



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
October 29, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 3808
RETURN RECEIPT REQUESTED

Mr. Rene Ruiter
Koppert Biological Systems Inc.
1502 Old U.S. Highway 23
Howell, Michigan 48843

Consent Agreement and Final Order In the Matter of
Koppert Biological Systems, Inc. Docket No. **FIFRA-05-2015-0007**

Dear Mr. Ruiter:

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 October 29, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,150 is to be paid in the manner described in paragraphs 62 and 63. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by November 28, 2014 (within 30 calendar days of the filing date

Thank you for your payment and cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Meghan Dunn".

Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2015-0007
)	
Koppert Biological Systems, Inc.)	Proceeding to Assess a Civil Penalty
1502 Old U.S. Highway 23)	Under Section 14(a) of the Federal
Howell, Michigan 48843,)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
_____)	



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 Koppert Biological Systems, Inc. a corporation doing business in the State of Michigan.
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 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 it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

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

11. Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa), defines “State” as, among other things, a State.

12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” as 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.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. *See also* 40 C.F.R. § 152.15.

14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as (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-organisms on or

in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w.

15. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states it shall be unlawful for any person in any state 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 a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

16. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term “label” as the written, printed, or graphic matter on, or attached to, the pesticide or any of its containers or wrappers.

17. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling,” in part, as all labels and all other written, printed or graphic matter accompanying the pesticide at any time or to which reference is made on the label.

18. 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 misbranded.

19. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “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.

Factual Allegations and Alleged Violations

20. Koppert Biological Systems, Inc. (Koppert) is a company doing business in the State of Michigan.

21. Koppert is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. This Order refers to Koppert and all of its divisions, offices, branches and subsidiaries, collectively, as “the Respondent.”
23. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
24. At all times relevant to this Order, **Triatum WG Biological Fungicide** was an EPA-registered pesticide, with EPA Registration Number 89635-3.
25. At all times relevant to this Order, **Triatum WG Biological Fungicide** was a “pesticide”, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
26. At all times relevant to this Order, **Triatum-P** was an alternate brand name for **Triatum WG Biological Fungicide**.
27. On or about January 6, 2014, EPA accepted labeling for **Triatum WG Biological Fungicide** (EPA-accepted labeling).
28. Koppert was the importer of record for a Notice of Arrival of Pesticides and Devices Form (NOA) dated July 11, 2014 and submitted to EPA, Region 5.
29. On or about July 11, 2014, Respondent submitted a Notice of Arrival of Pesticides and Devices (NOA) to EPA, Region 5 for the import of one shipment of “Triatum-P,” a pesticide with EPA Registration Number 89635-3.
30. The July 11, 2014 NOA related to a shipment of **Triatum-P** imported into the United States on July 14, 2014 at the Port of Detroit in Michigan.
31. The State of Michigan is a “State” as defined at Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa).
32. At all times relevant to this Order, Respondent owned, controlled, or had custody of the containers of **Triatum-P** associated with the July 11, 2014 NOA.

33. In or about July 2014, Respondent distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons **Trianum-P**.

34. In or about July 2014, Respondent distributed or sold **Trianum-P**, as “distribution or sale” is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

35. The label on containers of **Trianum-P** associated with the July 11, 2014 NOA referenced the website www.trianum.com (Respondent’s website).

36. For containers of **Trianum-P** associated with the July 11, 2014 NOA, Respondent’s website constitutes “labeling” as defined at FIFRA § 2(p), 7 U.S.C. § 136(p).

37. At all times relevant to this Order, Respondent’s website claimed, “Trianum measurably helps to develop the root system of your crop, resulting in the efficient absorption of fertilisers and an increase in the crop yield.”

38. The claims made in paragraph 37, above, do not appear in the EPA-accepted labeling.

39. At all times relevant to this Order, Respondent’s website claimed, “No resistance possible” and “Trianum has many different mechanisms to protect the plant from soil-borne diseases . . . [t]his makes it exceptionally unlikely that a disease could become resistant to Trianum.”

40. The claims made in paragraph 39, above, do not appear in the EPA-accepted labeling.

41. At all times relevant to this Order, Respondent’s website claimed, “No chemical crop protection agents can rival this.”

42. The claims made in paragraph 41, above, do not appear in the EPA-accepted labeling.

43. At all times relevant to this Order, Respondent's website claimed, "Since Trianum establishes itself on the roots, you do not have to apply it as often as other biological products. This therefore also means labour savings."

