



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

NOV 09 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8932 9027

Ms. Elsie Peterson  
Arthur Peterson, Inc.  
225 Canal Street  
Lemont, Illinois 60439

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0007

Dear Ms. Peterson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on November 9, 2006 with the Regional Hearing Clerk.

The civil penalty in the amount of \$500 is to be paid in the manner prescribed in paragraphs 36, 37 and 38. Please be certain that the number BD 2750745P009 and the docket number are written on both the transmittal letter and on the check. Payment is due by December 11, 2006 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terence Bonace  
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Susan Tennenbaum, ORC/C-14J (w/Encl.)  
Ray Marasigan, Finance/MF-10J (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In The Matter Of:

Arthur Peterson, Inc.  
d/b/a Arthur Peterson's Hardware  
Lemont, Illinois,

Respondent.

Docket No.

Proceeding to Assess a Civil Penalty

Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

FIFRA-05-2007-0007

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Consent Agreement and Final Order

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 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 (2005).

2. Complainant, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

3. Respondent is Arthur Peterson, Inc. ("Peterson"), a corporation doing business in Illinois.

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) (2005).

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 entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Peterson admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Peterson waives any 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.

#### **Statutory and Regulatory Background**

9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or the registration of which has been cancelled or suspended.

10. The Administrator of EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 through March 15, 2004 and may

assess a civil penalty of \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

**Factual Allegations and Violations**

11. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. §136(s).

12. At all times relevant to this Complaint, Respondent “distributed or sold” pesticides, as those terms are defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

13. On July 25, 2005 and October 18, 2005, William Schmidtke, an inspector employed by the Illinois Department of Public Health and authorized to conduct inspections under FIFRA, conducted inspections under Section 9 of FIFRA, 7 U.S.C. §136g, at Arthur Peterson, Inc., doing business as Arthur Peterson’s Hardware, 225 Canal Street, Lemont, Illinois, to examine and collect samples of any pesticides packaged, labeled, and released for shipment.

14. During the July 25, 2005 and October 18, 2005 inspections, the inspector documented the sale and distribution, as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by Respondent, of Ortho Ant Stop Killer, EPA Reg. No. 239-2490, Ortho Hi-Power Ant, Roach & Spider Spray Formula, EPA Reg. No. 239-2619, Ortho Outdoor Ant, Flea & Cricket Spray, EPA Reg. No. 239-2423, Green Light Flea & Tick Spray Concentrate, EPA Reg. No. 869-168, Raid Ant & Roach Killer, EPA Reg. No. 4822-189, Raid Home Insect Killer, EPA Reg. No. 4822-238, Ortho Home Defense Ortho-Klor, EPA Reg. No. 239-2513, Spectracide Home Insect Control, EPA Reg. No. 9688-42-8845, and Black Flag Professional Power Liquid Roach & Ant Killer, EPA Reg. No. 475-290.

15. The product Ortho Ant Stop Killer is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
16. The registration of Ortho Ant Stop Killer was cancelled on January 25, 2002.
17. The product Ortho Hi-Power Ant, Roach & Spider Spray Formula is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
18. The registration of Ortho Hi-Power Ant, Roach & Spider Spray Formula was cancelled on March 6, 2002.
19. The product Ortho Outdoor Ant Flea & Cricket Spray is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
20. The registration of Ortho Outdoor Ant Flea & Cricket Spray was cancelled on January 25, 2002.
21. The product Green Light Flea & Tick Spray Concentrate is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
22. The registration of Green Light Flea & Tick Spray Concentrate was cancelled on January 25, 2001.
23. The product Raid Ant and Roach Killer is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. §136(u).
24. The registration of Raid Ant and Roach Killer was cancelled on January 25, 2001.
25. The product Raid Home Insect Killer is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. §136(u).

26. The registration of Raid Home Insect Killer was cancelled on January 25, 2001.
27. The product Home Defense Ortho Klor is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 1369(u).
28. The registration of Home Defense Ortho Klor was cancelled on January 25, 2002.
29. The product Spectracide Home Insect Control is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
30. The registration of Spectracide Home Insect Control was cancelled on September 12, 2001.
31. The product Black Flag Professional Power Liquid Roach & Ant Control is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
32. The registration of Black Flag Professional Power Liquid Roach & Ant Control was cancelled on September 12, 2001.
33. Respondent distributed or sold the above-listed pesticides after the dates permitted in the cancellation orders.
34. Respondent’s distribution or sale of the above-listed cancelled pesticide products violates Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
35. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), considering the appropriateness of the size of the penalty to the size of the business, the effect on Peterson’s ability to continue in business, the gravity of the violation, and Respondent’s cooperation, EPA has determined that an appropriate civil penalty to settle this action is \$500.

36. Respondent must pay the \$500 civil penalty by cashier's or certified check payable to the Treasurer, United States of America, within 30 days after the effective date of this CAFO.

37. Respondent must send the check to:

U.S. EPA Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

38. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

Terence Bonace  
Pesticides and Toxics Enforcement Section (DT-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

Susan Tennenbaum  
Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not timely pay the civil penalty, 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).

41. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

#### **Final Statement**

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Violations section of this CAFO.

43. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

44. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws, and regulations.



45. Respondent certifies that it is complying fully with Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

46. The terms of this CAFO bind Peterson, its successors, and assigns.

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

48. Each party agrees to bear its own costs and attorneys' fees in this action.

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

**Arthur Peterson, Inc.,  
Respondent**

10/10/06  
Date

Elsie Peterson  
Elsie Peterson, Co-Owner  
Arthur Peterson, Inc.

**U. S. Environmental Protection Agency, Complainant**

10/27/06  
Date

Anthony J. Restani  
for Mardi Klevs, Chief  
Pesticides and Toxics Branch  
Waste, Pesticides, and Toxics  
Division

11/03/06  
Date

Margaret M. Guerriero for M.G.  
Margaret M. Guerriero, Director  
Waste, Pesticides, and Toxics  
Division

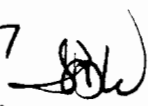
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FIFRA-05-2007-0007

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of Arthur Peterson, Inc.**

**Docket No** *FIFRA-05-2007-0007*



**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

*11 / 06 / 06*  
Date



Mary A. Gade  
Regional Administrator  
U. S. Environmental Protection Agency  
Region 5

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REGION 5

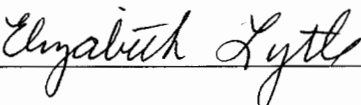
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Arthur Peterson, Inc. d/b/a Arthur Peterson's Hardware, was filed on November 9, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8932 9027, a copy of the original to the Respondents:

Elsie Peterson  
Arthur Peterson, Inc.  
225 Canal Street  
Lemont, Illinois 60439

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Susan Tennenbaum, Counsel for Complainant/C-14J  
Ray Marisigan, Finance/MF-10J

  
\_\_\_\_\_

Elizabeth Lytle  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2007-0007*  
*BBW*

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