

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

2014 SEP 22 PM 3: 04

In the Matter of)	Docket No. FIFRA-07-2014-0015
)	
Des Moines Feed and)	
Garden Shoppe, Inc.)	
2019 Hubbell Avenue)	
Des Moines, IA 50317)	
)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Des Moines Feed and Garden Shoppe, Inc. (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) and 22.18(b)(2) 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) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding 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 the EPA

has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

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 Des Moines Feed and Garden Shoppe, Inc., a pesticide distributor with a facility located at 2019 Hubbell Avenue, Des Moines, IA 50317.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in a living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether

incorporated or not.

9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. Produce is further defined by regulation at 40 C.F.R. § 167.3 as “to package, repackage, label, re-label, or otherwise change the container of any pesticide or device.”

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

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to the requirements of FIFRA unless the establishment in which it is produced is registered with the EPA.

13. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it shall be unlawful for any person to distribute or sell any pesticide any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 7 of FIFRA, 7 U.S.C. § 136a.

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

15. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

Section IV

General Factual Allegations

16. 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 an Iowa corporation qualified to do business in the state of Iowa.

17. On October 17, 2013, and October 23, 2013, representatives of the Iowa Department of Agriculture and Land Stewardship (IDALS) inspected the Respondent’s facility 2019 Hubbell Avenue, Des Moines, Iowa 50317 (Facility).

18. During the inspection referenced in the preceding paragraph, IDALS representatives documented that Respondent held for sale or distribution a quantity of the following products: Rampage Rodenticide Place Pac, EPA Reg. No. 12455-97-3240; Just One Bite II Bait Chunks, EPA Reg. No. 270-373; Just One Bite II Pellet Place Packs, EPA Reg. No. 270-372; Just One Bite Ex Bait Blocks, EPA Reg. No. 67517-66-270; Jaguar Rodenticide Place Pacs, EPA Reg. No. 12455-94-3240; and Havoc Rodenticide Bait Pack, EPA Reg. No. 100-1056-61282.

Rampage Rodenticide Place Pac, EPA Reg. No. 12455-97-3240

19. During the inspection referenced in the preceding paragraph, IDALS representatives observed that Respondent had repackaged the product Rampage Rodenticide

Place Pac, EPA Reg. No. 12455-97-3240, by removing it from its original packaging and then offering it for sale or distribution in individual units that lacked the EPA-approved product labeling. Further, the individual units which were offered for sale and distribution contained differing claims regarding safety and toxicity than the registered product.

20. The repackaged units of Rampage Rodenticide Place Pac are pesticides as defined by FIFRA.

21. The production of the individual units of *Rampage Rodenticide Place Pac* for sale or distribution took place at the Respondent's Facility, which in an establishment not registered by EPA, as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Just One Bite II Bait Chunks, EPA Reg. No. 270-373

22. During the inspection referenced in the preceding paragraph, IDALS representatives observed that Respondent had repackaged the product Just One Bite II Bait Chunks, EPA Reg. No. 270-373, by removing it from its original packaging and then offering it for sale or distribution in individual units that lacked the EPA-approved product labeling.

23. The repackaged units of Just One Bite II Bait Chunks are pesticides as defined by FIFRA.

24. The production of the individual units of Just One Bite II Bait Chunks for sale or distribution took place at the Respondent's Facility, which in an establishment not registered by EPA, as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Just One Bite II Pellet Place Packs, EPA Reg. No. 270-372

25. During the inspection referenced in the preceding paragraph, IDALS representatives observed that Respondent had repackaged the product Just One Bite II Pellet Place Packs, EPA Reg. No. 270-372, by removing it from its original packaging and then

offering it for sale or distribution in individual units that lacked the EPA-approved product labeling.

26. The repackaged units of Just One Bite II Pellet Place Packs are pesticides as defined by FIFRA.

27. The production of the individual units of Just One Bite II Pellet Place Packs for sale or distribution took place at the Respondent's Facility, which in an establishment not registered by EPA, as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Just One Bite Ex Bait Blocks, EPA Reg. No. 67517-66-270

28. During the inspection referenced in the preceding paragraph, IDALS representatives observed that Respondent had repackaged the Just One Bite Ex Bait Blocks, EPA Reg. No. 67517-66-270, by removing it from its original packaging and then offering it for sale or distribution in individual units that lacked the EPA-approved product labeling.

