



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 27 2016

REPLY TO THE ATTENTION OF
LC-8J

CERTIFIED MAIL No. 7014 2870 0001 9580 6217
RETURN RECEIPT REQUESTED

Donald Lentz
President
Lentz Fertilizer, Inc.
E6604 629th Avenue
Menomonie, Wisconsin 54751

Consent Agreement and Final Order In the Matter of Lentz Fertilizer,
Incorporated Docket Number FIFRA-05-2017-0002

Mr. Lentz:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on 10/27/2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,402.00 is to be paid in the manner described in paragraphs 37-38. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

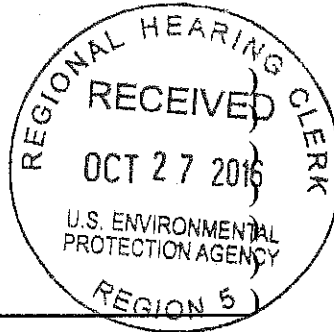
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Lentz Fertilizer, Inc.
Menomonie, Wisconsin

Respondent.



Docket No. FIFRA-05-2017-0002

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Lentz Fertilizer, Inc., a corporation doing business in the State of Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, opportunities for hearing or appeal, any right to contest the allegations in this CAFO, and any otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including but not limited to the opportunity for a hearing or appeal pursuant to Sections 14 and 16 of FIFRA, 7 U.S.C. §§ 136l, 136n; 40 C.F.R. § 22.15(c); and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06.

9. Respondent certifies that it is now complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

11. Under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person shall produce any pesticide or pesticidal product subject to FIFRA, unless the establishment in which it is produced is registered with EPA. *See also* 40 C.F.R. § 167.20(a).

12. Under 40 C.F.R. § 167.20(f), establishment registration will remain effective provided pesticide reports are submitted annually pursuant to the requirements of 40 C.F.R. Part 167. Failure to submit a report may result in termination of establishment registration, and civil or criminal penalty assessments.

13. The term “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not, as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

14. The term “pesticide” means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. 7 U.S.C. § 136(u).

15. The term “pesticidal product” means a pesticide, active ingredient, or device. 40 C.F.R. § 167.3.

16. A “pest” is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

17. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

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

19. The term “producer” means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide, as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

20. The term “establishment” means any site where a pesticide or pesticidal product is

produced, or held, for distribution or sale, as defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

21. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

22. Respondent has been a “producer” as that term is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), at all times relevant to this CAFO.

23. Respondent owned or operated a place of business located at E6604 629th Avenue, Menomonie, Wisconsin 54751 during calendar years 2015 and 2016.

24. Respondent’s place of business located at E6604 629th Avenue, Menomonie, Wisconsin 54751 has been an “establishment” as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3 at all times relevant to this CAFO.

25. During calendar year 2015, Respondent’s establishment was not registered with EPA as required under Section 7 of FIFRA, 7 U.S.C. § 136e.

26. On or about January 30, 2016, Lentz Fertilizer submitted a “2015 Pesticide Report for Pesticide-Producing and Device-Producing Establishments” (EPA Form 3540-16 or “Report”) to the Pesticide and Toxics Compliance Section (PTCS) in EPA, Region 5, located at 77 West Jackson Boulevard, Chicago, Illinois 60604.

27. The Report submitted to PTCS, EPA, Region 5 was for the Lentz Fertilizer facility, identified in Paragraph 23.

28. The Report identified pesticide production information for two pesticides, documented by the Respondent as “Volley ATZ Lite,” EPA Reg. No. 55467-6, and “Buccaneer Plus,” EPA Reg. No. 55467-9.

29. Respondent “produced” “Volley ATZ Lite,” EPA Reg. No. 55467-6, at the Lentz Fertilizer facility, in calendar year 2015, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

30. Respondent “produced” “Buccaneer Plus,” EPA Reg. No. 55467-9, at the Lentz Fertilizer facility, in calendar year 2015, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

31. “Volley ATZ Lite,” EPA Reg. No. 55467-6, constitutes a “pesticide” and “pesticidal product,” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 167.3.

32. “Buccaneer Plus,” EPA Reg. No. 55467-9, constitutes a “pesticide” and “pesticidal product,” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 167.3.

33. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a) by producing pesticides at an unregistered establishment.

34. Respondent’s production of the relevant pesticides known as “Volley ATZ Lite” and “Buccaneer Plus” while not registered constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

35. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, Respondent applied to register its establishment with EPA in or around February 2016 and was issued a notification of establishment of registration by EPA in or around April 2016.

Civil Penalty

36. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$3,402.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,402.00 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

or for checks sent by express mail, send a certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

38. Respondent must send a notice of payment, that (1) states Respondent's name and the case docket number and (2) includes a copy of the cashier's or certified check, to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Abigail Wesley (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Jillian Rountree (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not pay the civil penalty on time, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO: Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

42. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-

mail at the following valid e-mail addresses: rountree.jillian@epa.gov and wesley.abigail@epa.gov (for Complainant) and _____ (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

43. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

44. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

46. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

47. The terms of this CAFO bind Respondent, its successors, and assigns.

48. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

49. Each party agrees to bear its own costs and attorneys' fees in this action.

50. This CAFO constitutes the entire agreement between the parties.

51. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk.

Lentz Fertilizer, Inc., Respondent

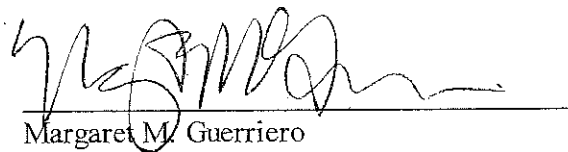
10-17-16
Date



Donald Lentz
President
Lentz Fertilizer, Inc.

United States Environmental Protection Agency, Complainant

10/25/2016
Date



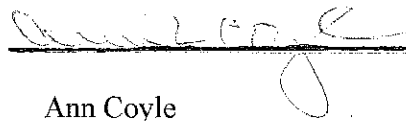
Margaret M. Guerriero
Director
Land and Chemicals Division

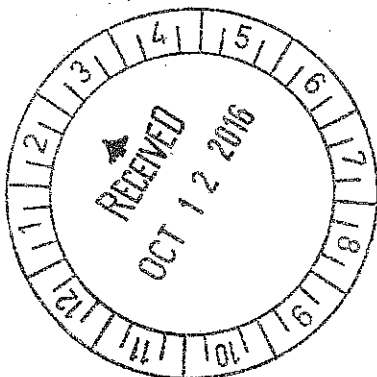
In the Matter of: Lentz Fertilizer, Inc.
Docket No. FIFRA-05-2017-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

October 26, 2016
Date


Ann Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5



In the Matter of: **Lentz Fertilizer, Inc.**
Docket No. []FIFRA-05-2017-0002

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on October 27, 2016 in the following manner to the addressees:

Copy by Certified Mail
Return Receipt Requested
Sent to Respondent:

Donald Lentz, President
Lentz Fertilizer, Inc.
E6604 629th Avenue
Menomonie, WI 54751

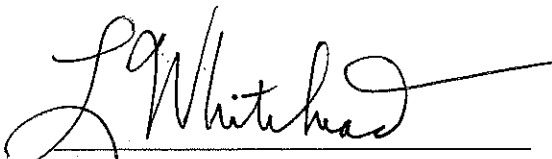
Copy by E-mail to
Attorney for Complainant:

Jillian Rountree
rountree.jillian@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: October 27, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7014 2870 0001 9580 6217