

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 08 JUN 08 PM 2:19

REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA 07-2008-0009
)	
West Plains Veterinary Supply Company)	
of Springfield, Inc.)	
614 North Washington, Box 328)	CONSENT AGREEMENT
Springfield, Missouri 65801)	AND
)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (EPA or Complainant), and West Plains Veterinary Supply of Springfield, Inc. (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), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is West Plains Veterinary Supply of Springfield, Inc. (West Plains Vet), a pesticide dealer, located at 614 North Washington, Box 328 in Springfield, Missouri. 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 Missouri.

Violations

General Allegations

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

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that it is unlawful for any person in any state to distribute or sell to any person any pesticide whose registration has been cancelled or suspended.

7. 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.

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

9. Section (q)(1)(A) of FIFRA, 7 U.S.C. § 136 (a)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular way.

10. Section 12 (a)(2)(k) of FIFRA, 7 U.S.C. § 136 (a)(2)(K), states it shall be unlawful for any person to violate any cancellation order issued under this Act.

11. 40 C.F.R. Section 152.132(e), states that voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

12. The term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 F.R. 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

13. The pesticide, EPA Registration Number 7401-67, registered as Ferti-Lome Rose Spray Containing Diazinon and Daconil, was cancelled at the request of the registrant, Voluntary Purchasing Group, Inc., effective December 9, 2002, and published in Federal Register: December 9, 2002 (Volume 67, Number 236). The EPA cancellation order provides that distribution or sale of existing stocks of this diazinon-containing pesticide, and its distributor products, shall be unlawful under FIFRA after December 31, 2002.

14. The pesticide, Ferti-Lome Triple Action Insecticide-Miticide-Fungicide, EPA Reg. No. 7401-67-10159, is a distributor product of Ferti-Lome Rose Spray Containing Diazinon and Daconil, EPA Reg. No. 7401-67.

15. On November 21 and 22, 2005, a representative of the Missouri Department of Agriculture (MDA) conducted marketplace inspections at the E.B.I.G. Corporation, DBA Feed & More Country Store in Mount Vernon, Missouri and the West Plains Veterinary Supply of Springfield, Inc. in Springfield, Missouri, to determine their compliance with FIFRA. The inspector collected documentation in the forms of photographs, an invoice and signed statements.

Count 1

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

17. On November 22, 2005, the MDA representative collected Invoice No. 165277, dated 05-18-05, documenting the sale of one 16 ounce container of Ferti-Lome Triple Action Insecticide-Miticide-Fungicide (EPA Reg. No. 7401-67-10159) by Respondent to Feed & More Country Store in Mount Vernon, Missouri.

18. The product registration of Ferti-Lome Triple Action Insecticide-Miticide-Fungicide (EPA Reg. No. 7401-67-10159) was cancelled, effective December 9, 2002. Sales or distribution of existing stocks for indoor use of this pesticide was unlawful under FIFRA after December 31, 2002.

19. Respondent violated Sections 12(a)(1)(A) and 12(a)(1)(E) and 12(a)(2)(K) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A), 136j(a)(1)(E) and 136j(a)(2)(K), by distributing or selling a misbranded pesticide whose registration has been cancelled as described in Paragraphs 17 and 18.

CONSENT AGREEMENT

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

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance

and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated 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, 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 four percent (4%) per annum for the period January 1, 2007 through December 31, 2007) 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.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay a civil penalty for the violations cited herein, in the amount of Two Thousand Dollars (\$2,000.00). The payment of the civil penalty shall be made within thirty days of the effective date of this Order.

2. 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, MO 63197-9000

3. The payment shall reference Docket Number, FIFRA 07-2008-0009 and In the Matter of West Plains Veterinary Supply of Springfield, Inc. Copies of the check shall be forwarded to:

Jennifer Trotter
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

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

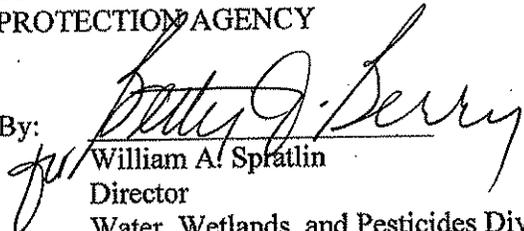
5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

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

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

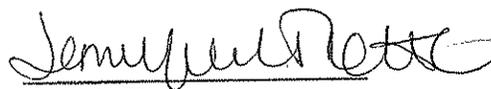
By:


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

Date:

01/17/08

By:


Jennifer Trotter
Attorney
Office of Regional Counsel

Date:

1/15/8

RESPONDENT:

West Plains Veterinary Supply of Springfield, Inc.

By:

Samuel Calhoun

Title:

Manager

Date:

1-10-08

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



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

Date: January 23, 2008

IN THE MATTER OF West Plains Veterinary Supply Company of Springfield, Inc., Respondent
Docket No. FIFRA-07-2008-0009

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:

Jennifer Trotter
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:

Mr. Lonnie Calhoun
614 N. Washington
P.O. Box 328
Springfield, Missouri 65801

Dated: 1/23/08



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7