

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
GE Osmonics, Inc.)
3643 450th Avenue) Docket No. FIFRA-07-2007-0012
Emmetsburg, Iowa 50536)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and GE Osmonics, Inc. (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), 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).

ALLEGATIONS

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

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.
4. The Respondent is GE Osmonics, Inc., a pesticide producer, located at 3643 450th Avenue, Emmetsburg, Iowa 50536. The Respondent is 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 Iowa.

Statutory and Regulatory Background

5. Section 12(a)(1)(B) of FIFRA states that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3 of FIFRA. 7 U.S.C. § 136j(a)(1)(B).

6. 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).

7. 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).

8. 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)(1)(A).

9. In no case may a pesticide product bear different signal words on different parts of the label. 40 C.F.R. § 156.64(b)(3).

Factual Allegations

10. Respondent, at all times relevant, operated a registered pesticide-producing establishment in Emmetsburg, Iowa, under EPA Establishment No. 50510-IA-01.

11. On or about November 1, 2005, a representative from the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted an inspection at Respondent’s facility. Respondent processes granular calcium hypochlorite into 1 gram chlorinating tablets. The IDALS inspector collected product samples and photographs of the chlorinating tablets product label.

12. On September 26, 2003, EPA approved a label for the chlorinating tablets. The EPA registration number for the chlorinating tablets is EPA Reg. No. 50510-1.

13. The EPA approved label for the chlorinating tablets bears the signal word “DANGER.”

14. Under the heading “Chlorinating Tablets” the EPA approved label bears the following instructions, “These are to be used in the Land-O-Matic dispenser for automatically treating well water in those areas where treated water supplies are not available.”

15. Under the heading “Directions for Use” the EPA approved label bears the following instructions, “This product is intended to be used for treating water by placing pellets at the base

of a well to sanitize until water is consumed. It is not intended to replace safe, properly constructed wells. EPA recommends for human consumption: 0.2 to 0.6 PPM to be determined by using a test kit provided with the Land-O-Matic dispenser. One pellet normally treats 20 gallons of average well water. These pellets are designed to dissolve in less than 1 hour. Consult the manufacturer's installation book for the proper installation and adjustment so that the required chlorine residual can be maintained at all times."

VIOLATIONS

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

Count 1

17. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

18. Documentation collected during the inspection reveals that Respondent was holding for distribution or sale containers of the product bearing the EPA Reg. No. 50510-1.

19. The photographs of the label for EPA Reg. No. 50510-1 collected on or about November 1, 2005, show two signal words on the label. The two signal words were "DANGER" and "CAUTION."

20. The photographs of the label for EPA Reg. No. 50510-1 show the following statement under the heading "Chlorinating Tablets" - "For Shock Chlorination of Water Supplies." This statement does not appear on the September 26, 2003, EPA approved label.

21. The photographs of the label for EPA Reg. No. 50510-1 show the following statement under the heading "Directions for Use" - "DO NOT USE IN THE LP-3000." This statement does not appear on the EPA Reg. No. 50510-1 label approved by EPA on September 26, 2003.

22. Respondent acknowledged that the product was packaged, labeled, and released for shipment to customers.

23. Respondent violated Section 12(a)(1)(E) of FIFRA by holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

24. Respondent violated 40 C.F.R. § 156.64(b)(3) because the pesticide product bore different signal words on different parts of the label.

COUNT 2

25. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

26. Sales receipts collected during the inspection reveal that Respondent distributed or sold the product bearing the EPA Reg. No. 50510-1.

27. The photographs of the label for EPA Reg. No. 50510-1 collected on or about November 1, 2005, show two signal words on the label. The two signal words were "DANGER" and "CAUTION."

28. The photographs of the label for EPA Reg. No. 50510-1 show the following statement under the heading "Chlorinating Tablets" - "For Shock Chlorination of Water Supplies." This statement does not appear on the September 26, 2003, EPA approved label.

29. The photographs of the label for EPA Reg. No. 50510-1 show the following statement under the heading "Directions for Use" - "DO NOT USE IN THE LP-3000." This statement does not appear on the EPA Reg. No. 50510-1 label approved by EPA on September 26, 2003.

