



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
August 20, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 3730
RETURN RECEIPT REQUESTED

Mr. James Kunstman
PBI-Gordon Corporation
1217 W. 12th St.
Kansas City, Missouri 64101

Consent Agreement and Final Order In the Matter of
PBI-Gordon Corporation, Docket No. **FIFRA-05-2014-0027**

Dear Mr. Kunstman:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on August 20, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$139,728 is to be paid in the manner described in paragraphs 140 and 141. Please be certain that the docket number is written on both the transmittal letters and on the checks. Payment is due by September 19, 2014, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

PBI-Gordon Corporation
Kansas City, Missouri,

Respondent.



Docket No. FIFRA-05-2014-0027

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is PBI-Gordon Corporation, a corporation doing business in the State of Missouri.
4. 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). 40 C.F.R. § 22.13(b).
5. 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its 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.

9. Respondent certifies that to the best of its knowledge and belief after reasonable inquiry it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 3(c)(2) of FIFRA, 7 U.S.C. § 136a(c)(2), provides that the Administrator of EPA shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time.

11. Section 3(c)(1)(C), 7 U.S.C. § 136a(c)(1)(C), provides that each applicant for registration of a pesticide shall file with the Administrator of EPA a statement which includes a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.

12. Section 3(c)(5)(A) of FIFRA, 7 U.S.C. § 136a(c)(5)(A), provides that the Administrator of EPA shall register a pesticide if the Administrator determines that, when considered with any restrictions imposed under subsection (d), its composition is such as to warrant the proposed claims for it.

13. Section 3(c)(5)(B) of FIFRA, 7 U.S.C. § 136a(c)(5)(B), provides that the Administrator of EPA shall register a pesticide if the Administrator determines that, when considered with any restrictions imposed under subsection (d), its labeling and other material required to be submitted comply with the requirements of FIFRA.

14. 40 C.F.R. § 152.112 provides that EPA will approve an application for registration of a pesticide under the criteria of FIFRA Section 3(c)(5) only if, among other things, the Agency has determined that the product is not misbranded as that term is defined in FIFRA Section 2(q) and 40 C.F.R. Part 156, and its labeling and packaging comply with the applicable requirements of the Act and 40 C.F.R. Parts 152, 156 and 157.

15. 40 C.F.R. § 156.10 provides that every pesticide product shall bear a label containing the information specified by FIFRA and the applicable regulations, and further provides that the contents of a label must show clearly and prominently, among other things, the following: hazard and precautionary statements as prescribed in 40 C.F.R. Part 156, Subparts D and E; and directions for use that must be stated in terms which can be easily read and that, when followed, must be adequate to protect the public from fraud and from personal injury and to prevent unreasonable adverse effects on the environment.

16. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), provides that it is unlawful for any person to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3 of FIFRA.

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

18. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which 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.

19. 40 C.F.R. § 152.132 provides that a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.”

20. 40 C.F.R. § 152.132 provides that a distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

21. 40 C.F.R. § 152.132 provides that supplemental distribution is permitted upon notification to EPA if all of the following conditions are met: (a) The registrant has submitted to EPA for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration number of the registered product; (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product; (c) The distributor product is not repackaged (remains in the producer’s unopened containers); (d) The label of the distributor product is the same as that of the registered product, except that: (1) the product name of the distributor product may be different (but may not be misleading), (2) the name and address of the distributor may appear instead of that of the

registrant, (3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, (4) the establishment number must be that of the final establishment at which the product was produced, and (5) specific claims may be deleted, provided that no other changes are necessary; and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

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 term "label" as defined in Section 2(p) of FIFRA, 7 U.S.C. § 136(p), means "the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers."

24. The term "labeling" as defined in Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), means "all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device" with exceptions not relevant here.

25. 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."

26. The term "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), means, among other things, "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."

27. The term “pest” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA.

28. The term “registrant” as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y), means “a person who has registered any pesticide pursuant to the provisions of FIFRA.”

29. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

30. Respondent is a corporation, and is therefore a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

31. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 1217th West 12th Street, Kansas City, Missouri.

32. Eau Claire Cooperative Oil Company (Eau Claire) is a corporation with a place of business located at 4970 Kane Road, Eau Claire, Wisconsin.

33. Eau Claire is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

34. An inspector employed by Wisconsin Department of Agriculture, Trade and Consumer Protection and authorized to conduct inspections under FIFRA conducted an inspection at Eau Claire’s place of business at 4970 Kane Road, Eau Claire, Wisconsin on the following dates in 2010: May 20 and 27; July 14, 27, 28, 29; August 2, 6, 9, 10, 12, 13, 16, 17,

18, 19, 20, 23 through 27, 30, 31; September 1, 2, 7 through 10, 13 through 16, 21 22, 23, 24, and 27 (the "inspection").

35. Respondent registered its pesticide product "Weed-'N-Feed 6" with EPA, with the first accepted label dated October 18, 1971.

36. EPA assigned EPA Registration Number (EPA Reg. No.) 2217-561 to Respondent's pesticide product Weed-'N-Feed 6.

37. Weed-'N-Feed 6 is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests, and is therefore a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

38. Respondent registered a pesticide pursuant to the provisions of FIFRA, and is therefore a "registrant" as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

39. EPA's Office of Pesticide Programs Information Network (OPPIN) database provides that on or about March 27, 2003, Respondent and Eau Claire submitted a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) to EPA for the pesticide product Weed-'N-Feed 6.

40. During the inspection, the inspector collected a copy of a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) signed by Respondent on October 7, 2008 and by Eau Claire on September 9, 2008 for the pesticide product Weed-'N-Feed 6.

41. The March 27, 2003 and October 7, 2008 Notices of Supplemental Distribution of a Registered Pesticide Product listed Eau Claire as a distributor of Weed-'N-Feed 6, EPA Reg. No. 2217-561.

42. The distributor company number assigned to Eau Claire is 57131.

43. The March 27, 2003 and October 7, 2008 Notices of Supplemental Distribution of a Registered Pesticide Product listed the distributor product name as “Menards Premium Weed & Feed 28-0-3.”

44. The EPA Reg. No. for the distributor product Menards Premium Weed & Feed 28-0-3 is 2217-561-57131.

45. The March 27, 2003 and October 7, 2008 Notices of Supplemental Distribution of a Registered Pesticide Product allowed Eau Claire to distribute Weed-‘N-Feed 6, EPA Reg. No. 2217-561, under the brand name Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, subject to the requirements of FIFRA.

46. Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests, and is therefore a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

47. Pursuant to 40 C.F.R. § 152.132, Eau Claire is considered an agent of Respondent for all intents and purposes under FIFRA, and Respondent may be held liable for violations pertaining to the distributor product Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131.

48. On or about December 12, 1996, EPA issued a conditional notice of registration to Respondent for the pesticide product “EH-1328 Weed and Feed 29-3-4” and assigned it EPA Reg. No. 2217-811.

49. EH-1328 Weed and Feed 29-3-4 is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests, and is therefore a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

50. Respondent registered a pesticide pursuant to the provisions of FIFRA, and is therefore a “registrant” as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

51. EPA’s OPPIN database provides that on or about January 11, 1999 Respondent and Eau Claire submitted a “Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) to EPA for the pesticide product EH-1328 Weed and Feed 29-3-4.

52. During the inspection, the inspector collected a copy of a “Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) signed by Respondent on October 18, 2006 and by Eau Claire on November 6, 2006 for the pesticide product EH-1328 Weed & Feed 29-3-4.

53. The January 11, 1999 and October 18, 2006 Notices of Supplemental Distribution of a Registered Pesticide Product listed Eau Claire as a distributor of EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

54. The January 11, 1999 and October 18, 2006 Notices of Supplemental Distribution of a Registered Pesticide Product listed the distributor product name as “Stein Gardens & Gifts Winterizer Plus Weed Control 22-0-10.”

