

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Boehringer Ingelheim Vetmedica, Inc.)

1620 North Woodbine Road)

St. Joseph, Missouri 64506)

Respondent)

Docket No. FIFRA-07-2008-0020

CONSENT AGREEMENT

AND

FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and
Boehringer Ingelheim Vetmedica, 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 Regulatory Background

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 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 7, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region 7.

4. The Respondent is Boehringer Ingelheim Vetmedica, Inc., a pesticide producer, located at 1620 North Woodbine Road, St. Joseph, Missouri 64506. 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).

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

6. Section 12(a)(1)(C) of FIFRA states that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C). Pesticide registration requirements are set forth in Section 3 of FIFRA. 7 U.S.C. § 136a.

7. Section 12(a)(1)(E) of FIFRA states that it shall be unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded. 7 U.S.C. § 136j(a)(1)(E).

8. The term "to distribute or sell" means 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 U.S.C. § 136(gg).

9. 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. 7 U.S.C. § 136(q).

10. Respondent, at all times relevant, operated a registered pesticide-producing establishment in Elwood, Kansas, under EPA Establishment No. 4691-KS-01.

11. On February 15, 2006, a representative of the Kansas Department of Agriculture (KDA) inspected the Respondent's Elwood, Kansas, facility. The KDA representative collected copies of labels and products produced by the facility, documentary shipping records, and records of sales of products. The representative collected samples of Elastrel Insecticide.

Count 1

12. Complainant hereby incorporates the allegations contained in paragraphs 5 through 11, above, as if fully set forth herein.

13. Analytical results of samples collected during the February 15, 2006, inspection determined the composition of Elastrel Insecticide. The sample contained 14.6 percent of the active ingredient, Dichlorvos.

14. The label collected at the February 15, 2006, inspection for Elastrel Insecticide indicates the concentration of the active ingredient of Dichlorvos is 19.2 percent.

15. Respondent acknowledged that the sample products were packaged, labeled, and released for shipment to customers.

16. Respondent violated Section 12(a)(1)(C) of FIFRA by distributing or selling a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C).

17. Respondent violated Section 12(a)(1)(E) of FIFRA by holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agree to comply with the terms of the Final Order portion of this Consent Agreement and 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 but denies any wrongdoing and the correctness of legal conclusions set forth in this Consent Agreement and Final Order. Respondent is settling this matter to avoid the expense and inconvenience of a lawsuit.

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 and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

7. 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.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

9. Respondent certifies by signing this Consent Agreement and Final Order that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Three Thousand One Hundred Eighty Five Dollars (\$3,185) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in paragraph 10, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9, above.

12. 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.

13. 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.

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, in the amount

of Three Thousand One Hundred Eighty Five Dollars (\$3,185) within thirty (30) days of the effective date this Final Order. Such payment shall identify the Respondent by name and Docket Number, and shall be by cashier's or certified check made payable to "Treasurer, United States of America" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. A copy of the check shall simultaneously be sent to the following:

Robert W. Richards
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and


Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. 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.


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

5. This executed Consent Agreement and Final Order shall be filed with the Regional
Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas
City, Kansas 66101.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By 
Robert W. Richards
Assistant Regional Counsel

Date 8/20/08

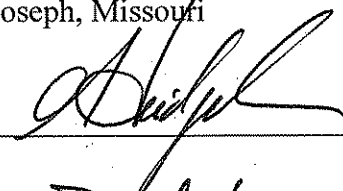
for 
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date August 19, 2008

RESPONDENT:

Boehringer Ingelheim Vetmedica, Inc.
St. Joseph, Missouri

By

A handwritten signature in black ink, appearing to be "A. K. ...", written over a horizontal line.


Title

President, COO.

Date

Aug 26, 2008

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

By 
Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date September 9, 2008

IN THE MATTER OF Boehringer Ingelheim Vetmedica, Inc., Respondent
Docket No. FIFRA-07-2008-0020

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:

Robert W. Richards
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Michael Herman
Boehringer Ingelheim Vetmedica, Inc.
1620 North Woodbine Road
St. Joseph, Missouri 64506

Dated: 9/9/08



Kathy Robinson
Hearing Clerk, Region 7