

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2012 JAN 26 PM 12: 35

IN THE MATTER OF)	
)	CONSENT AGREEMENT
Postville Farmers Cooperative Society)	AND
325 Coop Drive)	FINAL ORDER
Postville, Iowa 52162)	
)	Docket No. FIFRA-07-2012-0002
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Postville Farmers Cooperative Society (Respondent), have agreed to a settlement of this action before filing 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 Regulatory Background

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 (CAFO) serves as notice that 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 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Postville Farmers Cooperative Society, a pesticide distributor and seller, located at 325 Coop Drive, Postville, Iowa 52162. The Respondent is, and was at all times referred to in this CAFO, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Violations

General Allegations

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

6. It shall be unlawful for any person to distribute or sell a registered pesticide classified for restricted use to any person who is not at that time a certified applicator or agent of a certified applicator for the pesticide. FIFRA § 12 (a)(2)(F), 7 U.S.C. § 136j(a)(2)(F).

7. The term "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. FIFRA § 2 (gg), 7 U.S.C. § 136(gg).

8. Respondent, at all times relevant, was a distributor and seller of pesticides located in Postville, Iowa.

9. On May 25, 2011, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) inspected the Respondent's Postville, Iowa, facility. The IDALS representative collected written statements, and records of sales of products.

Count I

10. Complainant hereby incorporates the allegations contained in paragraphs 6 through 9, above, as if fully set forth herein.

11. Documents collected during the inspection revealed that the pesticide, Atrazine 4L Herbicide, EPA Reg. No. 34704-69, is a registered pesticide classified for restricted use and that on June 11, 2010, under purchase order PF 029554, 1.5 gal. of the pesticide was sold by the Respondent to a person who was not at that time a certified applicator or an agent of a certified applicator for the pesticide.

12. Respondent violated Section 12(a)(2)(F) of FIFRA by distributing or selling a registered pesticide classified for restricted use to a person who was not at that time a certified applicator or agent of a certified applicator for the pesticide. 7 U.S.C. § 136j(a)(2)(F).

Count II

13. Complainant hereby incorporates the allegations contained in paragraphs 6 through 9, above, as if fully set forth herein.

14. Documents collected during the inspection revealed that the pesticide, Atrazine 4L Herbicide, EPA Reg. No. 34704-69, is a registered pesticide classified for restricted use and that on July 21, 2010, under purchase order PW 15162, 2.5 gal. of the pesticide was sold by the

Respondent to a person who was not at that time a certified applicator or an agent of a certified applicator for the pesticide.

15. Respondent violated Section 12(a)(2)(F) of FIFRA by distributing or selling a registered pesticide classified for restricted use to a person who was not at that time a certified applicator or agent of a certified applicator for the pesticide. 7 U.S.C. § 136j(a)(2)(F).

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agree to comply with the terms of the Final Order portion of this Consent Agreement and 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 and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

7. 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.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

9. Respondent certifies by signing this Consent Agreement and Final Order that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Nine Thousand Seventy-Two Dollars (\$9,072) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in paragraph 6, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9, above.

12. 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.

13. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

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, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty for the violations cited herein, in the amount of Nine Thousand Seventy-Two Dollars (\$9,072) within thirty (30) days of the effective date this Final Order. Such payment shall identify the Respondent by name and Docket Number, and shall be by cashier's or certified check made payable to "Treasurer, United States of America" and remitted to:

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

2. A copy of the check shall simultaneously be sent to the following:

Robert W. Richards
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. 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.

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

5. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By Karen Flournoy
Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date 1-20-12

By Robert W. Richards
Robert W. Richards
Assistant Regional Counsel

Date 1/13/12

RESPONDENT:

Postville Farmers Cooperative Society
Postville, Iowa

By Michael W. Jackson

Title General Manager

Date 1-11-2012

IT IS SO ORDERED. This Order shall become effective immediately.

By 

Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date January 26, 2012

IN THE MATTER OF Postville Farmers Cooperative Society, Respondent
Docket No. FIFRA-07-2012-0002

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:

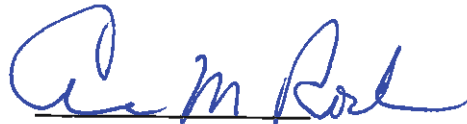
Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael W. Jacobson
General Manager
Postville Farmers Cooperative Society
325 Coop Drive
Postville, Iowa 52162

Dated: 1/26/2012



for
Kathy Robinson
Hearing Clerk, Region 7