55. The EPA Reg. No. for the distributor product Stein Gardens & Gifts Winterizer Plus Weed Control 22-0-10 is 2217-811-57131.

56. The January 11, 1999 and October 18, 2006 Notices of Supplemental Distribution of a Registered Pesticide Product allowed Eau Claire to distribute EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811, under the brand name Stein Gardens & Gifts Winterizer Plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131, subject to the requirements of FIFRA.

57. Stein Gardens & Gifts Winterizer Plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests, and is therefore a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

58. Under 40 C.F.R. § 152.132, Eau Claire is considered an agent of Respondent for all intents and purposes under FIFRA, and Respondent may be held liable for violations pertaining to the distributor product Stein Gardens & Gifts Winterizer Plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131.

59. During the inspection, the inspector collected a label and sales and/or distribution records for the product Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131.

60. During the inspection, the inspector collected a label and sales and/or distribution records for the product Stein Gardens & Gifts Winterizer Plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131.

Counts 1 through 30

Menards Premium Weed & Feed 28-0-3

61. Complainant incorporates by reference the allegations contained in paragraphs 30 through 60 of this CAFO.

62. During calendar year 2010, Weed-‘N-Feed 6, EPA Reg. No. 2217-561, was a registered pesticide with EPA accepted labels, including but not limited to accepted labels dated September 8, 2003, November 13, 2008 and October 8, 2009.

63. The accepted labels for Weed-‘N-Feed 6 provide directions for use in applying the product to the ground, including instructions for calibration based on the type of spreader to be used and the following direction: “Always apply with a properly calibrated rotary or drop type

fertilizer spreader to distribute the granules evenly. Never apply by hand.”

64. Eau Claire’s label for Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, did not include the directions for use “Always apply with a properly calibrated rotary or drop type fertilizer spreader to distribute the granules. Never apply by hand.”

65. The omitted directions for use “Always apply with a properly calibrated rotary or drop type fertilizer spreader to distribute the granules. Never apply by hand.” are necessary for effecting the purpose for which Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, is intended and, if complied with, are adequate to protect human health and the environment.

66. Based on paragraphs 63 through 65 above, Menards Premium Weed & Feed 28-0-3 was “misbranded” within the meaning of Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), because the label did not contain directions for use that 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, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.

67. The accepted labels for Weed-‘N-Feed 6 include approved claims that may be made for it as part of its distribution or sale.

68. Eau Claire’s label for Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131 included the claim “Methylene urea is a proven controlled-release homogenous technology. It releases nitrogen gradually through hydrolysis and microbial action in the soil for *safe*, sustained feeding.” (Emphasis added).

69. The word “safe” has not been accepted as a claim or as part of any claim for Weed-‘N-Feed 6, EPA Reg. No. 2217-561.

70. The words “methylene urea” have not been accepted as part of any claim for Weed-‘N-Feed 6, EPA Reg. No. 2217-561.

71. Eau Claire’s label for Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131 included the claim and website “EC GROW www.ecgrowproducts.com TIPS – FAQ’s – INFO.”

72. The accepted labels for Weed-‘N-Feed 6, EPA Reg. No. 2217-561, do not include the claim or website “EC GROW www.ecgrowproducts.com TIPS – FAQ’s – INFO.”

73. Eau Claire’s label for Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131 included the claim “Builds Healthy Lawns” on the front of the label beneath the product name.

74. The claim “Builds Healthy Lawns” has not been accepted as a claim or part of any claim for Weed-‘N-Feed 6, EPA Reg. No. 2217-561.

75. Eau Claire’s label for Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131 included the claim “Deep greening” in yellow colored font on the front of the label.

76. The claim “Deep Greening” has not been accepted as a claim or part of any claim for Weed-‘N-Feed 6, EPA Reg. No. 2217-561.

77. The claims made on Eau Claire’s label for Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131 as part of its distribution or sale and described in paragraphs 68 through 76 above substantially differed from the claims made for it on the accepted labels for Weed ‘N Feed 6, EPA Reg. No. 2217-561.

