

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2013 FEB 28 AM 9:45

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219  
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF )  
 )  
TESSENDERLO KERLEY, INC. ) Docket No. FIFRA-07-2013-0006  
 )  
 ) CONSENT AGREEMENT  
 ) AND  
 ) FINAL ORDER  
 )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Tessenderlo Kerley, Inc. (Respondent) have agreed to a settlement of this action before the 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).

**Section I**

**Jurisdiction**

1. This proceeding 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 Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## **Section II**

### **Parties**

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Tessenderlo Kerley, Inc., a formulator and packager of agrochemical products located at 2255 North 44<sup>th</sup> Street, Suite 300, Phoenix, Arizona 85008.

## **Section III**

### **Statutory and Regulatory Background**

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (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-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

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. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

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

#### **Section IV**

##### **General Factual Allegations**

12. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA.

13. On or about January 9, 2013, and January 17, 2013, two Notices of Arrivals of Pesticides and Devices (NOAs) were received by the EPA representing, respectively, a shipment of Linuron Technical (EPA Registration No. 61842-22) and a shipment of Terbacil Technical (EPA Registration No. 61842-14) into the United States by Respondent.

14. On January 22, 2012, an inspector from the Missouri Department of Agriculture, acting on behalf of EPA Region 7, conducted a federal, for-cause imports inspection of the shipments of Linuron Technical and Terbacil Technical. After review of the inspection documentation, it was determined that the products were misbranded in that the product labels deviated from the EPA accepted product labels.

**Violations**

15. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

**Count 1**

16. The facts stated in paragraphs 12 through 14 are realleged and incorporated as if fully stated herein.

17. On or about January 13, 2013, Respondent imported a quantity of Linuron Technical, EPA Reg. No. 61842-22, to the Kansas City Port of Entry, Entry Number 408 136000-8.

18. The pesticide referenced in Paragraph 17 was misbranded in that it lacked the required labeling for the product.

19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

**Count 2**

20. The facts stated in paragraphs 12 through 14 are realleged and incorporated as if fully stated herein.

21. On or about January 17, 2013, Respondent imported a quantity of Terbacil Technical, EPA Reg. No. 61842-14, to the Kansas City Port of Entry, Entry Number 408 1363914-0.

22. The pesticide referenced in Paragraph 21 was misbranded in that it lacked the required labeling for the product.

23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed a misbranded pesticide.

## Section V

### Consent Agreement

24. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

25. Respondent neither admits nor denies the factual allegations set forth above.

26. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

27. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

28. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

29. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

30. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

31. The effect of settlement as described in following paragraph is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in the preceding paragraph.

32. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

33. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

34. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the 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 and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated 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. 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.

## **Section VI**

### **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 shall pay a civil penalty of Seven Thousand Eight Hundred and Sixty-Five Dollars (\$7,865.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

Chris R. Dudding, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

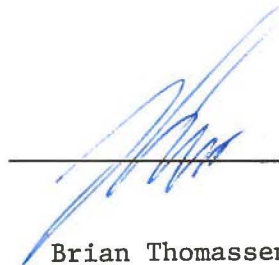
4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.



**RESPONDENT  
TESSENDERLO KERLEY, INC.**

Date: 1/2/2013

By:



\_\_\_\_\_  
Tessengerlo Kerley, Inc.


Brian Thomassen - Regulatory Affairs Manager

Print Name

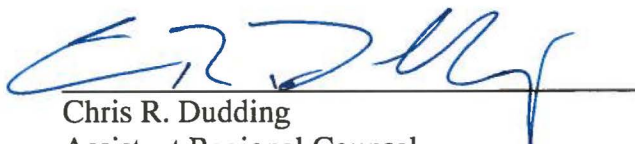
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 2/4/2013

  
\_\_\_\_\_  
Karen Fluornoy  
Director  
Water, Wetlands and Pesticides Division

Date: 2/4/13

  
\_\_\_\_\_  
Chris R. Dudding  
Assistant Regional Counsel  
Office of Regional Counsel

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

Date: Feb. 21, 2013

Karina Borromeo

KARINA BORROMEEO  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Tessengerlo Kerley, Inc., Respondent  
Docket No. FIFR4A-07-2013-0006

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris R. Dudding  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
11201 Renner Blvd.  
Lenexa, Kansas 66219

Copy by First Class Mail to:

Brian Thomassen  
Regulatory Affairs Mgr  
Tessengerlo Kerley, Inc.  
PO Box 15627  
Phoenix, Arizona 85060-5627

Dated: 2/28/13



Kathy Robinson  
Hearing Clerk, Region 7