



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

JUL 15 2015

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8555
RETURN RECEIPT REQUESTED

Mr. Steve Michaels
RitePack, Inc.
502 S. 15th ST.
Elwood, Kansas 66024

Consent Agreement and Final Order In the Matter of
RitePack, Inc. Docket No. FIFRA-05-2015-0042

Ms. Michaels:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on July 15, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 43 and 44. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

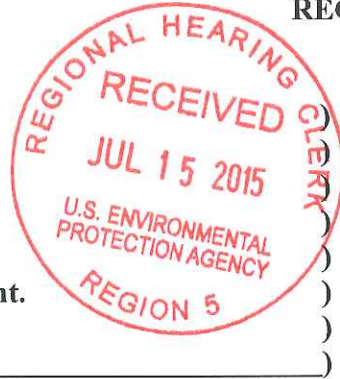
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

RitePack, Inc.
Elwood, Kansas

Respondent.



Docket No. FIFRA-05-2015-0042

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
Commencing and Concluding a Proceeding

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 RitePack, Inc. (RitePack), a corporation doing business in the State of Kansas.

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 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.

9. Respondent certifies that to the best of its knowledge, it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. *See also* Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful

for any person in any state to distribute or sell to any person any pesticide which is misbranded.

14. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states in part that a pesticide is “misbranded” if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon in 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.

15. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states in part that a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product was intended and if complied with, are adequate to protect human health and the environment.

16. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states in part that a pesticide is “misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with, is adequate to protect human health and the environment.

17. Section 2(q)(2)(C)(iv) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iv), states in part that a pesticide is “misbranded” if there is not affixed to its container a label bearing the registration number assigned to the pesticide under FIFRA.

18. 40 C.F.R. § 156.10(a) states in pertinent part that every pesticide product shall bear a label, attached to the immediate container of the pesticide product, containing the information specified by FIFRA and the regulations in 40 C.F.R. Part 156. Among other things, the contents of a label must show clearly and prominently the following:

- (a) The product registration number;
- (b) Hazard and precautionary statements; and
- (c) The directions for use.

19. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states in part that it is unlawful for any person to violate any regulation issued under Section 19 of FIFRA, 7 U.S.C. § 136q.

20. Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136q(a)(1)(B), states in pertinent part that the Administrator may require that the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of any container of the pesticide.

21. Section 19(e)(1)(B) of FIFRA, 7 U.S.C. § 136q(e)(1)(B), states in pertinent part that the Administrator shall promulgate regulations that facilitate the safe disposal or refill and reuse of pesticide containers.

22. 40 C.F.R. § 156.140 states in pertinent part that for nonrefillable containers the following statements must be placed on the label or container of a pesticide product: (a) a statement identifying the container as nonrefillable, (b) one of the prescribed reuse statements, (c) one of the prescribed recycling or reconditioning statements, and (d) a statement identifying the batch code.

23. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

24. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living 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).

25. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

26. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

27. The Administrator may assess a civil penalty against any registrant 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.

Factual Allegations and Alleged Violations

28. At all times relevant to this CAFO, Respondent was a corporation, and therefore was a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

29. On or about April 16, 2015, Respondent submitted to EPA an NOA under entry number 279-5049588-0 for an import shipment of the pesticide “Diflubenzuron Technical.”

30. The NOA listed the EPA Registration Number (EPA Reg. No.) for “Diflubenzuron Technical” to be 75313-R.

31. The NOA stated that Respondent was the importer of record.

32. The import shipment associated with entry number 231-6145665-6 entered the United States on or about April 16, 2015.

33. On March 2, 2007, “Diflubenzuron Technical” was registered and assigned EPA Reg. No. 75313-1 under Section 3 of FIFRA.

34. “Diflubenzuron Technical,” EPA Reg. No. 75313-1, is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. Respondent, as the importer of record of “Diflubenzuron Technical,” EPA Reg.

No. 75313-1, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

36. The imported quantity of “Diflubenzuron Technical,” EPA Reg. No. 75313-1, associated with entry number 279-5049588-0 failed to bear a label attached to the immediate containers of the pesticide product that contained the EPA Reg. No. assigned to the pesticide, precautionary and hazard statements, and directions for use as required by 40 C.F.R. § 156.10(a).

37. The imported quantity of “Diflubenzuron Technical,” EPA Reg. No. 75313-1, associated with entry number 279-5049588-0 failed to bear, on the containers or a label attached to the immediate containers of the pesticide product, a statement identifying the container as nonrefillable, one of the prescribed reuse statements, one of the prescribed recycling or reconditioning statements, and a statement identifying the batch code, as required by 40 C.F.R. § 156.140.

38. On or about April 15, 2015, Respondent “distributed or sold” the pesticide “Diflubenzuron Technical,” EPA Reg. No. 75313-1, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

39. On or about April 15, 2015, in an import shipment associated with entry number 279-5049588-0, Respondent distributed or sold the pesticide “Diflubenzuron Technical,” EPA Reg. No. 75313-1, in violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).

40. Respondent’s violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

41. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

42. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

43. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the alleged FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of RitePack, Inc." and the docket number of this CAFO.

44. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Eaton Weiler (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

46. If Respondent does not pay the civil penalty timely, 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.

47. Pursuant to 40 C.F.R. § 13.11 and 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

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

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

50. This CAFO does not affect Respondent's responsibility to comply with FIFRA

and other applicable federal, state, and local laws.

51. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

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

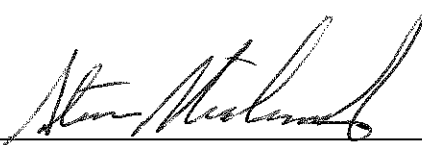
53. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorney fees in this action.

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


Respondent:
RitePack, Inc.
Elwood, Kansas

6/19/2015
Date


Steve Michaels
President
RitePack, Inc.

Complainant:
Region 5
U.S. Environmental Protection Agency

7/7/2015
Date


Margaret M. Guerriero, Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of:
RitePack
Docket No. FIFRA-05-2015-0042

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.

13 July 2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: RitePack, Inc.
Docket Number: FIFRA-05-2015-0042

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on July 15, 2015, in the following manner to the addressees:

Copy by Certified Mail

Return-receipt:

Mr. Steve Michaels
RitePack, Inc.
502 S. 15th ST.
Elwood, Kansas 66024

Copy by E-mail to

Attorney for Complainant:


Eaton Weiler
Weiler.eaton@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

July 15, 2015 

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8555