

4. The Respondent is Steinbeck & Sons, Inc., a pesticide dealer, located at 69888 612th Street, Griswold, Iowa 51535. 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 a corporation qualified to do business in the state of Iowa.

Violations

General Allegations

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

6. 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.

7. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person to distribute or sell, or make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA.

8. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. §§ 136a(d)(1)(C)(i) and (ii), state in pertinent part that a restricted use pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

9. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), defines "certified applicator" as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, as authorized to use or supervise the use of any pesticide which is classified for restricted use.

10. LUMAX® is a restricted use pesticide registered to Syngenta, Basel, Switzerland, under EPA Registration Number 100-1152 (EPA Reg. No. 100-1152). The label of LUMAX® states in pertinent part, "RESTRICTED USE PESTICIDE. (Ground and surface water concerns). For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification."

11. GRAZON® P+D is a restricted use pesticide registered to Dow AgroSciences LLC, Indianapolis, Indiana, under EPA Reg. No. 62719-182. The label of GRAZON® P+D states in pertinent part, "RESTRICTED USE PESTICIDE. May injure (Phytotoxic), Non-Target Plants. For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification."

12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), prohibits the sale of any pesticide which is adulterated or misbranded.

13. Section 2(q) of FIFRA defines "misbranded" as "labeling" bearing any "statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular ..."

14. Title 40 C.F.R. § 152.44 requires that any modification in the labeling or packaging of a registered pesticide must be submitted to EPA with an application for amended registration and approved by EPA before the modified product may be distributed or sold.

15. On November 15, 2006, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted a pesticide dealer inspection at Respondent's facility in Griswold, Iowa, for the purpose of determining Respondent's compliance with the FIFRA, including review of restricted use pesticide (RUP) sales and application records.

Count 1

16. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

17. On November 15, 2006, during the inspection referenced in paragraph 15, a representative of IDALS collected a copy of invoice number 0013250 from Respondent. The invoice documents Respondent's distribution and making available for use one quart of the restricted use pesticide LUMAX®, EPA Reg. No. 100-1152, to Mr. Tom Moore on June 2, 2006.

18. On November 27, 2006, the IDALS representative obtained from Mr. Tim Steinbeck an affidavit in which Mr. Steinbeck acknowledged selling the restricted use pesticide, LUMAX®, to Mr. Tom Moore, an uncertified applicator.

19. At the time of the sale referred to in paragraph 17, Mr. Tom Moore was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1) and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

20. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

Count 2

21. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

22. On November 15, 2006, during the inspection referenced in paragraph 15, a representative of IDALS collected a copy of invoice number 0013482 from Respondent. The invoice documents Respondent's distribution and making available for use two and one half gallons of the restricted use pesticide GRAZON® P+D, EPA Reg. No. 62719-182, to Mr. Randall Baier on July 26, 2006.

23. On November 27, 2006, the IDALS representative obtained from Mr. Tim Steinbeck an affidavit in which Mr. Steinbeck acknowledged selling the restricted use pesticide, GRAZON® P+D, to Mr. Randall Baier, an uncertified applicator.

24. At the time of the sale referred to in paragraph 17, Mr. Randall Baier was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1) and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

25. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

Count 3

26. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

27. On November 15, 2006, during the inspection referenced in paragraph 15, a representative of IDALS documented that Respondent had sold one quart of the pesticide GRAZON® P+D, EPA Reg. No.62719-182, in a two and one half gallon container marked "broken." Additionally, Respondent had not registered the modified product with EPA.

28. On November 27, 2006, the IDALS representative obtained from Mr. Tim Steinbeck an affidavit in which Mr. Steinbeck acknowledged selling one quart of GRAZON® P+D in a two and one half gallon container marked "broken."

29. Respondent violated Sections 12(a)(1)(a) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(a) and 136j(a)(1)(E), and 40 C.F.R. § 152.44 by selling an unregistered and misbranded pesticide.

Count 4

30. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

31. On November 15, 2006, during the inspection referenced in paragraph 15, a representative of IDALS documented that Respondent had sold one pint of the pesticide STRATEGY®, EPA Reg. No. 34704-836, in a two and one half gallon container marked "broken." Additionally, Respondent had not registered the modified product with EPA.

32. On November 27, 2006, the IDALS representative obtained from Mr. Tim Steinbeck an affidavit in which Mr. Steinbeck acknowledged selling one pint of the pesticide STRATEGY® in a two and one half gallon container marked "broken."

33. Respondent violated Sections 12(a)(1)(a) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(a) and 136j(a)(1)(E), and 40 C.F.R. § 152.44 by selling an unregistered and misbranded pesticide.

CONSENT AGREEMENT

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

1. This CA/FO 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 CA/FO 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 CA/FO.
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 CA/FO 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 CA/FO 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 CA/FO.
8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this CA/FO.
9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty. Respondent understands that its failure to timely pay any portion of the mitigated civil, 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.

10. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashiers or certified check, a civil penalty, for the violations cited herein, in the amount of Three Thousand Dollars (\$3,000.00). Payment will be made within thirty (30) days of the effective date of this Order. The payment shall be identified as **In the Matter of Steinbeck & Sons, Inc.**

11. 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, Missouri 63197-9000

12. The payment shall reference Docket Number, FIFRA-07-2009-0001 and **In the Matter of Steinbeck & Sons, Inc.** Copies of the check shall be forwarded to:

Chris Muehlberger
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

13. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

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

15. This executed CA/FO 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: *Karen A. Howrmy*
for William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 11-18-08

By: *Chris Muehlberger*
Chris Muehlberger
Attorney
Office of Regional Counsel

Date: 11.18.08

RESPONDENT:

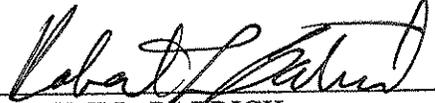
STEINBECK & SONS, INC.

By: *Jim Steinbeck*
Title: Pres

Date: 11-12-08

CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.



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

Date: November 19, 2008

IN THE MATTER OF Steinbeck & Sons, Inc., Respondent
Docket No. FIFRA-07-2009-0001

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:

Chris Muehlberger
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:

Tim Steinbeck
Steinbeck & Sons, Inc.
69888 612th Street
Griswold, Iowa 51535

Dated: 11/19/08



Kathy Robinson
Hearing Clerk, Region 7