute. Failure to correct the identified violations of FIFRA may result in further enforcement including assessment of civil penalties up to $7,500 per violation.

Your prompt attention to this matter is appreciated. If you have further questions, or would like to set up another conference call next week to discuss (please provide a date, time and telephone number) please do not hesitate to contact me at lesher.mark@epa.gov or at 913-551-7054.

Mark K. Lesher
Environmental Scientist
Toxics and Pesticides Branch
Water, Welands, and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard

Lenexa, KS 66219
913-551-7054
lesher.mark@epa.gov

********** ATTACHMENT NOT DELIVERED **********

This Email message contained an attachment named
image001.jpg
which may be a computer program. This attached computer program could contain a computer virus which could cause harm to EPA's computers, network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced into the EPA network. EPA is deleting all computer program attachments sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

********** ATTACHMENT NOT DELIVERED **********