

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 )  
)  
Flint Hills Feed & Supply, Inc. )  
100 North Main Street )  
Eureka, Kansas 67045 )  
)  
Respondent )

Docket No. FIFRA-07-2009-0004

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Flint Hills Feed & Supply, 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).

**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 Flint Hills Feed & Supply, Inc., an agricultural chemical and pesticide distribution operation which sells chemicals to farms and wholesale retail establishments located at 100 North Main Street, Eureka, Kansas.

### Section III

#### Statutory and Regulatory Background

5. 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).
6. 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.
7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.
8. 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. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of “producer” for the purposes of this subchapter.
9. Pursuant to 40 C.F.R. § 167.3, the term “produce” means 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, repackage, label, relabel, or otherwise change the container of any pesticide or device.
10. Pursuant to 40 C.F.R. § 152.3, the term “package” means the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use, or storage.
11. The Respondent is and was at all times referred to in this CAFO, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Kansas.
12. 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.

13. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of section 136e of this title.

14. Section 136e of FIFRA, 7 U.S.C. § 136e(a), sets forth the requirements for establishment registration. That section 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.

#### Section IV

##### General Factual Allegations

15. Respondent, at all times relevant, operated as a wholesale distributor of agricultural pesticide, insecticide, feed and seed in Eureka, Kansas.

16. On February 12, 2007, and August 31, 2007, a representative of the Kansas Department of Agriculture (KDA) conducted inspections of the Respondent's Eureka, Kansas facility.

17. Farnam Just One Bite Rat and Mouse Bait is a registered pesticide bearing EPA Registration Number (EPA Reg. No.) 7173-188-270.

18. Ropax Bars with Bitrex is a registered pesticide bearing the EPA Reg. No. 100-1055-1117.

19. Straight Arrow Body Guard Towelettes Personal Insect Repellent was a registered pesticide bearing the EPA Reg. No. 11715-242-11314. The registration for Straight Arrow Body Guard Towelettes was cancelled on May 9, 2000.

20. At the time of the February 12 and August 13, 2007, inspections, the Respondent had not registered for an establishment number from EPA to produce pesticide products.

##### VIOLATIONS

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

##### Count 1

22. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 20 above, as if fully set forth herein.

23. Documentation collected during the February 12, 2007 inspection, shows that on December 22, 2006, Respondent sold two individual placepackets of the pesticide, Farnam Just One Bite Rat and Mouse Bait.

24. Farnam Just One Bite Rat and Mouse Bait is labeled for sale as 7.03 pound containers.

25. The label on the individual packets of Farnam Just One Bite Rat and Mouse Bait bears the statement, "It is illegal to sell these placepacks individually."

26. The individual placepackets for Farnam Just One Bite Rat and Mouse Bait are not registered pesticides.

27. Respondent altered the container of the registered pesticide and sold the individual place packets.

28. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), 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 20 above, as if fully set forth herein.

30. Documentation collected during the February 12 and August 31, 2007, inspections, shows that on November 9, 2006, June 25, 2007, June 26, 2007, and July 5, 2007, Respondent sold individual blocks of the pesticide, Ropax Bars with Bitrex.

31. Ropax Bars with Bitrex is labeled for sale as 1.0 pound containers.

32. Individual blocks of Ropax Bars with Bitrex do not have any packaging or labels, and are not registered pesticides.

33. Respondent altered the container of the registered pesticide and sold the individual blocks which are not registered.

34. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

Count 3

35. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 20 above, as if fully set forth herein.

36. Documentation collected during the February 12 and August 31, 2007, inspections, shows that Respondent offered for sale or distribution individual packets of Straight Arrow Body Guard Towelettes Personal Insect Repellent.

37. Straight Arrow Body Guard Towelettes Person Insect Repellent is labeled for sale as 2.65 ounce containers.

38. The registration for Straight Arrow Body Guard Towelettes Person Insect Repellent was cancelled on May 9, 2000.

39. The Respondent altered the container of the Straight Arrow Body Guard Towelettes Personal Insect Repellent and sold them as individual placepackets which are not registered pesticides.

40. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA and whose registration has been canceled.

#### Count 4

41. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 20 above, as if fully set forth herein.

42. Documentation collected during the February 12 and August 31, 2007, inspections, shows that Respondent produced pesticide products by changing the container of the following pesticide products: (1) Farnam Just One Bite Rat and Mouse Bait, (2) Ropax Bars with Bitrex, and (3) Straight Arrow Body Guard Towelettes Personal Insect Repellent.

43. At the time of the February 12 and August 31, 2007, inspections, Respondent had not registered for an establishment number from EPA to produce pesticide products.

44. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by operating as a producer in an establishment not registered with EPA pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

#### Section V

#### CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

45. 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.
46. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Fourteen Thousand Four Hundred Thirty Dollars (\$14,430.00) plus interest as set forth in Paragraph 1 of the Final Order.
54. The effect of settlement described in Paragraph 50 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 52 above.
55. 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.
56. 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 Four Hundred Thirty Dollars (\$14,430.00), plus interest of Two Hundred Twenty-Seven Dollars and Eight-Eight Cents (\$227.88) over a period of twelve (12) months for a total payment of Fourteen Thousand Six Hundred Fifty-Seven Dollars and Eighty-Eight Cents (\$14,657.88). The total civil penalty shall be paid in twelve (12) monthly payments of One Thousand Two Hundred Twenty-One Dollars and Forty-Nine Cents (\$1,221.49) each. The first payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order. Each subsequent payment will be due thirty (30) days after the previous payment.

2. Payments of the penalty shall be by cashier or certified check and shall reference EPA Docket Number FIFRA-07-2009-0004, 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 signed by the Regional Judicial Officer.

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: 9-1-09

By: *Karen A. Flournoy*  
for William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

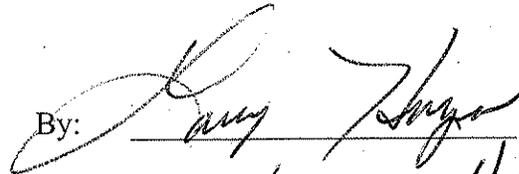
Date: 8/28/09

By: *Kelley Catlin*  
Kelley Catlin  
Assistant Regional Counsel

RESPONDENT:

Flint Hills Feed & Supply, Inc.

Date: 8-21-09

By: 

Printed Name: LARRY HAYES

Title: Owner

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

Date: September 2, 2009



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

IN THE MATTER OF Flint Hills Feed & Supply, Inc., Respondent  
Docket No. FIFRA-07-2009-0004

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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Larry Hayes, Owner  
Flint Hills Feed & Supply, Inc.  
100 North Main Street  
Eureka, Kansas 67045

Dated: 9/2/09



Kathy Robinson  
Hearing Clerk, Region 7