

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

2015 JAN 15 AM 8:17

In the Matter of)
) Docket No. FIFRA-07-2015-0020
)
Hillyard Industries, Inc.)
)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Hillyard Industries, 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) 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 Hillyard Industries, Inc., a manufacturer of various cleaning products, located in St. Joseph, Missouri.

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. The regulations found at 40 C.F.R. § 152.132 set forth the conditions under which “supplemental distribution” is permitted. Pursuant to the regulations, the registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. One condition which must be met in order for supplemental distribution to be permitted is that the label of the distributor product must be the same as that of the registered product except for the following:

- (i) The product name of the distributor product may be different (but may not be misleading);
- (ii) The name and address of the distributor may appear instead of that of the registrant;
- (iii) The registration number of the registered product must be followed by a dash, followed by the distributor’s company number;
- (iv) The establishment number must be that of the final establishment at which the product was produced; and
- (v) Specific claims may be deleted, provided that no other changes are necessary.

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

12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of FIFRA, is adequate to protect health and the environment.

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

Section IV

General Factual Allegations

14. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA.

15. Canberra Corporation is the registrant of a pesticide product called General Purpose/Non-Acid Husky G/P Disinfectant Cleaner bearing the EPA Registration Number (EPA Reg. No.) 8155-5.

16. On or about August 6, 2002, Respondent entered into an updated supplemental distribution agreement with Canberra Corporation.

17. As a result of that agreement Respondent was authorized to sell or distribute General Purpose/Non-Acid Husky G/P Disinfectant Cleaner as a “distributor product”. The name of the distributor product is Germicidal Foaming Cleaner bearing the EPA Reg. No. 8155-5-1658.

18. On or about March 18, 2013, a representative from the Missouri Department of Agriculture connected an inspection at the Respondent’s facility located in St. Joseph, Missouri. During the inspection, the inspector collected copies of the label of the distributor product that was being held for sale or distribution.

Violations

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

Count 1

20. The facts stated in paragraphs 14 through 18 are realleged and incorporated as if fully stated herein.

21. On or about March 18, 2013, Respondent was holding for sale or distribution the distributor product.

22. The copy of the distributor product label collected by the inspector was misbranded in that it failed to include the complete storage and disposal statements. According to Respondent’s representative the copy of the label provided was identical to the labels on the distributor product being held for sale or distribution on that date.

23. Pursuant to 40 C.F.R. § 152.132, Respondent, as the supplemental distributor, violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when the distributor product held for sale or distribution with a label that was adulterated or misbranded.

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 Respondent 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 32 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 30 above.

32. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Three Thousand Dollars (\$3,000) as set forth in Paragraph 1 of the Final Order. 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.

33. 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.

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 Three Thousand Dollars (\$3,000) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If by wire transfer, payment should 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, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. 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

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

3. 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.

4. 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
Hillyard Industries, Inc.

Date: 12-27-2014

By:



Terry L Hall

Print Name


Vice President Regulatory Affairs

Title

COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/5/15



Karen Flournoy
Director
Water, Wetlands, and Pesticides Division

Date: 1/5/15



Kelley Catlin
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective upon the filing of the Final Order by the Regional Hearing Clerk.

Date: 1-14-2015

Karina Borromeo

KARINA BORROMEO

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Hillyard Industries, Inc., Respondent
Docket No. FIFRA-07-2015-0020

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 by email to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by email to Respondent:

Thall@hillyard.com

Dated: 1/15/15



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7