

2013 AUG 26 AM 11:33

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

In the Matter of)

) Docket No. FIFRA-07-2013-0020

Water Engineering, Inc.)

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Water Engineering, Inc. (“WEI” or “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).

Section I

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 EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of 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 Water Engineering, Inc., 1574 County Road 10, Mead, Nebraska 68041.

Section III

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 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(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.

10. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), states that it shall be unlawful for any person to distribute or sell any pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration.

Section IV

General Factual Allegations

11. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA and is registered to do business in the state of Nebraska.

12. On February 27, 2012, Nebraska Department of Agriculture (“NDA”) conducted an inspection at Water Engineering, Inc., located at 1574 County Road 10, Mead, Nebraska 68041.

13. At the time of the inspection, Water Engineering, Inc., was acting as a supplemental distributor of BWA Water Additives US, LLC product Bellacide 355, EPA Registration Number (EPA Reg. No.) 83451-16, which it produced and distributed as WEI product Formula 145, EPA Reg. No. # 83451-16-68314.

14. At the time of the inspection, Water Engineering, Inc., held for sale or distribution WEI Formula 145, EPA Reg. No. # 83451-16-68314.

15. During the inspection, a sample of WEI Formula 145 was obtained. The sample was split, with one portion taken by NDA's Inspector for analysis, and the other portion left with Water Engineering, Inc.

16. The WEI Formula 145 sample was tested by NDA and its composition was found to differ from the composition reported in its registration statement.

17. BWA Water Additives US, LLC, in June 2013, obtained Water Engineering, Inc.'s portion of the original sample and retested. BWA Water Additives US, LLC also found the product's composition differed from the composition reported in its registration statement..

Alleged Violations

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

Count 1

19. The facts stated in paragraphs 11 through 17 are realleged and incorporated as if fully stated herein.

20. On or about February 27, 2012, Respondent was holding for sale or distribution a quantity of WEI Product Formula 145.

21. On the date it was being held for sale or distribution, the composition of the pesticide product WEI Product Formula 145 differed from the composition reported in its registration statement submitted to EPA for Bellacide 355, EPA Reg. No. # 83451-16.

22. Respondent violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), by selling or distributing or holding for sale or distribution, a pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

23. Respondent's violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a).

Section V

Consent Agreement

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

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

26. 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.

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

28. 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.

29. 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 Water Engineering, Inc., to it.

30. 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.

31. The effect of settlement as described in paragraph 33 is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in the immediately preceding paragraph.

32. 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.

33. Payment of this 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.

34. Late Payment Provisions: 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. 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 Four Thousand, Five Hundred Thirty Six Dollars (\$4,536.00) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be made by cashier check, by wire transfer or on-line as listed below. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States and be remitted to

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

Wire transfers shall 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"

On-line payments are available through the Department of Treasury:

www.pay.gov
Enter "sfo 1.1" in the search field.
Open the form and complete required files.

3. 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

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

and to


Mark K. Leshner
Toxics & Pesticides Branch, WWPD
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

4. 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.

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

RESPONDENT
Water Engineering, Inc.

Date: 8.16.13

By: 

Epiphany Ramos Operations Director
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date:

8/22/13



Karen Flournoy

Director

Water, Wetlands and Pesticides Division

Date:

8/21/13



Lucretia Myers

Assistant Regional Counsel

Office of Regional Counsel

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

Date: 8-26-13

Karina Borromeo

KARINA BORROMEO

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

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 emailed to Attorney for Complainant:

Myers.Lucretia@epa.gov


Copy emailed to Case Review Officers:

Leshner.Mark@epa.gov

Copy by First Class Mail to Respondent:

Mr. Paul Herrick
President and CEO
Water Engineering, Inc.
1574 County Road 10
Mead, Nebraska 68041.

Dated: 8/27/13


Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7