



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
May 6, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7648 8884

Mr. Aaron Root
Root Brothers Mfg. & Supply Co.
10317 S. Michigan Avenue
Chicago, Illinois 60628

Consent Agreement and Final Order In the Matter of
Root Brothers Mfg. & Supply Co. Docket No. FIFRA-05-2014-0014

Dear Mr. Root:

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 May 6, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,860 is to be paid in the manner described in paragraphs 26 and 27. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by June 5, 2014, (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 "Terence Bonace".

for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2014-0014
)	
Root Brothers Mfg. & Supply Co.)	Proceeding to Assess a Civil Penalty
Chicago, Illinois,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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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 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, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Root Brothers Mfg. & Supply Co., a corporation doing business in the State of Illinois.

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). *See* 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 general allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

10. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

11. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

12. 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).

13. 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).

14. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any

provision of FIFRA of 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. § 136l(a)(1), and 40 C.F.R. Part 19.

General Allegations

15. Complainant incorporates paragraphs 1 through 14 of this CAFO as if set forth in this paragraph.

16. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. Respondent owned or operated a place of business located at 10317 South Michigan Avenue, Chicago, Illinois during the calendar year 2011.

18. On September 28, 2011, an inspector employed by the Illinois Department of Public Health and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Chicago, Illinois.

19. During the September 28, 2011 inspection, the inspector observed that the pesticide Dexol Termite Killer, EPA Reg. No. 192-173, was offered for sale on store shelves.

20. Dexol Termite Killer’s registration was cancelled on January 25, 2001.

21. The January 25, 2001 cancellation order for Dexol Termite Killer (a/k/a Dexol Termite and Lawn Insect Killer) prohibited the retail distribution of existing stocks after December 31, 2001.

Count I

22. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21 of this CAFO.

23. Respondent distributed or sold the cancelled pesticide Dexol Termite Killer after the prohibited retail sale date of December 31, 2001.

24. Respondent’s distribution or sale of the cancelled pesticide Dexol Termite Killer

constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

25. 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 \$2,860. In determining the penalty, 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.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,860 civil penalty for the FIFRA violation 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

The check must note the following: "In the Matter of Root Brothers Mfg. & Supply Co." and the docket number of this CAFO.

27. Respondent must send a notice of payment that states Respondent's name and the case docket number 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

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

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

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

29. If Respondent does not pay timely the civil penalty, EPA may refer this 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.

30. 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 overdue amount 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

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

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

33. Respondent certifies that it is complying with Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

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

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

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

37. Each person signing this CAFO 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.

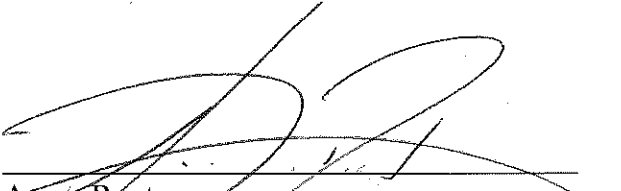
38. Each party agrees to bear its own costs and attorneys fees in this action.

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

**In the Matter of: Root Brothers Mfg. & Supply Co.
Docket No.**

Root Brothers Mfg. & Supply Co., Respondent

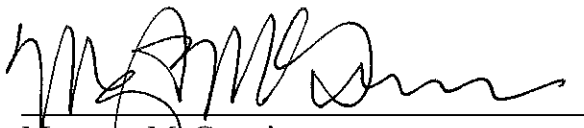
09 APR 16 2014
Date



Aaron Root
Vice President of Sales and Marketing
Root Brothers Mfg. & Supply Co.

U.S. Environmental Protection Agency, Complainant

4/29/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Root Brothers Mfg. & Supply Co.
Docket No. FIFRA-05-2014-0014

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.

5-2-2014

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Root Brothers Mfg. & Supply Co., was filed on June 5, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7648 8884, a copy of the original to the Respondents:

Mr. Aaron Root
Root Brothers Mfg. & Supply Co.
10317 S. Michigan Avenue
Chicago, Illinois 60628

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Robert Peachey, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. **FIFRA-05-2014-0014**