29. The repackaged units of Just One Bite II Pellet Place Packs are pesticides as defined by FIFRA.

30. The production of the individual units of Just One Bite II Pellet Place Packs for sale or distribution took place at the Respondent's Facility, which in an establishment not registered by EPA, as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Jaguar Rodenticide Place Pacs, EPA Reg. No. 12455-94-3240

31. During the inspection referenced in the preceding paragraph, IDALS representatives observed that Respondent had repackaged the Jaguar Rodenticide Place Pacs, EPA Reg. No. 12455-94-3240, by removing it from its original packaging and then offering it for sale or distribution in individual units that lacked the EPA-approved product labeling.

32. The repackaged units of Jaguar Rodenticide Place Pacs are pesticides as defined

by FIFRA.

33. The production of the individual units of Jaguar Rodenticide Place Pacs for sale or distribution took place at the Respondent's Facility, which in an establishment not registered by EPA, as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Havoc Rodenticide Bait Pack, EPA Reg. No. 100-1056-61282

34. During the inspection referenced in the preceding paragraph, IDALS representatives observed that Respondent had repackaged the Havoc Rodenticide Bait Pack, EPA Reg. No. 100-1056-61282, by removing it from its original packaging and then offering it for sale or distribution in individual units that lacked the EPA-approved product labeling.

35. The repackaged units of Havoc Rodenticide Bait Pack are pesticides as defined by FIFRA.

36. The production of the individual units of Havoc Rodenticide Bait Pack for sale or distribution took place at the Respondent's Facility, which in an establishment not registered by EPA, as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Violations

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

Count 1

37. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

38. On or about October 23, 2013, Respondent held for sale or distribution a re-packaged version of the pesticide product Rampage Rodenticide Place Pac, EPA Reg. No. 12455-97-3240.

39. The re-packaged version of Rampage Rodenticide Place Pac, held for sale or distribution by Respondent, was misbranded in that it lacked the required labeling for the product. Further, the individual units which were offered for sale and distribution contained differing claims regarding safety and toxicity than the registered product.

40. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), by distributing or selling a registered pesticide with claims that substantially differed from claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

41. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

Count 2

42. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

43. On or before October 23, 2013, Respondent repackaged a quantity of the pesticide product Rampage Rodenticide Place Pac, EPA Reg. No. 12455-97-3240.

44. Respondent's Facility is not registered with the EPA as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

45. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a pesticide in an establishment that was not registered in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Count 3

46. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

47. On or about October 23, 2013, Respondent held for sale or distribution a re-packaged version of the pesticide product Just One Bite II Bait Chunks, EPA Reg. No. 270-373.

48. The re-packaged version of Just One Bite II Bait Chunks, held for sale or distribution by Respondent, was misbranded in that it lacked the required labeling for the product.

49. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

Count 4

50. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

51. On or before October 23, 2013, Respondent repackaged a quantity of the pesticide product Just One Bite II Bait Chunks, EPA Reg. No. 270-373.

52. Respondent's Facility is not registered with the EPA as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

53. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a pesticide in an establishment that was not registered in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Count 5

54. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

55. On or about October 23, 2013, Respondent held for sale or distribution a re-packaged version of the pesticide product Just One Bite II Pellet Place Packs, EPA Reg. No. 270-372.

56. The re-packaged version of Just One Bite II Bait Pellet Place Packs, held for sale or distribution by Respondent, was misbranded in that it lacked the required labeling for the product.

57. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

Count 6

58. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

59. On or before October 23, 2013, Respondent repackaged a quantity of the pesticide product Just One Bite II Pellet Place Packs, EPA Reg. No. 270-372.