44. The claims made in paragraph 43, above, do not appear in the EPA-accepted labeling.

45. At all times relevant to this Order, Respondent's website claimed, "Offers long-lasting protection."

46. The claims made in paragraph 45, above, do not appear in the EPA-accepted labeling.

47. At all times relevant to this Order, Respondent's website claimed, "Safe for people, plants, and the environment" and "Trianum is 100% harmless for people, crops and animals."

48. The claims made in paragraph 47, above, do not appear in the EPA-accepted labeling.

49. At all times relevant to this Order, Respondent's website claimed "Protects against soil-borne diseases" and "effective against a great many soil-borne diseases."

50. The EPA-accepted label states: "The active ingredient is a microbe, *Trichoderma harzianum* Strain T-22, which when applied to seeds, transplants or other propagative material, or to soil or planting mixes, grows onto plant roots as they develop and provides protection against plant root pathogens including *Pythium*, *Rhizoctonia*, *Fusarium*, *Cylindrocladium* and *Thielaviopsis*."

51. At all times relevant to this Order, Respondent's website claimed, "grows fast and effectively on roots of all plants."

52. The EPA-accepted label states: "... [S]ince Triatum® WG Biological Fungicide has not been tested on all plant varieties or in combination with all available tank mixes the manufacturer recommends testing Triatum on a small number of plants to check for adverse plant effects before applying to a larger number of plants."

53. At all times relevant to this Order, Respondent's website contained a graphic of an apple and under the headings "Applications" and "Fruit cultivation," stated "Apple."

54. The EPA-accepted label states: "**NOTE: DO NOT APPLY to [...] apple.**"

55. At all times relevant to this Order, Respondent's website stated, "Never use chemical products in a tank mix with Triatum."

56. The EPA-accepted label states:

Triatum® WG Biological Fungicide can be tank mixed and is compatible with many commonly used fungicides, liquid fertilizers, herbicides, insecticides and biological control products registered for use on greenhouse/ornamental plants.

57. In or about July 2014, Respondent distributed or sold to any person **Triatum-P** while claims made for **Triatum-P** as a part of its distribution or sale substantially differed from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

58. In or about July 2014, Respondent distributed or sold to any person **Triatum-P** with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading in any particular. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

59. In or about July 2014, Respondent distributed or sold to any person misbranded **Triatum-P**.

60. Respondent's July 14, 2014 distribution or sale of **Triatum-P** was an unlawful act under Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

61. Respondent's July 14, 2014 distribution or sale of **Triatum-P** was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

62. 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 \$7,150. 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. Respondent must pay by one of the following methods:

For checks sent by regular U.S. Postal Service mail: 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 "Koppert Biological Systems, Inc." and the docket number of this CAFO.

For checks sent by express mail: By sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note “Koppert Biological Systems, Inc.” and the docket number of this CAFO.

For electronic funds transfer: By electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state “Koppert Biological Systems, Inc.” and the docket number of this CAFO.

For Automated Clearinghouse (ACH) also known as REX or remittance express: By ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state “Koppert Biological Systems, Inc.” and the docket number of this CAFO.

For on-line payment: By an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

63. 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

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

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

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

65. 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.

66. 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

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

68. 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.

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

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

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

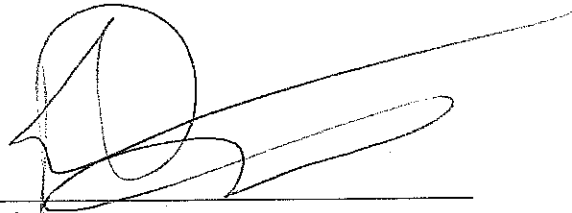
72. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

73. Each party agrees to bear its own costs and attorneys fees, in this action.

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

Koppert Biological Systems, Inc., Respondent

9/15/14
Date


Rene Ruiters
General Manager
Koppert Biological Systems, Inc.

United States Environmental Protection Agency, Complainant

10/17/2014
Date

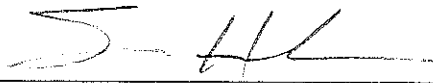
Michael D. Harris *For M.G.*
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Koppert Biological Systems, Inc.
Docket No. FIFRA-05-2015-0007

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.

10/24/2014
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 Koppert Biological Systems, Inc., was filed on October 29, 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 3808, a copy of the original to the Respondent:

Mr. Rene Ruiter
Koppert Biological Systems Inc.
1502 Old U.S. Highway 23
Howell, Michigan 48843

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Kris Vezner, 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

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