From: Dudding, Chris
To: Lesher, Mark
Subject: RE: Response to your March 1, 2013 letter
Date: Thursday, March 14, 2013 4:29:00 PM

I don't get the sense that he was awaiting on some sort of HQ input from how I'm reading it. Let's talk tomorrow.

Chris R. Dudding
Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219
913-551-7524
Facsimile 913-551-9524
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From: Lesher, Mark
Sent: Thursday, March 14, 2013 4:25 PM
To: Dudding, Chris
Subject: FW: Response to your March 1, 2013 letter

From: Stephen Smith [mailto:Stephen@agrigro.com]
Sent: Thursday, March 14, 2013 4:03 PM
To: Lesher, Mark
Subject: RE: Response to your March 1, 2013 letter

Dear Mr. Lesher,

Since I did not received a response from you requesting an extension to respond to your March 1, letter and having to attend the funeral of a close family friend tomorrow, I will address your letter below with my response highlighted in red for the sake of time. I apologize my response could not be more professional but given the time constraints to work with and the personal issues our family has had to contend with since my daughters illness, I wanted to make sure my reply reached you by the requested due date of tomorrow, March 15, 2013.

As you will see below, we are striving to be compliant and taking serious measures to address your concerns to keep us compliant and in good standing with the requirements of FIFRA. Upon your approval of the actions below, we will begin work immediately to correct and address the remaining concerns your letters have raised. We would ask that you allow us to complete these actions by no later than May, 1, 2013. Again, it is our full intention to have these actions completed and submitted to you for review much sooner and we will certainly strive to have these actions completed well before the May, 1, 2013 deadline.

The actions below will no doubt place us at a serious disadvantage in the market place compared to other companies selling competing/similar products in nature and could result in a significant negative financial impact on our business. Our products are not pesticidal in nature or composition, yet we are treated as though we are a pesticide and restricted from making the claims that "all" other sellers of macro and micro-nutrients are making to sell their products to the ag market here in the US and abroad. Our previous attempts to explain our products claims and mode of action as nutritional, not pesticidal, have been for the most part, overlooked and were never acknowledged or addressed in your letter of March 1. Therefore, we know of no other actions to take at this time other than the following which we have outlined below. Additionally, we have submitted our products, labels, supporting literature and websites to the EPA for review as to their status and are waiting on a ruling from them.

We trust these actions will meet FIFRA's expectations and await your response.

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 you are aware, since you first contacted our company in late 2012, we have made numerous changes to our company's website to address the points of concern you have raised involving the products we manufacture and the wording we use when promoting them to the general public. We have even gone as far as to add a disclaimer statement to ensure that anyone reading our website are clear on the products, their role in agronomy and the mode of action they involve. As has been stated in all of our previous responses, all of the products manufactured by Agri-Gro Marketing, Inc. are 100% free of any pesticidal active ingredients. The claims we make are based upon the nutritional response they provide to both the targeted plants and soil environment. While we have attempted to explain this by providing written explanations of our products mode of action, the ingredients used, pier reviewed research and universally accepted data, it has obviously fallen short of your expectations. Reading your response to the information we have provided, we can only assume that FIFRA's guidelines leave no room for differentiating a plant growth effect from a nutritional response verses a pesticidal response. Therefore until we can receive further clarification on this matter or obtain EPA exemption for our products, the only option we see at this time is to remove all of the questionable wording in their entirety from our website and any accompanying written literature published involving the products we manufacture.

With that being said, all wording listed on our website, regardless of the product in question, stating claims as follows: including "contains … plant stimulants," "increases root growth," and "establish[es] larger root systems with stronger stalks." Will be removed from our companies http://www.agrigro.com and http://www.bountiful-harvest.com websites as required by FIFRA. Furthermore, we will begin to take measures to reprint all supporting literature and remove such claims and wording from any printed material involving all products manufactured by Agri-Gro Marketing, Inc.

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. Agri-Gro Marketing, Inc. does not manufacture any plant regulators or fungicides as defined by FIFRA nor do any of our products contain pesticidal ingredients. Any wording that exist on our companies websites and written literature that represent our products as a "plant stimulant" or "growth stimulant" or claims to accelerate or retard the growth of particular parts of a plant (e.g., roots or stalks) or to impact germination rates, will be removed as required by 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. The Turf Formula product will not qualify as a vitamin hormone product as the product does not contain nor claim to contain on the label, any plant growth hormones or plant growth regulators. Turf Formula is a mixture of chelated micro-nutrients, Macro-nutrients, humic acids and myccorhizal fungi. As stated above, any pesticidal claims that exist on our company's website or printed material involving Turf Formula will be removed so that no confusion or misunderstandings exist involving the Turf Formula product, its intended use and proper application. All claims and instructions for use made on the company website, product label and written literature for the Turf Formula product are specific to the use on Turf Grass production only.

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. We understand the disclaimer in and of itself is insufficient to remove or exempt any of our companies products from regulation under FIFRA. However, in an effort to ensure the public consumer is clear in their understanding of our products and their intended use, we will keep the disclaimer in place as a safeguard for all who may view our website and research our products. Furthermore, any claims that could be considered "pesticidal in nature that exist on our website and company literature such as "contains natural rooting hormones," "minimizes disease and soil borne pathogens," "provides other growth "stimulants" not found in ordinary fertilizers," "increases root mass," etc. will be removed as required by FIFRA.

To address the violations identified in the Notice of Warning, please submit, by no later than March 15, 2013, <u>for each of the products identified in the Notice of Warning</u>, 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). Based upon the above intended actions and your approval of such, we will take the described actions to address the concerns your letters have raised. Since our products do not contain any pesticidal ingredients, we will not be reformulating any of our products in question. Our companies websites and marketing materials will be revised to remove all claims that could be considered pesticidal in nature as required in your letters by FIFRA.

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
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********** 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 **********