

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Bartlett Grain Company, L.P.)
503 East Thomas Drive)
Waverly, Missouri 64096)

Respondent)

Docket No. FIFRA-07-2010-0001

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Bartlett Grain Company, L.P. (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).

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 the 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 Bartlett Grain Company, L.P., a repackager of agricultural chemicals and fertilizers as well as operator of a grain elevator offering grain merchandising, grain milling, and feed manufacturing located at 503 East Thomas Drive, Waverly, 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, bacterial, 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(w) of FIFRA, 7 U.S.C. § 136(w), defines the term "produce" to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

9. The term "produce" is further defined at 40 C.F.R. § 167.3 to mean to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term "producer" to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

11. The term "producer" is further defined at 40 C.F.R. § 167.3 to mean any person, as defined by FIFRA, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

12. 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.

13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a) states that no person in any State may distribute or sell to any person any pesticide that is not registered under this subject.

14. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that no person shall produce any pesticide subject to this subchapter or active ingredient used in producing a pesticide subject to this subchapter in any State unless the establishment in which it is produced is registered with the Administrator.

15. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a) states that the Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of this subchapter and to make the records available for inspection and copying in the same manner as provided in subsection (b) of this section.

16. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

17. The EPA Enforcement Policy Applicable to Bulk Shipments of Pesticides (Bulk Repackaging Policy) was issued on July 11, 1977, and amended on March 4, 1991. The purpose of the Bulk Repackaging Policy is to address the practice of transport and transfer of large quantities of pesticides. The Bulk Repackaging Policy allows the repackaging of any quantity of registered pesticides into refillable containers, provided the following conditions are met:

- a. The container is designed and constructed to accommodate the return and refill of greater than 55 gallons of liquid pesticide or 100 pounds of dry product;
- b. Either: (i) the containers are dedicated to and refilled with one specific active ingredient in a compatible formulation, or (ii) the container is thoroughly cleaned according to written instructions provided by the registrant to the repackaging establishment prior to introducing another chemical to the container in order to avoid cross-contamination;
- c. The facility at which the transfer occurs is registered with the EPA pursuant to section 7 of FIFRA;
- d. The repackaging facility must have written authorization (repackaging agreement) from the registrant to repackage and use its label;
- e. All repackaged pesticides being distributed and sold by the repackaging facility must be labeled with the current EPA-registered end-use product label, including bearing the repackaging facility's EPA establishment number and the correct net contents of the repackaged pesticide introduced into the container;

- f. All repackaged pesticides must meet the same standard for product integrity as any other pesticide being released by the registrant;
- g. The bulk storage tanks must be correctly labeled with the registrant's current EPA registered label (including the EPA establishment number where the pesticide was last produced); and
- h. The repackaging facility must keep records as required by Section 8 of FIFRA and report to EPA annually, the types and amounts of pesticides produced as required by Section 7 of FIFRA.

Section IV

General Factual Allegations

- 18. The Respondent is and was at all times referred to in this CAFO, a person and a limited partnership qualified to do business in the state of Missouri.
- 19. The Respondent's EPA Establishment Number is 51902-MO-001.
- 20. On November 12-14, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection of the Respondent's Waverly, Missouri, facility.
- 21. During the November 2008 inspection, the MDA representative asked what products Respondent produced through bulk repackaging in the previous two years. The Respondent identified the products it produced through bulk repackaging to include but not be limited to: (a) Medal II, EPA Registration Number (EPA Reg. No.) 100-965; (b) Atra-5, EPA Reg. No. 19713-80; (c) Lo-Vol 4 2,4-D, EPA Reg. No. 42750-15-55467; and (d) Parallel, EPA. Reg. No. 66222-87.
- 22. During the November 2008 inspection, the MDA representative requested copies of each repackaging agreement Respondent entered into with each registrant.

VIOLATIONS

- 23. The Complainant hereby states and alleges that Respondent has violated FIFRA, federal regulations promulgated thereunder, and the Bulk Repackaging Policy, as follows:

Count 1

- 24. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

25. Documentation collected during the November 2008 inspection reveals that Respondent distributed or sold 120 gallons of repackaged Medal II on June 2, 2008.

