

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5<sup>TH</sup> STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )

) Docket No. FIFRA-07-2008-0012

Baring Farm Services, Inc. )

Depot Road/RR 1 )

Baring, MO 63531 )

) CONSENT AGREEMENT

) AND

) FINAL ORDER

) Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Baring Farm Services, Inc. (Respondent), have agreed to a settlement of this action before filing 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" or "Act"), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order (CAFO) serves as notice that 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 Baring Farm Services, Inc., a pesticide dealer, located on Depot Road/RR 1, Baring, Missouri. The Respondent is and was at all times referred to in this CAFO, 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 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.
7. FIFRA Section 2(w), 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, defines the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, re-label, or otherwise change the container of any pesticide or device.
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 to distribute or sell any pesticide which is adulterated or misbranded.
9. According to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), 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 way.
10. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states that a pesticide is misbranded if any word, statement, or other information required by FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
11. 40 C.F.R. § 156.10(a)(4), requires the label of a pesticide product to appear on or be securely attached to the immediate container of the pesticide product. Further, if the immediate container is enclosed within a wrapper or outside container through which the label cannot be clearly read, the label must also be securely attached to the outside wrapper or container, if it is a part of the package as customarily distributed or sold.
12. According to section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary to carry out the purpose for which the product is intended.
13. 40 C.F.R. § 156.10(i)(1)(ii)(A), prescribes the placement of directions for use of pesticide

products. The directions may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product. Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that . . . such printed or graphic matter is securely attached to each package of the pesticide or placed within the outside wrapper or bag.

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

15. 40 C.F.R. § 156.60(a)(2) states that hazard and precautionary statements not required to be on the front panel, may appear on other panels, and may also be required on supplemental labeling. These include, but are not limited to, the human hazard and precautionary statements, domestic animal statements if applicable, a Note to Physician, and physical or chemical hazard statements.

16. DIURON 80DF DRY FLOWABLE HERBICIDE (hereinafter "Diuron") is a pesticide registered under EPA Registration No. 66222-51 to Makhteshim-Agan of North America, Inc., Raleigh, North Carolina.

17. On or about August 2, 2006, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Respondent's place of business located on Depot Road/RR1, Baring, Missouri.

#### Count 1

18. Complainant hereby incorporates the allegations contained in paragraphs 5 through 17 above, as if fully set forth herein.

19. Documentation collected during the August 2, 2006 inspection revealed that Respondent was holding for sale or distribution 12-five pound bags of Diuron.

20. The complete label of each the 12-five pound bags of Diuron could not be clearly read. Additionally, the end-user booklet was not attached to any of the 12 bags or containers of Diuron. This end-user booklet contains required, important additional Precautionary Statements, Personal Protection Equipment (PPE) requirements, User Safety Recommendations, Environmental Hazards, Agricultural and Non-Agricultural Use Requirements, Direction For Use, and pesticide Storage and Disposal Information.

21. The pesticide described in paragraphs 16, 19, and 20, was not encompassed within the terms

of the product registration under EPA Registration No. 66222-51, as required under provisions of Section 3 of FIFRA.

22. Since the 12 bags of Diuron did not have most of the required labeling, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

### 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, finds it reasonable, 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. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due

date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

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

9. 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.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

11. The effect of the settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5 above.

### **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 check or certified check, a civil penalty for the violations cited herein, in the amount of \$4,126, on or before thirty (30) days of the effective date this Final Order.

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

**Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII,  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077,  
St. Louis, Missouri 63197-9000.**

3. The payment shall reference Docket Number, FIFRA 07-2008-0012 and **In the Matter of Baring Farm Services, Inc.** Copies of the check shall be forwarded to:

Demetra O. Salisbury  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

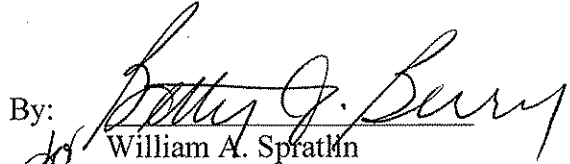
Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

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 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

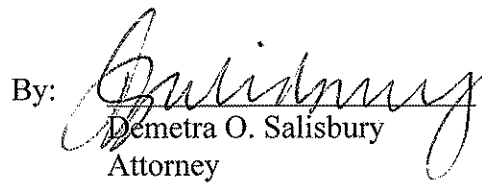
By:

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

Date:

02/25/08

By:

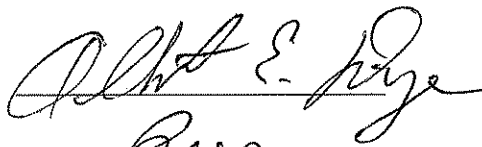
  
Demetra O. Salisbury  
Attorney  
Office of Regional Counsel

Date:

February 22, 2008

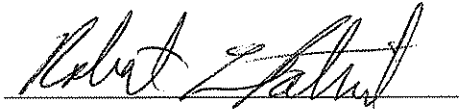
RESPONDENT:

Baring Farm Services, Inc.

By:   
Title: Pres.  
Date: 2-19-08



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

A handwritten signature in cursive script, appearing to read "Robert L. Patrick", written over a horizontal line.

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

February 26, 2008  
Date

IN THE MATTER OF Baring Farm Services, Inc., Respondent  
Docket No. FIFRA-07-2008-0012

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:

Demetra O. Salisbury  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Albert E. Dye  
President and Director  
Baring Farm Service, Inc.  
Depot Road, PO Box 66  
Baring, Missouri 63531

Dated: 2/27/08



Kathy Robinson  
Hearing Clerk, Region 7