

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

FILED

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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the matter of:) Docket No. FIFRA-9-2007- 0010
Elk Grove Milling, Inc.) CONSENT AGREEMENT
Respondent.) and
FINAL ORDER PURSUANT TO
SECTIONS 22.13 AND 22.18

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent Elk Grove Milling, Inc. (hereafter "EGM" or "Respondent") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

B. AUTHORITY AND PARTIES

2. Respondent is a California corporation. Respondent owns, operates, or otherwise controls a feed and farm supply store located at 8320 Eschinger Road, Elk Grove, California (the "Elk Grove facility").

3. Respondent's Elk Grove facility is a registered establishment under Section 7 of FIFRA, 7 U.S.C. §136e, and the Elk Grove facility has been assigned establishment number 067773-CA-001. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

4. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136 l(a), is vested in the Administrator of EPA (“Administrator”). By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number 1255.08 dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Director of the Communities and Ecosystems Division. The Director of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

5. Section 2(gg), of FIFRA, 7 U.S.C. § 136(gg), states that “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.

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell to any person any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

7. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

8. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful

for any person who is a producer to violate any of the provisions of section 7. Section 7(c) of FIFRA states that the information required pursuant to section 7(c) shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe. 7 U.S.C. § 136e(c). Section 167.85 of the implementing regulations requires that the pesticide report shall include (1) the name and address of the establishment; (2) amount of each pesticidal product: (i) Produced during the past year; (ii) sold or distributed during the past year; (iii) estimated to be produced during the current year. The report shall only include those pesticidal products actually produced at the reporting establishment. 40 C.F.R. § 167.85(b).

C. COMPLAINANT'S ALLEGATIONS

9. Stable Mix Plus contains Rabon® oral larvicide for fly control, and Rabon contains the active ingredient tetrachlorvinphos. Stable Mix Plus is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). Stable Mix Plus is not a registered pesticide.

10. Tetrachlorvinphos can cause cholinesterase inhibition in humans; that is, it can overstimulate the nervous system causing nausea, dizziness, confusion, and at very high exposures (e.g., accidents or major spills), respiratory paralysis and death.

11. On or about September 6, 2005, Respondent distributed or sold approximately 40 fifty pound bags of Stable Mix Plus with Fly Control to Sheldon Feed and Supply. Respondent violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

12. On or about September 6, 2005, Respondent distributed or sold to Sheldon Feed and Supply approximately 40 fifty pound bags of Stable Mix Plus with Fly Control with labels that bearing a false and misleading EPA pesticide registration number, and an incorrect EPA establishment number. Respondent violated section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

13. In 2005, Respondent produced, and sold and distributed, Stable Mix Plus. For the 2005 reporting year, Respondent filed a pesticide report for the Elk Grove facility establishment and in that filing Respondent reported zero production at the Elk Grove facility. Respondent did not report the amount of Stable Mix Plus produced during 2005, nor did Respondent report the amount of Stable Mix Plus sold or distributed during 2005, or the amount of Stable Mix Plus estimated to be produced during 2006. Respondent violated section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to report the amount of Stable Mix Plus produced during 2005, sold or distributed during 2005, and estimated to be produced during 2006, in violation of 40 C.F.R. §167.85(b) and subsection 7(c) of FIFRA.

D. RESPONDENT'S ADMISSIONS

14. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

15. Respondent consents to the assessment of a penalty in the amount of **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$ 12,500)** as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO.

16. The civil penalty shall be paid by certified or cashier's check, payable to "Treasurer,

United States of America," and sent by certified mail, return receipt requested, to:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The check should note the case title and docket number, and a transmittal letter, indicating Respondent's name, and this case docket number, must accompany the payment. When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
- b) Glenda Dugan
Pesticides Program
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

17. In the event that Respondent fails to pay the civil administrative penalty assessed above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of **ONE HUNDRED DOLLARS (\$100)** for each day that payment is late. Upon Complainant's written demand, payable shall immediately become due and payable.

18. Respondent's failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of

money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

F. CERTIFICATION OF COMPLIANCE

19. In executing this CAFO, Respondent certifies that (1) it is no longer distributing or selling Stable Mix Plus with Rabon, and will not resume distribution or sale of Stable Mix Plus with Rabon until and unless such sale and distribution complies with FIFRA, and (2) it has complied with all other FIFRA requirements at all facilities under its control.

20. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act and other Federal, state or local laws or statutes.

21. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

22. Except as set forth in Paragraph 18 above, each party shall bear its own costs, fees, and disbursements in this action.

23. For the purposes of state and federal income taxation, Respondent shall not claim a

deduction for any civil penalty payment made pursuant to this CAFO.

24. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

26. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

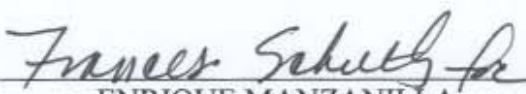
ELK GROVE MILLING INC.:

Date: MAY 12 2007 By: 

Name: Robert H Lert

Title: President Elk Grove Milling Inc

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 6/21/07 By: 
ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$ 12,500)**, in accordance with the terms set forth in the Consent Agreement.

Date: June 22, 2007



Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-9-2007-0010 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Robert H. Lent
Elk Grove Milling, Inc.
8320 Eschinger Road
Elk Grove, CA 95758

June 26, 2007

DATE

Steven Armsey

Danielle Carr (Steven Armsey, Acting)
Regional Hearing Clerk
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105