



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
February 5, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7647 6140

Mr. Robert Jones III
American Sales Corporation.
8410 W. 185th St.
Tinley Park, Illinois 60487

Consent Agreement and Final Order In the Matter of
American Sales Corporation. Docket No. FIFRA-05-2014-0006

Dear Mr. Jones:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on February 5, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,375.00 is to be paid in the manner described in paragraphs 30 and 31. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by March 7, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

American Sales Corporation
Tinley Park, Illinois,
Respondent.



Docket No. FIFRA-05-2014-0006

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

Consent Agreement and Final Order Commencing and Concluding the Proceeding

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. § 136l(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 is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is American Sales Corporation, a corporation doing business in the State of Illinois.

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 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 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 of FIFRA, 7 U.S.C. § 136a.

11. The term “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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. 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).

Factual Allegations and Alleged Violations

15. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
16. Respondent owned or operated places of business located at 8401 and 8405 West 185th Street, Tinley Park, Illinois during the calendar year 2011.
17. On February 3, 2011, an inspector employed by the Illinois Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's place of business at 8405 West 185th Street, Tinley Park, Illinois.
18. During the February 3, 2011, inspection, the inspector collected photographs of Malibu Concentrated Algaecide and Malibu 100% Soluble Stabilized Chlorinating Granular offered for sale on retail shelves at Respondent's place of business.
19. Respondent's label for Malibu Concentrated Algaecide photographed on February 24, 2011, states that it is an algaecide.
20. Malibu Concentrated Algaecide is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
21. Respondent's label for Malibu 100% Soluble Stabilized Chlorinating Granular photographed on February 3, 2011, states that it is for "superchlorination" and "shock treatment" of swimming pools and bears the EPA registration number 7124-31-52645.
22. Malibu 100% Soluble Stabilized Chlorinating Granular is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
23. Respondent distributed or sold Malibu Concentrated Algaecide on February 3, 2011.
24. Malibu Concentrated Algaecide was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on February 3, 2011.
25. Respondent's distribution or sale of the unregistered pesticide Malibu Concentrated

Algaecide constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

26. Respondent distributed or sold Malibu 100% Soluble Stabilized Chlorinating Granular on February 3, 2011.

27. Malibu 100% Soluble Stabilized Chlorinating Granular was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on February 3, 2011.

28. Respondent's distribution or sale of the unregistered pesticide Malibu 100% Soluble Stabilized Chlorinating Granular constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

29. 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 \$6,375.00. 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 EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,375.00 civil penalty for the FIFRA violations. 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
Post Office Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must note the case title (In the Matter of: American Sales Corporation) and the docket number of this CAFO.

31. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Jeffrey A. Cahn (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

33. If Respondent does not pay the civil penalty timely, then 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.

34. 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

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

36. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

37. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

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

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


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

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

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


American Sales Corporation, Respondent

12-16-2013
Date


Robert Jones
President
American Sales Corporation

United States Environmental Protection Agency, Complainant

1/30/2014
Date


Margaret M. Guerriero
Director
Land and Chemicals Division



In the Matter of:
American Sales Corporation
Docket No. FIFRA-05-2014-0006

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.

2/3/2014
Date

S Hedman
Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



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 American Sales Corporation, was filed on February 5, 2014 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7647 6140, a copy of the original to the Respondents:

Mr. Robert Jones III
American Sales Corporation.
8410 W. 185th St.
Tinley Park, Illinois 60487

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jeffery A. Cahn, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



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

Docket No. FIFRA-05-2014-0006

