

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:

Rodney Derr
151 East Laurel Street
Frackville, PA 17931

Dorothy Derr
151 East Laurel Street
Frackville, PA 17931

Matthew Derr
151 East Laurel Street
Frackville, PA 17931

RESPONDENTS.

Docket No. FIFRA-03-2013-0030

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Rodney Derr, Dorothy Derr, and Matthew Derr doing business as Broad Mountain Pet and Garden Supply ("Respondents") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. §§ 22.18(b)(2) and (3).

This CA and the accompanying Final Order ("FO"; collectively "CA/FO") address the alleged sale or distribution of unregistered and misbranded pesticides in violation of Sections 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E), respectively.

General Provisions

1. For purposes of this proceeding only, Respondents admit to the jurisdictional allegations set forth in this CA/FO.
2. For purposes of this proceeding, Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in the Complaint, except as provided in Paragraph 1, above.
3. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CA/FO.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondents consent to the issuance of this CA/FO and agree to comply with its terms. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
6. Respondents are aware that the submission of false or misleading information to the United States government may subject them to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondents to Complainant are false or, in any material respect, inaccurate.
7. Respondents shall not deduct for civil taxation purposes the civil penalty specified in this CA/FO.
8. Respondents shall bear their own costs and attorney's fees.
9. Respondents certify to EPA by their signatures herein that they are presently in compliance with the provisions of FIFRA referenced herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Complainant incorporates by reference all the factual allegations and legal conclusions contained in the Complaint filed in this matter.

CIVIL PENALTY

11. In settlement of Complainant's claims for civil penalties for the violations alleged in the Complaint, Respondents agree to pay a civil penalty of Eight Thousand Two Hundred Dollars (\$8,200). The civil penalty is due and payable immediately upon Respondents' receipt of a true and correct copy of this CA/FO. If Respondents pay the entire civil penalty within 30 calendar days of the date on which this CA/FO is mailed to Respondents, no interest will be assessed against Respondents pursuant to 40 C.F.R. § 13.11(a)(1).
12. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
13. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CA/FO begins to accrue on the date that a copy of the CA/FO is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
14. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives—Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first 30 day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.
15. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than 90 calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
16. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Complainant also took into account the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated December 2009 ("ERP").

- A. All payments by Respondents shall reference each Respondent's name and address, and the Docket Number of this action, *i.e.*, FIFRA-03-2013-0030;
- B. All checks shall be made payable to **"United States Treasury"**;
- C. All payments made by check and sent by regular mail shall be addressed to:
- U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105
- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:
- U.S. Bank, Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:
- Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001
- F. All payments made by electronic wire transfer shall be directed to:
- Federal Reserve Bank of New York, ABA = 021030004, Account No.=
68010727, SWIFT address = FRNYUS33, 33 Liberty Street, New York, NY
10045
- Field Tag 4200 of the Fedwire message should read:
- D 68010727 Environmental Protection Agency
- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:
- US Treasury REX / Cashlink
ACH Receiver, ABA = 051036706
Account No.: 310006
Environmental Protection Agency

CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

J. A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

FULL AND FINAL SATISFACTION

18. This CA/FO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), for the violations alleged in the Complaint.

RESERVATION OF RIGHTS

19. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

OTHER APPLICABLE LAWS

20. Nothing in this CA/FO relieves Respondents of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

21. Each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind themselves hereto.

ENTIRE AGREEMENT

22. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

EFFECTIVE DATE

23. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.


SIGNATURES

For Respondents:

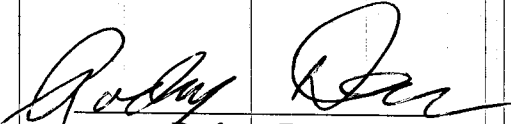
Date: 7-6-13


Matthew Derr

Date: 7/6/13


Dorothy Derr

Date: 7/6/13


Rodney Derr

For Complainant:

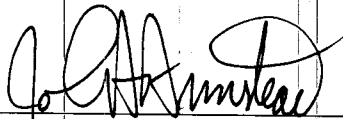
Date: 7/24/13
~~7/6/13~~

U.S. Environmental Protection Agency


Louis F. Ramalho
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 7.30.13


John A. Armstead, Director
Land and Chemicals Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

IN RE:

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RESPONDENTS

Docket No. FIFRA-03-2013-0030

FINAL ORDER

The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated as if set forth at length herein;

NOW THEREFORE, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136l(a), and based on the representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), **IT IS HEREBY ORDERED** that Respondents comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Eight Thousand Two Hundred Dollars (\$8,200.00) as specified in the attached Consent Agreement.

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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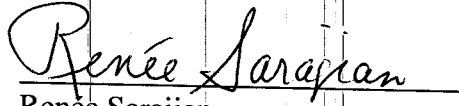
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The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date:

8/1/13



Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, **Docket No. FIFRA-03-2013-0030**, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

Respondents:


Matthew Derr
Broad Mountain Pet and
Garden Supply
151 East Laurel Street
Frackville, PA 17931

Dorothy Derr
Broad Mountain Pet and
Garden Supply
151 East Laurel Street
Frackville, PA 17931

Rodney Derr
Broad Mountain Pet and
Garden Supply
151 East Laurel Street
Frackville, PA 17931

Date

8/5/2013


Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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