



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
August 25, 2008

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6136

Dr. Donald Bartels, President
Solon Veterinary Clinic
6475 Richmond Road
Solon, Ohio 44139

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REGIONAL HEARING CLERK
US EPA REGION V

2008 AUG 25 AM 10: 08

Consent Agreement and Final Order, Docket No. **FIFRA-05-2008-0025**

Dear Dr. Bartels:

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 August 25, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,660 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the number **BD2750845P025** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 25, 2008, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

| | | | |
|---------------------------------------|---|-------------------------------------|---------------------------|
| In the Matter of: |) | Docket No. | FIFRA-05-2008-0025 |
| |) | | |
| SOLON VETERINARY CLINIC, INC., |) | Proceeding to Assess a Civil | |
| SOLON, OHIO, |) | Penalty Under Section 14(a) | |
| |) | of the Federal Insecticide, | |
| Respondent. |) | Fungicide, and Rodenticide | |
| _____ |) | Act, 7 U.S.C. § 136l(a) | |

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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. § 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, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Solon Veterinary Clinic, a corporation doing business in the State of Ohio.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
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 terms of this CAFO, including the assessment of the civil penalty described herein.

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 any 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)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as “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.”

12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” as, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” as any insect or any other form of terrestrial or aquatic plant or animal life which the Administrator of

U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1), 40 C.F.R. §152.5(b).

14. Federal regulations, at 40 C.F.R. § 152.15(a)(1), state that 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.

15. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136w(q)(1)(A), states that a pesticide is misbranded if it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator under Section 25(c)(3) of FIFRA, 7 U.S.C. § 136w(c)(3).

16. Federal regulations, at 40 C.F.R. § 156.10(a)(1), promulgated under authority of Section 25(a)(1) of FIFRA, 7 U.S.C. § 136w(a)(1), and implementing Section 25(c)(3) of FIFRA, 7 U.S.C. § 136w(c)(3), require all pesticides to bear a label containing, among other things, warning and precautionary statements prescribed by 40 C.F.R. § 156.10(h) and directions for use as prescribed by 40 C.F.R. § 156.10(i).

17. The Administrator of U.S. EPA may assess a civil penalty against any dealer, retailer or other distributor who violates any provision of FIFRA of up to \$6,500 for each violation pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. part 19.

Factual Allegations and Alleged Violations

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

19. Respondent is a veterinary clinic licensed to distribute and sell veterinary

medications, including products for the elimination of fleas and other external parasites.

20. Respondent owned or operated a place of business located at 6475 Richmond Road, Solon, Ohio, during calendar year 2006.

21. On November 30, 2006, Respondent held for sale “Advantage 55 (Imidacloprid) Topical Solution,” U.S. EPA Reg. No. 11556-120, manufactured by Bayer Health Care and intended to kill fleas on dogs, and which is sold in packages of four doses with warning and dosage information included on the exterior packaging and on printed material inserted into the packaging.

22. “Advantage 55 (Imidacloprid) Topical Solution,” U.S. EPA Reg. No. 11556-120, is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. On November 30, 2006, Respondent sold to a consumer a single dose of “Advantage 55 (Imidacloprid) Topical Solution,” U.S. EPA Reg. No. 11556-120, without the accompanying packaging and printed package inserts.

24. The single dose of “Advantage 55 (Imidacloprid) Topical Solution,” U.S. EPA Reg. No. 11556-120, sold by Respondent on November 30, 2006, did not contain the warning and precautionary statements prescribed by 40 C.F.R. § 156.10(h) or directions for use prescribed by 40 C.F.R. § 156.10(i).

25. Respondent’s distribution or sale of a single dose of “Advantage 55 (Imidacloprid) Topical Solution,” U.S. EPA Reg. No. 11556-120, without the warning and precautionary statements prescribed by 40 C.F.R. § 156.10(h) or directions for use prescribed by 40 C.F.R. § 156.10(i) constitutes the distribution or sale of a misbranded pesticide, which is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

26. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), renders it liable for a penalty not to exceed \$6,500 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. part 19.

Civil Penalty

27. 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 **\$2,660**. 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.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$2,660** civil penalty for the FIFRA violation described above. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note the case title, the docket number of this CAFO and the billing document (BD) number.

29. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD 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

Joseph Lukascyk (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

31. If Respondent does not timely pay the civil penalty, U.S. EPA may refer the matter to the Attorney General who may 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 parties agree that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. 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

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

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

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

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

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

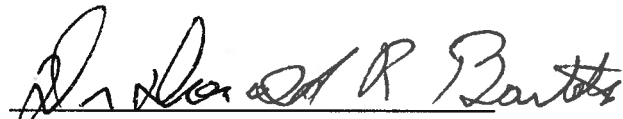
38. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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


Solon Veterinary Clinic, Inc., Respondent

7/25/08
Date


Dr. Donald Bartels
President
Solon Veterinary Clinic

United States Environmental Protection Agency, Complainant

8/14/08
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Solon Veterinary Clinic, Inc.,
Docket No. FIFRA-05-2008-0025

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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.

8/21/08
Date

Lynn Buhl
Lynn Buhl
Regional Administrator
United States Environmental Protection Agency
Region 5

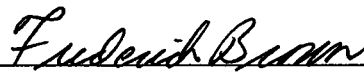
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Solon Veterinary Clinic Inc, was filed on August 25, 2008 with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8921 6136, a copy of the original to the Respondents:

Dr. Donald Bartels, President
Solon Veterinary Clinic
6475 Richmond Road
Solon, Ohio 44139

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Robert S. Guenther, 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

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