

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL TRAINING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of

Douglas Products and Packaging

Respondent

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Docket No. FIFRA-07-2011-0013

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Douglas Products and Packaging 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 Renovation, 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 Douglas Products and Packaging, a pesticide importer with a facility located at 1550 East Old 210 Highway, Kansas City, Missouri 64068.

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 animal) 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. Pursuant to regulations promulgated under Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), when pesticides are imported to the United States, the importer must submit to EPA a Notice of Arrival of Pesticides and Devices form (NOA).

10. Section 12(a)(1)(N) of FIFRA, 7 U.S.C. § 136j(a)(1)(N), provides, in pertinent part, that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act.

Section IV

Violation

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

12. Respondent is an importer for the pesticide Drex-PH3 Aluminum Phosphide Fumigant Pellets, EPA Reg. No. 19713-569, which is now known as Phosfume 2, EPA Reg. No. 1015-74.

13. On May 19, 2011, EPA was notified that a shipment of Drex-PH3 Aluminum Phosphide Fumigant Pellets, EPA Reg. No. 19713-569, imported by Respondent, was being held at the U.S. Customs Port of Entry in Kansas City, Missouri because no NOA had been filed with EPA Region 7.

14. Respondent’s failure to submit to EPA a NOA prior to importing Drex-PH3 Aluminum Phosphide Fumigant Pellets, EPA Reg. No. 19713-569, violated Section 12(a)(1)(N) of FIFRA, 7 U.S.C. § 136j(a)(1)(N), by failing to file a report required by this Act.

15. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 11 through 14, it is proposed that a civil penalty of \$6,237.00 be assessed against Respondent.

Section V

Consent Agreement

16. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

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

18. Respondent waives its right to contest any issue of fact or law set forth above and its/their right to appeal the Final Order accompanying this Consent Agreement.

19. 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.

20. 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.

21. 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.

22. 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.

23. The effect of settlement described in Paragraph 24 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 22 above.

24. 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.

25. 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.

26. 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 Six Thousand Two Hundred and Thirty-Seven Dollars (\$6,237.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

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."

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
901 North 5th Street
Kansas City, Kansas 66101

and

Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

5. 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.

6. 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
DOUGLAS PRODUCTS AND PACKAGING**

Date: Oct 28/2011


By:



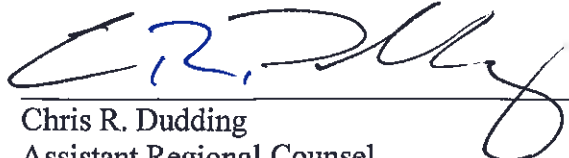
Wes Long _____ COO
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY


Date: 11/14/11


Karen A. Flourney
Acting Director
Water, Wetlands and Pesticides Division

Date: 11/10/11


Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

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

Date: Nov. 18, 2011 
ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Douglas Products and Packaging
Docket No. FIFRA-07-2011-0013

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:

Chris R. Dudding
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:

Mr. Wes Long
Chief Operations Officer
Douglas Products and Packaging, LLC
1550 E. Old Hwy 210
Liberty, MO 64068

Dated: 11/18/11


Kathy Robinson
Hearing Clerk, Region 7

For