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**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

In the Matter of

Crane's Stores, Inc.

Respondent

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Docket No. FIFRA-07-2013-0008

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Crane's Stores, 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) and 22.18(b)(2) 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) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding 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 (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Crane's Stores, Inc., a general store, located at 10675 Old Highway 40, Williamsburg, Missouri. The Respondent is a corporation qualified to conduct business in the state of Missouri.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. 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.

10. The term "establishment" is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) as any place where a pesticide is produced, or held, for distribution or sale.

11. According to 40 C.F.R. § 152.3, the term "package" means the immediate container or wrapping including any attached closure(s) in which the pesticide is contained for distribution, sale, consumption, use, or storage.

12. The term "produce" is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as meaning to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

13. The term "producer" is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

14. 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 by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such

conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

15. 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 any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

16. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

17. 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 of FIFRA, 7 U.S.C. § 136e.

18. FIFRA Section 7(a), 7 U.S.C. § 136e(a) states that no person may produce a pesticide subject to FIFRA unless the establishment in which it is produced is registered with EPA.

Section IV

General Factual Allegations

19. Respondent is and, at all times referred to herein, was a "person" within the meaning of FIFRA.

20. "Just One Bite II" is a registered pesticide bearing the EPA Registration Number (Reg. No.) 270-372.

21. On or about May 9, 2012, a representative of the Missouri Department of Agriculture (MDA) inspected Respondent's place of business located at 10675 Old Highway 40, Williamsburg, Missouri, to determine Respondent's compliance with FIFRA. During the inspection statements and photographs were collected.

22. At the time of the inspection, Respondent had not registered for an establishment number from EPA to produce pesticide products.

Violations

23. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

24. The facts stated in Paragraphs 19 through 22 are realleged and incorporated as if fully stated herein.

25. Just One Bite II is registered and labeled for sale with a net weight of 112.5 ounces.

26. Documentation collected during the inspection reveals that on or about May 9, 2012, Respondent held for sale or distribution three large plastic containers of Just One Bite II. This pesticide's allowable package, as defined by 40 C.F.R. § 152.3, is considered the large plastic container. According to the label, each container should have 75 1.5 ounce individual place packets.

27. One container of Just One Bite II was open and contained approximately 35 place packets. The open container displayed the following hand written notation, "75¢ each." The individual place packs were being held for sale or distribution.

28. The label on the Just One Bite II container states, in bold red letters, "IT IS ILLEGAL TO SELL THESE PLACEPACKETS INDIVIDUALLY." The label on the individual packets of Just One Bite II state, in bold red letters, "Not For Individual Resale."

29. The individual place packets are not registered pesticides.

30. Respondent altered the container of a registered pesticide and offered for sale or distribution the individual place packets. Respondent's act of offering for sale or distribution the individual place packets is considered repackaging.

31. 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold. Therefore, by repackaging the pesticide, Just One Bite II, Respondent created an unregistered pesticide.

32. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by offering for sale or distribution a pesticide that is not registered under section 136a of FIFRA.

33. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by offering for sale or distribution a misbranded pesticide because the individual place packs did not contain all required label language.

Count 2

34. The facts stated in Paragraphs 19 through 22 are realleged and incorporated as if fully stated herein.

35. The repackaged pesticide product, the 1.5 ounce place pack of Just One Bite II, was not encompassed within the terms of the product registration under EPA Reg. No. 270-372, and required a separate product registration under Section 3 of FIFRA.

36. Respondent's act of repackaging the unregistered pesticide Just One Bite II constitutes "production" as that term is defined under Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

37. 40 CFR 167.20(a)(1) requires any establishment where production occurs to be registered.

38. Since Respondent produced the pesticide Just One Bite II at its facility identified in Paragraph 4 above, it was required to register as a pesticide-producing establishment pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e. During the inspection, it was determined that Respondent failed to properly register the facility as required by FIFRA § 7(a), 7 U.S.C. § 136e.

39. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), in that it was considered a producer and failed to comply with the provisions of Section 7 of FIFRA by producing a pesticide in an unregistered establishment.

Section V

Consent Agreement

40. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

41. Respondent neither admits nor denies the factual allegations set forth above.

42. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

43. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

44. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

45. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind

Respondent to it.

46. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

47. The effect of settlement as described in Paragraph 48 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 46 above.

48. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of One Thousand Dollars (\$1,000.00) as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

49. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

50. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the 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 and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated 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. 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.

Section VI

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

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

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall

simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT
Crane's Stores, Inc.

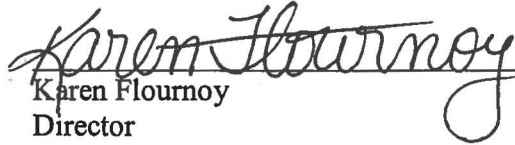
Date: 2-28-13

By: 

DAVID H. CRANE PRESIDENT
Print Name Title

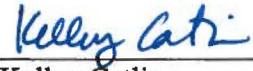
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/16/13



Karen Flourney
Director
Water, Wetlands and Pesticides Division

Date: 2/15/13



Kelley Catlin
Office of Regional Counsel

IT IS SO ORDERED.

Date: 3/11/13

Karina Borromeo

KARINA BORROMEO

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Crane's Stores, Inc., Respondent
Docket No. FIFRA-07-2013-0008

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Mail to:

David H. Crane
Crane's Country Store
10675 Old Highway 40
Williamsburg, Missouri 63388

and

Jacquelyn Brazas, Esq.
Riley and Dunlap P.C.
13 East Fifth Street
Fulton, Missouri 65251

Dated: 3/11/13



Kathy Robinson
Hearing Clerk, Region 7