78. On or about April 28, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards in West St. Paul, Minnesota.

79. On or about April 29, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards in Coon Rapids, Minnesota.

80. On or about April 29, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Moorhead, Minnesota.

81. On or about April 29, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Plover, Wisconsin.

82. On or about April 29, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Baxter, Minnesota.

83. On or about April 29, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Elk River, Minnesota.

84. On or about April 30, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Cambridge, Minnesota.

85. On or about May 5, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Waite Park, Minnesota.

86. On or about May 5, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located at 5150 East Frontage Road HYW 25 in Rochester, Minnesota.

87. On or about May 5, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located at 3000 South Broadway in Rochester, Minnesota.

88. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Apple Valley, Minnesota.

89. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located at 430 Commerce Drive in Madison, Wisconsin.

90. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Baxter, Minnesota.

91. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Baraboo, Wisconsin.

92. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Cambridge, Minnesota.

93. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Forest Lake, Minnesota.

94. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Janesville, Wisconsin.

95. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Golden Valley, Minnesota.

96. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Maple Grove, Minnesota.

97. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Marshfield, Wisconsin.

98. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located at 2102 East Springs Drive in Madison, Wisconsin.

99. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Blaine, Minnesota.

100. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Muskegon, Michigan.

101. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Brooklyn Park, Minnesota.

102. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Holland, Michigan.

103. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Fridley, Minnesota.

104. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Maplewood, Minnesota.

105. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Mankato, Minnesota.

106. On or about May 6, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Coon Rapids, Minnesota.

107. On or about May 10, 2010, Eau Claire distributed or sold Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131, to Menards located in Eau Claire, Wisconsin.

108. Each of the thirty sales and/or distributions by Eau Claire of Menards Premium Weed & Feed 28-0-3 described in paragraphs 78 through 107 above, constitutes a distribution and/or sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

109. Each of the thirty sales and/or distributions by Eau Claire of Menards Premium Weed & Feed 28-0-3, EPA Reg. No. 2217-561-57131 described in paragraphs 78 through 107 above, constitutes a distribution and/or sale of a pesticide with claims that substantially differ from claims made for it as part of the statement required in connection with its registration under Section 136a of FIFRA, in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

110. As provided in 40 C.F.R. § 152.132, Respondent, as the registrant of the distributor product, is liable for each of the thirty unlawful sales and/or distributions of the misbranded pesticide Menards Premium Weed & Feed 28-0-3 described in paragraphs 78 through 107 above.

111. As provided in 40 C.F.R. § 152.132, Respondent, as the registrant of the distributor product, is liable for each of the thirty unlawful sales and/or distributions that made claims which substantially differed from claims made in connection with the registration of Menards Premium Weed & Feed 28-0-3 described in paragraphs 78 through 107 above.

Counts 31 through 34

Stein Gardens & Gifts Winterizer Plus Weed Control 22-0-10

112. Complainant incorporates by reference the allegations contained in paragraphs 30 through 60 of this CAFO.

113. During calendar year 2009, EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811 was a registered pesticide with EPA accepted labels, including but not limited to

accepted labels dated November 23, 2001, April 24, 2003, November 6, 2007, November 16, 2007 and November 13, 2008.

114. The accepted labels for EH-1328 Weed and Feed 29-3-4 include approved claims that may be made for it as part of its distribution or sale.

115. Eau Claire's label for Stein Garden & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim "Improved" on the front of the label.

116. The claim "Improved" has not been accepted as a claim or part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

117. Eau Claire's label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim "Formulated for Wisconsin."

118. The claim "Formulated for Wisconsin" has not been accepted as a claim or part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

119. Eau Claire's label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim "Manufactured exclusively for Stein Gardens & Gifts."

120. The claim "Manufactured exclusively for Stein Gardens & Gifts" has not been accepted as a claim or part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

121. Eau Claire's label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim "Fortified with Milorganite® For Better Results. Naturally."

