



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

March 13, 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL  
RECEIPT NO. 7001 0320 0006 1562 2573

Kendall L. Miller, General Manager  
Evergreen FS, Inc.  
402 N. Hershey Road  
P.O. Box 1367  
Bloomington, IL 61702-1367

In the Matter of: Evergreen FS, Inc., f/d/b/a Corn Belt FS, Inc., Maroa, IL

Docket No. FIFRA-05-2007-0021

Dear Mr. Miller:

I have enclosed the file-stamped Consent Agreement and Final Order (CAFO) which resolves the above case. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on March 13, 2007.

Under paragraph 48 of the CAFO, you must pay the civil penalty within 30 days of March 13, 2007. Your check must display the case docket number, above, and the billing document number BD 2750745P023.

Please direct any questions regarding this case to Maria Gonzalez, Office of Regional Counsel at 312-886-6630.

Sincerely,

A handwritten signature in black ink, appearing to read "David Star", written over a horizontal line.

David Star  
Pesticides and Toxics Enforcement Section

Enclosures (2)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

RECEIVED  
MAR 13 2007

\_\_\_\_\_) Consent Agreement and **REGIONAL HEARING CLERK**  
In the Matter of: ) **U.S. ENVIRONMENTAL**  
) **PROTECTION AGENCY**  
)  
**Evergreen FS, INC.** ) **Proceeding to Assess a Civil Penalty**  
**f/d/b/a Corn Belt FS, Inc.** ) **under Section 14(a) of the Federal**  
**Maroa, Illinois** ) **Insecticide, Fungicide, and Rodenticide**  
Respondent. ) **Act, 7 U.S.C. § 136l(a)**  
)  
\_\_\_\_\_) Docket No. **FIFRA-05-2007-00 21**

**CONSENT AGREEMENT AND FINAL ORDER**

1. This is a civil administrative action commenced and concluded pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a)(1), and Sections 22.1(a)(1), 22.13, 22.18, and 22.35 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) as codified at 40 C.F.R. Part 22 (2006).

**I. PARTIES**

2. The Complainant is, by lawful delegation, the Chief, Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Evergreen FS, Inc., a corporation doing business in the State of Illinois.

4. At all times relevant to this Consent Agreement and Final Order (CAFO), the Respondent, through Corn Belt FS, Inc., had a place of business at 389 East School Road, Maroa, Illinois 61756.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). (See 40 C.F.R. § 22.13(b) [2006]).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

## **II. JURISDICTION AND WAIVER OF RIGHT TO HEARING**

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives any right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

## **III. STATUTORY AND REGULATORY BACKGROUND**

10. 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 7 of FIFRA, 7 U.S.C. § 136e.

11. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with the Administrator of the U.S. EPA (Administrator).

12. Under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), the Administrator registers establishments that produce pesticides and assigns them an establishment registration number.

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

14. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which it was produced.

15. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that 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.

16. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

17. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. In addition, according to 40 C.F.R. § 152.15(a)(1), a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

19. The term “establishment” is defined, in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

20. The term “producer” is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3, as meaning the person who manufactures, prepares, compounds, propagates, or processes any pesticide, or any person who produces any pesticide (including packaging, repackaging, labeling and relabeling).

21. The term “produce” as defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3, means “to manufacture, prepare, propagate, compound, or process any pesticide . . . or to package, repackage, label, relabel or otherwise change the container of any pesticide or device.”

22. The term “distribute or sell” as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), means “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.”

23. The Administrator of U.S. EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 through March 15, 2004 and may assess a civil penalty of up to \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

#### **IV. FACTUAL ALLEGATIONS AND VIOLATIONS**

24. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

25. On September 1, 2006, Respondent merged with Corn Belt FS Inc. and assumed the liability for the violations alleged in this CAFO.

26. On or about March 1, 2005, U.S. EPA acquired information (Respondent’s records) regarding the production of “pesticides” by Respondent, located at 389 East School Road, Maroa, Illinois 61756, during the 2004 calendar year.

27. Respondent’s facility at 389 East School Road, is an “establishment” as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

28. Respondent’s records indicated that Respondent produced the following pesticides, as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), at its establishment:

Guardsman Max (EPA Reg. 7969-192)

Marksman (EPA Reg. 55947-39)

Prowl (EPA Reg. 241-337)

Roundup Original Max (EPA Reg. 524-539)

Roundup Weather Max (EPA Reg. 524-357)

The pesticides listed above are pesticides, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 36(u).

29. Records maintained by U.S. EPA reveal that the establishment owned and operated by Respondent was not registered as an active pesticide producing establishment during

the 2004 calendar year and continuing to September 12, 2005, pursuant to the requirements of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 CFR Part 167.

30. Respondent produces pesticides as the term “produce” is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.

31. Respondent is a “producer” as that term is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 CFR § 167.3.

32. Respondent produced a pesticide in an unregistered establishment in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

33. Respondent’s production of a pesticide in an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), which states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

34. As a result of Respondent’s violation of Section 7(a) of FIFRA, 7 U.S.C. §136e(a), Respondent is subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

35. At all times relevant to this CAFO, Respondent owned, controlled, or had custody of the pesticides identified in paragraph 28.

36. At all times relevant to this CAFO, Respondent “distributed or sold” the pesticides identified in paragraph 28, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

37. Respondent’s records indicated that the pesticides identified in paragraph 28 were distributed or sold during the 2004 calendar year.