60. Respondent's Facility is not registered with the EPA as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

61. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a pesticide in an establishment that was not registered in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Count 7

62. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

63. On or about October 23, 2013, Respondent held for sale or distribution a re-packaged version of the pesticide product Just One Bite Ex Bait Blocks, EPA Reg. No. 67517-66-270.

64. The re-packaged version of Just One Bite Ex Bait Blocks, held for sale or distribution by Respondent, was misbranded in that it lacked the required labeling for the

product.

65. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

Count 8

66. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

67. On or before October 23, 2013, Respondent repackaged a quantity of the pesticide product Just One Bite Ex Bait Blocks, EPA Reg. No. 67517-66-270.

68. Respondent's Facility is not registered with the EPA as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

69. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a pesticide in an establishment that was not registered in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Count 9

70. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

71. On or about October 23, 2013, Respondent held for sale or distribution a re-packaged version of the pesticide product Jaguar Rodenticide Place Pacs, EPA Reg. No. 12455-94-3240.

72. The re-packaged version of Jaguar Rodenticide Place Pacs, held for sale or distribution by Respondent, was misbranded in that it lacked the required labeling for the product.

73. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by

distributing or selling a pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

74. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

Count 10

75. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

76. On or before October 23, 2013, Respondent repackaged a quantity of the pesticide product Jaguar Rodenticide Place Pacs, EPA Reg. No. 12455-94-3240.

77. Respondent's Facility is not registered with the EPA as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

78. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a pesticide in an establishment that was not registered in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Count 11

79. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

80. On or about October 23, 2013, Respondent held for sale or distribution a re-packaged version of the pesticide product Havoc Rodenticide Bait Pack, EPA Reg. No. 100-1056-61282.

81. The re-packaged version of Havoc Rodenticide Bait Pack, held for sale or distribution by Respondent, was misbranded in that it lacked the required labeling for the product.

82. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

Count 12

83. The facts stated in paragraphs above are re-alleged and incorporated as if fully stated herein.

84. On or before October 23, 2013, Respondent repackaged a quantity of the pesticide product Havoc Rodenticide Bait Pack, EPA Reg. No. 100-1056-61282.

85. Respondent's Facility is not registered with the EPA as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

86. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a pesticide in an establishment that was not registered in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Section V

Consent Agreement

87. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

88. Respondent neither admits nor denies the factual allegations set forth above.

89. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

90. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

91. Nothing contained in the Final Order portion of this CAFO shall alter or

otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

92. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

93. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

94. The effect of settlement as described in Paragraph 95 below is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 93 above.

95. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order below. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

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

97. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining

balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

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 shall pay a civil penalty of Eighteen Thousand Dollars (\$18,000.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number (FIFRA-07-2014-0000) and made as follows and shall:
 2. If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.
 3. If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency".

4. A copy of the check or other information confirming payment shall
simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7 ✓
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

5. No portion of the civil penalty or interest paid by Respondent pursuant to the
requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or
local income tax purposes.

6. This CAFO shall be effective upon the filing of the Final Order by the Regional
Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein
shall be calculated in calendar days from such date.

RESPONDENT
DES MOINES FEED AND GARDEN SHOPPE, INC.

Date: 8-26-14

By: *Ralph A. Holt*

Ralph A. Holt
Print Name

President
Title

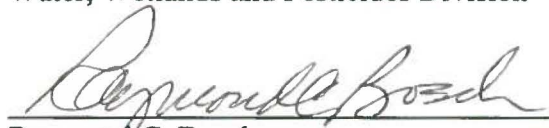
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9-10-14



Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date: 9-9-2014



Raymond C. Bosch
Assistant Regional Counsel
Office of Regional Counsel

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

Date: 9-22-14

Karina Borromeo
KARINA BORROMEO
Regional Judicial Officer

IN THE MATTER OF Des Moines Feed and Garden Shoppe, Inc., Respondent
Docket No. FIFRA-07-2014-0015

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 by email to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to:

Ralph A. Holt, President
Des Moines Feed and Garden Shoppe, Inc.
2019 Hubbell Avenue
Des Moines, Iowa 50317

Dated: 9/22/14


Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7