



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone: 800-227-8917
http://www.epa.gov/region08

2016 SEP 30 AM 11:55

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2016-0012

IN THE MATTER OF:

J & J Chemical, Inc.
50 N. Ash Street
Blackfoot, Idaho 83221

RESPONDENT

)
)
)
)
)
)
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 29th DAY OF September, 2016.

Elyana Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2016 SEP 28 PM 3:17

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
J & J Chemical, Inc.)
50 N. Ash Street)
Blackfoot, Idaho 83221)
)
Respondent)
_____)

Docket No.: FIFRA-08-2016-0012

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

I. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for selling and/or distributing misbranded pesticides in violation of section 12(a)(1)(E) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(1)(E).
2. The EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
3. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Agreement.
4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual allegations in this Agreement.

II. ALLEGATIONS

6. Respondent, J & J Chemical Inc., is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
7. Respondent's place of business is located at 50 N. Ash Street, Blackfoot, Idaho 83221.
8. At all times relevant to the alleged violations, the Respondent was a "distributor/seller" as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a "pesticide" defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a "producer" as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).

9. By statute, “[t]he 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’” FIFRA section 2(gg), 7 U.S.C. § 136 (gg).
10. Under FIFRA section 3(a), it is “unlawful for any person in any State to distribute or sell to any person-(A) any pesticide that is not registered under 136a ... or whose registration has been canceled”

III. VIOLATIONS

11. On May 15 and 16, 2014, an inspector with the U.S. Environmental Protection Agency (EPA) conducted seven inspections at restaurants in the Salt Lake City, Utah area to ensure compliance with the FIFRA.
12. The EPA inspector also conducted an inspection of the Respondent’s cargo truck on May 16, 2014, parked onsite at one of the restaurants.
13. The evidence obtained from the inspections revealed that the Respondent was distributing an unregistered pesticide product called “Sanitizer” whose label included the following: J&J Chemical Inc., Distributed by J&J Chemical Inc., www.jandjchemical.com, and the EPA Establishment Number: 082515-ID-001.
14. On or about May 23, 2012, the Respondent inactivated its EPA Establishment Number 82515-ID-001 authorizing it to “produce” and “distribute” sanitizer known as sodium hypochlorite. (EPA Registration Number 9678-7, T-Chlor) by repackaging and relabeling it.
15. From approximately May 23, 2012, through and including May 16, 2014, Respondent’s distribution or sale of the Sanitizer, an unregistered pesticide, constitutes seven violations of FIFRA section 3(a)(1)(A), 7 U.S.C. § 136j(a) (1)(A).

IV. PAYMENT OF CIVIL PENALTY

16. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
17. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent’s ability to continue in business, and the gravity of the violation.
18. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of \$5,720 against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.
19. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$5,720 in eight quarterly payments of \$715 as follows:

- a) **First payment** is due within thirty days of the effective date of the Final Order;
- b) **Second payment** is due on or before January 30, 2017;
- c) **Third payment** is due on or before April 30, 2017;
- d) **Fourth payment** is due on or before August 30, 2017;
- e) **Fifth payment** is due on or before November 30, 2017;
- f) **Sixth payment** is due on or before February 28, 2018;
- g) **Seventh payment** is due on or before May 30, 2018; and,
- h) **Eighth and final payment** is due on or before August 30, 2018.

20. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

21. The payments shall be made by remitting a check or making a wire transfer or online payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent accordingly as follows:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

US Bank	
Cincinnati Finance Center Box 979077	Contact: Craig Steffen 1005
Convention Plaza	513-487-2091
Mail Station SL-MO-C2GL St.	
Louis, MO 63101	

Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
 ABA = 021030004
 Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency CTX

Format Transaction Code 22 – checking

Physical location of US Treasury Facility

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

Randolph Maxwell: 202-874-7026

Remittance Express (REX): 1-866-234-5681

On-line Payments:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from www.pay.gov.

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

22. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Daniel Webster (8ENF-UFO)
Technical Enforcement Program
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

and

Melissa Haniewicz (8RC)
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

23. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.
24. If each and any of the payments are not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).


25. If any of the installment payments are missed or are received late, the remaining balance of the \$5,720 penalty is immediately due and owing and the agreement to allow installments is negated.
26. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

V. TERMS AND CONDITIONS

27. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
28. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
29. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
30. Each party shall bear its own costs and attorney fees in connection with this matter.
31. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
32. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
33. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
34. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

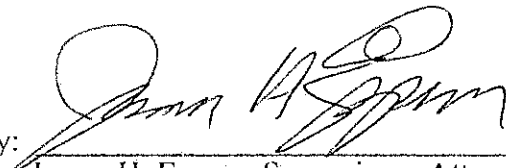
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
Office of Enforcement, Compliance
and Environmental Justice
Complainant

Date: 9-27-16

By: 

David Cobb, Acting Supervisor
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

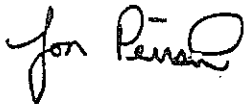
Date: 9/28/16

By: 

James H. Eppers, Supervisory Attorney Legal
Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

J&J CHEMICAL, INC.,
Respondent

Date: 9/20/16

By: 

Printed Name: Jon Peirson

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **J & J Chemical, Inc.**; **DOCKET NO.: FIFRA-08-2016-0012** was filed with the Regional Hearing Clerk on September 28, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on 9/30/16.

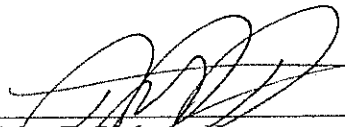
Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on 9/30/16, to:

Respondent

Jon Piersol
J & J Chemical, Inc.
50 N. Ash Street
Blackfoot, Idaho 83221

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268



John F. Pickens II
Acting Regional Hearing Clerk

