

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 07-2008-0002
)	
Dallas County Farmers Exchange No. 177)	
d/b/a MFA Farm and Home)	CONSENT AGREEMENT
300 Eagle Ridge)	AND
Fair Grove, MO 65648)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Dallas County Farmers Exchange No 177 d/b/a MFA Farm and Home (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 Dallas County Farmers Exchange No. 177 d/b/a MFA Farm and Home, a pesticide dealer, located at 300 Eagle Ridge, Fair Grove, Missouri. 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 Missouri.

Violations

General Allegations

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) provides that it is unlawful for any person in any state to distribute or sell to any person any pesticide whose registration has been cancelled or suspended.

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 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 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(2)(K), states it shall be unlawful for any person to violate any cancellation order issued under this Act.

11. Respondent sold or distributed Fertilome Triple-Action Insecticide-Miticide-Fungicide, a pesticide registered under EPA Registration Number (Reg. No.) 7401-67-10159. Records documenting sale or distribution of this product were collected from Respondent.

12. On or about December 13, 2005, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at your facility located at 300 Eagle Ridge, Fair Grove, Missouri, for the purpose of determining Respondent's compliance with the requirements of FIFRA. At the time of the inspection, Respondent was holding for sale or distribution 9 16-ounce containers of the pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, EPA

Reg. No. 7401-67-10159, which were packaged, labeled, and released for shipment.

13. The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, EPA Registration No. 7401-67-10159, was cancelled at the request of the registrant and notice was published in the Federal Register on December 9, 2002, (Volume 67, Number 236). The Order provides that distribution or retail sale of existing stocks of this pesticide shall be unlawful effective December 31, 2002.

14. The term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

Count 1

15. The facts stated in paragraphs 6 through 14 are realleged and incorporated as if fully stated herein.

16. On or about December 13, 2005, the MDA representative collected a computer inventory maintenance documenting the sale of 1 16-ounce unit of the pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, to Mary Stevens on June 7, 2004.

17. The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, EPA Registration No. 7401-67-10159, was cancelled at the request of the registrant and notice was published in the Federal Register on December 9, 2002, (Volume 67, Number 236). The Order provides that distribution or retail sale of existing stocks of this pesticide shall be unlawful effective December 31, 2002.

18. Respondent violated Sections 12(a)(1)(A) and 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 136j(a)(2)(K), by distribution or sale of a pesticide whose registration has been cancelled.

19. Respondent's distribution or sale of Fertilome Triple-Action Insecticide-Miticide-Fungicide on June 7, 2004, was a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, referenced in paragraph 11, was misbranded in that the label bore the EPA Reg. No. 7401-67-10159, which was the EPA Registration Number assigned at the time of registration. In that the product's registration was cancelled, this statement is false or misleading.

Count 2

20. The facts stated in paragraphs 6 through 14 are realleged and incorporated as if fully stated herein.

21. On or about December 13, 2005, the MDA representative collected a computer inventory maintenance and a signed statement from Angela Gann, Manager of MFA, documenting sale of 1 16-ounce unit of the pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, to Jack Brooks on July 23, 2005.

22. The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, EPA Registration No. 7401-67-10159, was cancelled at the request of the registrant and notice was published in the Federal Register on December 9, 2002, (Volume 67, Number 236). The Order provides that distribution or retail sale of existing stocks of this pesticide shall be unlawful effective December 31, 2002.

23. Respondent violated Sections 12(a)(1)(A) and 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 136j(a)(2)(K), by distribution or sale of a pesticide whose registration has been cancelled.

24. Respondent's distribution or sale of Fertilome Triple-Action Insecticide-Miticide-Fungicide on July 23, 2005, was a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, referenced in paragraph 11, was misbranded in that the label bore the EPA Reg. No. 7401-67-10159, which was the EPA Registration Number assigned at the time of registration. In that the product's registration was cancelled, this statement is false or misleading.

Count 3

25. The facts stated in paragraphs 6 through 14 are realleged and incorporated as if fully stated herein.

26. On or about December 13, 2005, the MDA representative collected a computer inventory maintenance and a signed statement from Angela Gann, Manager of MFA, documenting sale of 1 16-ounce unit of the pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, to Jerry Swearengin on September 12, 2005.

27. The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, EPA Registration No. 7401-67-10159, was cancelled at the request of the registrant and notice was published in the Federal Register on December 9, 2002, (Volume 67, Number 236). The Order provides that distribution or retail sale of existing stocks of this pesticide shall be unlawful effective December 31, 2002.