26. Syngenta Crop Protection Inc. is the registrant for Medal II.

27. During the November 2008 inspection, Respondent could not produce evidence of a written authorization from Syngenta Crop Protection Inc. to produce Medal II through bulk repackaging for the dates the product was produced and distributed.

28. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

Count 2

29. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

30. Documentation collected during the November 2008 inspection reveals that Respondent distributed or sold 250-gallons of repackaged Atra-5 on June 2, 2008; 50-gallons on June 3, 2008; 100-gallons on June 11, 2008; two 5-gallon containers on August 13, 2008; and 1.25-gallons on August 13, 2008.

31. Drexel Chemical Company is the registrant for Atra-5.

32. During the November 2008 inspection, Respondent produced a written authorization from Drexel Chemical Company dated August 25, 2008, after the product described in Paragraph 30 above was distributed or sold.

33. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

Count 3

34. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

35. Documentation collected during the November 2008 inspection reveals that Respondent distributed or sold 125-gallons of repackaged 2,4 D LV on March 8, 2008; 2.5-gallons on July 21, 2008; 2.5-gallons on July 21, 2008; and three 2.5-gallon containers on July 31, 2008.

36. Tenkoz Inc. is the registrant for 2,4 D LV.

37. During the November 2008 inspection, Respondent could not produce evidence of a

written authorization from Tenkoz Inc. to produce 2,4 D LV through bulk repackaging for the dates the product was produced and distributed.

38. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

Count 4

39. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

40. Documentation collected during the November 2008 inspection reveals that Respondent distributed or sold five 250-gallon containers of repackaged Parallel on September 26, 2008; and one 234.94-gallon container on November 14, 2008.

41. Makhteshim-Agan of North America, Inc. is the registrant for Parallel.

42. During the November 2008 inspection, Respondent produced a written authorization from Makhteshim-Agan of North America, Inc. dated October 10, 2008, after the product described in Paragraph 40 above was distributed or sold.

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

43. For purposes of this proceeding, Respondent admits the statutory and regulatory information 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 set forth below.

44. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

45. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

46. 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.

47. Respondent and Complainant agree to conciliate the matters set forth in this CAFO

without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

48. This CAFO 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.

49. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

50. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.* and all regulations promulgated thereunder.

51. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Fourteen Thousand Five Hundred Sixty Dollars (\$14,560.00) as set forth in Paragraph 1 of the Final Order.

52. The effect of settlement described in Paragraph 48 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 50 above.

53. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the EPA. 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.

54. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. Department of Justice (DOJ) 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.

Section VI

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136*l*, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

Payment of Civil Penalty

✓ 1. Respondent shall pay a mitigated civil penalty of Fourteen Thousand Five Hundred Sixty Dollars (\$14,560.00). The payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order.

2. Payments of the penalty shall be by cashier or certified check and shall reference EPA Docket Number FIFRA-07-2010-0001, and made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

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

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Kelley Catlin
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
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 CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. 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.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2-17-10

By: Karen A. Flounoy
William A. Spratlin
Director
Water, Wetlands and Pesticides Division

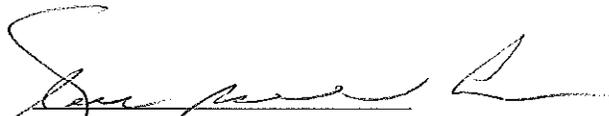
Date: 2/14/10

By: Kelley Catlin
Kelley Catlin
Assistant Regional Counsel

RESPONDENT:

Bartlett Grain Company, L.P.

Date: 2-8-2010

By: 

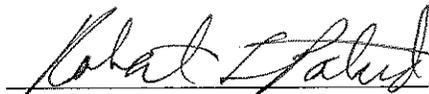
Printed Name: Simon B. Buckner

Title: COUNSEL

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

Date:

March 2, 2010



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF Bartlett Grain Company, L.P., Respondent
Docket No. FIFRA-07-2010-0001

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:

Kelley Catlin
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Simon B. Buckner, Esq.
Bartlett Grain Company, L.P.
4900 Main Street, Suite 1200
Kansas City, Missouri 64112-2807

Dated: 3/2/10


Kathy Robinson
Hearing Clerk, Region 7