

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:

Respondent
Jacobson Warehouse Co, Inc.
3811 Dixon St.
Des Moines, IA 50313

Facility
Jacobson Warehouse, Inc.
41 Runway Road
Levittown, PA 19057

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. TSCA-03-2009-0047

2008 DEC 22 AM 10:50

RECEIVED

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on December 22, 2008, the original and one true and correct copy of this Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2009-0047) was hand-delivered to and filed with the Regional Hearing Clerk (3RC30), U.S.EPA - Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029. On December 22, 2008, a true and correct copy of the Consent Agreement/Final Order and enclosures (Docket No. TSCA-03-2009-0047) was sent by Certified Mail, Return Receipt Requested, to the addressees listed below.

Marty T. Howard, President
Jacobson Warehouse Co., Inc.
3811 Dixon St.
Des Moines, IA 50313

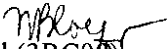
Al Littig, Manager
Jacobson Warehouse, Inc.
41 Runway Road
Levittown, PA 19057


Date: 12/22/08

Magda Rodriguez-Hunt
Magda Rodriguez-Hunt
Compliance Officer
U.S. EPA - Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Subject: Federal Insecticide, Fungicide, and Rodenticide Act
Jacobson Warehouse Company, Inc., Docket No. FIFRA-03-2009-0047
Consent Agreement and Final Order

From: William C. Early 
Regional Counsel (3RC00)

Abraham Ferdas, Director 
Land and Chemicals Division (3LC00)

To: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement has been negotiated pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.18(b)(2), in settlement of an alleged violation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 et seq., by Jacobson Warehouse Company, Inc. The terms of the settlement include a civil penalty of \$3,600.00, calculated in accordance with the statutory factors of Section 14(a) of FIFRA and EPA's "Enforcement Response Policy for Section 7(c) Pesticide Producing Establishment Reporting Requirement," dated June 2007.

We concur with the terms of the attached Consent Agreement and we recommend that you sign the Final Order, in accordance with the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).

cc: Marty T. Howard, President
Jacobson Warehouse Company, Inc.
3811 Dixon Street
Des Moines, IA 50313

Al Littig, Manager
41 Runway Road
Levittown, PA 19057

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

| | | |
|----------------------------------|---|-------------------------------|
| IN RE: |) | DOCKET NO. FIFRA-03-2009-0047 |
| |) | |
| Jacobson Warehouse Company, Inc. |) | CONSENT AGREEMENT |
| 3811 Dixon Street |) | |
| Des Moines, IA 50313 |) | NOTABLY LATE OR NON REPORTING |
| |) | |
| Respondent |) | |

RECEIVED
2009 DEC 22 AM 10:50

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Jacobson Warehouse Company, Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against the Respondent under FIFRA arising from the violation of FIFRA alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.

EPA's Findings of Fact and Conclusions of Law

7. In accordance with the Consolidated Rules at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
 - a. Respondent is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to civil penalties pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
 - b. At all times relevant to the violation alleged herein, Respondent operated a registered pesticide producing "establishment" as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), located at 41 Runway Road, Levittown, PA 19057. This establishment is registered with EPA under Establishment Number 067997-PA-001.
 - c. At all times relevant to the violation alleged herein, Respondent was a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.
 - d. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), provides, *inter alia*, that a producer operating a registered establishment is required to submit annually a pesticide production report to EPA stating the types and amounts of pesticides: (A) which the producer is currently producing; (B) which the producer has produced during the past year; and (C) which the producer has sold or distributed during the past year.
 - e. 40 C.F.R. § 167.85(d) requires that a producer operating a registered establishment submit its pesticide production report (EPA Form 3540-16) annually for the preceding calendar year on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.
 - f. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any person who is a producer to violate any provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
 - g. Respondent was required to submit to EPA by March 1, 2008, a pesticide production report (EPA Form 3540-16) concerning its production, sales, and distribution of pesticides during calendar year 2007.
 - h. Respondent failed to submit its pesticide production report for calendar year 2007 on or before March 1, 2008.

- i. Respondent's failure to timely submit its pesticide production report for calendar year 2007 on or before March 1, 2008 constitutes a violation of Section 7 of FIFRA, 7 U.S.C. § 136e, and therefore, an unlawful act under Section 12 (a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
- j. Respondent is a "distributor" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. 136l(a)(1).

Settlement

8. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of three thousand six hundred dollars (\$3,600), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
9. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to 40 C.F.R. Part 19 and EPA's *Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement*, dated June 2007.
10. Payment of the civil penalty amount required under the terms of Paragraph 8, above, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.

Contact: Natalic Pearson
314-418-4087

b. Via Overnight Delivery of a certified or cashier's check, made payable to the

"United States Treasury", sent to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

c. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

d. By automatic clearinghouse ("ACH") to the following account:

PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA - 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

Contact: Jesse White
301-887-6548

e. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

All payments shall also reference the above case caption and docket number, Docket Number FIFRA-03-2009-0047. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Magda Rodriguez-Hunt (3LC62), Land

and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

11. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

12. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Certification

13. Respondent certifies by its signature herein that it is currently in compliance with all applicable requirements of FIFRA § 7, 7 U.S.C. § 136e.

Other Applicable Laws

14. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable Federal, State, and local laws and regulations.

Reservation of Rights

15. This CAFO resolves only EPA's civil claims for penalties for the specific violation alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

16. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violation alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

17. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

18. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

19. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

12/6/08
Date

Marty R. Howard
Marty R. Howard
Vice President and General Counsel
Jacobson Warehouse Company, Inc.

For Complainant:

12/10/08
Date

Magda Rodriguez-Hunt
Magda Rodriguez-Hunt
Pesticides and Asbestos Programs Branch

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

12/18/08
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

| | | |
|----------------------------------|---|-------------------------------|
| IN RE: |) | DOCKET NO. FIFRA-03-2009-0047 |
| |) | |
| Jacobson Warehouse Company, Inc. |) | FINAL ORDER |
| 3811 Dixon Street |) | |
| Des Moines, IA 50313 |) | |
| |) | |
| Respondent |) | |

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Jacobson Warehouse Company, Inc., have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, *as amended*, 7 U.S.C. § 136l(a) ("FIFRA"), and the Consolidated Rules of Practice, and having determined based on the parties' representation in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a

consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that Respondent pay a penalty of three thousand six hundred dollars (\$3,600), and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

12/19/08
Date



Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III