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Enforcement Action Summary FY 2008 - April 2008

## Enforcement Action Summary FY 2008 - April 2008

- [April 7, 2008](#)

### Week of April 7, 2008

#### Behnke Lubricants, Inc. FIFRA Hearing

On May 7, 2007, the United States Environmental Protection Agency (U.S. EPA) filed a Complaint against Behnke Lubricants, Inc. (Behnke) located in Menomonee Falls, Wisconsin. The Complaint alleged Behnke had sold or distributed five different lubricants, which were unregistered pesticides, on at least eleven different occasions in violation of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Behnke's labeling, advertising and marketing claims included public health pesticide claims.

On March 31, 2008, after extensive pretrial motions and briefings, the hearing on this matter commenced before Honorable Judge Barbara Gunning in Waukesha County, Wisconsin. The U.S. EPA put on its case in chief on March 31, April 1 and the morning of April 2, 2008.

On the morning of April 2, 2008, Behnke began to present its case in chief. Their basic defense was that the lubricants fell under the exemption of "on or in processed foods" set forth in 40 CFR 152.5(d) and therefore were not subject to U.S. EPA's jurisdiction under FIFRA and were strictly regulated under the Food and Drug Administration (FDA).

The case concluded on the afternoon of April 3, 2008 with closing arguments.

The judge will issue a post hearing briefing schedule once the transcripts are

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ready, which should take about 4 weeks. The parties will be required to brief the case and the Judge will then issue a written opinion. It is likely that such an opinion will not be issued until October or November of 2008.

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