

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-07-2007-0010
)	
Harvey Products, Inc.)	CONSENT AGREEMENT
2080 McKimber Street)	AND
Harvey, Iowa 50119)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Harvey Products, 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), 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 Harvey Products, Inc., located at 2080 McKimber Street, Harvey, Iowa 50119. 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 an Iowa corporation qualified to do business in the state of Iowa.

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), 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.

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)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

9. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide unless the establishment in which it is produced is registered with the Administrator.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3, the term "produce" means 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, relabel, or otherwise change the container of any pesticide or device.

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

12. 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.

13. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states a pesticide is misbranded if its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.

14. 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 such authority of 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.

15. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment.

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

17. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states a pesticide is misbranded if the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase.

18. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states a pesticide is misbranded if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the name and address of the producer, registrant, or person for whom produced, and the registration number assigned to the pesticide.

19. On April 10 and April 18, 2006, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted inspections at your facility pursuant to Section 9 of FIFRA for the purpose of determining Respondent's compliance with the provisions of FIFRA.

20. After reviewing the information from the representative's inspection report,

EPA issued a Stop Sale, Use, or Removal Order to your Respondent for two pesticides: Pel-Lime Mini Pelletized Calcitic Limestone and Dolomitic Pel-Lime Pelletized Dolomitic Limestone on October 25, 2006. The Stop Sale, Use, or Removal Order was vacated on November 28, 2006, when Respondent provided to EPA evidence of Respondent's compliance with the terms of the Order.

Count 1

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

22. On the dates of the inspections, Respondent was holding for sale or distribution 150, 50-pound bags of Pel-Lime Mini Pelletized Calcitic Limestone which bore a label displaying the following pesticidal claim: "aid in the reduction of fungal diseases."

23. The Pel-Lime Mini Pelletized Calcitic Limestone was not a registered pesticide on the date of the inspections.

24. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that it held for sale or distribution a pesticide which was not registered under section 3 of FIFRA, 7 U.S.C. § 136a.

Count 2

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

26. On the dates of the inspections, Respondent was holding for sale or distribution 850, 50-pound bags of Dolomitic Pel-Lime Pelletized Dolomitic Limestone which bore a label displaying the following pesticidal claim: "aid in the reduction of fungal diseases."

27. The Dolomitic Pel-Lime Pelletized Dolomitic Limestone was not a registered pesticide on the date of the inspections.

28. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that it held for sale or distribution a pesticide which was not registered under section 3 of FIFRA, 7 U.S.C. § 136a.

Count 3

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

30. On the dates of the inspections, Respondent was holding for sale or

distribution 150, 50-pound bags of Pel-Lime Mini Pelletized Calcitic Limestone which was misbranded in that the label displayed on the pesticide did not bear the required language described in paragraphs 12 through 18 above.

31. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that it held for sale or distribution the misbranded pesticides described herein.

Count 4

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

33. On the dates of the inspections, Respondent was holding for sale or distribution 850, 50-pound bags of Dolomitic Pel-Lime Pelletized Dolomitic Limestone which was misbranded in that the label displayed on the pesticide did not bear the required language described in paragraphs 12 through 18 above.

34. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that it held for sale or distribution the misbranded pesticides described herein.

Count 5

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

36. On the dates of the inspections, nor at any date prior to or subsequent to the inspections, Respondent had not submitted to EPA an application to register its establishment as a pesticide producing establishment.

37. Respondent was not registered as a pesticide-producing establishment pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e.

38. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), in that it was considered a producer and failed to comply with the provisions of Section 7 of FIFRA by producing a pesticide in an unregistered establishment.

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. 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 paragraph 1 of the Final Order.

10. The effect of the settlement is conditioned upon the accuracy of the Respondent's representations and submissions to EPA, as memorialized in Paragraphs 5 and 9 above.

11. Respondent acknowledges that as of the date of signature of this Agreement, due to a fire at its facility it is liquidating its assets and does not intend to re-open for business. In the event Respondent does re-open for business, it agrees to notify EPA at least 10 calendar days prior to re-opening. Such notification shall reference the Docket Number of this Agreement and be sent to:

Barbara Shepard
Water, Wetlands and Pesticides Division
Environmental Protection Agency, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

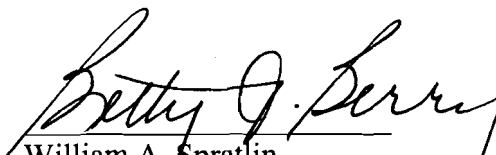
FINAL ORDER

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. Based on Complainant's review of Respondent's financial information, Respondent shall be assessed a penalty of zero dollars.
2. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.
3. 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: 
for William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 09/10/07

By: 
Kent Johnson
Attorney
Office of Regional Counsel
9/7/07

RESPONDENT:

Harvey Products, Inc.

By: Alfred M. Tucker, Jr.
Title: President
Date: 8-7-07

Harvey Products, Inc.
FIFRA-07-2007-0010

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



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

September 10, 2007
Date

IN THE MATTER OF Harvey Products, Inc., Respondent
Docket No. FIFRA-07-2007-0010

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:

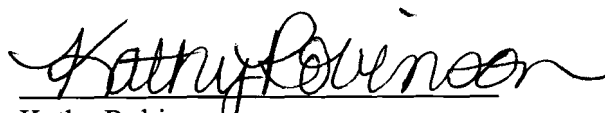
Copy hand delivered to
Attorney for Complainant:

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:

Jane Knutson
Harvey Products, Inc.
2080 McKinley Street
Harvey, Iowa 50119

Dated: 9/10/07


Kathy Robinson
Hearing Clerk, Region 7