

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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U.S. ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	U.S. EPA Docket Number
)	FIFRA 03-2009-0015
Kent Co-Operative Inc.)	
11999 Augustine Herman Highway)	FINAL ORDER
Kennedyville, MD 21645)	
)	
RESPONDENT)	
)	Proceeding under Section 14(a)
)	of the
11999 Augustine Herman Highway)	Federal Insecticide, Fungicide and
Kennedyville, MD 21645)	Rodenticide Act, 7 U.S.C. § 136l(a)
)	
FACILITY)	

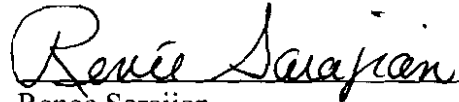
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), U.S. Environmental Protection Agency - Region III, and Kent Co-operative Inc. ("Respondent"), have executed a document entitled "Consent Agreement". I hereby ratify the Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing "Consent Agreement" are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO the Consolidated Rules of Practice and having determined that the civil penalty agreed to by the parties in this proceeding is based on consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that Respondent pay a civil penalty of ten thousand and four hundred dollars (\$10,400.00) and to comply with the terms and conditions of the Consent Agreement.

This **FINAL ORDER** shall become effective upon filing with the Regional Hearing Clerk.

Date: 2/11/09


Renee Sarajian
Regional Judicial Officer

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REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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IN THE MATTER OF:)	U.S. EPA Docket Number
)	FIFRA 03-2009-0015
Kent Co-Operative Inc.)	CONSENT AGREEMENT
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Kennedyville, MD 21645)	
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RESPONDENT)	Proceeding under Section 14(a)
)	of the
11999 Augustine Herman Highway)	Federal Insecticide, Fungicide and
Kennedyville MD 21645)	Rodenticide Act, 7 U.S.C. § 136l(a)
)	
FACILITY)	

CONSENT AGREEMENT

This Consent Agreement, with the attached Final Order (collectively the "CA/FO"), is entered into by the Director, Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), United States Environmental Protection Agency, Region III ("EPA" or "Complainant") and Kent Co-operative Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), and 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*, 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.13(b) and 18(b)(2) and (3).

I. PRELIMINARY STATEMENT

1. The violations cited herein pertain to the Respondent's alleged failure to comply with FIFRA and regulations promulgated thereunder in connection with the selling and/or distributing of a pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

II. JURISDICTION

2. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the *Consolidated Rules of Practice*, 40 C.F.R. §§22.1(a)(5) and 22.4.
3. For the purposes of this proceeding only, the Respondent admits the jurisdictional allegations set forth in this Consent Agreement.

III. TERMS OF THE SETTLEMENT

4. Respondent neither admits nor denies the factual allegations and conclusions of law contained in this Consent Agreement, except as provided in Paragraph 3 above.
5. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations in this Consent Agreement and to appeal the Final Order.
6. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.
7. This CA/FO resolves only EPA's civil claims for penalties for the specific violations alleged in this Consent Agreement. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c).
8. Respondent certifies that, with respect to the violations alleged in the Findings of Facts and Conclusions of Law below, it is currently in full compliance with the provisions of FIFRA referenced herein.
9. Complainant reserves any rights and remedies available to it to enforce the provisions of this CA/FO under FIFRA and regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, following the entry of this CA/FO.

- 10. No portion of any civil penalty paid by Respondent pursuant to this CA/FO shall be claimed by Respondent as a deduction for civil taxation purposes.
- 11. Nothing in this CA/FO shall alter or otherwise affect Respondent’s obligation to comply with all applicable federal, state, and local statutes and regulations.
- 12. Each party shall bear its own costs and attorneys fees in connection with this proceeding.

IV. EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, EPA alleges the Findings of Fact and Conclusions of Law set forth immediately below.
- 14. Respondent is, and was at all times relevant to this CA/FO, a “person” within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s)
- 15. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides that the term “pesticide” means, in part, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
- 16. Pursuant to 40 C.F.R. Section 152.3 the term “pesticide” means, in part, 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 desiccant.”
- 17. 40 C.F.R. § 152.15 provides, in pertinent part, that:

A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance . . . can or should be used as a pesticide; or

** * **

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

- 18. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term to “distribute or sell” means, with exceptions not relevant to these proceedings, “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.”

