

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Eau Claire Co-op Oil Company, Inc.)
4970 Kane Road)
Eau Claire, Wisconsin 547032)
)
Respondent)

Docket No. FIFRA-07-2010-0038

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Eau Claire Co-op Oil Company, Inc. (Respondent), have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) 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), 22.18(b)(2), and 22.18(b)(3).

Section I

Jurisdiction

1. This 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 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 Eau Claire Co-op Oil Company, Inc., a supplemental distributor and pesticide producer located at 4970 Kane Road, Eau Claire, Wisconsin 547032. The

Respondent is, and was at all times referred to in this CAFO, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and a corporation qualified to do business in the State of Wisconsin.

Section III

Statutory and Regulatory Background

5. Section 12(a)(2)(A) of FIFRA states that it shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under FIFRA Subchapter II—Environment Pesticide Control. 7 U.S.C. § 136j(a)(2)(A).

6. Every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R Part 156. 40 C.F.R. § 156.10(a)(1).

7. The label of each pesticide product must bear a statement which contains the name and percentage by weight of each active ingredient. 40 C.F.R. § 156.10(g)(1).

8. Directions [for use] may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product. 40 C.F.R. § 156.10(i)(1)(ii).

9. All required label text must not be obscured or crowded. 40 C.F.R. § 156.10(a)(2)(ii)(C).

10. Section 12(a)(1)(E) of FIFRA states that it shall be unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded. 7 U.S.C. § 136j(a)(1)(E).

11. A pesticide is "misbranded" if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular. 7 U.S.C. § 136(q).

12. The term "to 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).

13. Pesticide registrants may distribute or sell a registered product under another person's name and address instead of (or in addition to) their own. Such distribution and sale is termed "supplemental distribution." 40 C.F.R. § 152.132.

Section IV

General Factual Allegations

14. Respondent, at all times relevant, operated a registered pesticide-producing establishment in Eau Claire, Wisconsin, under EPA Establishment No. 57131-WI-001.

15. Respondent applied for and received authorization to act as a supplemental distributor for a fertilizer-herbicide product registered to Syngenta Crop Protection, Inc., Greensboro, North Carolina 27419.

16. Syngenta Crop Protection, Inc. is the registrant for "Prodiamine Pro F 0.38% Herbicide," EPA Registration No. 100-1339 (EPA Reg. No.). Respondent is authorized to act as supplemental distributor of Prodiamine Pro F 0.38% Herbicide under the distributor product name "Award Turf Fertilizer with 0.38% Barricade," EPA Reg. No. 100-1339-57131. The active ingredient of Prodiamine Pro F 0.38% Herbicide is prodiamine with a label claim of 0.38 percent concentration.

17. On March 25, 2010, a representative of the Missouri Department of Agriculture (MDA) inspected Pro Lawn Care, Plattsburg, Missouri. The inspection showed a fertilizer-pesticide product was sold in bags bearing EPA Reg. No. 100-1339-57131 that were screen printed, with the product's screen-print labeling indicating the product was Award Turf Fertilizer with 0.38% Barricade. The bags additionally bore stick-on labels. The stick-on labels indicated that the product was "20-0-5 .20% Barricade, PCSCU." Also, the stick-on labels partially obscured the directions for use list of application sites for the product. The inspection showed the product was purchased by Pro Lawn Care from Winfield Solutions, LLC, St. Joseph, Missouri.

18. On March 26, 2010, a representative of the MDA inspected Winfield Solutions, LLC, St. Joseph, Missouri. The inspection showed that Respondent, on January 20, 2010, sold to Winfield Solutions, LLC the fertilizer-pesticide product. Documents and statements collected during the inspection showed that the fertilizer-pesticide product was produced and labeled by Respondent and sold to Winfield Solutions, LLC as labeled and described in Paragraph 17, above.

VIOLATIONS

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

Count 1

20. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 18, above, as fully set forth herein.

