

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

In the Matter of)

Hohn Manufacturing, Inc.)

200 Sun Valley Circle)

Fenton, Missouri 53026)

Respondent.)

) Docket No. FIFRA-07-2011-0004

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Hohn Manufacturing, Inc. (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) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b).

Section I

Jurisdiction

1. This proceeding 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.

Section II

Parties

3. The Complainant, by delegation from the Administrator of 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 Hohn Manufacturing, Inc., a Missouri Corporation, located at 200 Sun Valley Circle, Fenton, Missouri 63206.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether

incorporated or not.

9. 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.

10. The term “produce” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as meaning to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

11. The term “producer” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.

13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness 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.

14. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be

unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

15. 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 pesticide cancellation order.

16. 40 C.F.R. § 152.132 permits a registrant to supplementally distribute its product under another company's name, provided certain conditions (e.g., label of the distributor product is the same as that of the registered pesticide except for the product name, name and address of the registrant/distributor and the product registration number includes the distributor's number).

Section IV

General Factual Allegations

17. Respondent is and at all times referred to herein was a "person" within the meaning of FIFRA.

18. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, EPA registered to Millennium Specialty Chemicals (the Registrant) a pesticide known as Glidclean 25/150 25% Pine Type Disinfectant, EPA Registration Number (EPA Reg. No.) 13648-11. Thereafter, Hohn Manufacturing, Inc. produced Registrant's product under the name of Hohn Pine D, using EPA Reg. No. 13648-11-10208.

19. On October 24, 2003, the registration of Glidclean 25/150 25% Pine Type Disinfectant, EPA Reg. No. 13648-11, was cancelled by EPA, as were all its distributor products.

20. Sales of existing stock by the Registrant and distributors of Glidclean 25/150 25% Pine Type Disinfectant, EPA Reg. No. 13648-11, were prohibited after January 15, 2004.

21. On February 4, 2010, a representative of the Missouri Department of Agriculture (MDA) conducted a routine Pesticide Establishment Inspection at Respondent's Fenton, Missouri facility, EPA Establishment Number 10208-MO-1.

22. During the February 2010 inspection, MDA collected information that Respondent produced and distributed Hohn Pine D, EPA Reg. No. 13648-11-10208, after January 15, 2004.

Violations

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

Count 1

24. The facts stated in paragraphs 17 through 22 are realleged and incorporated as if fully stated herein.

25. On or about December 30, 2008, Respondent sold or distributed a quantity of Hohn Pine D, EPA Reg. No. 13648-11-10208.

26. The label of the Hohn Pine D discussed in paragraph 25 bore a false or misleading EPA registration number, incorrectly classified the toxicity of the pesticide, and was missing the environmental statement required by 40 C.F.R. § 156.80.

27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded.

Count 2

28. The facts stated in paragraphs 17 through 26 are realleged and incorporated as if

fully stated herein.

29. On or about January 22, 2009, Respondent sold or distributed a quantity of Hohn Pine D, EPA Reg. No. 13648-11-10208.

30. The label of the Hohn Pine D discussed in paragraph 29 bore a false or misleading EPA registration number, incorrectly classified the toxicity of the pesticide, and was missing the required environmental statement.

31. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded.

Count 3

32. The facts stated in paragraphs 17 through 30 are realleged and incorporated as if fully stated herein.

33. On or about February 24, 2009, Respondent sold or distributed a quantity of Hohn Pine D, EPA Reg. No. 13648-11-10208.

34. The label of the Hohn Pine D discussed in paragraph 33 bore a false or misleading EPA registration number, incorrectly classified the toxicity of the pesticide, and was missing the required environmental statement.

35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded.

Count 4

36. The facts stated in paragraphs 17 through 34 are realleged and incorporated as if fully stated herein.

37. On or about March 24, 2009, Respondent sold or distributed a quantity of Hohn

Pine D, EPA Reg. No. 13648-11-10208.

