



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

09 JUN 30 AM 10:44  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )

) Docket No. FIFRA 07-2009-0011

)  
) Carman Chemicals, Inc.  
) 25358 Business Highway 24 West  
) Paris, Missouri )

) CONSENT AGREEMENT  
) AND FINAL ORDER

) Respondent )

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and Carman Chemicals, 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 Complaint serves as notice that the United States Environmental Protection Agency (EPA) alleges 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 Carman Chemicals, Inc., a pesticide dealer, located at 25358 Business Highway 24 West, Paris, Missouri. 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 Missouri corporation qualified to do business in the state of Missouri.

### Violations

5. Section 12(a)(1)(A), 7 U.S.C. §136j(a)(1)(A), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide whose registration has been canceled or suspended.

6. Section 2(gg) of FIFRA, 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)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

8. 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 to appear on the label is not prominently placed thereon with conspicuousness so as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

9. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. §136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of this Act, are adequate to protect health and environment.

10. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. §136j(a)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and the environment.

11. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. §136j(2)(q)(A), states a pesticide is misbranded if the label does not bear an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase.

12. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. §136j(q)(2)(C), states a pesticide is misbranded if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing –

- (i) the name and address of the producer, registrant, or person for whom produced;
- (ii) the name, brand, or trademark under which the pesticide is sold;

- (iii) the net weight or measure of the content; and
- (iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification.

13. Title 40 C.F.R. Section 156.200 prescribes statements that must be placed on pesticide products. These statements are referred to as Worker Protection Standard (WPS) statements.

14. 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 to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with Section 3(d) and any regulations thereunder.

15. Section 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.

16. 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, to use or supervise the use of any pesticide which is classified for restricted use.

17. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. §136j(a)(2)(I), states that it shall be unlawful for any person to violate any order issued under Section 13.

18. Section 13(a) of FIFRA, 7 U.S.C. §136k(a), states that whenever any pesticide is found by the Administrator in any State and there is reason to believe on the basis of inspection that such pesticide is in violation of any of the provisions of this Act, or that such pesticide has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Administrator may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide, and after receipt of such order no person shall sell, use, or remove the pesticide described in the order except in accordance with the provisions of the order.

19. Section 12(a)(2)(J) of FIFRA, 7 U.S.C. §136j(a)(2)(J), states it shall be unlawful for any person to violate any suspension order issued under Section 6.

20. Section 12(a)(2)(K) of FIFRA, 7 U.S.C. §136j(a)(2)(K), states that it shall be unlawful for any person to violate any cancellation order issued under FIFRA.

21. 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.

22. Section 7(a) of FIFRA, 7 U.S.C. §136e(a), states that no person shall produce any pesticide unless the establishment in which it is produced is registered with the Administrator.

23. Section 2(w) defines "produce" to mean to manufacture, prepare, compound, propagate, or process any pesticide or devices or active ingredient used in producing a pesticide.

24. Title 40 C.F.R. Section 167.3 defines the term "produce" to mean to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

25. On or about April 5-6, 2004; April 28, 2004; May 3-5, 2004; February 22, 2005; July 28, 2005; and, October 10, 2005, representatives from the U.S. Environmental Protection Agency (EPA) and the Missouri Department of Agriculture (MDA) conducted inspections at Carman Chemical, Inc., 25358 Business Highway 24 West, Paris, Missouri, to determine the status of Respondent's compliance with FIFRA. Documentation of products packaged, labeled, and released for shipment were collected during the inspections.

26. On or about July 7, 2004, representatives of EPA and MDA conducted an inspection at the residence of J. P. Carman, President of Carman Chemicals, Inc. to determine the status of Respondent's compliance with FIFRA. Respondent stated that the products located at the residence were not for sale or distribution. Stop Sale, Use, or Removal Orders (SSUROs), authorized under Section 13 of FIFRA, were issued for 68 products allegedly in violation of FIFRA..

27. On or about February 23, 2006, representatives of EPA and MDA conducted an inspection at the residence of J. P. Carman, President of Carman Chemicals, Inc. to determine the status of Respondent's compliance with the July 7, 2004, SSURO.

28. Respondent's establishment at 25358 Business Highway 24 West, Paris, Missouri, is not registered with EPA as a pesticide-producing establishment under Section 7 of FIFRA. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §136j(a)(2)(L), in that it failed to comply with the provisions of Section 7 of FIFRA, 7 U.S.C. §136e.

29. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), and Section 12(a)(1)(E), 7 U.S.C. §136j(a)(1)(E), by repackaging and holding for distribution or sale, GUARDSMAN MAX, an unregistered and misbranded pesticide.

30. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), by distributing or selling pesticides which failed to bear the required WPS statement and/or directions for use on the label and/or labeling. These pesticides being held for sale included:

- (a) Passport Herbicide, EPA Registration No. 241-325
- (b) Classic Herbicide, EPA Registration No. 352-436
- (c) Botran 75W Fungicide, EPA Registration No. 1023-36
- (d) Royal MH-30, EPA Registration No. 400-84
- (e) Furadan 4 Flowable Insecticide, EPA Registration No. 279-2876-3125
- (f) Zineb 75 Wettable Powder, EPA Registration No. 51036-62
- (g) Tophand Broadleaf Herbicide, EPA Registration No. 524-466
- (h) Ramrod Flowable Herbicide, EPA Registration No. 524-331
- (i) Linuron 4L Weed Killer, EPA Registration No. 19713-97-34704
- (j) Captan 50W, EPA Registration No. 34704-427
- (k) Hoelon 3EC Herbicide, EPA Registration No. 8340-20-54382
- (l) Subdue 2E Fungicide, EPA Registration No. 100-619

31. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), by distributing or selling TANDEX #4 granules which failed to bear the registration number assigned under section 7 to each establishment in which it was produced; failed to bear a label containing directions for use which are necessary for effecting the purpose for which the product is intended; failed to bear a label containing a warning or caution statement which may be necessary and if complied with together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and the environment; failed to bear a label containing an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase; and, failed to bear a label containing the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measure of the content.

32. Respondent violated Section 12(a)(2)(J) of FIFRA, 7 U.S.C. §136j(a)(2)(J), and Section 12(a)(2)(K) of FIFRA, 7 U.S.C. §136j(a)(2)(K) by distributing or holding for sale Klean-Krop, a pesticide containing dinoseb (2-sec-butyl-4,6-dinitrophenol) or any of its salts whose registration has been suspended and cancelled under section 6.

33. Respondent violated Section 12(a)(1)(A) and Section 12(a)(2)(K) by distributing or holding for sale Premium Grain Fumigant No. 2, a liquid grain fumigant containing carbon tetrachloride as an active ingredient whose registration had been cancelled..

34. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), by distributing a pesticide, Hi-Yield Kill-A-Bug Granules (EPA Registration No. 7401-293) whose registration has been canceled.

35. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. §136j(a)(2)(F), by selling or making available for use registered pesticides classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. §136a(d). These pesticides included:

- (a) Atrazine 90DF

Carman Chemicals, Inc.  
Docket No. FIFRA 07-2009-0011

- (b) Trimet II
- (c) Atrazine 90
- (d) Alachlor 4EC
- (e) Lasso Micro-Tech
- (f) Pilot
- (g) Atrazine 4L
- (h) Waylay

36. Respondent violated Section 12(a)(2)(I) of FIFRA, 7 U.S.C. §136j(a)(2)(I), by violating orders issued under Section 13.

### 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 any alleged FIFRA violations relating to the inspections referenced in this Consent Agreement and Final Order. 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 in paragraphs 1-4 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. To the best of its knowledge, Respondent 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.

Carman Chemicals, Inc.  
Docket No. FIFRA 07-2009-0011

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 as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated 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, 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 three percent (3%) per annum for the period January 1, 2009 through December 31, 2009) 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 shall pay a civil penalty, for the violations cited herein, in the amount of One Thousand Dollars (\$1,000.00) plus interest. The penalty will be paid in ten (10) monthly payments. The initial payment of One Hundred and One Dollars and Thirty-eight cents (\$101.38.) must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). Each succeeding payment of One Hundred and One Dollar and Thirty-eight cents (\$101.38) will be due within 30 days after the previous payment. The payments shall be identified as **In the Matter of Carman Chemical, 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

12. The payment shall reference Docket Number, FIFRA 07-2008-0011 and **In the Matter of Carman Chemical, Inc.** Copies of the check shall be forwarded to:



Carman Chemicals, Inc.  
Docket No. FIFRA 07-2009-0011

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

and

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

Carman chemicals, Inc.  
Docket No. FIFRA 07-2009-0011

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

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

Date: 6-26-09

By: *Kent Johnson*  
Kent Johnson  
Attorney  
Office of Regional Counsel

Date: 6/26/09

RESPONDENT:

CARMAN CHEMICAL, INC.

By: *J. Lamm*  
Title: Pres  
Date: 6-18-2009

Carman Chemicals, Inc.  
Docket No. FIFRA 07-2009-0011

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: June 30, 2009

IN THE MATTER OF Carman Chemicals, Inc., Respondent  
Docket No. FIFRA-07-2009-0011

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  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

J.P. Carman, President  
Carman Chemicals, Inc.  
25358 Business Highway 24 West  
Paris, Missouri 65275

Dated: 6/30/09

  
Kathy Robinson  
Hearing Clerk, Region 7