19. Pursuant to 40 C.F.R. § 167.3, the term “produce” means “to manufacture, prepare, propagate, compound, or process any pesticide ... or to package, repack, label, relabel, or otherwise change the container of any pesticide”
20. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, *inter alia*, with exceptions not relevant to this CA/FO, that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
21. On June 5, 2006, pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, a duly authorized inspector from the Maryland Department of Agriculture (“MDA”) conducted an inspection of Respondent’s facility, the Kent Co-Operative Inc. facility (the “Facility”) located at 12099 Augustine Herman Highway in Kennedyville, Maryland. EPA initiated an investigation of the Facility as a result of the MDA inspection.
22. “Roundup Original Max” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, manufactured and/or produced by Monsanto Inc., and registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
23. At some time prior to July 2, 2005 Respondent transferred “Roundup Original Max” from its original bulk container to a smaller container for sale and/or distribution. Such activity constituted “production” of a new pesticide that was not registered under FIFRA § 3.
24. On July 2, 2005 Respondent sold and/or distributed to one of its customers the repackaged “Roundup Original Max” in the container referenced above.
25. At some time prior to June 5, 2006 Respondent again transferred “Roundup Original Max” from its original bulk container to a smaller container for sale and/or distribution. Such activity constituted “production” of a new pesticide that was not registered under FIFRA § 3.
26. On June 5, 2006 Respondent sold and/or distributed to one of its customers the repackaged “Roundup Original Max” in the container referenced in paragraph 25.
27. Respondent’s sale and/or distribution of an unregistered pesticide on two (2) separate occasions, July 2, 2005 and June 5, 2006, represent two violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

V. PENALTY

28. Respondent agrees to pay a civil penalty in the amount of ten thousand and four hundred dollars (\$10,400.00) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described below, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), and the criteria set forth at EPA's FIFRA Enforcement Response Policy (July 1990).
29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, Complainant will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall

accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

30. Having determined that this Consent Agreement is in accordance with law and that the settlement penalty amount was determined after consideration of the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the parties hereby agree and acknowledge that payment of the civil penalty as set forth above shall be in full and final satisfaction of all claims for civil penalties which Complainant may have under Section 12(a)(1)(A), of FIFRA, 7 U.S.C. §136j(a)(1)(A) for the violations alleged herein.

31. Respondent shall remit the full penalty, and/or any interest, administrative fees and late payment penalties, in accordance with Paragraphs 28 and 29 above via one of the following methods:

a. Via U.S. Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

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

b. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The U.S. Bank customer service contact for both regular mail and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.

c. Via electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- d. Via automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), to the following account:

PNC Bank
ABA No. 05136706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW
Washington, D.C. 20074.

The PNC Bank customer service contact, Jesse White, may be reached at 301-887-6548.

- e. Via on-line payment (from bank account, credit card, debit card), access "www.pay.gov" and enter "sfo 1.1" in the search field. Open the form and complete the required fields.
- 32. All payments by the Respondent shall include the Respondent's full name and address and the EPA Docket Number of this Consent Agreement (FIFRA 03-2009-0015).
 - 33. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Rodney Travis Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103

VI. FULL AND FINAL SATISFACTION

34. Payment of the penalty specified in this Consent Agreement and compliance with the terms and conditions of this Consent Agreement shall constitute full and final satisfaction of Complainant's claims for civil penalties for the specific violations of FIFRA alleged in this Consent Agreement.

VII. PARTIES BOUND

35. This CA/FO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. By his/her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms and conditions of this CA/FO.

VIII. EFFECTIVE DATE

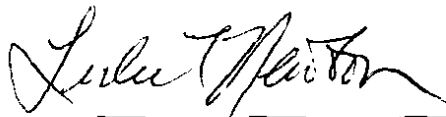
36. The effective date of this CA/FO is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk.

IX. ENTIRE AGREEMENT

37. This CA/FO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO.


For Respondent:

Date: 12/22/08

By: 
Kent Co-operative Inc.
Leslie T. Newton, Treasurer

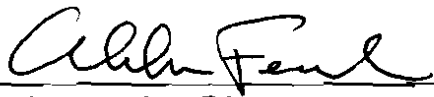
For Complainant United States Environmental Protection Agency, Region III:

1/6/09
Date

By: 
Rodney Travis Carter
Senior Assistant Regional Counsel
U.S. EPA Region III

After reviewing the Findings of Fact and Conclusions of Law within the Consent Agreement and other pertinent matters, the Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), EPA Region III, recommends that the Regional Judicial Officer or the Regional Administrator issue the Final Order attached hereto.

1/21/09
Date

By: 
Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA Region III

CERTIFICATE OF SERVICE

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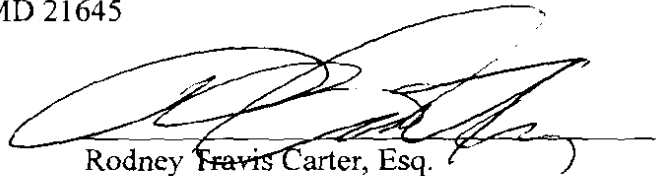
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I certify that on the date noted below, I caused, by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, **In the Matter of: Kent Co-Operative Inc. Docket Number FIFRA 03-2009-0015**, to be sent to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

James E. Ryan Jr. Esq.
Troutman Sanders LLP
Troutman Sanders Building
1001 Haxall Point
Richmond Virginia 21239

John Krastel
Kent Co-Operative Inc.
11999 Augustine Herman Highway
Kennedyville, MD 21645

Dated: 2/15/09



Rodney Travis Carter, Esq.
Senior Assistant Regional Counsel
Office of Regional Counsel
EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029