38. The label of the Hohn Pine D discussed in paragraph 37 bore a false or misleading EPA registration number, incorrectly classified the toxicity of the pesticide, and was missing the required environmental statement.

39. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded.

Count 5

40. The facts stated in paragraphs 17 through 38 are realleged and incorporated as if fully stated herein.

41. On or about September 17, 2009, Respondent sold or distributed a quantity of Hohn Pine D, EPA Reg. No. 13648-11-10208.

42. The label of the Hohn Pine D discussed in paragraph 41 bore a false or misleading EPA registration number, incorrectly classified the toxicity of the pesticide, and was missing the required environmental statement.

43. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded.

Count 6

44. The facts stated in paragraphs 17 through 42 are realleged and incorporated as if fully stated herein.

45. On October 24, 2003, the registration of Glidclean 25/150 25% Pine Type Disinfectant, EPA Reg. No. 13648-11 and all distributor products, including Hohn Pine D (EPA

Reg. No. 13648-11-10208) were cancelled via a written Cancellation Order for Section 3 Pesticide Product Registration ("Cancellation Order").

46. Sales of existing stock by the Registrant and distributors of Glidclean 25/150 25% Pine Type Disinfectant, EPA Reg. No. 13648-11 were prohibited after January 15, 2004.

47. The Cancellation Order stated that neither the registrant nor any distributors were to distribute any products produced after the effective date of the Cancellation Order.

48. Respondent stated that products were manufactured on an as needed basis, that is, only when a customer submits an order. The inventory produced is then shipped immediately.

49. Respondent produced and then shipped various quantities of Hohn Pine D on December 20, 2008, January 22, 2009, February 24, 2009, March 24, 2009, and September 17, 2009.

50. Respondent violated Section 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by producing and selling or distributing a pesticide in violation of a cancellation order.

Section V

Consent Agreement

51. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

52. Respondent neither admits nor denies the factual allegations set forth above.

53. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

54. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

55. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

56. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

57. Respondent certifies that by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

58. The effect of settlement described in Paragraph 59, below, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 57, above.

59. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

60. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

61. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or may result in the commencement of a civil action in Federal District Court to recover the full

remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated 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 charge for each subsequent thirty (30) day period. 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.

Section VI

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 shall pay a civil penalty of Twenty Three Thousand Seven Hundred and Seventy-Six Dollars (\$23,776) within thirty (30) days of the effective date of this Final Order.

Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

If online, access the payment website www.pay.gov. Once on the website, enter "SFO 1.1" in the "Search Public Forms" field. Once there, open form, and complete.

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

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

and

Demetra O. Salisbury, Attorney
Office of Regional Counsel
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 CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

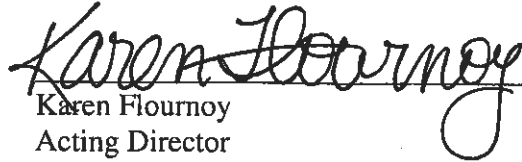
**RESPONDENT
HOHN MANUFACTURING INC.**

Date: February 21, 2010 By: Lawrence A. Harrington

LAWRENCE A. HARRINGTON President
Print Name Title

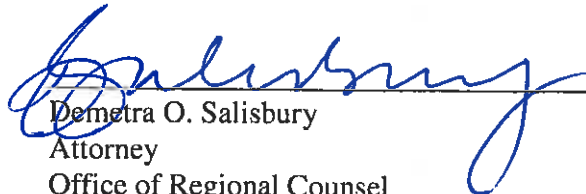
**COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 3-3-11



Karen Flournoy
Acting Director
Water, Wetlands, and Pesticides Division

Date: 3-4-11



Demetra O. Salisbury
Attorney
Office of Regional Counsel

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

Date:

Mar. 7, 2011 Robert Patrick

ROBERT L. PATRICK

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Hohn Manufacturing, Inc., Respondent
Docket No. FIFRA-07-2011-0004

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 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Christopher M. Hohn
Thompson Coburn LLP
One US Bank Plaza
St Louis, Missouri 63101

Dated: 3/7/11



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7