

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA 07-2008-0018
)	
Cogdill Farm Supply, Inc.)	CONSENT AGREEMENT
108 N. 6 th Street)	AND
Dunlap, Iowa 51529)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Cogdill Farm Supply, Inc. (Respondent) have agreed to a settlement of this action before filing of 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).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

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 Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

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

4. The Respondent is Cogdill Farm Supply, Inc., a pesticide dealer, located at 108 N. 6th Street, Dunlap, Iowa 51529. The Respondent is and was at all times referred to in this Complaint, 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 Iowa.

Violations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

8. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

10. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling does not contain directions for use which are necessary and if complied with are adequate to protect health and the environment.

11. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which is necessary and if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.

12. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person to distribute or sell, or make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA.

13. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. §§ 136a(d)(1)(C)(i) and (ii), state in pertinent part that a restricted use pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

14. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), defines “certified applicator” as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, as authorized to use or supervise the use of any pesticide which is classified for restricted use.

15. Section 12(a)(2)(O) of FIFRA, 7 U.S.C. § 136j(a)(2)(O), states that it shall be unlawful for any person to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of the Act.

16. Section 2(w) of FIFRA, 7 U.S.C. § 136w, states that the term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

17. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to, and approved by, the Agency before the product as modified may be distributed or sold.

18. AZTEC 2.1% is a restricted use pesticide registered to Bayer CropSciences LP, Research Triangle Park, North Carolina, under EPA Registration Number 264-813 (EPA Reg. No. 264-813). The label of AZTEC 2.1% states in pertinent part, “RESTRICTED USE PESTICIDE Due to Toxicity to Aquatic Invertebrates. For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the certified applicator’s certification.”

19. GRAZON P+D is a restricted use pesticide registered to Dow AgroSciences LLC, Indianapolis, Indiana, under EPA Reg. No. 62719-182. The label of GRAZON P+D states in pertinent part, “RESTRICTED USE PESTICIDE. May Injure (Phytotoxic) Susceptible, Non-Target Plants. For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator’s certification. . .”

20. CALLISTO is a pesticide registered to Syngenta Crop Protection, Inc., Greensboro, North Carolina, under EPA Reg. No. 100-1131.

21. On December 6, 2005 and December 9, 2005, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted a routine pesticide dealer inspection at Respondent’s branch facility in Panama, Iowa, for the purpose of determining Respondent’s compliance with the FIFRA, including review of restricted use pesticide (RUP) sales and application records.

Count 1

22. The facts stated in paragraphs 6 through 21 are realleged and incorporated as if fully stated herein.

23. On December 6, 2005, during the inspection referenced in paragraph 21, a

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representative of IDALS collected a copy of invoice numbers 90330, 90463, and 90471 from Respondent. The invoices document Respondent's distribution and sales of 300 pounds, 900 pounds, and 600 pounds of the restricted use pesticide AZTEC 2.1%, EPA Reg. No. 264-813, to Mr. Joe Mages on April 20, 2005, April 30, 2005, and April 30 or May 1, 2005, respectively.

24. On April 6, 2006, the IDALS representative obtained from Mr. Joe Mages a statement in which Mr. Mages acknowledged purchasing and applying the restricted use pesticide, AZTEC 2.1%, without supervision by a certified applicator.

25. At the time of the sale referred to in paragraph 23, Mr. Joe Mages was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

26. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

Count 2

27. The facts stated in paragraphs 6 through 21 are realleged and incorporated as if fully stated herein.

28. On December 6, 2005, during the inspection referenced in paragraph 21, a representative of IDALS collected a copy of invoice numbers 90695 and 91040 from Respondent. The invoices document Respondent's distribution and sale of 5 gallons and 2 ½ gallons of the restricted use pesticide GRAZON P+D, EPA Reg. No. 62719-182, to Mr. Joe Mages on May 23, 2005 and May 28, 2005, respectively.

29. On April 6, 2006, the IDALS representative obtained from Mr. Joe Mages a statement in which Mr. Mages acknowledged purchasing and applying the restricted use pesticide, GRAZON P+D, without supervision by a certified applicator.

30. At the time of the sale referred to in paragraph 29, Mr. Joe Mages was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

31. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

Count 3

32. The facts stated in paragraphs 6 through 21 are realleged and incorporated as if fully stated herein.

33. On December 6, 2005, during the inspection referenced in paragraph 21, a representative of IDALS collected a copy of invoice number 92050 from Respondent. The invoice documents Respondent's distribution and sale of 10 ounces of the pesticide CALLISTO, EPA Reg. No. 100-1131, packaged in a 1 gallon container to Mr. Ralph Doran, Harlan, Iowa, on May 28, 2005.

34. On April 6, 2006, the IDALS representative obtained from Mr. Ralph Doran a statement in which Mr. Doran said that he received 10 ounces of the pesticide CALLISTO, EPA Reg. No. 100-1131, in a 1 gallon container.

