

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA 07-2009-0039
)	
Helena Chemical Company)	CONSENT AGREEMENT
14401 W. 100 th St.)	AND
Lenexa, KS 66215)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Helena Chemical Company (Respondent) have agreed to a settlement of this action before filing of 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 Statutory Requirements

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. § 136f.

2. This Complaint serves as notice that the United States Environmental Protection Agency (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 VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is the Helena Chemical Company., a pesticide dealer, located at 14401 W. 100th Street, Lenexa, Kansas. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Kansas.

Statutory and Regulatory Background

1. Section 12(a)(2)(F) of FIFRA states that it shall be unlawful for any person to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) of this title and any regulations thereunder; except that it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator. 7 U.S.C. § 136j(a)(2)(F).

2. 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. 7 U.S.C. § 136(gg).

Factual Allegations

3. Respondent, at all times relevant, operated as a distributor of agricultural chemicals including pesticides, insecticides, and fertilizers in Lenexa, Kansas.

4. On September 13, 2007, a representative of the Kansas Department of Agriculture (KDA) conducted an inspection of the Respondent's Lenexa, Kansas facility.

5. During the inspection, the KDA representative reviewed the sales receipts of individuals who purchased Restricted Use Pesticides (RUPs) from Respondent.

6. During the inspection, the KDA representative obtained documentation that Respondent offered for sale or distribution the Restricted Use Pesticide, Scimitar, EPA registration Number 100-1088. The documentation revealed that an individual purchased 2 quarts of Scimitar on April 20, 2007. That individual's certification expired on December 31, 2006.

7. During the inspection, the KDA representative obtained documentation that Respondent offered for sale or distribution the Restricted Use Pesticide Dursban Pro, EPA registration Number 62719-166. The documentation revealed that an individual who did not have a valid certification purchased 2 gallons of Dursban Pro on September 10, 2007.

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

Count 1

9. Documentation collected during the September 13, 2007, inspection revealed the Scimitar, EPA Reg. No. 100-1088, a RUP, was sold to an applicator whose certification had expired. The individual who purchased the Scimitar applied the product without proper certification and did not purchase the product for use by a certified applicator.

10. Respondent violated Section 12(a)(2)(F) of FIFRA by distributing or selling a registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) of this title and any regulations thereunder. 7 U.S.C. § 136j(a)(2)(F).

Count 2

11. Documentation collected during the September 13, 2007, inspection revealed the Dursban Pro, EPA Reg. No. 62719-166, an RUP, was sold to an uncertified applicator. The individual who purchased the Dursban Pro applied the product without proper certification and did not purchase the product for use by a certified applicator.

12. Respondent violated Section 12(a)(2)(F) of FIFRA by distributing or selling a registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) of this title and any regulations thereunder. 7 U.S.C. § 136j(a)(2)(F).

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the 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 certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. 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.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order.

10. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Ten Thousand Four Hundred Dollars (\$10,400.00).

11. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. Department of Justice ("DOJ") 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 Ten Thousand Four Hundred Dollars (\$10,400.00). Payment will be made within thirty (30) days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

3. The payment shall reference Docket Number, FIFRA 07-2009-0039 and In the Matter of Helena Chemical Company. Copies of the check shall be forwarded to:

Helena Chemical Company
Docket No. FIFRA 07-2009-0039

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101


4. 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.

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

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

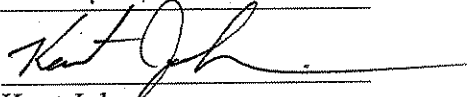
COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 

William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 9/22/09

By: 

Kent Johnson
Attorney
Office of Regional Counsel

Date: 9/22/09

Helena Chemical Company
Docket No. FIFRA 07-2009-0039

RESPONDENT:

HELENA CHEMICAL COMPANY

By:

Title:

Date:

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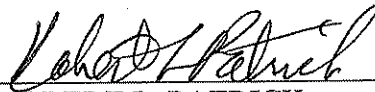
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9/15/09

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Helena Chemical Company
Docket No. FIFRA 07-2009-0039

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



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: September 25, 2009

IN THE MATTER OF Helena Chemical Company, Respondent
Docket No. FIFRA-07-2009-0039

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David Hawkins
General Counsel
225 Schilling Blvd, Suite 300
Collierville, Tennessee 38017

Dated: 9/28/09



Kathy Robinson
Hearing Clerk, Region 7