



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 26 2010

Certified Mail – Return Receipt Requested

Brett Grimm, Esq.
Ambrose, Wilson, Grimm & Durand
607 Market Street, 6th Floor
Knoxville, Tennessee 37209

Re Docket No. FIFRA-04-2010-3030(b)
Knoxville Seed & Greenhouse Supply Corp.

Dear Mr. Grimm:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the first installment in the amount of \$1,563.59 of the assessed penalty of \$7,800 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-9085 or Ms. Cheryn Jones at (404) 562-9006.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document

Internet Address (URL) • <http://www.epa.gov>

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Enclosures

cc: Kathy Booker
TN Dept. of Agriculture
State File Nos. 0403080476601
and 0404080476601

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION 4
2010 MAY 26 AM 11:45
HEAVY METALS

In the Matter of:)
)
Knoxville Seed &)
Greenhouse Supply Corp.)
)
Respondent.)
_____)

Docket No. FIFRA-04-2010-3030(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Knoxville Seed & Greenhouse Supply Corp.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested

in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9006.

5. Respondent is Knoxville Seed & Greenhouse Supply Corp., a Tennessee corporation, located at 5001 Rutledge Pike, Knoxville, Tennessee 37914.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about April 4, 2008, an authorized representative of the EPA conducted an inspection at Respondent's facility.
8. During the aforementioned inspection, Rid-A-Bug Concentrated Home Insect Killer was identified as being sold and/or distributed by the Respondent.
9. Rid-A-Bug Concentrated Home Insect Killer is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator

- declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
11. Respondent “distributes or sells” pesticides. The term “to distribute to sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
 12. Pesticides that are sold and distributed in the United States are required to be registered with the EPA.
 13. The EPA registration number for Rid-A-Bug Concentrated Home Insect Killer, EPA Reg. No. 8845-30, was canceled on or about September 12, 2001.
 14. At the time of the inspection, Rid-A-Bug Concentrated Home Insect Killer was not registered as a pesticide with EPA.
 15. The inspector documented at least two offers for sale and/or distribution of Rid-A-Bug Concentrated Home Insect Killer.
 16. As part of the investigation, the inspector interviewed an individual who purchased the product at Knoxville Seed & Greenhouse Supply, Corp. on or about March 16, 2008.
 17. At the time of the April 4, 2008 inspection, the product was offered for sale on display shelves at Respondent’s facility.
 18. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or which has been canceled.
 19. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least two occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

20. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
21. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
22. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$7,800) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the allegations set forth above.
24. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
25. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
27. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state

CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

Respondent is assessed a civil penalty of SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$7,800). Five payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days of the effective date of this CAFO. The subsequent four payments shall be due in 30 day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be SEVEN THOUSAND EIGHT HUNDRED SEVENTEEN DOLLARS and NINETY FIVE CENTS (\$7,817.95). Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$1,563.59
2	within 60 days of filing of CAFO	\$1,563.59
3	within 90 days of filing of CAFO	\$1,563.59
4	within 120 days of filing of CAFO	\$1,563.59
5	within 150 days of filing of CAFO	\$1,563.59

Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

P.O. Box 979077
St. Louis, MO 63197-9000.

**The check shall reference on its face the name of the
Respondent and Docket Number of this CAFO.**

29. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Cheryn L. Jones
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960; and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

30. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
31. 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts.

In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

- 32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
- 33. This CAFO shall be binding upon the Respondent, its successors and assigns.
- 34. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

VI. Effective Date

- 35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Knoxville Seed & Greenhouse Supply Corp.
Docket No.: FIFRA 04-04-2010-3030(b)

By: Ernie Rader (Signature)

Date: 3/17/10

Name: Ernie Rader (Typed or Printed)

Title: _____ (Typed or Printed)

U.S. Environmental Protection Agency

By: Kenneth R. Lapierre
Kenneth R. Lapierre, Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Date: 5/7/2010

APPROVED AND SO ORDERED this 26th day of May 2010.

Susan B. Schub

Susan B. Schub
Regional Judicial Officer

Knoxville Seed & Greenhouse Supply Corp.
Docket No. FIFRA-04-2010-3030(b)

foregoing Consent Agreement and Final Order, In the Matter of Knoxville Seed & Greenhouse
Supply Corp., Docket Number: FIFRA-04-2010-3030(b) to the addressees listed below.

Brett Grimm, Esq.
Ambrose, Wilson, Grimm & Durand
607 Market Street, 6th Floor
Knoxville, TN 37209

(via Certified Mail, Return Receipt Requested)

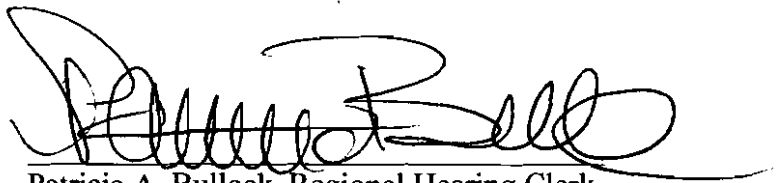
Cheryn L. Jones
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Robert Caplan
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Date: 5-26-10



Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on _____
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Knoxville Seed + Greenhouse Supply Corp
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7800.00
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2010-3030(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|