122. The claim “Fortified with Milorganite® For Better Results. Naturally.” has not been accepted as a claim or part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

123. Eau Claire’s label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim “Contains Iron for Deep Greening.”

124. The claim “Contains Iron for Deep Greening” has not been accepted as a claim or part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

125. The accepted labels for EH-1328 Weed and Feed 29-3-4 include the approved claim “Contains slow-release nitrogen for long lasting feeding without burning, when applied as directed.”

126. Eau Claire’s label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim “Contains *Organic* Slow-Release Nitrogen” on the front of the label. (Emphasis added).

127. The word “organic” has not been accepted as part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

128. Eau Claire’s label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim “No phosphate runoff into lakes and streams” on the front of the label.

129. The claim “No phosphate runoff into lakes and streams” has not been accepted as a claim or part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

130. Eau Claire’s label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 included the claim “Strengthens grass against disease” on the front of the label.

131. The claim “Strengthens grass against disease” has not been accepted as a claim or part of any claim for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

132. The claims made on Eau Claire’s label for Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 as part of its distribution or sale and described in paragraphs 115 through 131 above substantially differed from the claims made for it on the accepted labels for EH-1328 Weed and Feed 29-3-4, EPA Reg. No. 2217-811.

133. On or about August 24, 2009, Eau Claire distributed or sold Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131, to Javic Wholesale Warehouse located in Glendale, Wisconsin.

134. On or about September 25, 2009, Eau Claire distributed or sold Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131, to Javic Wholesale Warehouse located in Glendale, Wisconsin.

135. On or about October 19, 2009, Eau Claire distributed or sold Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131, to Javic Wholesale Warehouse located in Glendale, Wisconsin.

136. On or about November 10, 2009, Eau Claire distributed or sold Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131, to Javic Wholesale Warehouse located in Glendale, Wisconsin.

137. Each of the four sales and/or distributions by Eau Claire of Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10, EPA Reg. No. 2217-811-57131 described in paragraphs 133 through 136 above, constitutes a distribution and/or sale of a pesticide with claims that substantially differ from claims made for it as part of the statement required in connection with

its registration under Section 136a of FIFRA, in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

138. As provided in 40 C.F.R. § 152.132, Respondent, as the registrant of the distributor product, is liable for each of the four unlawful sales and/or distributions that made claims which substantially differed from claims made in connection with the registration of Stein Gardens & Gifts Winterizer plus Weed Control 22-0-10 described in paragraphs 133 through 136 above.

Civil Penalty

139. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$139,728. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

140. Within 30 days after the effective date of this CAFO, Respondent must pay a \$139,728 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note PBI-Gordon Corporation and the docket number of this CAFO.

141. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

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

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

143. If Respondent does not pay timely the civil penalty, 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

144. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

145. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

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

148. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

149. Respondent agrees to take the following actions:

- (a) Within 180 days of the effective date of this CAFO, conduct a review of all accepted labels to ensure compliance with the requirements of FIFRA and revise/amend each label as necessary at the next label printing and enhance training of sales and regulatory staff on appropriate marketing and labeling claims for pesticides; and
- (b) Within 30 days of the effective date of this CAFO, develop and implement a policy requiring distributors to submit copies of labels to Respondent for review and approval prior to Respondent agreeing to allow the supplemental sale and/or distribution of any pesticide product.

150. The terms of this CAFO bind Respondent, its successors and assigns.

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

152. Each party agrees to bear its own costs and attorney fees in this action.

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

PBI-Gordon Corporation, Respondent

July 25, 2014
Date

Donald A. Chew
Donald A. Chew
President & CEO
PBI-Gordon Corporation

United States Environmental Protection Agency, Complainant

8/13/2014
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
PBI-Gordon Corporation
Docket No. FIFRA-05-2014-0027

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8-15-2014

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving PBI-Gordon Corporation, was filed on August 20, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 3730, a copy of the original to the Respondent:

Mr. James Kunstman
PBI-Gordon Corporation
1217 W. 12th St.
Kansas City, Missouri 64101

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Kasey Barton, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2014-0027