38. Respondent distributed or sold the pesticides identified in paragraph 28, with a label or labels that did not bear a registration number assigned under Section 7 to the establishment in which it was produced.

39. Respondent distributed or sold “misbranded” pesticides as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

40. Respondent’s distribution or sale of a misbranded pesticide constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any

pesticide which is adulterated or misbranded.

41. As a result of Respondent's violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), Respondent is subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

42. On or about August 10, 2005, U.S. EPA issued a Stop Sale, Use, or Removal Order against Respondent for the production of pesticides in an establishment not registered with U.S. EPA and the subsequent distribution or sale of "misbranded" pesticides, because any labels affixed to the pesticides were misbranded by either bearing a false establishment registration number or not bearing a true establishment registration number assigned by U.S. EPA.

43. After proper application by Respondent to register its establishment, U.S. EPA registered Respondent's establishment on September 12, 2005, and, after the merger, on November 17, 2006.

44. The U.S. EPA assigned the establishment registration number, 040681-IL-021 to Respondent.

45. In correspondence dated September 22, 2005, Respondent submitted to U.S. EPA a corporate operating procedure to demonstrate that it understands the responsibilities of having an establishment registered under Section 7 of FIFRA, 7 U.S.C. § 136e, and an establishment registration number and the requirements necessary to maintain compliance with FIFRA. The corporate operating procedure would include, among other things, a directive to place the correct EPA-assigned Establishment Registration Number on each pesticide package or container, maintain detailed records on production, i.e. repackaging, when such event occurs, and properly report to U.S. EPA on an annual basis the company's total production for each calendar year.

## **V. CIVIL PENALTY**

46. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and the "Enforcement Response Policy for FIFRA (July 2, 1990)," U.S. EPA has determined that a civil penalty of \$8,295 per pesticide produced and subsequently distributed or sold by Respondent may be proposed in a complaint for Respondent's violations of Sections 7(a) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(1)(E). However, in light of Respondent's good faith efforts to correct the violations immediately after discovery by U.S. EPA, Complainant has

determined that an appropriate civil penalty to settle this action expeditiously and prior to the issuance of a complaint is \$2,074.

47. Respondent agrees to pay a civil penalty in the amount of the \$2,074 to settle this matter.

48. Respondent must pay the \$2,074 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

49. Respondent must send the check to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

50. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Maria Gonzalez (C-14J)  
Office of Regional Counsel  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

David Star (DT-8J)  
Pesticides and Toxics Enforcement Section  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondent does not timely pay the civil penalty, U.S. EPA may refer the matter to the Attorney General, who will recover such amount by action in the appropriate



United States district court, under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

53. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

- (a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.
- (b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.
- (c) **Non-Payment Penalty.** Respondent will pay a 6 percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

## VI. FINAL STATEMENT

54. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Violations section of this CAFO.

55. The effect of the settlement described in this CAFO is conditioned upon the accuracy of Respondent's representations to U.S. EPA, as memorialized in paragraphs 43 and 45 of this CAFO, Respondent's "**Application for Registration of Pesticide-Producing and Device-Producing Establishments**" dated August 23, 2005, and November 8, 2006, and Respondent's correspondence to U.S. EPA dated September 22, 2005, October 6, 2006 and November 8, 2006.

56. Respondent consents to all of the conditions in this CAFO.

57. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

58. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws, and regulations.

59. Respondent certifies that it is complying fully with FIFRA, 7 U.S.C. §§ 136 et.seq.

60. The terms of this CAFO bind Evergreen FS, Inc., and its successors, and assigns.

61. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that

party to its terms.

62. Each party agrees to bear its own costs and attorneys' fees in this action.

63. This CAFO constitutes the entire agreement between the parties.

64. Respondent consents to the issuance of the accompanying Final Order without further notice.

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of: Evergreen FS, Inc. Maroa, Illinois**

**Docket No. FIFRA-05-2007-0021**

*BBW*

**Evergreen FS, Inc., Respondent**

Date: 2/21/07

By: *Fendell L. Miller, General Manager*  
[Responsible Individual's Name, Title]  
Evergreen FS, Inc.

**United States Environmental Protection Agency, Complainant**

Date: 3/2/07

By: *Anthony S. Restaino*  
for Mardi Klevs Chief  
Pesticides and Toxics Branch  
Waste, Pesticides, and Toxics Division

Date: 3/5/07

By: *Margaret M. Guerriero*  
Margaret M. Guerriero, Director  
Waste, Pesticides, and Toxics Division

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of: Evergreen FS, Inc. Maroa, Illinois**  
**Docket No. FIFRA-05-2007-0021**

*JBW*

**RECEIVED**  
MAR 13 2007

*JBW*

**REGIONAL HEARING CLERK**  
**U.S. ENVIRONMENTAL**  
**PROTECTION AGENCY**

**FINAL ORDER**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

Date: 3-7-07

*Mary A. Gade*  
\_\_\_\_\_

Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

CERTIFICATE OF SERVICE

I hereby certify that one original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Evergreen FS, Inc., f/d/b/a Corn Belt FS, Inc., Maroa, Illinois, was filed on March 13, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 1562 2573, the second copy to Respondent:

Kendall L. Miller, General Manager  
Evergreen FS, Inc.  
402 N. Hershey Road  
P.O. Box 1367  
Bloomington, IL 61702-1367

and forwarded copies (intra-Agency) to:

Marcy Toney, ORC/C-14J  
Maria Gonzalez, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

Marlene Bronson 3/13/07

Marlene Bronson  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2007-0021

*JBW*