30. Respondent acknowledged that the product was packaged, labeled, and released for shipment to customers.

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

32. Respondent violated 40 C.F.R. § 156.64(b)(3) because the pesticide product bore different signal words on different parts of the label.

COUNT 3

33. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

34. Documentation collected during the inspection reveals that Respondent was holding for distribution or sale containers of the product bearing the EPA Reg. No. 50510-1.

35. The photographs of the label for EPA Reg. No. 50510-1 show the following claim under the heading "Directions for Use." The claim states, "This product is intended to be used for well, storage tank or cistern sanitization. The amount of tablets used will depend on the amount of water in the system to be sanitized. To produce a 400 ppm chlorine concentration to sanitize a water system, use one-half (1/2) pound chlorinating tablets for each 100 gallons of water in the system."

36. This claim substantially differs from the claims set forth in the September 26, 2003 EPA approved label. The approved claim included under the heading "Directions for Use" is included in Paragraph 15 above.

37. Respondent acknowledged that the product was packaged, labeled, and released for shipment to customers.

38. Respondent violated Section 12(a)(1)(B) by holding for distribution or sale a registered pesticide with claims made for it as part of its distribution or sale which substantially differed from any claims made for it as a part of the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(B).

COUNT 4

39. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

40. Sales receipts collected during the inspection reveal that Respondent distributed or sold the product bearing the EPA Reg. No. 50510-1.

41. The photographs of the label for EPA Reg. No. 50510-1 show the following claim under the heading "Directions for Use." The claim states, "This product is intended to be used for well, storage tank or cistern sanitization. The amount of tablets used will depend on the amount of water in the system to be sanitized. To produce a 400 ppm chlorine concentration to sanitize a water system, use one-half (1/2) pound chlorinating tablets for each 100 gallons of water in the system."

42. This claim substantially differs from the claims set forth in the September 26, 2003 EPA approved label. The approved claim included under the heading "Directions for Use" is included in Paragraph 15 above.

43. Respondent acknowledged that the product was packaged, labeled, and released for shipment to customers.

44. Respondent violated Section 12(a)(1)(B) by distributing or selling a registered pesticide with claims made for it as part of its distribution or sale which substantially differed from any claims made for it as a part of the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(B).

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order 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 conclusions set forth in this Consent Agreement and Final Order.
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 Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement and Final Order 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 Consent Agreement and Final Order 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 Consent Agreement and Final Order and to execute and legally bind Respondent to it.
9. Respondent certifies by signing this Consent Agreement and Final Order 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 Consent Agreement and Final Order, Respondent shall pay a penalty of Twenty Thousand Eight Hundred Dollars (\$20,800.00) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in Paragraph 10 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 the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order 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. § 136f, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay by cashier or certified check, a civil penalty, for the violations cited herein, in the amount of Twenty Thousand Eight Hundred Dollars (\$20,800.00), on or before thirty (30) days of the effective date this Final Order.

2. Payment of the penalty shall be by cashier or certified check which shall reference Docket Number FIFRA-07-2007-0012, and made payable to "Treasurer, United States of America" and remitted to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 371099M,
Pittsburgh, Pennsylvania 15251.

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

Kelley Hickman
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
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 Consent Agreement and Final Order 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 Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: August 22, 2007

By:

William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: August 22, 2007

By:

Kelley Hickman
Assistant Regional Counsel

RESPONDENT:

GE Osmonics, Inc.

Date: August 21, 2007


By: Colleen H. Connor

Printed Name: Colleen H. Connor

Title: General Manager EHS
EHS Legal Counsel

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

Date: August 23, 2007



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

IN THE MATTER OF GE Osmonics, Inc., Respondent
Docket No. FIFRA-07-2007-0012

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:

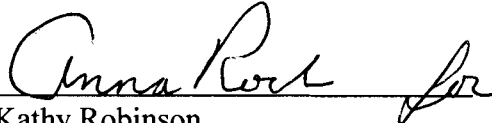
Copy hand delivered to:

Kelley Hickman
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Colleen H. Connor, General Manager
EHS Legal Counsel
GE Osmonics, Inc.
3643 450th Avenue
Emmetsburg, Iowa 50536

Aug 23, 2007
Dated


Kathy Robinson
Hearing Clerk, Region 7