

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA 07-2008-0013
)	
Sam's West, Inc.)	CONSENT AGREEMENT
702 SW 8 th Street)	AND
Bentonville, AR 72716-0555)	FINAL ORDER
)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Sam's West, 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), 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).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

1. This 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 Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is Sam's West, Inc., a retail/wholesale membership club that sells pesticides, located at 702 SW 8th Street, Bentonville, Arkansas. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and an Arkansas corporation qualified to do business in the state of Kansas.

Violation

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. 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 which is adulterated or misbranded.

7. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular way.

8. Pool Brand MULTI-FUNCTIONAL CHLORINATING GRANULES is a pesticide that has a supplemental registration under EPA Reg. 69470-29-0-75217, Nava Water Products, South Charleston, West Virginia. The producer and registrant of this product is Clearon Corporation, South Charleston, West Virginia and it is registered under the EPA Reg. No. 69470-20.

9. On or about September 1, 2006, and October 9, 2006, a representative of the Kansas Department of Agriculture conducted inspections including Respondent's place of business located at Sam's Club Store No. 8176, 1401 SW Wanamaker Road, Topeka, Kansas and collected copies of sales receipts, statements and photographs documenting the sale of the pesticide mentioned in Paragraph 8, above.

10. On or about July 18, 2006, Respondent sold a partially-filled container of Pool Brand MULTI-FUNCTIONAL CHLORINATING GRANULES, EPA Reg. No. 69470-75217. The container had been previously sold and returned to Respondent with less than the original contents of 70 pounds of pesticide listed on the container.

11. The partially filled container of Pool Brand MULTI-FUNCTIONAL CHLORINATING GRANULES, EPA Reg. No. 69470-75217 sold by Respondent did not have a correct net contents statement. Pesticides sold with false or misleading labeling information are misbranded.

12. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(a)(1)(E), by selling or distributing a pesticide which was misbranded.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order 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.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. 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.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder at the Sam's Club 8176 in Topeka, Kansas.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated 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, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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. Interest shall

accrue thereon at the rate determined by the Secretary of the Treasury (currently five percent (5%) per annum for the period January 1, 2008 through December 31, 2008) on the unpaid balance until such civil penalty and accrued interest are both paid in full. 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.

FINAL ORDER

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount of Five Thousand Two Hundred Dollars (\$5,200.00). Payment will be made within thirty (30) days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

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

3. The payment shall reference Docket Number, FIFRA 07-2008-001 and In the Matter of Sam's West, Inc. Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
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 Consent Agreement and Final Order shall be claimed by Respondent as a

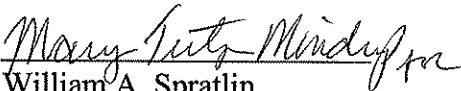
deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

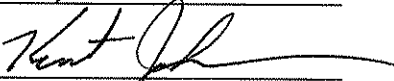
6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

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


Date: 3/28/08

By: 
Kent Johnson
Attorney
Office of Regional Counsel

Date: 3/28/08

Sam's West, Inc.
Docket No. FIFRA 07-2008-0013

RESPONDENT:
Sam's West, Inc.

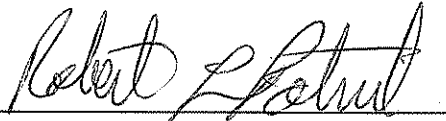
By: 

Title: RGMP

Date: 3-25-08

Sam's West, Inc.
Docket No. FIFRA 07-2008-0013

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



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

Date: March 31, 2008

IN THE MATTER OF Sam's West, Inc., Respondent
Docket No. FIFRA-07-2008-0013

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:

Kent Johnson
Senior 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:

Nelson E. Jackson
Assistant General Counsel
Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, Arkansas 72716-0215

Dated: 3/31/08



Kathy Robinson
Hearing Clerk, Region 7