

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH 5th 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 07-2008-0024
)	
Lindstrom Farm Supply, Inc.)	CONSENT AGREEMENT
118 Main Street)	AND
Kiron, IA 51448)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Lindstrom Farm Supply, 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 Consent Agreement and Final Order 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 Lindstrom Farm Supply, Inc., a pesticide dealer, located at 118 Main Street, Kiron, Iowa 51448. 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 Iowa.

Violations

General Allegations

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

6. 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.

7. 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 make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA.

8. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. §§ 136a(d)(1)(C)(i) and (ii), state 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.

9. 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, as authorized to use or supervise the use of any pesticide which is classified for restricted use.

10. SURPASS® EC is a restricted use pesticide registered to Dow AgroSciences LLC, Indianapolis, Indiana, under EPA Registration Number 62719-367 (EPA Reg. No. 62719-367). The label of SURPASS® EC states in pertinent part, "RESTRICTED USE PESTICIDE Due to Oncogenicity. 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."

11. BUCTRIL® + Atrazine Herbicide is a restricted use pesticide registered to Bayer CropScience LP, Research Triangle Park, North Carolina, under EPA Reg. No. 264-477. The label of BUCTRIL® + Atrazine Herbicide states in pertinent part, "RESTRICTED USE PESTICIDE. (Ground and Surface Water Concerns). 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. ATRAZINE 4L Herbicide is a restricted use pesticide registered to Loveland Products, Inc., Greeley, Colorado, under EPA Reg. No. 34704-69. The label of ATRAZINE 4L

Herbicide states in pertinent part, "RESTRICTED USE PESTICIDE. (Ground and Surface Water Concerns). For retail sale to and use only by certified applicators or person under their direct supervision, and only for those uses covered by the certified applicator's certification.

13. On January 10 and 11, 2008, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted a routine pesticide dealer inspection at Respondent's facility in Kiron, Iowa, for the purpose of determining Respondent's compliance with the FIFRA, including review of restricted use pesticide (RUP) sales and application records.

Count 1

14. The facts stated in paragraphs 6 through 13 are realleged and incorporated as if fully stated herein.

15. On January 10, 2008, during the inspection referenced in paragraph 13, a representative of IDALS collected a copy of invoice number 3450 from Respondent. The invoice documents Respondent's distribution and sale of 280 gallons of the restricted use pesticide SURPASS® EC, EPA Reg. No. 62719-367, to Mr. Dan Schoenherr on May 2, 2007.

16. On January 10, 2008, during the inspection referenced in paragraph 13, a representative of IDALS collected a copy of invoice number 3604 from Respondent. The invoice documents Respondent's distribution and sale of 110 gallons of the restricted use pesticide SURPASS® EC, EPA Reg. No. 62719-367, to Mr. Dan Schoenherr on May 18, 2007.

17. On January 29, 2008, the IDALS representative obtained from Mr. Dan Schoenherr an affidavit in which Mr. Schoenherr acknowledged purchasing and applying the restricted use pesticide, SURPASS® EC, without supervision by a certified applicator.

18. At the time of the sale referred to in paragraphs 15 and 16, Mr. Dan Schoenherr was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

19. 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

20. The facts stated in paragraphs 6 through 13 are realleged and incorporated as if fully stated herein.

21. On January 10, 2008, during the inspection referenced in paragraph 13, a representative of IDALS collected a copy of invoice number 3661 from Respondent. The invoice documents Respondent's distribution and sale of a total of 166 gallons of the restricted

use pesticide BUCTRIL® + ATRAZINE, EPA Reg. No. 264-477, to Mr. Dan Schoenherr on May 31, 2007.

22. On January 10, 2008, during the inspection referenced in paragraph 13, a representative of IDALS collected a copy of invoice number 3994 from Respondent. The invoice documents Respondent's distribution and sale of 40 gallons of the restricted use pesticide BUCTRIL® + ATRAZINE, EPA Reg. No. 264-477, and 5 gallons of the restricted use pesticide ATRAZINE 4L, EPA Reg. No. 34704-69, to Mr. Dan Schoenherr on June 11, 2007.

23. On January 29, 2008, the IDALS representative obtained from Mr. Dan Schoenherr an affidavit in which Mr. Schoenherr acknowledged purchasing and applying the restricted use pesticides, BUCTRIL® + ATRAZINE and ATRAZINE 4L, without supervision by a certified applicator.

24. At the time of the sale referred to in paragraphs 21 and 22, Mr. Dan Schoenherr was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

25. 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, 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. Respondent understands that its failure to timely pay any portion of the mitigated civil, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently five percent (5%) per annum for the period January 1, 2008 through December 31, 2008) on the unpaid balance until such civil penalty and accrued interest are both paid in full. 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.

10. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashiers or certified check, a civil penalty, for the violations cited herein, in the amount of Seven Thousand Eight Hundred Dollars (\$7,800.00). Payment will be made within thirty (30) days of the effective date of this Order. The payment shall be identified as **In the Matter of Lindstrom Farm Supply, Inc.**

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

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

Lindstrom Farm Supply, Inc.
Docket No. FIFRA 07-2008-0024

12. The payment shall reference Docket Number, FIFRA 07-2008-0024 and In the Matter of Lindstrom Farm Supply, Inc. Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

13. 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.

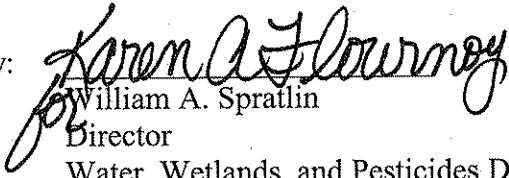
14. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

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

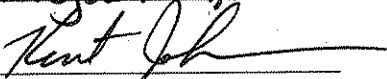
Lindstrom Farm Supply, Inc.
Docket No. FIFRA 07-2008-0024

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

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

Date: August 19, 2008

By: 
Kent Johnson
Attorney
Office of Regional Counsel

Date: 8/28/2008

Lindstrom Farm Supply, Inc.
Docket No. FIFRA 07-2008-0024

RESPONDENT:

LINDSTROM FARM SUPPLY, INC.

By:

Curt Rutz

Title:

Owner

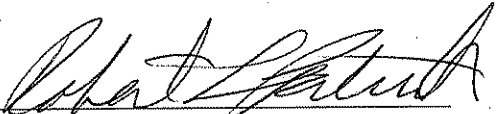
Date:

8/25/08

Lindstrom Farm Supply, Inc.
Docket No. FIFRA 07-2008-0024

CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.



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

Date: August 29, 2008

IN THE MATTER OF Lindstrom Farm Supply, Inc., Respondent
Docket No. FIFRA-07-2008-0024

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. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Lindstrom Farm Supply, Inc.
118 Main Street
Kiron, Iowa 51448

Dated: 8/29/08



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7