

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 1562 3631

Gary Hood, Senior Counsel
Sanford L.P.
2707 Butterfield Road, Suite 100
Oak Brook, Illinois 60523

Sanford L.P.

FIFRA-05-2008-0007

Dear Mr. Hood:

I have enclosed one original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on January 29, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$98,800 is to be paid in the manner prescribed in paragraphs 37 to 39. Please be certain that the number **BD 2750845P008** and the docket number are written on both the transmittal letter and on the check. Payment is due by February 28, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

R. Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer (w/Encl.)
Nidhi O'Meara ORC /C-14J (w/Encl.)
Erik Volck, Cincinnati Finance (w/Encl.)
Gerald Kirback, IDA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Sanford L.P.)
Oak Brook, Illinois)
)
Respondent)

Docket No. **FIFRA-05-2008-0007**
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

2008 JUN 27 PM 3:03
RECEIVED
REGIONAL OFFICE
EPA REGION 5

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, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, has been delegated the authority to settle this matter.

3. Respondent is Sanford L.P. (Sanford), located at 2707 Butterfield Road, Suite 100, Oak Brook, Illinois 60523.

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 contained in paragraphs 10 through 18 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. This CAFO is not intended, and shall not be construed, to relieve Respondent of its obligation to comply with all of the applicable requirements of FIFRA, 7 U.S.C. Sections 136 to 136y.

Statutory and Regulatory Background

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, unless an exemption applies. 40 C.F.R. § 152.25(a) states that an article treated with a pesticide to protect the article itself is exempt from all provisions of FIFRA if the pesticide is registered for such use (hereinafter the “treated article exemption”).

11. 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.

12. 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).

13. 40 C.F.R. § 168.22(a) states:“FIFRA sections 12(a)(1)(A) and (B) make it unlawful for any person to ‘offer for sale’ any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. EPA interprets these provisions as extending to advertisements on any advertising medium to which pesticide users or the general public have access.”

14. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

15. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver”

16. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. § 152.5(c) “as 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”.

17. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty of up to \$6,500 for each violation of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

Factual Allegations and Alleged Violations

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

20. On or about April 11, 2007, a U.S. EPA inspector conducted an inspection under FIFRA at Sanford, to inspect and collect samples of any pesticides packaged, labeled, ready for and/or released for shipment by Respondent as authorized under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g.

21. During the April 11, 2007 inspection, the inspector collected a package of Paper Mate FlexGrip Elite™ ball point pens.

22. Subsequent to the inspection, Sanford sent U.S. EPA copies of labels and distribution/ shipping records for its Paper Mate FlexGrip Elite™ pen and pencil products and Paper Mate DYNAGrip+™ pen products.

Paper Mate FlexGrip Elite™ Pen and Pencil Products

23. On or about April 11, 2007 and in the copies of labels sent to U.S. EPA subsequent to the April 11, 2007 inspection, the labeling on the Paper Mate FlexGrip Elite™ pen and pencil products stated, among other things, "FlexGrip Elite™ with Anti-Bacterial Pen Protection."

24. The labeling on the Paper Mate FlexGrip Elite™ pen and pencil products constitutes a public health claim.

25. Therefore, the Paper Mate FlexGrip Elite™ pen and pencil products do not qualify for the “treated article exemption” under 40 C.F.R. § 152.25(a).

26. The Paper Mate FlexGrip Elite™ pen and pencil products are not registered as pesticides under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Paper Mate DYNAGrip+™ Pen Products

27. The labeling sent to U.S. EPA subsequent to the April 11, 2007 inspection for the Paper Mate DYNAGrip+™ pen products stated, among other things, “DYNAGrip+™ with Anti-Bacterial Pen Grip Protection.”

28. The labeling on the Paper Mate DYNAGrip+™ pen products constitutes a public health claim.

29. Therefore, the Paper Mate DYNAGrip+™ pen products do not qualify for the “treated article exemption” under 40 C.F.R. § 152.25(a).

30. The Paper Mate DYNAGrip+™ pen products are not registered as pesticides under Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Counts 1 through 23

31. Complainant incorporates by reference the allegations contained in paragraphs 1 through 30 of this Complaint.

32. Respondent distributed, offered for sale, or sold Paper Mate FlexGrip Elite™ pen and pencil products on at least 23 separate occasions from February 2005 through March 2007 in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

33. Respondent’s violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) on 23 separate occasions subjects Respondent to the issuance of an

Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a) for each of the 23 violations.

Counts 24 through 38

34. Complainant incorporates by reference the allegations contained in paragraphs 1 through 33 of this Complaint.

35. Respondent distributed, offered for sale, or sold Paper Mate DYNAGrip+™ pen products on at least 15 separate occasions from December 2005 through March 2007 in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

36. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) on fifteen separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a) for each of the fifteen (15) violations.

Civil Penalty

37. 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 \$98,800. 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.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a \$98,800 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
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the following: the case name, the docket number of this CAFO and the billing document number.

39. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document 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

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

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

41. If Respondent does not pay the civil penalty timely, U.S. 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.

42. 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

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

44. Respondent certifies that it has undertaken the steps necessary to ensure compliance with FIFRA and its implementing regulations, for the following products: The Paper Mate FlexGrip Elite™ pen and pencil products and the Paper Mate DYNAGrip+™ pen products.

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

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

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

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


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

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

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

Sanford L.P.

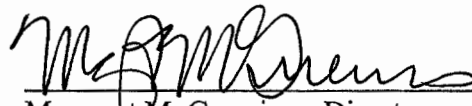
December 27, 2007
Date



Brad Turner, Group Vice President
And General Counsel
Sanford L.P.

United States Environmental Protection Agency, Complainant

January 18, 2008
Date



Margaret M. Guerriero, Director
Land and Chemicals Division

FIFRA-05-2008-0007

In the Matter of:

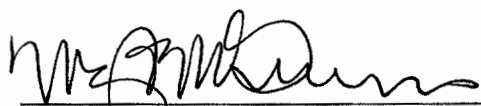
Sanford L.P.

Docket No. FIFRA-05-2008-0007

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.

January 24, 2008
Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATION 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 Sanford L.P., was filed on January 29, 2008 with the Region Hearing Clerk, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (E-13J), Chicago, Illinois 60604, and I mailed by certified mail, Receipt No. 7001 0320 0006 1562 3631, a copy of the original to Respondent:

Gary Hood, Senior Counsel
Sanford L.P.
2707 Butterfield Road, Suite 100
Oak Brook, Illinois 60523

And forwarded copies, via intra-office mail, to:

Marcy Toney, Regional Judicial Officer (C-14J)
Nidhi O'Meara, Associate Regional Counsel (C-14J)
Erik Volck, Cincinnati Finance (MWD)

On the 29 day of January, 2008.



R. Terence Bonace
U.S. Environmental Protection Agency
Region 5

FIFRA-05-2008-0007

2008 JAN 29 PM 3:05
RECEIVED
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5