

Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 2, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Company, Inc. (collectively, "EBC"), both of St. Louis, Missouri. 68 FR 32771 (June 2, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1-12 of U.S. Patent No. 5,464,709 ("the '709 patent"). The complaint and notice of investigation named 26 respondents and were later amended to include an additional firm as a respondent. The investigation has been terminated as to claims 8-12 of the '709 patent. Several respondents have been terminated from the investigation for various reasons.

On October 1, 2004, the Commission issued notice in the original investigation that it had determined to terminate the investigation with a finding of no violation of section 337 on the basis that the asserted claims of the '709 patent were invalid for indefiniteness. EBC appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). On January 25, 2006, the Federal Circuit issued its decision in the appeal, reversing the Commission's final determination and remanding the investigation to the Commission. *Energizer Holdings, Inc. v. International Trade Commission*, 435 F.3d 1366 (Fed. Cir. 2006). The Federal Circuit issued its mandate on March 20, 2006. On April 14, 2006, the Commission issued an order directing all parties to the investigation to provide comments on how this investigation should proceed, including comments on whether and to what extent the investigation should be remanded to the ALJ.

Having considered the record in this investigation, including the comments received pursuant to the Commission's order of April 14, 2006, the Commission has determined to terminate this investigation with a finding of no violation of section 337. Specifically, the Commission has determined that the asserted claims are invalid for failure to meet the written description requirement and that, if valid, they are not infringed by respondents' products. Vice Chairman Aranoff and Commissioner Lane dissented from the Commission's final determination.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.41-51 of the Commission's Rules of Practice and Procedure (19 CFR 210.41-51).

Issued: February 23, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

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Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *U.S. v. Martin Ain*, D.J. Ref. 90-5-1-1-07662.

The settlement may be examined at the Office of the United States Attorney, Eastern District of New York, 610 Federal Plaza, Central Islip, New York 11722, and at the Region II Office of the U.S. Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007-1866. During the public comment period, the settlement may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the settlement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$2.00 (25 cents per page production cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order Pursuant to Safe Drinking Water Act and Resource Recovery and Conservation Act

Notice is hereby given that on February 12, 2007, a proposed settlement in *United States v. Martin Ain*, Civil No. 04-2912, has been lodged with the United States District Court for the Eastern District of New York.

In this action, the United States sued Ain for violations of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300h, *et seq.*, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. 6901 *et seq.*, in connection with the injection of fluids into wells on a property located at 257/259 Main Street, Town of Hempstead, New York, the failure to determine if contaminated soils and sludges were hazardous wastes and the failure to respond adequately to U.S. Environmental Protection Agency information requests. Ain has come into compliance with SDWA and RCRA. The settlement requires Ain to pay a civil penalty of \$80,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the settlement. Comments should be addressed to the Assistant Attorney General, Environmental and

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 20, 2007, a Consent Decree in *United States of America v. FMC Corporation*, Civil Action No. 05-5663, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree with FMC Corporation ("FMC") resolves the claims of the United States on behalf of EPA against FMC for past response costs under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), in connection with the East Tenth Street Superfund Site ("Site") in Marcus Hook, Delaware County, Pennsylvania.