

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

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BEFORE THE ADMINISTRATOR

In the Matter of

Chem Supply Company
224 North Stewart Avenue
Springfield, MO 65902

Respondent

Docket No.: FIFRA-07-2015-0027

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Chem Supply Company (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)(2) 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) and 22.18(b)(2).

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 the 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 Chem Supply Company, a pesticide distributor with a facility located at 224 North Stewart Avenue, Springfield, Missouri.

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it 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 a living man or other living animals) 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(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. Produce is further defined by regulation at 40 C.F.R. § 167.3 as “to package, repackage, label, re-label, or otherwise change the container of any pesticide or device.”

10. Section 8(a) of FIFRA, 7 U.S.C § 136f(a) requires producers of pesticides to maintain records concerning their production activities and that failure to do so is a violation of Section 12(a)(2)(B) of FIFRA, 7 U.S.C § 136j(a)(2)(B).

11. 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.

12. 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.

13. 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 that is adulterated or misbranded.

14. 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.

15. Section 12(a) of FIFRA, 7 U.S.C. § 136l(a), states that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter [FIFRA] may be assessed a civil penalty.

General Factual Allegations

16. 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 a Missouri corporation qualified to do business in the state of Missouri.

17. On October 28, 2013, a representative of the Missouri Department of Agriculture (MDA) inspected Respondent's facility in Springfield, Missouri. From review of information gathered during and after this inspection, the EPA has documented that Respondent has sold or distributed on multiple occasions a pesticide that was misbranded in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). It was also determined that Respondent has not kept the pesticide production records required by Section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B).

18. As a result of the inspection referenced in the preceding paragraph, and EPA's subsequent document discovery, it was determined that Respondent held for sale or distribution a misbranded pesticide, namely *Vertex CSS-10, EPA Reg. No. 9616-8*, which Respondent purchased from the manufacturer and repackaged for distribution or sale with incorrect labeling, including incorrect handling instructions.

19. More specifically, it was determined that, on at least 12 different occasions, Respondent mislabeled and sold or distributed the pesticide, *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has

different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

20. As a result of the inspection referenced above, and EPA's subsequent document discovery, it was also determined that Respondent did not keep the pesticide production records required by Section 12(a)(2)(B) of FIFRA, 7 U.S.C § 136j(a)(2)(B).

Violations

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

Count 1

21. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

22. On or about May 5, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

23. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 2

25. On or about July 2, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

26. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 3

28. On or about July 9, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

29. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 4

31. On or about July 23, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

32. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 5

34. On or about July 30, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

35. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 6

37. On or about August 5, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

38. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 7

40. On or about August 7, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

41. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 8

43. On or about August 30, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

44. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 9

46. On or about September 13, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

47. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 10

49. On or about September 23, 2013, Respondent sold or distributed a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

50. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 11

52. On or about October 28, 2013, Respondent held for sale or distribution, in a 55 gallon drum, a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

53. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 12

55. On or about October 28, 2013, Respondent held for sale or distribution, in bulk tanks, a re-packaged version of the pesticide product *Vertex CSS-10, EPA Reg. No. 9616-8*, with a label incorrectly identifying it as *Vertex CSS-10, EPA Reg. No. 9616-9*.

56. The pesticide *Vertex CSS-10, EPA Reg. No. 9616-9* is a discontinued product with a cancelled registration, and has different chemical composition and different label instructions than *Vertex CSS-10, EPA Reg. No. 9616-8*.

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

Count 13

58. As stated above, on October 28, 2013, a representative of the MDA inspected Respondent's facility in Springfield, Missouri. From review of information gathered during and after this inspection, the EPA has documented that Respondent has not kept any records of the pesticide production or repackaging it has performed, as required by Section 8(a) of FIFRA, 7 U.S.C § 136f(a).

59. Failure to maintain records required by Section 8(a) of FIFRA, 7 U.S.C § 136f(a) is a violation of Section 12(a)(2)(B) of FIFRA, 7 U.S.C § 136j(a)(2)(B).

Count 14

60. Pursuant to of Section 7 of FIFRA, 7 U.S.C § 136e, an establishment that produces a pesticide subject to FIFRA, must register that establishment with the Administrator of EPA and file production reports annually with EPA describing the types and amounts of the pesticide being produced. Respondent filed production reports for the years 2010, 2011, 2012 and 2013 with EPA, incorrectly stating that it was producing *Vertex CSS-10, EPA Reg. No. 9616-9*, when it was actually producing *Vertex CSS-10, EPA Reg. No. 9616-8*.

61. Failure to file correct pesticide production reports with EPA, as required by Section 7 of FIFRA, 7 U.S.C § 136e, is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L).

Section V

Consent Agreement

62. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

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

64. 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.

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

66. 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.

67. 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.

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

69. The effect of this settlement, as described in the paragraph below, is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in this CAFO.

70. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order below. The amount of this penalty is based on an ability to pay analysis. Payment of this mitigated 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.

71. Respondent agrees that 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.

72. 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.

73. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the 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 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 charged 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 Five Thousand Dollars (\$5,000.00) within sixty (60) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number (FIFRA-07-2015-0027) and be made as set forth below.

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

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

3. 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, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency".

4. 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
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

RESPONDENT
CHEM SUPPLY COMPANY

Date: 7-24-15 By: Lavanna M. Nash

LAVANNA M. NASH PRESIDENT
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8-12-15



Karen Flourney
Director
Water, Wetlands and Pesticides Division

Date: 8-12-2015



Raymond C. Bosch
Assistant Regional Counsel
Office of Regional Counsel

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

Date: 8-17-15

Karina Borromeo

KARINA BORROMEO
Regional Judicial Officer

IN THE MATTER OF Chem Supply Company, Respondent
Docket No. FIFRA-07-2015-0027

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to:

Lavanna M. Nash, President
Chem Supply Company
224 North Stewart Avenue
Springfield, Missouri 65902

Dated: 8/17/15



Kathy Robinson
Hearing Clerk, Region 7