



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

JUL 22 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6402

Mr. Paul W. Casper
Frost, Brown, Todd LLC
2200 PNC Center
Cincinnati, Ohio 45202

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-022 *22*

Dear Ms. Bayer:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on July 22, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,640 is to be paid in the manner described in paragraphs 29 thru 33. Please be certain that the number **BD 2750845P022** and the docket number are written on both the transmittal letter and on the check. Payment is due by Aug 21, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Moeller Services, LLC)
Cincinnati, Ohio)
)
Respondent)
_____)

Docket No. *FIFRA-05-2008-002222*
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

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, has been delegated the authority to settle this matter.

3. Respondent is Moeller Services, LLC incorporated in the state of Ohio with a place of business at 576 Locust Corner Road, Cincinnati, Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

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

12. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

13. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

14. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

15. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. § 152.5(c) “as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life....”

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide, 40 C.F.R. § 152.15(a)(1).

17. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty of up to \$5,500 for each violation of FIFRA that occurred from January 31, 1997 to March 15, 2004 and a civil penalty of up to \$6,500 for each violation 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).

Factual Allegations and Alleged Violations

18. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. On October 25, 2007, an inspector with the U.S. EPA, downloaded web pages from Respondent's web site at www.roofreviver.com.

20. Respondent's web site at www.roofreviver.com offers for sale Roof Reviver™ Roof Cleaner.

21. Respondent's web site makes the following claims for Roof Reviver™ Roof Cleaner:

- If you are using the 'Gradual Removal Process' without rinsing, Roof Reviver™ will stop further destruction and granule loss to any type of roof. Depending on the severity of the problem, you may need additional applications. Gradually with rainfall, the roof will return to its original color. Moss, algae, fungus, or any green material will turn brown and rinse away on its own.”
- “After applying Roof Reviver™ to green growth such as moss, algae, lichens, fungus, etc, it is best to wait until the growth turns brown before rinsing.”
- “Why the sudden explosion of roof stains? Shingle formulas have been slowly changing! As a result, algae, moss, black streaks and fungus are more able to attach and damage your roof. The appearance of black or green stains is the first sign that problems are coming. Thanks to Roof Reviver™, there's an affordable alternative to replacing your roof too soon.”

22. Roof Reviver™ Roof Cleaner is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. Respondent is a “distributor” of the Roof Reviver™ Roof Cleaner pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

24. Roof Reviver™ Roof Cleaner is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Count 1

25. Complainant incorporates by reference the allegations contained in paragraphs 1 through 24 of this Complaint.

26. Respondent distributed or sold an unregistered pesticide, Roof Reviver™ Roof Cleaner, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

27. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

28. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$3,640. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,640 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the following: the case name, the docket number of this CAFO and the billing document number.

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

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

32. If Respondent does not pay the civil penalty timely, 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

34. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO and for any other pesticidal claims made on October 25, 2007 by Respondent on its website, www.roofreviver.com, regarding Roof Revivier™ Roof Cleaner.

35. Respondent certifies that it has corrected all the violations alleged in this CAFO and will comply with FIFRA and its regulations.

36. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

38. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for FIFRA.

39. The terms of this CAFO bind Respondent and its successors, and assigns.

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

41. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Moeller Services, LLC

June 23, 2008
Date

Mica G. Moeller
Mica Moeller,
President, Moeller Services, LLC

United States Environmental Protection Agency, Complainant

7/15/08
Date

Margaret M. Guerriero, Jr.
Margaret M. Guerriero, Director
Land and Chemicals Division

2008 JUN 23 10:09:16
MARGARET M. GUERRIERO, JR.

In the Matter of:

Moeller Services, LLC.

Docket No. FIFRA-05-2008-0022²².

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7/16/08

Date

Walter W. Kovaluk
for

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

RECEIVED
REGIONAL HEARING CLERK
JUL 16 2008 10:46


CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Moeller Services, LLC, was filed on July 21, 2008 with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No.7001 0320 0005 8921 6402, a copy of the original to the Respondents:

Mr. Paul W. Casper
Frost, Brown, Todd LLC
2200 PNC Center
Cincinnati, Ohio 45202

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick J. Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *FIPRA-05-2008-0022* *JD*