



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

JAN 04 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 7439

Mr. Terry Fischer, President
Jet, Inc.
750 Alpha Drive
Cleveland, OH 44143

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0006

Dear Mr. Fischer:

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 January 4, 2008 with the Regional Hearing Clerk.

The civil penalty is to be paid according to the payment schedule prescribed in paragraphs 41, 42 and 43. Please be certain that the number BD 2750865P001 and the docket number are written on all the transmittal letters and on the checks. First payment is due by February 4, 2008 (within 30 calendar days of the filing date) and the final payment is due on February 2, 2009.

Thank you for your cooperation in resolving this matter.

Sincerely,

Terence Bonace
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:)
)
Jet Inc.)
Cleveland, Ohio)
)
)
)
)
Respondent)

Docket No. FIFRA-05-2008-0006

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136I(a)

Consent Agreement and Final Order

Preliminary Statement

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. § 136I(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, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, has been delegated the authority to settle this matter.

3. Respondent is Jet Inc. (Jet), located at 750 Alpha Drive, Cleveland, Ohio.

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

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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. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

11. 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 to any person any pesticide that is not registered under Section 3.

12. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide, 40 C.F.R. § 152.15(a)(1).

13. The term "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) "means any individual, partnership, association, corporation, or any organized group of persons whether

incorporated or not.”

14. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

16. The term “pests” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. §152.5(c) “as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism”

17. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty of up to \$5,500 for each violation of FIFRA that occurred from January 31, 1997 to March 15, 2004 and a civil penalty of up to \$6,500 for each violation of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

Factual Allegations and Alleged Violations

19. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. On or about December 7, December 15 and December 21, 2006, an inspector employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's place of business at 750 Alpha Drive, Cleveland, Ohio.

21. During the inspection, the inspector found Jet-Chlor in Respondent's warehouse.

22. The EPA registration number on the Jet-Chlor in the warehouse was EPA Reg.

No. 45983-1.

23. The inventory of Jet-Chlor was packaged, labeled and ready for delivery or sale.

24. During the inspection, the inspector collected a physical sample of the Jet-Chlor.

25. During the inspection, the inspector also collected incoming and outgoing shipping records for Jet-Chlor.

26. The EPA registration number for Jet-Chlor, EPA Reg. No. 45983-1, was cancelled on October 24, 2003.

27. Jet-Chlor is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.15(a)(1).

28. As of October 24, 2003, Jet-Chlor was no longer registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

29. On or about August 11, 2006, Respondent distributed or sold Jet-Chlor to Everly Concrete.

30. On or about August 14, 2006, Respondent distributed or sold Jet-Chlor to Utility Supply of America.

31. On or about August 15, 2006, Respondent distributed or sold Jet-Chlor to Downs Septic and Drain.

Count 1

32. Complainant incorporates by reference the allegations contained in paragraphs 1 through 31 of this Complaint.

33. Respondent distributed, offered for sale, or sold Jet-Chlor on or about August 11, 2006, in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

34. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 2

35. Complainant incorporates by reference the allegations contained in paragraphs 1 through 34 of this Complaint.

36. Respondent distributed, offered for sale, or sold Jet-Chlor on or about August 14, 2006, in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

37. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 3

38. Complainant incorporates by reference the allegations contained in paragraphs 1 through 37 of this Complaint.

39. Respondent distributed, offered for sale, or sold Jet-Chlor on or about August 15, 2006, in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

40. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty

41. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$15,600. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,600 civil penalty for the FIFRA violations in accordance with the following payment schedule:

Installment	Due By	Payment	Principal	Interest (4%)
Payment #1	Within 30 days of the filing date	\$3,900.00	\$3,900.00	\$0.00
Payment #2	Within 150 days of the filing date	\$4,053.86	\$3,900.00	\$153.86
Payment #3	Within 270 days of the filing date	\$4,002.58	\$3900.00	\$102.58
Payment #4	Within 390 days of the filing date	\$3,951.39	\$3,900.00	\$51.29
	Totals:	\$15,907.73	\$15,600.00	\$307.73

Respondent must pay the penalty by sending a cashier's or certified check, payable to the
"Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the following: the case name, the docket number of this CAFO and the
billing document number.

43. A transmittal letter, stating, Respondent's name, the case title, Respondent's
complete address, 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

Terence Bonace (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

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

45. 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.

46. 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

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

48. Respondent certifies that it is now in full compliance with FIFRA and its implementing regulations.

49. 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.

50. This CAFO does not affect Respondent's responsibility to comply with FIFRA and

other applicable federal, state, and local laws, and regulations.

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

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

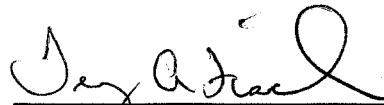
53. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Jet, Inc., Respondent


12-12-07
Date *by RTP w/auth. of Respondent*



Terry A. Fischer,
President, Jet, Inc.

United States Environmental Protection Agency, Complainant

12/28/07
Date



Margaret M. Guerriero, Director
Land and Chemicals Division

FIFRA-05-2008-0006

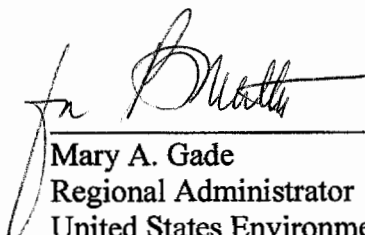
In the Matter of:
Jet, Inc.
Docket No. FIFRA-05-2008-0006

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.

1-2-08

Date



Mary A. Gade
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 Jet, Inc, was filed on January 4, 2008 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 7439, a copy of the original to the Respondent:

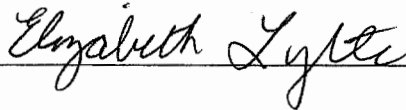
Mr. Terry Fischer, President
Jet, Inc.
750 Alpha Drive
Cleveland, OH 44143

and to the Respondent's attorney:

Mark Mayanec
Baker Hostetler LLP
3200 National City Center
1900 E. 9th St.
Cleveland, OH 44114

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



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

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