



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

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6518

Mr. Eric M. Sherman
Family Dollar Services
10401 Old Monroe Drive
Matthews, North Carolina 28201

RECEIVED
REGIONAL HEARING CLERK
JUL 11 2008
7:00 AM - 1:00 PM

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0019 *20*

Dear Mr. Sherman:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on July 1, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$13,000 is to be paid in the manner described in paragraphs 40 and 41. Please be certain that the number **BD 2750845P019** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 31, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. <i>FIFRA -05-2008-001922.</i>
)	
Family Dollar Services)	Proceeding to Assess a Civil Penalty
Matthews, North Carolina)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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RECEIVED
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EPA REGION 5
MAY 14 2008

Consent Agreement and Final Order

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 (U.S. EPA), Region 5.
3. Respondent is Family Dollar Services, a corporation doing business at 10401 Old Monroe Drive, Matthews, North Carolina 28105.
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 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the U.S. EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that “all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. Part 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

12. 19 C.F.R. § 12.112 states, in pertinent part, that “an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States.” See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. 40 C.F.R. § 152.25(f) states, in pertinent part, that “minimum risk” pesticides must bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient to be exempt from registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

14. 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 any pesticide which is unregistered.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.”

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms 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. § 136 w(c)(1).”

17. 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.”

18. 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.”

Factual Allegations and Alleged Violations

19. Respondent is, and was at all times relevant to this Complaint, a corporation and therefore, is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. On or about April 30, 2008, Fed Ex Trade Networks, located at 1226 North Michael Drive, Wood Dale, Illinois, was a broker/agent for Respondent.

21. On or about April 30, 2008, Respondent submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to U.S. Customs and Border Protection for an

import shipment of the pesticide product "Citronella Pail" from China, entering the United States on April 22, 2008.

22. "Citronella Pail" is a pesticide product, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as it is intended to repel or mitigate a pest.

23. The NOA identified Respondent as the importer of record for the pesticide product "Citronella Pail."

24. Respondent, as the importer of record of pesticide products, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated there under.

25. The April 30, 2008 NOA submitted by Respondent was not submitted to U.S. EPA prior to the arrival of the shipment in the United States.

26. Therefore, Respondent did not submit a report for the pesticide product "Citronella Pail."

27. On May 15, 2008, an inspector employed by U.S. EPA and duly authorized to conduct inspections under FIFRA, conducted a neutral scheme inspection of the April 22, 2008 shipment of "Citronella Pail" at a bonded Customs warehouse, Channel Distribution Corporation, located at 925 West Thorndale Avenue, Itasca, Illinois 60143, in order to determine compliance with Section 17(c) of FIFRA, 7 U.S.C. §§ 136o(c).

28. During the inspection, the inspector observed the labels for "Citronella Pail" did not bear the name of each inert ingredient in the product.

29. Therefore, the pesticide product "Citronella Pail" does not meet the requirements for exemption from registration under Section 3 of FIFRA, 7 U.S.C. § 136a, found at 40 C.F.R. § 152.25(f).

Specific Allegations

Count 1

30. The statements provided in paragraphs 1 through 28 are incorporated by reference as though set forth here in full.

31. On or about April 22, 2008, Respondent failed to file a report (a NOA) for the import shipment of the pesticide product "Citronella Pail," as required by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and 19 C.F.R. § 12.112.

32. Respondent's failure to file a report on April 22, 2008 for the import shipment of "Citronella Pail" constitutes an unlawful act according to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

33. Respondent's violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

34. The statements provided in paragraphs 1 through 32 are incorporated by reference as though set forth here in full.

35. On or about April 22, 2008, Respondent distributed or sold a pesticide product, "Citronella Pail," that was unregistered.

36. The fact that Respondent distributed or sold an unregistered pesticide product, "Citronella Pail," constitutes an unlawful act according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and 40 C.F.R. §156.10(a).

37. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

38. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

39. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$13,000. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990.

40. Within 30 days of the effective date of this CAFO, Respondent must pay a \$13,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

41. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

43. If Respondent does not pay the civil penalty timely, U.S. 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.

44. 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

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

46. This CAFO does not affect the right of the U.S. EPA or the United States to

pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

50. 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.

51. Each party agrees to bear its own costs and attorney fees in this action.

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

53. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, Chicago, Illinois.

In the Matter of:
Family Dollar Services
Docket No. FIFRA-05-2008-0019 25

RESPONDENT
Family Dollar Services
Matthews, North Carolina 28105

6/9/2008
Date

Eric M. Sherman
Eric M. Sherman
Director of Imports
Family Dollar Services

COMPLAINANT
Region 5
United States Environmental Protection Agency

6/25/08
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

2008 JUN 25 11:11 AM
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

In the Matter of:
The Coburn Company
Docket No. FIFRA-05-2008-001922.

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.

Date 6/26/08



Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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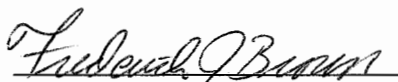
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Family Dollar Services, was filed on July 1, 2008 with the Regional Hearing Clerk (E-13J), U. S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true copy was sent by Certified Mail, Receipt No.7001 0320 0005 8921 6518, a copy of the original to the Respondents:

Mr. Eric M. Sherman
Family Dollar Services
10401 Old Monroe Drive
Matthews, North Carolina 28201

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick J. Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2008-001902*.

2008 JUL 1 11:02

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