

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2014 AUG 27 PM 1:13

BEFORE THE ADMINISTRATOR

In the Matter of

Custom Feed Services Corporation

Respondent

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Docket No. FIFRA-07-2014-0008

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Custom Feed Services Corporation, (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) and 22.18(b)(2) 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) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding 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 the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

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 Custom Feed Services Corporation, a pesticide producer and distributor with a facility located at 2100 North 13th Street, Norfolk, Nebraska 68701.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. 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 animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. 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.

8. 40 C.F.R. § 152.15(a) states that 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 (1) claims, states, or implies (by labeling or otherwise) that the substance

can or should be used as a pesticide; or (2) that the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide.

9. 40 C.F.R. § 152.15(c) states that 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 has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

11. 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.

12. The term “produce” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as meaning 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.

13. The term “producer” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as 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).

14. 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 representative thereto or to its ingredients which is false or misleading in any particular.

15. 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 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.

16. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment.

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

18. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), states that any producer operating a registered pesticide establishment shall submit annual reports of pesticide production, sales, and distribution to the EPA Administrator in accordance with applicable regulations.

19. The regulation at 40 C.F.R. § 167.3 states that pesticide production reports shall include information showing the types of pesticidal products produced at a facility, and that, for pesticides that are not registered with the EPA, such information shall include the chemical formulation of the products.

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

21. 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 U.S.C. § 136a, or whose registration has been cancelled or suspended.

22. 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.

Section IV

General Factual Allegations

23. 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).

24. The Respondent, at all times relevant herein, operated a pesticide-producing establishment in Norfolk, Nebraska.

25. The Respondent’s president, Larry Smith, is also the principal of Earthworks Health, LLC, a Nebraska corporation that engages in the sale and distribution of Diatomaceous Earth and Copper Sulfate products via the internet.

26. All Earthworks Health LLC products are packaged and shipped by Respondent Custom Feed Services.

27. The Diatomaceous Earth products marketed by Earthworks Health LLC are marketed with the following claims:

- (i) “Get Rid of Bed Bugs”
- (ii) “Organic Pest Control”

- (iii) "Flea control"
- (iv) "Organic Garden Pest Control"
- (v) "Household Pest Control"
- (vi) "natural, organic garden pest control and household insect killer"
- (vii) "Kill roaches, silverfish, KILL ANTS, fire ants, carpenter ants, bedbugs, lice, mites, spiders, earwigs, flies, fleas, box elder bugs, crabs(std), Pubic and hair Lice, scorpions, crickets, and many other insects"
- (viii) "PERMA-GUARD CRAWLING INSECT CONTROL---EPA REGISTERED AND APPROVED!"
- (ix) "KILLS aphids, white flies, beetles, loopers, mites, snails, slugs, leaf hoppers, and HARMFUL PESTS"
- (x) "for organic pest control on farms"
- (xi) "used by non-organic growers for pest control"
- (xii) "for Garden Insects"
- (xiii) "For household insects, ants, roaches, spiders, mites, fleas, flies etc."
- (xiv) "DE kills spiders, roaches, silverfish, ants, fire ants, carpenter ants, bedbugs, lice, mites, earwigs, flies, fleas, box elder bugs, crabs(std), pubic and hair lice, scorpions, crickets and harmful insects."
- (xv) "We sell both the EPA approved label bag and the Non EPA approved label bag. The only difference is the label - it is exactly the same product dug out of the same mine."

28. The copper sulfate products in 10-pound and 3-pound packages as described in this Consent Agreement and Final Order were repackaged by Respondent from one or more EPA-registered copper sulfate pesticide products intended for the control of algae in agricultural and non-agricultural settings, for root control in sewers, and as fungicides.

Violations

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

Count 1

30. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

31. On or about November 21, 2011, Respondent sold or distributed a quantity of a Diatomaceous Earth pesticide product packaged in a jug container

32. On the date of the sale and/or distribution of the Diatomaceous Earth pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

33. As sold or distributed by Respondent, the label for the Diatomaceous Earth pesticide product lacked a valid EPA registration number.

34. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 2

36. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

37. On or about November 21, 2011, Respondent sold or distributed a quantity of a Diatomaceous Earth pesticide product packaged in a 4-pack of containers.

38. On the date of the sale and/or distribution of the Diatomaceous Earth pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

39. As sold or distributed by Respondent, the label for the Diatomaceous Earth pesticide product lacked a valid EPA registration number.

40. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

41. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 3

42. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

43. On or about November 21, 2011, Respondent sold or distributed a quantity of a Diatomaceous Earth pesticide product packaged in a 10-pound bag.

