

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 N. FIFTH STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
 )  
R & C Dean, Inc. )  
203 North Linn Avenue )  
Logan, Iowa 51546 )  
 )  
Respondent )

Docket No. FIFRA-07-2009-0008

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and R & C Dean, 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).

**ALLEGATIONS**

**Jurisdiction**

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 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.

**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 R & C Dean, Inc., a pesticide producer located at 203 North Linn Avenue, Logan, Iowa. The Respondent ceased pesticide production operations on January 1, 2009. 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 authorized to conduct business in the state of Iowa.

### 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, bacteria, 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(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

8. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

9. Section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), states that it shall be unlawful for any person to refuse to prepare, maintain or submit any records required by or under section 136c, 136e, 136f, 136i, or 136q of this title.

10. 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.

11. Pursuant to 40 C.F.R. § 169.2, all producers of pesticides, devices, or active ingredients used in producing pesticides subject to this Act, including pesticides produced pursuant to an experimental use permit and pesticides, devices, and pesticide active ingredients produced for export, shall maintain a number of different records, including but not limited to:

- a. Records showing the product name, EPA Registration Number, Experimental Permit Number if the pesticide is produced under an Experimental Use Permit, amounts per batch and batch identification (numbers, letters, etc.) of all pesticides produced. In cases where the product is an active ingredient used in producing a pesticide or where the product is a pesticide which is not registered, is not the

subject of an application for registration, or is not produced under an Experimental Use Permit, the records shall also show the complete formula. The batch identification shall appear on all production control records. These records shall be retained for a period of two (2) years. 40 C.F.R. § 169.2(a).

- b. Records showing the following information regarding the receipt, by the producer, of all pesticides, devices, and active ingredients used in producing pesticides:
  - i. Brand name of the pesticide or device, or common or chemical name of the pesticide active ingredient;
  - ii. Name and address of shipper;
  - iii. Name of delivering carrier;
  - iv. Date received; and
  - v. Quantities received.

These records are not intended to cover receipt of pesticides used for in-plant maintenance, extermination, or sanitation programs, etc. Shipping and receiving documents such as invoices, freight bills, receiving tickets, etc., which provide the required information will be considered satisfactory for the purposes of this section. These records shall be retained for a period of two (2) years. 40 C.F.R. § 169.2(c).

- c. Inventory records with respect to the types and amounts of pesticides or pesticide active ingredients, or quantities of devices in stock which he has produced. These records may be disposed of when a more current inventory record is prepared. 40 C.F.R. § 169.2(e).

12. Iowa Code § 490.1421, states that a corporation administratively dissolved continues its corporate existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 490.1405 and notify claimants under sections 490.1406 and 490.1407.

13. Iowa Code § 490.1405, states that dissolution of a corporation does not prevent commencement of a proceeding by or against the corporation in its corporate name. 490.1405(2)(e).

#### **Factual Allegations**

14. Respondent, at all times relevant, operated a pesticide production facility located in Logan, Iowa.

15. Respondent produced one pesticide product in a residential garage. The name of the pesticide product was Dean's Meat Base Rat & Mouse Bait bearing the following EPA Registration Number, EPA Reg. No. 17975-1. Respondent has been assigned the following EPA Establishment Number, EPA Est. No. 17975-IA-001.

16. On June 26, 2008, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted a routine producer establishment inspection at the Respondent's facility in Logan, Iowa, for the purpose of determining the Respondent's compliance with FIFRA, including review of pesticide products produced and records maintained.

17. During the June 26, 2008, inspection the Respondent could not provide the IDALS representative pesticide production records, receiving records, or inventory records. The representative for Respondent additionally made a certified statement that these records are not maintained.

18. On August 11, 2008, the Iowa Secretary of State issued a Certificate of Dissolution which administratively dissolved Respondent's corporation. The grounds for dissolution were based on Respondent's failure to file a biennial report, as required by Iowa Code § 490.1622, within 60 days of its due date.

19. On January 1, 2009, Respondent ceased all operations at its Logan, Iowa facility and began to dissolve the corporation. Respondent terminated its registration with EPA as part of dissolution.

