

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
 )  
Hunter's Specialties, Inc. ) Docket No. FIFRA-07-2008-0001  
6000 Huntington Court, NE )  
Cedar Rapids, IA 52402 ) CONSENT AGREEMENT  
 ) AND  
Respondent ) FINAL ORDER

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Hunter's Specialties, Inc. (Respondent) have agreed to a settlement of this action before filing 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" or "Act"), 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 VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.
4. The Respondent is Hunter's Specialties, Inc., a pesticide producer, located at 6000 Huntington Court, NE, Cedar Rapids, Iowa. 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 Iowa.

### **Statutory and Regulatory Background**

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to include, among other things, bacteria or other micro-organism.

6. According to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

7. FIFRA § 2(dd), 7 U.S.C. § 136(dd), defines an establishment as any place where a pesticide is produced, or held, for distribution or sale.

8. 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.

9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 USC § 136a.

10. According to 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration if, inter alia, the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

11. FIFRA § 7(a), 7 U.S.C. § 136e(a) states that no person may produce a pesticide subject to FIFRA unless the establishment in which it is produced is registered with EPA.

12. According to FIFRA Section 2(w), 7 U.S.C. § 136(w) and 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 the Act, any active ingredient or device, or to package, repack, label, re-label, or otherwise change the container of any pesticide or device.

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

15. 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.

17. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

#### Factual Allegations

18. On or about December 8, 2006, a representative of the Iowa Department of Agriculture and Land Stewardship (IDAL) inspected Respondent's facility identified in paragraph 4 and collected photos of the following products: 38,170 packages each containing 1.5 oz. granular mixture of Wild Gamekeeper Spray; and 8,784 packages each containing three, 1.5 oz. bags granular mixture of Wild Gamekeeper Refills.

19. The label of Wild Gamekeeper Spray states, in pertinent part, "Wild Gamekeeper immediately lowers the pH on the surface of the animal, creating an acid base which inhibits bacteria growth and deters mold spores from attaching to the animal ... Wild Gamekeeper field dressing spray, when used properly can kill bacteria growth; E-Coli (99.6%), Salmonella (99.9%), and Listeria monocytogenes (99.9%)." The label also claims to work on "Contact to inhibit Bacteria Growth and Spoilage."

20. The label of Wild Gamekeeper Refills states, in pertinent part, "Wild Gamekeeper immediately lowers the pH on the surface of the animal, creating an acid base which inhibits bacteria growth and deters mold spores from attaching to the animal ..." The label also claims to specifically prevent the growth of the following types of bacteria: E-Coli, Salmonella, and Listeria Monocytogenes. The label states that it will on "Contact to inhibit Bacteria Growth and Spoilage."

#### Violations

21. Complainant hereby incorporates the allegations contained in paragraphs 1 through 20 above, as if fully set forth herein and alleges that Respondent has violated FIFRA and the regulations promulgated thereunder as follows:

#### Count 1

22. During the inspection referenced in paragraph 18, IDAL's representative collected, from Respondent, a copy of the sales invoice numbered 377082 for order number 111006. These records document Respondent's distribution and sale of six packages of Wild Gamekeeper Spray to Stewart Distributing located at 1636 U.S. Hwy 87 W, Stockdale, Texas on or about November

14, 2006.

23. During the inspection referenced in paragraph 18, IDAL's representative collected, from Respondent, a copy of the sales invoice numbered 377870 for order number 341575. These records document Respondent's distribution and sale of thirty-six packages of Wild Gamekeeper Refills to Cabela's Inc., Wheeling Distribution Road, Triadelphia, West Virginia 26059-1000 on or about November 27, 2006.

24. Wild Gamekeeper Spray is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because it promises to kill bacteria, a pest defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t). However, Wild Gamekeeper Spray is not registered with EPA as required by Section 3 of FIFRA, 7 USC § 136a and 40 C.F.R. § 152.15. Therefore, Wild Gamekeeper Spray is an unregistered pesticide.

25. Wild Gamekeeper Refill is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because it promises to kill bacteria, a pest defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t). However, Wild Gamekeeper Refill is not registered with EPA as required by Section 3 of FIFRA, 7 USC § 136a and 40 C.F.R. § 152.15. Therefore, Wild Gamekeeper Refill is an unregistered pesticide.

26. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling the unregistered pesticide, Wild Gamekeeper Spray and Wild Gamekeeper Refill.

Count 2

27. Complainant hereby incorporates the allegations contained in paragraphs 1 through 26 above, as if fully set forth herein.

28. During the inspection referenced in paragraph 18, IDAL's representative visited Respondent's warehouse and documented the holding for sale of the unregistered pesticide product, Wild Gamekeeper Spray and Wild Gamekeeper Refill.

29. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term "to distribute or sell" includes holding of a pesticide for sale or distribution. Therefore, Respondent distributed or sold the unregistered pesticides, Wild Gamekeeper Spray and Wild Gamekeeper Refills.

30. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by the distribution or sale of the unregistered pesticides, Wild Gamekeeper Spray and Wild Gamekeeper Refills.

