



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

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0183 0449

Mr. George Jarvis
Vice President
Lapeer Grain Company
155 South Saginaw
Lapeer, Michigan 48446

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order, Docket No. ~~FHRA~~-05-2009-0001

Dear Mr. Jarvis:

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 December 18, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$13,050 is to be paid in the manner described in paragraphs 43 and 44. Please be certain that the number **BD 2750945P001** and the docket number are written on both the transmittal letter and on the check. Payment is due by January 17, 2009, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2009-0001
)	
Lapeer Grain Company)	Proceeding to Assess a Civil Penalty
155 South Saginaw)	Under Section 14(a) of the Federal
Lapeer, Michigan 48446)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
<u>Respondent.</u>)	

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

Preliminary Statement

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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, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Lapeer Grain Company (Lapeer or Respondent), a corporation doing business in the State of Michigan.
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 it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. In accordance with authority granted under Sections 7 and 25 of FIFRA, 7 U.S.C. §§ 136e and 136w, the Administrator of EPA promulgated the “Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports” Final Rule on September 8, 1988 (53 Fed. Reg. 35055). The Final Rule became effective on August 9, 1989 (54 Fed. Reg. 32636). Requirements for establishment registration and production reports are codified at 40 C.F.R. Part 167.

11. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that no person shall produce any pesticide subject to FIFRA or any active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator. Also see 40 C.F.R. § 167.20(a).

12. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) requires any producer operating an establishment registered with the EPA under Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. Part 167 to inform the Administrator within 30 days after it is registered, and annually thereafter, of the types and amounts of pesticides and, if applicable, active ingredients used in

producing pesticides (a) which the producer is currently producing, (b) which the producer has produced in the past year, and (c) which the producer has sold or distributed during the past year (Annual Pesticide Production Report). Also see 40 C.F.R. § 167.85(c).

13. 40 C.F.R. § 167.85(c) requires that the Annual Pesticide Production Report be made on forms supplied by EPA (known as the “Pesticides Report for Pesticide-Producing Establishments” form, or EPA Form 3540-16). 40 C.F.R. § 167.85(c) specifies that it is the ultimate responsibility of companies to obtain, complete, and submit the forms for each year.

14. 40 C.F.R. § 167.85(d) requires the producer to submit the Annual Pesticide Production Report for the preceding year to the EPA on or before March 1 of each year, even if the producer has not produced any pesticidal product for that reporting year.

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

16. The Administrator of the EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$5,500 for each offense that occurred from January 31, 1997 through March 15, 2004, and up to \$6,500 for each offense that occurred after March 15, 2004 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

17. At all times relevant to this Complaint, the Respondent has been a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. At all times relevant to this Complaint, the Respondent has been a “producer” as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

19. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1).

20. On February 26, 1988, Respondent registered its establishment located at 265 Howard Street, Lapeer, Michigan with U.S. EPA.

21. U.S. EPA assigned Respondent's establishment EPA Establishment Number 059165-MI-001.

22. During calendar year 2008, Respondent's place of business located at 265 Howard Street, Lapeer, Michigan 48446, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

23. During calendar year 2007, Respondent's place of business located at 265 Howard Street, Lapeer, Michigan 48446, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

24. During calendar year 2006, Respondent's place of business located at 265 Howard Street, Lapeer, Michigan 48446, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

25. During calendar year 2005, Respondent's place of business located at 265 Howard Street, Lapeer, Michigan 48446, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

26. During calendar year 2004, Respondent's place of business located at 265 Howard Street, Lapeer, Michigan 48446, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

27. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2007 on or before March 1, 2008.

28. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2006 on or before March 1, 2007.

29. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2005 on or before March 1, 2006.

30. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2004 on or before March 1, 2005.

31. Respondent has represented to the EPA that Lapeer sold the business located at 265 Howard Street, Lapeer, Michigan approximately two years ago but did not deactivate the associated establishment number.

32. Therefore, Respondent is still required to submit Annual Pesticide Production Reports to EPA for reporting years 2004, 2005, 2006 and 2007 for this establishment.

Count 1

33. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this Complaint.

34. The Respondent's failure to submit the Annual Pesticide Production Report for calendar year 2007 on or before March 1, 2008, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

35. The Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

36. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this Complaint.

37. The Respondent's failure to submit the Annual Pesticide Production Report for calendar year 2006 on or before March 1, 2007, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

38. The Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 3

39. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this Complaint.

40. The Respondent's failure to submit the Annual Pesticide Production Report for calendar year 2004 on or before March 1, 2005, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

41. The Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

42. 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 \$13,050. 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 *Enforcement Response Policy for FIFRA Section 7(c) (ERP)*, dated June 2007.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,050 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:
for a check sent by regular U.S. Postal Service mail:

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

for a check sent by overnight mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document (BD) number.

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

Regional Hearing Clerk (E-13J)

U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Mrs. Nidhi O'Meara (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 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 violation and facts alleged in the CAFO.

49. This CAFO does not affect the right of the 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 ERP for FIFRA.

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

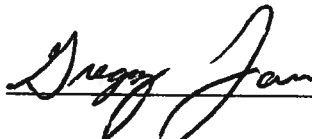
53. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Lapeer Grain Company, Respondent

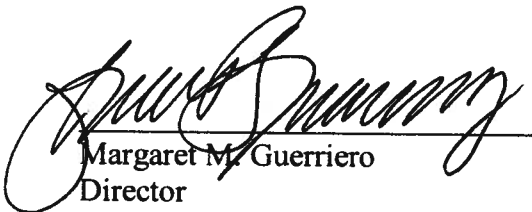
11/13/08
Date



Gregory Jarvis, Vice President
Lapeer Grain Company

United States Environmental Protection Agency, Complainant

12/15/08
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Lapeer Grain Company
Docket No. FIFRA-05-2009-0001

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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.

12/17/08
Date

Lynn Buhl
Lynn Buhl
Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
NOV 28 2008
OFFICE OF REGIONAL
COUNSEL

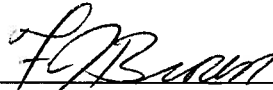
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Lapeer Grain Company, was filed on December 18, 2008, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0183 0449, a copy of the original to the Respondents:

Mr. George Jarvis
Vice President
Lapeer Grain Company
155 South Saginaw
Lapeer, Michigan 48446

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, 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

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