

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. FIFRA 07-2008-0003
	)	
R and F Farm Supply, Inc.	)	CONSENT AGREEMENT
10200 Highway 59	)	AND
Erie, Kansas 66733	)	FINAL ORDER
	)	
	)	
Respondent	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Harvey Products, 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 R and F Farm Supply, Inc., a pesticide dealer, located at 10200 Highway 59, Erie, Kansas 66733. 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 Kansas.

### **Violations**

#### **General Allegations**

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

6. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA.

7. Section 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. § 136a(d)(1)(C)(i) and (ii), states, in pertinent part, that a restricted use pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

8. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1) defines "certified applicator" as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, to use or supervise the use of any pesticide which is classified for restricted use.

9. 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.

10. Tordon® 22K is a restricted use pesticide that at the time of sale was registered to Dow AgroSciences, 9330 Zionsville Road, Indianapolis, Indiana, under EPA Registration No. 62719-6.

11. The label of Tordon® 22K herbicide, EPA Reg. No. 62719-6, states, in pertinent part: "RESTRICTED USE PESTICIDE. May injure (phytotoxic) susceptible, non-target plants. For retail sale to and use only by certified applicators or persons under their direct supervision, and only for those uses covered by the certified applicator's certification."

12. On January 19, 2007, a representative of Kansas Department of Agriculture conducted an inspection at Respondent's place of business in Erie, Kansas, and documented the sale of the restricted use pesticide referenced in paragraphs 10 and 11 to two uncertified persons, Mr. Brad Blythe, Blythe Ranch, Uniontown, Kansas, and Mr. Mick Massa, Massa Cattle Company, Mulberry, Kansas, for use by an uncertified person or persons. It was documented that Respondent made the restricted use pesticide sales to the uncertified persons and failed to

require proof of pesticide applicator certifications prior to making the sale.

13. On March 22, 2007, a representative of Kansas Department of Agriculture interviewed Mr. Brad Blythe, Blythe Ranch, Uniontown, Kansas, and documented Mr. Blythe's purchase of the restricted use pesticide referenced in paragraphs 10 and 11. It was documented that Mr. Brad Blythe was not a certified applicator when he purchased the restricted use pesticide. Mr. Brad Blythe stated that he applied the Tordon® 22K, EPA Reg. No. 62719-6 and he was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

14. On May 11, 2007, a representative of Kansas Department of Agriculture interviewed Mr. Mick Massa, Massa Cattle Company, Mulberry, Kansas, and documented that either Mr. Massa or his son-in-law, Mr. Ray Holmes, purchased the restricted use pesticide referenced in paragraphs 10 and 11. It was documented that neither Mr. Mick Massa nor Mr. Ray Holmes were certified applicators when one of them purchased the restricted use pesticide. Mr. Mick Massa stated that either he or his son-in-law, Mr. Ray Holmes, applied the Tordon® 22K, EPA Reg. No. 62719-6. Neither Mr. Mick Massa nor his son-in-law, Mr. Ray Holmes, was certified at the time the restricted use pesticide was applied by one of them, and neither of them was directly supervised by a certified applicator at the time he applied the restricted use pesticide.

#### Count 1

15. On April 20, 2005, Respondent distributed or sold, and thereby made available for use to Mr. Brad Blythe, a 5 gallon quantity of the restricted use pesticide, Tordon® 22K, as documented by Respondent's invoice number 23507.

16. At the time of the sale referred to in paragraph 13, Mr. Brad Blythe was not a certified applicator as the term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

17. At the time Mr. Brad Blythe used the Tordon® 22K herbicide, EPA Reg. No. 62719-6, he was not certified to use the pesticide, and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

18. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

#### Count 2

19. On May 26, 2004, Respondent distributed or sold, and thereby made available for use to either Mr. Mick Massa or his son-in-law, Mr. Ray Holmes, a 2.5 gallon quantity of the restricted use pesticide, Tordon® 22K, as documented by Respondent's invoice number 6986.

20. At the time of the sale referred to in paragraph 14, neither Mr. Mick Massa nor his son-in-law, Mr. Ray Holmes, was a certified applicator as the term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

21. At the time that either Mr. Mick Massa or Mr. Ray Holmes used the Tordon® 22K herbicide, EPA Reg. No. 62719-6, neither was certified to use the pesticide, and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

22. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

### **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, finds it reasonable, 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.

**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 by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount of Ten Thousand Four Hundred Dollars (\$10,400.00), in two installments: \$5,200.00 within thirty (30) days of the effective date this Final Order, and \$5,200.00 on or before January 31, 2008.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

3. The payment shall reference Docket Number, FIFRA 07-2008-0003 and In the Matter of R and F Farm Supply, Inc. Copies of the check shall be forwarded to:

Rupert Thomas  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
Office of Regional Counsel

United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

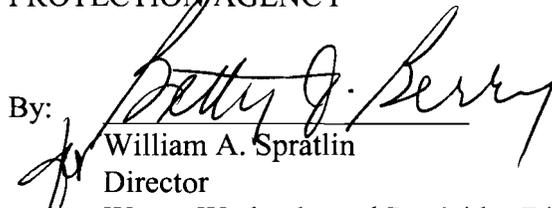
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

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

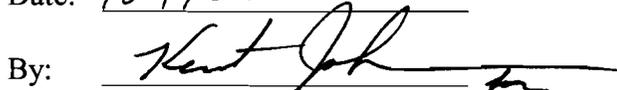
6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

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

Date: 10/16/07

By:   
Rupert Thomas  
Attorney  
Office of Regional Counsel

Date: 10/12/07

R and F Farm Supply, Inc.  
Docket No. FIFRA 07-2008-0003

RESPONDENT:

R AND F FARM SUPPLY, INC.

By: David Harris

Title: OWNER, PRESIDENT

Date: 10/10/07

R and F Farm Supply, Inc.  
Docket No. EIPA 07-2008-0003



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

Date: October 19, 2007

IN THE MATTER OF R and F Farm Supply, Inc., Respondent  
Docket No. FIFRA-07-2008-0003

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:

Kent Johnson  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David Harris  
Owner/President  
R and F Farm Supply, Inc.  
10200 Highway 59  
Erie, Kansas 66733

Dated: 10/22/07

  
Kathy Robinson  
Hearing Clerk, Region 7