Count 3

31. During the inspection referenced in paragraph 18, IDAL's representative collected, from Respondent, a copy of the sales invoice numbered 377082 for order number 111006. These records document Respondent's distribution and sale of six packages of Wild Gamekeeper Spray to Stewart Distributing located at 1636 U.S. Hwy 87 W, Stockdale, Texas on or about November 14, 2006.

32. During the inspection referenced in paragraph 18, IDAL's representative collected, from Respondent, a copy of the sales invoice numbered 377870 for order number 341575. These records document Respondent's distribution and sale of thirty-six packages of Wild Gamekeeper Refills to Cabela's Inc., Wheeling Distribution Road, Triadelphia, West Virginia 26059-1000 or about November 27, 2006.

33. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), the label of each the packages of Wild Gamekeeper Spray and Wild Gamekeeper Refill were misbranded because the label did not contain important required information including but not limited to additional Precautionary Statements, Personal Protection Equipment (PPE) requirements, User Safety Recommendations, Environmental Hazards, Agricultural and Non-Agricultural Use Requirements, Direction For Use, and pesticide Storage and Disposal Information.

34. Since the Wild Gamekeeper Spray and Wild Gamekeeper Refills did not have most of the required labeling, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a pesticide which was misbranded.

#### Count 4

35. Complainant hereby incorporates the allegations contained in paragraphs 1 through 34 above, as if fully set forth herein.

36. During the inspection referenced in paragraph 18, the IDAL's representative visited the warehouse of Respondent and documented the holding for sale of the unregistered pesticide product, Wild Gamekeeper Spray and Wild Gamekeeper Refill.

37. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), the label of each the packages of Wild Gamekeeper Spray and Wild Gamekeeper Refill were misbranded because the label did not contain important required information including but not limited to additional Precautionary Statements, Personal Protection Equipment (PPE) requirements, User Safety Recommendations, Environmental Hazards, Agricultural and Non-Agricultural Use Requirements, Direction For Use, and pesticide Storage and Disposal Information.

38. Since the Wild Gamekeeper Spray and Wild Gamekeeper Refills did not have most of the

required labeling, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

Count 5

39. The facts stated in paragraphs 1 through 38 are realleged and incorporated as if fully stated herein.

40. During the inspection referenced in paragraph 18, the IDAL's representative documented that Respondent was re-packaging, labeling and/or re-labeling the unregistered pesticides Wild Gamekeeper Spray and Wild Gamekeeper Refills.

41. Respondent's act of re-packaging, labeling and/or re-labeling the unregistered pesticides Wild Gamekeeper Spray and Wild Gamekeeper Refills constitutes "production" as that term is defined under Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

42. Since Respondent produced the pesticides Wild Gamekeeper Spray and Refills at its facility identified in paragraph 4, it was required to register as a pesticide-producing establishment pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e. However, during the inspection referenced in paragraph 18, it was determined that Respondent failed to properly establish the facility as required by FIFRA § 7(a), 7 U.S.C. § 136e.

43. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), in that it was considered a producer and failed to comply with the provisions of Section 7 of FIFRA by producing a pesticide in an unregistered establishment.

**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, finds it reasonable, 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.
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. 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.
8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.
9. 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.
10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.
11. The effect of the settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5 above.

**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:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's check or certified check, a civil penalty for the violations cited herein, in the amount of \$13,000, on or before thirty (30) days of the effective date this Final Order.
2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America," and reference Docket Number FIFRA 07-2008-0001 and **In the Matter of Hunter's Specialties, Inc.** and be remitted to:

**Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII,  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077,  
St. Louis, Missouri 63197-9000.**

3. Copies of the check shall be forwarded to:

Demetra O. Salisbury  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> 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.

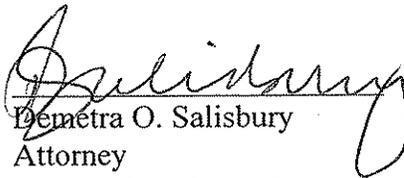
6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

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

Date: 8-5-08

By:   
Demetra O. Salisbury  
Attorney  
Office of Regional Counsel

Date: August 1, 2008

RESPONDENT:

Hunter's Specialties Inc.

By: Carman S Forbes

Title: CO-CEO

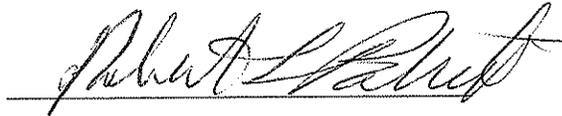
Date: 7-23-08

By: David R. Tubbs

Title: CO-CEO

Date: 7-25-08

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



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

August 6, 2008  
Date

IN THE MATTER OF Hunter's Specialties, Inc., Respondent  
Docket No. FIFRA-07-2008-0001

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:

Demetra O. Salisbury  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Steven J. Pace  
Shuttleworth & Ingersoll, P.L.C.  
PO Box 2107  
Cedar Rapids, Iowa 52406-2107

Dated: 8/7/08



Kathy Robinson  
Hearing Clerk, Region 7