



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
June 12, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7649 5640

Mr. Charles Cochran
CMC Enterprises, LLC
f/k/a Howbert Co., LLP
10034 Navarra Rd. SW
Navarre, Ohio 44662

Consent Agreement and Final Order In the Matter of
CMC Enterprises, LLC, Docket No. FIFRA-05-2014-0020

Dear Mr. Cochran:

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 June 12, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,215 is to be paid in the manner described in paragraphs 39 and 40. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by July 14, 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 "Meghan Dunn".

Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures



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

June 12, 2014

REPLY TO THE ATTENTION OF:

LC-8J

Mr. Charles Cochran
CMC Enterprises, LLC
10034 Navarre Road SW
Navarre, Ohio 44662

Payment of Penalty for Consent Agreement and Final Order FIFRA-05-2014-0020

Dear Mr. Cochran:

The U.S. Environmental Protection Agency **has received your payment** of \$1,215 in settlement of violations of the Federal Insecticide, Fungicide and Rodenticide Act.

Please disregard the attached letter requesting payment of \$1,215 for this matter, and **do not submit an additional payment.** EPA will process your earlier payment at this time.

Sincerely,

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

Meghan Dunn
Pesticides and Toxics Compliance Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No. FIFRA-05-2014-0020
)	
CMC Enterprises, LLC)	Proceeding to Assess a Civil Penalty
f/k/a Howbert Company, LLP)	Under Section 14(a) of the Federal
Navarre, Ohio,)	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 CMC Enterprises, LLC, a corporation doing business in the State of Ohio, formerly known as Howbert Company, LLP.

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 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. 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.”

12. The term “State” as defined in Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa), means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

13. The term “to distribute or sell” 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.” 7 U.S.C. § 136(gg).

14. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

15. A “pest” is 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. 7 U.S.C. § 136(t).

16. An organism is declared to be a pest under circumstances that make it deleterious to man or the environment if it is any vertebrate animal other than man. 40 C.F.R. § 152.5(a).

17. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

18. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of 7 U.S.C. § 136(e).

19. The term “producer” means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 7 U.S.C. § 136(w).

20. A person is considered a producer if the person produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling). 40 C.F.R. § 167.3.

21. The term “establishment” means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd).

22. The Administrator of EPA may assess a civil penalty against any wholesaler, 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.

§ 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

24. Respondent is a producer.

25. According to the State of Ohio Department of Agriculture, Howbert Company, LLP (Howbert) was incorporated in the State of Ohio and in operation in calendar year 2011.

26. Respondent owned or operated a place of business during calendar year 2011 located at 7750 County Road 201, Fredericksburg, Ohio 44627 (Fredericksburg establishment).

27. Ohio is a “State” as defined at Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa).

28. The Fredericksburg establishment is an “establishment” as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

29. On July 14, 2010, EPA issued a Cancellation Order for Section 3 pesticide product registration to Respondent for “Hobby’s Ready to Use Rat and Mouse Bait,” EPA Registration Number 7537-2, effective July 14, 2010.

30. On October 13, 2011, inspectors employed by the State of Ohio, Department of Agriculture (ODA), conducted an authorized FIFRA inspection (the inspection) on behalf of EPA at the Fredericksburg establishment to determine Respondent’s compliance with FIFRA.

31. During the October 13, 2011 inspection at the Fredericksburg establishment, the inspectors collected a written statement from Mr. Joe Miller, employee of Howbert, stating that three batches of “Hobby’s Ready to Use Rat and Mouse Bait” were produced at the Fredericksburg establishment during calendar year 2011; one in January, one in April, and one on July 23, 2011.

32. On October 13, 2011, inspectors employed by ODA conducted an authorized

FIFRA inspection (the inspection) on behalf of EPA at 10034 Navarre Road, Navarre, Ohio 44662, which is the current residence of Mr. Charles Cochran (former owner of Howbert and current owner of CMC Enterprises, LLC), and current business address of Respondent, to determine Respondent's compliance with FIFRA.

33. During the October 13, 2011 inspection, Mr. Cochran provided the inspectors with "Hobby's Ready to Use Rat and Mouse Bait" sales invoices for sales that occurred after the January 15, 2011 date indicated in the Cancellation Order, including three sales on August 3, 2011, and one sale on August 29, 2011.

34. During the October 13, 2011 inspection, the inspectors collected a written statement from Mr. Cochran stating that Mr. Cochran had instructed Mr. Miller to manufacture "Hobby's Ready to Use Rat and Mouse Bait" after he had received the Cancellation Order.

35. "Hobby's Ready to Use Rat and Mouse Bait" was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on August 3, 2011 and August 29, 2011.

36. Respondent sold the unregistered pesticide, "Hobby's Ready to Use Rat and Mouse Bait," on three occasions on August 3, 2011 and on one occasion August 29, 2011.

37. Respondent's distribution or sale of the unregistered pesticide "Hobby's Ready to Use Rat and Mouse Bait" constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

38. Respondent's distribution or sale of the unregistered pesticide "Hobby's Ready to Use Rat and Mouse Bait" after January 15, 2011 constitutes an unlawful act pursuant to Section 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(2)(K).

Civil Penalty

39. 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 \$1,215. 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 "CMC Enterprises, LLC" 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 "CMC Enterprises, LLC" 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 “CMC Enterprises, LLC” 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 “CMC Enterprises, LLC” 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.

40. 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

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

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

42. 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.

43. 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

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

45. 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.

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

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

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

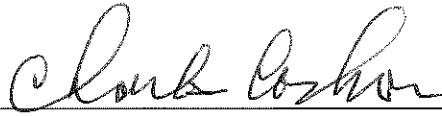
49. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

CMC Enterprises, LLC, Respondent


May 12, 2014
Date



Charles Cochran
Owner
CMC Enterprises, LLC

United States Environmental Protection Agency, Complainant

6/6/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
CMC Enterprises, LLC
f/k/a Howbert Company, LLP
Docket No. FIFRA-05-2014-0020



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.

6/10/2014

Date

A handwritten signature in blue ink, appearing to be "S. Hedman".

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 CMC Enterprises, LLC f/k/a Howbert Company, LLP was filed on June 12, 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 7649 5640, a copy of the original to the Respondents:

Mr. Charles Cochran
CMC Enterprises, LLC
f/k/a Howbert Co., LLP
10034 Navarra Rd. SW
Navarre, Ohio 44662



and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Puja Lakhani, 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-05-2014-0020**