35. CALLISTO is a pesticide registered to Syngenta Crop Protection, Inc., Greensboro, North Carolina, under EPA Reg. No. 100-1131.

36. The repackaged pesticide, CALLISTO, described in paragraphs 35 through 37, was not encompassed within the terms of the product registration under EPA Registration No. 100-1131 and required separate product registration under Section 3 of FIFRA.

37. The pesticide described in paragraphs 35 through 37 was misbranded in that its labeling bears a statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading.

38. Respondent violated Sections 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and (E), by distribution or sale of a misbranded and unregistered pesticide whose contents had been manipulated and did not meet the requirements of registration under Section 3 of FIFRA.

Count 4

39. The facts stated in paragraphs 6 through 21 are realleged and incorporated as if fully stated herein.

40. On December 6, 2005, during the inspection referenced in paragraph 21, a representative of IDALS collected a copy of invoice number 90578 from Respondent. The invoice documents Respondent's distribution and sale of ½ gallon of the restricted use pesticide GRAZON P+D, EPA Reg. No. 62719-182, packaged in a 2 ½ gallon container to Mr. Delbert Rueschenberg, Harlan, Iowa, on May 7, 2005. Mr. Ed Rueschenberg, Mr. Delbert Rueschenberg's son, who is a certified applicator, picked up the GRAZON P+D at Respondent's place of business and applied it to his father's pasture.

41. On April 5, 2006, the IDALS representative obtained from Mr. Ed Rueschenberg a statement in which Mr. Rueschenberg said that he received from Respondent the ½ gallon of the restricted use pesticide GRAZON P+D, EPA Reg. No. 62719-182, in a 2 ½ gallon container with no label, but only the following written on it "Grazon P+D 1/oz gal".

42. GRAZON P+D is a restricted use pesticide registered to Dow AgroSciences LLC, Indianapolis, Indiana, under EPA Reg. No. 62719-182.

43. The repackaged pesticide, GRAZON P+D, described in paragraphs 43 through 45, was not encompassed within the terms of the product registration under EPA Registration No. 62719-182 and required separate product registration under Section 3 of FIFRA.

44. The pesticide described in paragraphs 43 through 45 was misbranded in that it was packaged in a container that failed to bear the EPA-accepted label for GRAZON P+D.

45. Respondent violated Sections 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and (E), by distribution or sale of a misbranded and unregistered pesticide whose contents had been manipulated and did not meet the requirements of registration under Section 3 of FIFRA.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the 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 certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. 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.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty described in Paragraph 1 of the Final Order below, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Interest shall

accrue thereon at the rate determined by the Secretary of the Treasury (currently five percent (5%) per annum for the period January 1, 2008 through December 31, 2008) on the unpaid balance until such civil penalty and accrued interest are both paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

10. Respondent shall pay a civil penalty, for the violations cited herein, in the amount of Nineteen Thousand Two Hundred Dollars (\$19,200.00) plus interest. The penalty will be paid in seven payments. The initial payment of Two Thousand Seven Hundred and Forty-two Dollars and Eighty-six cents (\$2,742.86) must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). Each succeeding payment of Two Thousand Nine Hundred and Fifty-four Dollars and Ninety Cents (\$2,954.90) will be due within 180 days after the previous payment. The payment shall be identified as **In the Matter of Cogdill Farm Supply, Inc.**

11. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Cogdill Farm Supply, Inc.
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12. The payment shall reference Docket Number, FIFRA 07-2008-0018 and In the Matter of Cogdill Farm Supply, Inc. Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

13. 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.

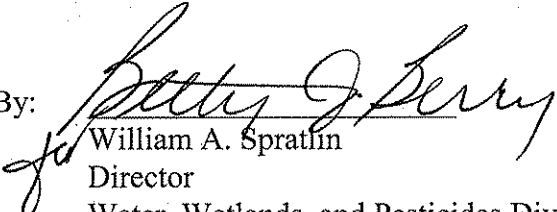
14. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

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

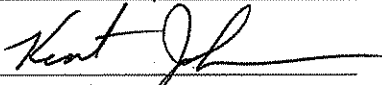
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COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 
William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date: 05/12/08

By: 
Kent Johnson
Attorney
Office of Regional Counsel

Date: 5/9/08

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RESPONDENT:

COGDILL FARM SUPPLY, INC.

By: Sam Cogdill

Title: Pres

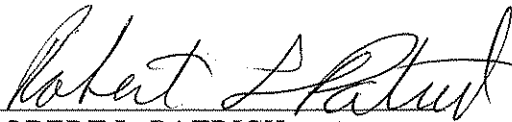
Date: 5/2/08

Sam Cogdill

Phone 712 643 5360

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The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: May 14, 2008

IN THE MATTER OF Cogdill Farm Supply, Inc., Respondent
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CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Sam Cogdill
Cogdill Farm Supply, Inc
108 N. 6th Street
Dunlap, Iowa 51529

Dated: 5/14/08


Kathy Robinson
Hearing Clerk, Region 7