

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF)
)
Wellmark International)
1501 E. Woodfield Road, Suite 200)
West Schaumburg, Illinois 60173)
)
)
)
Respondent)

UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY - *RE*
REGION 7
2012 SEP 27 AM/PM 11:46

Docket No. FIFRA-07-2012-0036

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Wellmark International (Respondent), have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Wellmark International, a pesticide registrant located at 1501 East Woodfield Road, Suite 200 West Schaumburg, Illinois 60173. The Respondent is, and was at all times referred to in this CAFO, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and a corporation qualified to do business in the state of Illinois.

Section III

Statutory and Regulatory Background

5. Section 12(a)(2)(L) of FIFRA states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA. 7 U.S.C. § 136j(a)(2)(L).

6. Section 7(a) of FIFRA states that no person shall produce any pesticide subject to this subchapter or active ingredient used in producing a pesticide subject to this subchapter in any State unless the establishment in which it is produced is registered with the Administrator. 7 U.S.C. § 136e(a).

7. Section 2(b) of FIFRA states that the term "Administrator" means the Administrator of the Environmental Protection Agency. 7 U.S.C. § 136(b).

8. Section 2(w) of FIFRA states that the term "producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide; and that the term "produce" means to manufacture, prepare, compound, propagate or process any pesticide or device or active ingredient used in producing a pesticide. 7 U.S.C. § 136(w).

9. Section 2(dd) of FIFRA states that the term "establishment" means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd).

10. Pesticide registrants may distribute or sell a registered product under another person's name and address instead of (or in addition to) their own. Such distribution and sale is termed "supplemental distribution." 40 C.F.R. § 152.132. The distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

Section IV

VIOLATIONS

11. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

12. Wellmark International is the registrant for "RF9904 Granules, containing S-Methoprene," EPA Registration Number (EPA Reg. No.) 2724-494.

13. Xtra Factors is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and a corporation qualified to do business in the state of Kansas.

14. On August 4, 2009, EPA was informed of Wellmark International's intent to supplementally distribute its registered product, RF9904 Granules, containing S-Methoprene, EPA Registration Number (EPA Reg. No.) 2724-494, through Xtra Factors using the product name "Cow Base Mineral with Altosid" and the EPA Reg. No. 2724-494-40770.

15. On January 9, 2012, a representative of the Kansas Department of Agriculture conducted an inspection at the facility of Xtra Factors, located in Pratt, Kansas.

16. The inspection showed that at the Pratt, Kansas facility, Xtra Factors was then currently in the business of manufacturing and compounding the pesticide product bearing the label "Cow Base Mineral with Altosid" and EPA Reg. No. 2724-494-40770.

17. The EPA establishment number for its Pratt, Kansas facility, 40770-KS-001, was inactivated in 1992 by Xtra Factors and was inactive at the time of the inspection.

18. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of its supplemental distributor, Respondent violated Section 12(a)(2)(L) of FIFRA by failing to meet the requirement of Section 7(a) of FIFRA by producing a registered pesticide at an establishment that was not registered with the Administrator.

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement and Final Order addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.
7. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
9. Respondent certifies by signing this Consent Agreement and Final Order that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Two Thousand Eight Hundred and Sixty Dollars (\$2,860) as set forth in paragraph 1 of the Final Order.

11. The effect of settlement described in paragraph 6, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9, above.

12. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

13. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty for the violations cited herein, in the amount of Two Thousand Eight Hundred and Sixty Dollars (\$2,860) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier's or certified check which shall reference Docket Number FIFRA-07-2012-0036, and made payable to "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

3. A copy of the check shall simultaneously be sent to the following:

Robert W. Richards
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

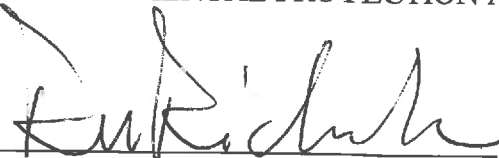
NOTE New EPA Region 7 Office Address Effective October 15, 2012:
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.


5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By 
Robert W. Richards
Assistant Regional Counsel
Office of Regional Counsel

Date 9/25/12

By 
Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date 9-26-12

RESPONDENT:
Wellmark International
West Schaumburg, Illinois

By *TJ Gussak*

Title *COO*

Date *9/17/12*

IT IS SO ORDERED. This Order shall become effective immediately.

By Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date Sept. 27, 2012

IN THE MATTER OF Wellmark International, Respondent
Docket No. FIFRA-07-2012-0036

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

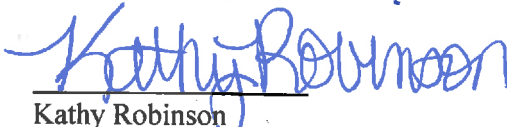
Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Certified Mail to:

Steven R. Spaulding
Director, Regulatory Affairs
Wellmark International
1501 East Woodfield Road, Suite 200
West Schaumburg, IL 60173

Dated: 9/27/12


Kathy Robinson
Hearing Clerk, Region 7