21. The fertilizer-pesticide product labeled by the Respondent and sold to Winfield Solutions, LLC on January 29, 2010, was required by the regulation at 40 C.F.R. § 156.10(g)(1) to contain a statement containing the name and percentage by weight of each active ingredient.

22. Respondent placed stick-on pesticide labels indicating .20% active ingredients “Barricade” (prodiamine) to the screen-printed pesticide labels indicating 0.38% “Barricade” (prodiamine). Respondent’s placement of the stick-on labels constituted an alteration of the active ingredients statement on the screen-printed labels on the pesticide product.

23. The fertilizer-pesticide product labeled by the Respondent and sold to Winfield Solutions, LLC on January 29, 2010, and which bore directions for use on the screen-printed label, was required by the regulation at 40 C.F.R. § 156.10(i)(1)(ii) to contain directions for use conspicuous enough to be easily read by the user of the pesticide product, and by the regulation at 40 C.F.R. § 156.10(a)(2)(ii)(C) the text of such label must not be obscured or crowded.

24. Respondent placed stick-on labels to the screen-printed labels bearing directions for use, partially obscuring the directions for use on the screen-printed label. Respondent’s placement of the stick-on labels thus constituted an alteration of the screen-printed labels.

25. Respondent violated Section 12(a)(2)(A) of FIFRA by altering, in whole or in part, pesticide labeling required under FIFRA Subchapter II—Environment Pesticide Control. 7 U.S.C. § 136j(a)(1)(C).

Count 2

26. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 18, above, as fully set forth herein.

27. Respondent distributed and sold to Winfield Solutions, LLC on January 29, 2010, a fertilizer-pesticide product. The product bore stick-on pesticide labels indicating .20% active ingredients “Barricade” (prodiamine), and screen-printed pesticide labels indicating 0.38% “Barricade” (prodiamine).

28. The fertilizer-pesticide product could not simultaneously and in fact have differing concentrations for the same active ingredient, and thus was misbranded as defined by 7 U.S.C. § 136(q), because it bore a statement relative to its ingredients which was false or misleading.

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

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.
2. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusion set forth in this CAFO.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.
5. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This CAFO addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.
7. 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.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
9. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

10. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Six Thousand Eight Hundred and Sixty Four Dollars (\$6,864.00) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in Paragraph 6 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 9, above.

12. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. 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.

13. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

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, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty for the violations cited herein, in the amount of Six Thousand Eight Hundred and Sixty Four Dollars (\$6,864.00) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier's or certified check which shall reference Docket Number FIFRA-07-2010-0038, and made payable to "United States Treasury" and remitted to:

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

3. A copy of the check shall simultaneously be sent to the following:

Robert W. Richards
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

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. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

By

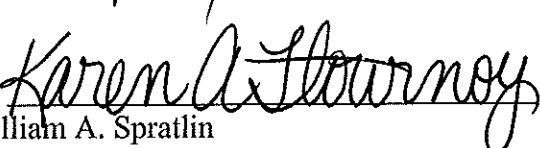

Robert W. Richards

Assistant Regional Counsel

Date

9/22/10

By


William A. Spratlin

for
Director

Water, Wetlands and Pesticides Division

Date

9/23/10

RESPONDENT:

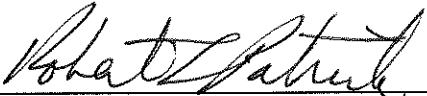
Eau Claire Co-op Oil Company, Inc.
Eau Claire, Wisconsin

By Steve Hunsley
Steve Hunsley

Title General Manager

Date 9/15/2010

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

By 
Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date Sept. 30, 2010

IN THE MATTER OF Eau Claire Co-op Company, Inc., Respondent
Docket No. FIFRA-07-2010-0038

CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Steve Hunsley, General Manager
Eau Claire Co-op Company, Inc.
4970 Kane Road
Eau Claire, Wisconsin 54703

Dated: 9/30/10


Kathy Robinson
Hearing Clerk, Region 7