

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)
)
PBI-Gordon Corporation)
1217 12th Street) Docket No. FIFRA-07-2010-0010
Kansas City, Missouri 64101)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA or the Agency), Region 7 and PBI-Gordon Corporation (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 or the Act), 7 U.S.C. § 136j.
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 PBI-Gordon Corporation, a pesticide manufacturer located at 1217 West 12th Street, Kansas City, Missouri.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and later amended it in 1972. 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(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(q) of FIFRA, 7 U.S.C. § 136(q), states that a pesticide is “misbranded” if, among other things, its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

10. 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.

11. Section 17(c) of FIFRA, 7 U.S.C. § 136o, states that the Secretary of Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon the Administrator’s request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony.

12. Pursuant to 19 C.F.R. §12.112(a), an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (NOA), prior to the arrival of the shipment in the United States. The Administrator shall complete the NOA, indicating the disposition to be made of the shipment of pesticides or devices upon its arrival in the United States, and shall return the completed NOA to the importer or his agent.

13. Pursuant to 40 C.F.R. § 152.130(a), a registrant may distribute or sell a registered product with the composition, packaging and labeling currently approved by the Agency.

14. The regulations found at 40 C.F.R. § 152.44(a) state that except as provided by §152.46, any modification in the composition, labeling, or packaging of a registered product must be submitted with an application for amended registration. The applicant must submit the information required by §152.50, as applicable to the change requested. If an application for amended registration is required, the application must be approved by the Agency before the product, as modified, may legally be distributed or sold.

15. Pursuant to 40 C.F.R. § 152.130(c), if the product labeling is amended on the initiative of the registrant, by submission of an application for amended registration, the registrant may distribute or sell under the previously approved labeling for a period of 18 months after approval of the revision, unless an order subsequently issued by the Agency under FIFRA Section 6 or 13 provides otherwise.

16. The regulations found at 40 C.F.R. § 156.68 set forth the first aid statement labeling requirements, and 40 C.F.R. § 156.80 set forth the labeling requirements for hazard and precautionary statements for environmental hazards. Hazard statements describe the type of hazard that may be present, while precautionary statements direct or inform the user of actions to take to avoid the hazard or mitigate its effects.

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

Section IV

General Factual Allegations

18. The Respondent is and was at all times referred to in this CAFO, a person and a corporation qualified to do business in the state of Missouri.

19. On May 6, 1999, EPA accepted with comments a label for 2,4-D Acid bearing the EPA Registration Number (EPA Reg. No.) 2217-455.

20. On November 9, 2005, EPA accepted with comments an amended label for 2,4-D Acid bearing the EPA Reg. No. 2217-455. The November 9, 2005, label expanded, among other things, the first aid statements and hazard and precautionary statements for environmental hazards.

21. On or about May 18, 2009, an NOA was submitted to EPA for the importation of 152 bags, each containing approximately 1,940-lbs, of 2,4-D Acid bearing the EPA Reg. No. 2217-455. The entry number listed on the NOA is 581-5520274-8.

22. The 2,4-D Acid was produced by Atanor SA of Munro, Argentina. Atanor SA's EPA Producer Establishment Number is 46146-ARG-001.

23. Respondent's name is listed as the importer on the NOA.

24. On or about May 19, 2009, EPA requested that the U.S. Customs Service detain the shipment for inspection.

25. On or about June 24, 2009, the shipment of 2,4-D Acid was received at Terminal Consolidation Company Kansas City Piggyback, Inc. (TCKCP), located at 3600 Great Midwest Drive, Kansas City, Missouri.

26. On or about June 24, 2009, a representative from the Missouri Department of Agriculture (MDA) conducted an inspection at TCKCP (hereinafter the "MDA inspection").

27. During the MDA inspection, photographic documentation of the label of the 2,4-D Acid was collected.

28. The label for the 2,4-D Acid failed to include the expanded first aid statements included in the EPA accepted November 9, 2005, label.

29. The label for the 2,4-D Acid failed to include the complete environmental hazards precautionary statement accepted in the November 9, 2005, label.

30. The label for the 2,4-D Acid failed to include the revised directions for use and labeling requirements for products released for shipment on or after October 1, 2005, included in the EPA accepted November 9, 2005, label.

VIOLATION

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

Count 1

32. Complainant hereby incorporates the allegations contained in Paragraphs 18 through 30 above, as if fully set forth herein.

33. Documentation collected during the MDA inspection reveals that Respondent distributed or sold approximately 152 bags, each containing approximately 1,940-lbs, of 2,4-D Acid.

34. The label on the 2,4-D Acid at the time of the MDA inspection failed to include the complete EPA accepted first aid statement and environmental hazards precautionary statement. The label further failed to include the revised directions for use and labeling requirements for products released for shipment on or after October 1, 2005.

35. Respondent violated Section 12(a)(1)(E) of FIFRA by holding for distribution or sale a pesticide which is adulterated or misbranded.

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

36. 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.

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

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

39. 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.

40. 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.

41. This CAFO addresses all civil administrative claims for the FIFRA violation identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

42. 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.

43. 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.

44. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Six Thousand Dollars (\$6,000.00) as set forth in Paragraph 1 of the Final Order.

45. The effect of settlement described in Paragraph 41 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 43 above.

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

47. 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. § 136l, 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 Six Thousand Dollars (\$6,000.00). The payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order.

2. Payment of the penalty shall be by cashier or certified check and shall reference EPA Docket Number FIFRA-07-2010-0010, 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. The effective date of this Order shall be the date on which it is filed.

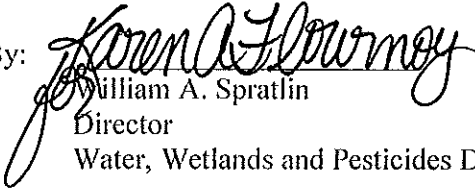
6. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY


Date: 6/1/10

By:


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date: 6/1/10

By:


Kelley Catlin
Assistant Regional Counsel

RESPONDENT:

PBI-Gordon Corporation

Date: May 24, 2010


By: 

Printed Name: Richard E. Martin

Title: President and CEO

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

Date: June 4, 2010



ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF PBI - Gordon Corporation, Respondent
Docket No. FIFRA-07-2010-0010

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 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

James L Kunstman, Ph.D
Director of Regulatory Services
1217 West 12th Street
Kansas City, Missouri 64101-0090

Dated: 6/4/10



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7