

Original



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 1, 2005

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 9028 0881

Jabril Muhammed
M3 Products, Inc.
529 West Taft Drive
South Holland, Illinois 60473

M3 Products, Inc., Docket No.

~~FIFRA-05-~~ 2005-0020 *[Signature]*

Dear Mr. Muhammed:

I have enclosed a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on March 1, 2005, with the Regional Hearing Clerk.

The civil penalty in the amount of \$300 is to be paid in the manner prescribed in paragraphs 29 and 30. Please be certain that the number BD054505021 and the docket number are written on both the transmittal letter and on the check. Payment is due by March 31, 2005 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

R. Terence Bonace

R. Terence Bonace, Life Scientist
Pesticides and Toxics Enforcement Section

Enclosures

cc: Regina Kossek, Regional Judicial Officer/C-14J (w/Encl.)
Susan Tennenbaum, ORC/C-14J (w/Encl.)
Ray Marasigan, Finance/MF-10J (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**M3 Products Inc.
South Holland, Illinois,**

Respondent.

) **Docket No.** ~~FIFRA-05-~~ 2005-0020
)
) **Proceeding to Assess a Civil Penalty**
) **under Section 14(a) of the Federal**
) **Insecticide, Fungicide, and Rodenticide**
) **Act, 7 U.S.C. § 136l(a)**
)

Consent Agreement and Final Order

1. Complainant, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

2. On September 8, 2004, U.S. EPA issued a Notice of Intent to file an administrative complaint against M3 Products Inc. (M3 Products or Respondent), for violations of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Part 167, Subpart E, in connection with its failure to submit the Annual Pesticide Production Report for calendar year 2003 on or before March 1, 2004.

3. The parties agreed to settle M3 Products' liability in this matter prior to U.S. EPA filing a complaint.

4. This consent agreement and final order (CAFO) is being filed in lieu of a complaint; therefore, Respondent waives its right to file an answer and request a hearing under Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3) and 40 C.F.R. § 22.15.

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Jurisdiction

5. Under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20(a), no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator.

6. Under Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, any producer operating an establishment registered with U.S. EPA under Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. Part 167 shall inform the Administrator within 30 days after it is registered, and annually thereafter, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides which the producer is currently producing, which the producer has produced in the past year, and which the producer has sold or distributed during the past year.

7. Under 40 C.F.R. § 167.85(c), the report required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 (the "Annual Pesticide Production Report") must be made on forms supplied by U.S. EPA. It is the ultimate responsibility of companies to obtain, complete, and submit the forms each year. (U.S. EPA's forms are known as the "Pesticides Report for Pesticide-Producing Establishments" form, or EPA Form 3540-16.)

8. Under 40 C.F.R. § 167.85(d), the producer must submit the Annual Pesticide Production Report for the preceding year to U.S. EPA on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

9. The Administrator of U.S. EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 to March 15, 2004 and may assess a

civil penalty of \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

Facts

10. Respondent is M3 Products Inc., which is and was at all times relevant to this Complaint a corporation incorporated under the laws of Illinois, located in South Holland, Illinois.

11. At all times relevant to this Complaint, Respondent has been a “producer” as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.

12. At all times relevant to this Complaint, Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

13. At all times relevant to this Complaint, Respondent's place of business, located at 529 West Taft Drive, South Holland, Illinois, has been an “establishment” as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

14. In accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, Respondent registered its establishment, located at 529 West Taft Drive, South Holland, Illinois, on or about November 7, 2001.

15. U.S. EPA subsequently assigned EPA Establishment Number 74475-IL-001 to this establishment.

16. During calendar year 2003, Respondent's establishment, located at 529 West Taft Drive, South Holland, Illinois, was registered with U.S. EPA under Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. Part 167.

17. Respondent's Annual Pesticide Production Report for 2003 was due on or before March 1, 2004.

18. On November 29, 2004, Respondent submitted to U.S. EPA the Annual Pesticide Production Report for calendar year 2003 for its establishment located at 529 West Taft Drive, South Holland, Illinois.

19. On September 8, 2004, U.S. EPA mailed a Pre-filing Notice letter to Respondent via Certified Mail, Return Receipt Requested, informing it that U.S. EPA intended to file an administrative complaint against Respondent in this matter. Respondent received this letter on or about September 11, 2004.

20. Respondent's failure to submit timely to U.S. EPA the Annual Pesticide Production Report for 2003 violates Section 7(c)(1) of FIFRA, 7 U.S.C. §136e(c)(1).

Stipulations

21. Respondent admits the jurisdictional allegations in paragraphs 1 through 20, above, and neither admits nor denies the factual allegations in paragraphs 1 through 20, above.

22. Respondent waives its right to appeal under Section 16(b) of FIFRA, 7 U.S.C. § 136n(b).

23. Respondent certifies that it is complying fully with Section 12(a)(2)(B)(ii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(ii).

24. The parties consent to the terms of this CAFO.

25. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

26. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), U.S. EPA calculated an initial gravity-based proposed penalty of \$3,300 by applying the factors enumerated in Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to the violations alleged in this Complaint. The reasoning for the assessment is explained in detail in the "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)," July 2, 1990.

27. In consideration of Respondent's good faith and cooperation in correcting the alleged violation and Respondent's inability to pay the full penalty, as documented in Respondent's financial records, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$330.

28. Respondent must pay the \$330 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

29. Respondent must send the check to:

U.S. EPA, Region 5
P.O. Box 70753
Chicago, Illinois 60673

30. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Terence Bonace (DT-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Susan Tennenbaum (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not timely pay the civil penalty, U.S. EPA may refer the matter to the Attorney General, who will recover such amount by action in the appropriate United States district court, under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

33. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

General Provisions

34. This CAFO settles U.S. EPA's claims for civil penalties for the violations described above.

35. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with FIFRA and other applicable laws and regulations.

36. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws, and regulations.

37. The terms of this CAFO bind M3 Products and its successors, and assigns.

38. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of: M3 Products Inc.

Docket No.

~~FIFRA-05-~~ 2005 - 0020 M3 Products Inc., Respondent

Date: 2/7/2005

By: Jabril R Muhammad
Jabril Muhammad, President
M3 Products Inc.

**United States Environmental Protection Agency,
Complainant**

Date: 2/18/05

By: Anthony J. Restaino
Anthony Restaino, Acting Chief
Pesticides and Toxics Branch
Waste, Pesticides, and Toxics Division

Date: 2/23/05

By: Margaret Guerriero
Margaret Guerriero, Director
Waste, Pesticides, and Toxics Division

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 2/25/05

Bharat Mathur
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency,
Region 5

CERTIFICATE OF SERVICE

I hereby certify that one original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving M3 Products, Inc., South Holland, Illinois was filed on March 1, 2005, with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, Chicago, Illinois, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 9028 0881, the second original signed copy of the Consent Agreement and Final Order to:

Jabril Muhammed
M3 Products, Inc.
529 West Taft Drive
South Holland, IL 60473

and forwarded copies (intra-Agency) to:

Regina Kossek, Regional Judicial Officer (C-14J)
Susan Tennenbaum, ORC (C-14J)
Ray Marasigan, Finance (MF-10J)

Marlene Bronson 3/1/05
Marlene Bronson (DT-8J)
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. RA-95- 2005-0020 *JBW*

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