44. On the date of the sale and/or distribution of the Diatomaceous Earth pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

45. As sold or distributed by Respondent, the label for the Diatomaceous Earth pesticide product lacked a valid EPA registration number.

46. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

47. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 4

48. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

49. On or about November 21, 2011, Respondent sold or distributed a quantity of a Diatomaceous Earth pesticide product packaged in a 50-pound bag.

50. On the date of the sale and/or distribution of the Diatomaceous Earth pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

51. As sold or distributed by Respondent, the label for the Diatomaceous Earth pesticide product lacked a valid EPA registration number.

52. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

53. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 5

54. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

55. On or about November 21, 2011, Respondent sold or distributed a quantity of a Copper Sulfate pesticide product packaged in a 10-pound bag.

56. On the date of the sale and/or distribution of the Copper Sulfate pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

57. As sold or distributed by Respondent, the label for the Copper Sulfate pesticide product lacked a valid EPA registration number, production establishment number, directions for use, and personal protection equipment language.

58. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

59. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 6

60. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

61. On or about November 21, 2011, Respondent sold or distributed a quantity of a Copper Sulfate pesticide product packaged in a 3-pound container.

62. On the date of the sale and/or distribution of the Copper Sulfate pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

63. As sold or distributed by Respondent, the label for the Copper Sulfate pesticide product lacked a valid EPA registration number, production establishment number, directions for use, and personal protection equipment language.

64. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

65. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 7

66. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

67. On or about November 21, 2011, Respondent repackaged a quantity of a Diatomaceous Earth pesticide product into a jug container.

68. On the occasion of its repackaging of the quantity of the Diatomaceous Earth pesticide product, Respondent's establishment was not registered with the EPA as a pesticide producing establishment.

69. As defined by 40 C.F.R. § 167.3, the packaging, repackaging, labeling, or relabeling of a pesticide constitutes production of the pesticide.

70. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by production of the Diatomaceous Earth pesticide product in an establishment that was not registered with the EPA as a pesticide producing establishment.

Count 8

71. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

72. On or about November 21, 2011, Respondent repackaged a quantity of a Diatomaceous Earth pesticide product into one or more 4-packs of containers for distribution.

73. On the occasion of its repackaging of the quantity of the Diatomaceous Earth pesticide product, Respondent's establishment was not registered with the EPA as a pesticide producing establishment.

74. As defined by 40 C.F.R. § 167.3, the packaging, repackaging, labeling, or relabeling of a pesticide constitutes production of the pesticide.

75. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by production of the Diatomaceous Earth pesticide product in an establishment that was not registered with the EPA as a pesticide producing establishment.

Count 9

76. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

77. On or about November 21, 2011, Respondent repackaged a quantity of a Diatomaceous Earth pesticide product into one or more 10-pound containers.

78. On the occasion of its repackaging of the quantity of the Diatomaceous Earth pesticide product, Respondent's establishment was not registered with the EPA as a pesticide producing establishment.

79. As defined by 40 C.F.R. § 167.3, the packaging, repackaging, labeling, or relabeling of a pesticide constitutes production of the pesticide.

80. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by production of the Diatomaceous Earth pesticide product in an establishment that was not registered with the EPA as a pesticide producing establishment.

Count 10

81. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

82. On or about November 21, 2011, Respondent repackaged a quantity of a Copper Sulfate pesticide product into one or more 10-pound containers.

83. On the occasion of its repackaging of the quantity of the Copper Sulfate pesticide product, Respondent's establishment was not registered with the EPA as a pesticide producing establishment.

84. As defined by 40 C.F.R. § 167.3, the packaging, repackaging, labeling, or relabeling of a pesticide constitutes production of the pesticide.

85. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by production of the Copper Sulfate pesticide product in an establishment that was not registered with the EPA as a pesticide producing establishment.

Count 11

86. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

87. On or about November 21, 2011, Respondent repackaged a quantity of a Copper Sulfate pesticide product into one or more 3-pound containers.

88. On the occasion of its repackaging of the quantity of the Copper Sulfate pesticide product, Respondent's establishment was not registered with the EPA as a pesticide producing establishment.

89. As defined by 40 C.F.R. § 167.3, the packaging, repackaging, labeling, or relabeling of a pesticide constitutes production of the pesticide.

90. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by production of the Copper Sulfate pesticide product in an establishment that was not registered with the EPA as a pesticide producing establishment.

Count 12

91. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

92. On or about August 6, 2011, Respondent sold or distributed a quantity of a Copper Sulfate pesticide product.

93. On the date of the sale and/or distribution of the Copper Sulfate pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

94. As sold or distributed by Respondent, the label for the Copper Sulfate pesticide product lacked a valid EPA registration number, production establishment number, directions for use, and personal protection equipment language.

95. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

96. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 13

97. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

98. On or about October 30, 2011, Respondent sold or distributed a quantity of a Copper Sulfate pesticide product.

99. On the date of the sale and/or distribution of the Copper Sulfate pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

100. As sold or distributed by Respondent, the label for the Copper Sulfate pesticide product lacked a valid EPA registration number, production establishment number, directions for use, and personal protection equipment language.

101. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

102. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 14

103. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

104. On or about November 30, 2011, Respondent sold or distributed a quantity of a Diatomaceous Earth pesticide product.

105. On the date of the sale and/or distribution of the Diatomaceous Earth pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

106. As sold or distributed by Respondent, the label for the Diatomaceous Earth pesticide product lacked a valid EPA registration number.

107. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

108. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 15

109. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

110. On or about November 19, 2011, Respondent sold or distributed a quantity of a Copper Sulfate pesticide product.

111. On the date of the sale and/or distribution of the Copper Sulfate pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

112. As sold or distributed by Respondent, the label for the Copper Sulfate pesticide product lacked a valid EPA registration number, production establishment number, directions for use, and personal protection equipment language.

113. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

114. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 16

115. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

116. On or about November 5, 2011, Respondent sold or distributed a quantity of a Copper Sulfate pesticide product.

117. On the date of the sale and/or distribution of the Copper Sulfate pesticide product, the product was not registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

118. As sold or distributed by Respondent, the label for the Copper Sulfate pesticide product lacked a valid EPA registration number, production establishment number, directions for use, and personal protection equipment language.

119. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

120. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

Count 17

121. The facts stated in paragraphs 23 through 28 are realleged and incorporated as if fully stated herein.

122. For the quantities of Copper Sulfate and Diatomaceous Earth pesticide products produced by Respondent, Respondent failed to submit a production report to the EPA, as required by Section 7 of FIFRA, 7 U.S.C. § 136e.

123. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to submit production reports pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

Section V

Consent Agreement

124. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

125. Respondent neither admits nor denies the factual allegations set forth above.

126. Respondent waives its right to contest any allegations set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

127. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

128. 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.

129. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

130. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

131. The effect of settlement as described in the following paragraph is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in the preceding paragraph.

132. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order below. Payment of

this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

133. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA not addressed in this Consent Agreement and Final Order or any other applicable law and/or regulation administered by the EPA.

134. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated 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. 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.

Section VI

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 shall pay a mitigated civil penalty of Fifty-Five Thousand Seven Hundred Fifty-Two Dollars and Eighty Cents (\$55,752.80) plus interest for two years of Four

Hundred Eighty-Eight Dollars and Forty-Eight Cents (\$488.48). The civil penalty will be paid in eight (8) quarterly payments of Seven Thousand Thirty Dollars and Sixteen Cents (\$7,030.16) each. The first payment must be received at the address below on or before 30 days after the effective date of the Final Order. Each of the seven succeeding payments shall be due on or before the following dates:

December 8, 2014

March 8, 2015

June 8, 2015

September 8, 2015

December 8, 2015

March 8, 2016

June 8, 2016

Such payments shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street

New York, New York 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

If by electronic payment, payment may be submitted on-line at www.pay.gov by entering “SFO 1.1” in the “Search Public Forms” field. Open the on-line form and complete the required fields to complete payment. Respondent shall print a copy of the payment receipt and mail a copy of the receipt to the contacts listed below

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Andrew Kowalski
Toxics and Pesticides Enforcement Branch, WWPD
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

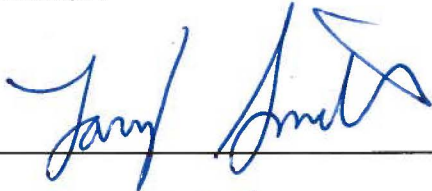
3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT
CUSTOM FEED SERVICES CORPORATION**

Date: 8/4/14

By:




Larry Smith
Print Name

President
Title


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8-22-14



Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date: 9/22/14



Chris R. Dudding
Office of Regional Counsel

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

Date: 8-27-14

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Custom Feed Services Corporation, Respondent
Docket No. FIFRA-07-2014-0008

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

dudding.chris@epa.gov

Copy by First Class Mail to:

Larry Smith, President
Custom Feed Services Corporation
Earthworks Health, LLC
2100 North 13th Street
Norfolk, Nebraska 68701

Dated: 8/27/14



Kathy Robinson
Hearing Clerk, Region 7