### VIOLATIONS

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

#### Count 1

21. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 19 above, as if fully set forth herein.

22. During the IDALS inspection on June 26, 2008, Respondent could not provide pesticide production records, receiving records, or inventory records to the IDALS representative for the following pesticide product produced by the Respondent, Dean Meat Base Rat and Mouse Bait, bearing the EPA Registration number, EPA Reg. No. 17975-1.

23. Respondent violated Section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), by failing to prepare, maintain, or submit any records required by or under section 136c, 136e, 136f, 136i, or 136q of this title. Specifically, Respondent failed to maintain records required under Section 8(a) of FIFRA, 7 U.S.C. § 136f.

### CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. 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.
2. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO.
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 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.
6. 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.
7. 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.
8. 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.
9. 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.

10. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of One Thousand Five Hundred Dollars (\$1,500.00) as set forth in Paragraph 16 of the Final Order.

11. The effect of settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 9 above.

12. Nothing in this CAFO 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 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.

13. Respondent agrees that it is dissolving its corporate status, that it ceased producing Dean Meat Base Rat and Mouse Bait, bearing the EPA Registration number, EPA Reg. No. 17975-1, on January 1, 2009, that all Dean Meat Base Rat and Mouse Bait and ingredient products have been sold, and that it will not resume pesticide production operations in the future.

14. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

15. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice 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.

#### **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:

**A. Payment of Civil Penalty**

16. Respondent, in settlement of the allegations set forth above, shall pay by cashier or certified check, a civil penalty, for the violations cited herein, in the amount of One Thousand Five Hundred Dollars (\$1,500.00), on or before thirty (30) days of the effective date this Final Order.

17. Payment of the penalty shall be by cashier or certified check which shall reference Docket Number FIFRA-07-2009-0008, 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.

18. A copy of the check shall simultaneously be sent to the following:

Kelley Catlin  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101.

19. 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.

**B. Compliance Actions**

20. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below:

- a. Within 30 days of the Effective Date of this Consent Agreement and Final Order, Respondent shall provide a legible copy of all forms submitted to EPA Headquarters which:
- i. cancel Respondent's pesticide registration for Dean Meat Base Rat and Mouse Bait, bearing the EPA Registration number, EPA Reg. No. 17975-1; and
  - ii. cancel Respondent's EPA Establishment Number, EPA Est. No. 17975-IA-001.

21. Respondent shall submit all documentation required by Paragraph 20(a), above, within 30 days of the effective date of the Final Order to the following address:

Elizabeth Murtagh-Yaw, WWPD  
Environmental Protection Agency  
Region VII  
901 N. 5th Street  
Kansas City, Kansas 66101.

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

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/1/09

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

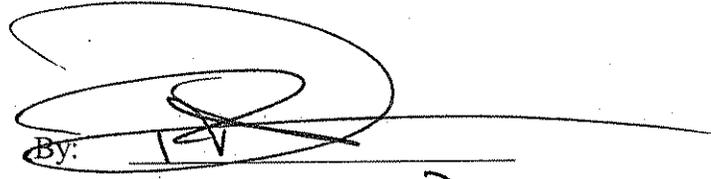
Date: 5/1/09

By: *Kelley Catlin*  
Kelley Catlin  
Assistant Regional Counsel

RESPONDENT:

R & C Dean, Inc.

Date: 29 APR 09



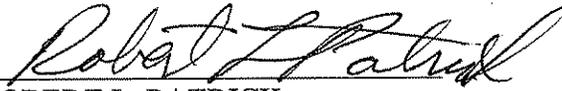
By: [Signature]

Printed Name: ROBERT A. DEAN

Title: Gen. Manager

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

Date: May 11, 2009

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

IN THE MATTER OF R&C Dean, Inc., Respondent  
Docket No. FIFRA-07-2009-0008

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:

Robert A. Dean, General Manager  
R&C Dean, Inc.  
203 North Linn Avenue  
Logan, Iowa 51546

Dated: 5/11/09



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7