28. Respondent violated Sections 12(a)(1)(A) and 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 136j(a)(2)(K), by distribution or sale of a pesticide whose registration has been cancelled.

29. Respondent's distribution or sale of Fertilome Triple-Action Insecticide-Miticide-Fungicide on September 12, 2005, was a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, referenced in paragraph 11, was misbranded in that the label bore the EPA Reg. No. 7401-67-10159, which was the EPA Registration Number assigned at the time of registration. In that the product's registration was cancelled, this statement is false or misleading.

Count 4

30. The facts stated in paragraphs 6 through 14 are realleged and incorporated as if fully stated herein.

31. On or about December 13, 2005, the MDA representative collected documentation in the form of photographs and a signed statement from Angela Gann, Manager of MFA during the inspection referenced in paragraph 12, which revealed that Respondent was holding for sale or distribution 9 16-ounce containers of the pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, EPA Reg. No. 7401-67-10159.

32. The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, EPA Reg. No. 7401-67-10159, was cancelled at the request of the registrant and notice was published in the Federal Register on December 9, 2002, (Volume 67, Number 236). The Order provides that distribution or retail sale of existing stocks of this pesticide shall be unlawful effective December 31, 2002.

33. Respondent violated Sections 12(a)(1)(A) and 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 136j(a)(2)(K), by distribution or sale of a pesticide whose registration has been cancelled.

34. Respondent's holding for distribution or sale of Fertilome Triple-Action Insecticide-Miticide-Fungicide on December 13, 2005, was a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). The pesticide, Fertilome Triple-Action Insecticide-Miticide-Fungicide, referenced in paragraph 11, was misbranded in that the label bore the EPA Reg. No. 7401-67-10159, which was the EPA Registration Number assigned at the time of registration. In that the product's registration was cancelled, this statement is false or misleading.

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 four percent (4%) per annum for the period January 1, 2007 through December 31, 2007) 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.

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 or any other violations that could have been cited as a result of the December 13, 2007 inspection, in the amount of Thirteen Thousand Dollars (\$13,000.00), plus interest of \$277.12 for a total payment of \$13,277.12. An initial payment of \$2,000.00 shall be paid on or before thirty (30) days of the effective date this Final Order. Each succeeding payment of \$2,819.28 shall be due ninety (90) days after the previous payment.

2. 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

3. The payment shall reference Docket Number, FIFRA 07-2008-0002 and In the Matter of Dallas County Farmers Exchange No. 177 d/b/a MFA Farm and Home. 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

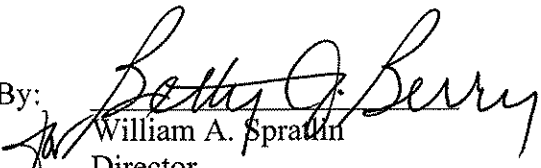
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

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

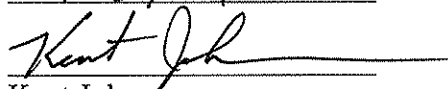
6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

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

Date: 10/30/07

By: 
Kent Johnson
Attorney
Office of Regional Counsel

Date: 10/25/07

Dallas County Farmer's Exchange No. 177
d/b/a MFA Farm and Home
Docket No. FIFRA 07-2008-0002

RESPONDENT:

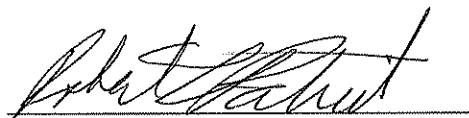
Dallas County Farmers Exchange No. 177
d/b/a MFA Farm and Home

By: Phil Perkins

Title: President

Date: 10/15/07

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



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

Date: November 5, 2007

IN THE MATTER OF Dallas County Farmers Exchange No. 177 d/b/a MFA Farm and Home,
Respondent
Docket No. FIFRA-07-2008-0002

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:

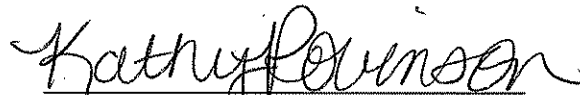
Copy hand delivered to
Attorney for Complainant:

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

Copy by Certified Mail Return Receipt to:

Phil Perkins
926 West Dallas, Box 1024
Buffalo, Missouri 65622

Dated: 11/6/07


Kathy Robinson
Hearing Clerk, Region 7