



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 11 2007

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jerry Blevins
Royster-clark, Inc., d/b/a Crop Production Services
1038 Tomlin Mill Road
Statesville, NC 28625

SUBJ: Docket No. FIFRA-04-2007-3019(b)
Royster-clark, Inc., d/b/a Crop Production Services

Dear Mr. Blevins:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 CFR Part 22.

Please make note of the provisions in Section IV of the Final Order, with respect to the payment options of the assessed penalty of \$2,805.00, which is due within 30 days from the effective date of the CAFO. If paying by cashier's or certified check, we request that the payment be identified by writing FIFRA-04-2007-3019(b) on the face of the check.

Also, enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION 4
2007 JUN 11 AM 7:32
HEARING CLERK

In the Matter of:)
)
Royster-clark, Inc., d/b/a) Docket No. FIFRA-04-2007-3019(b)
Crop Production Services)
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Royster-clark, Inc., d/b/a Crop Production Services.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14 dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Phillip Beard
Pesticides Management Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012
5. The Respondent is Royster-clark, Inc., d/b/a Crop Production Services, a North Carolina corporation located at 1038 Tomlin Mill Road, Statesville, North Carolina 28625.
6. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. On or about April 19, 2004, an authorized representative of the EPA conducted an inspection at Respondent’s facility known as Royster Clark #1250, located at P.O. Box 5271, Statesville, North Carolina 28687.
8. During the aforementioned inspection, the product “Vereen’s 18-2-9 W/ .86 Pendimethalin 25% PSCU” was identified as being offered for sale or distribution by the Respondent.
9. The inspector documented this product which was found on a pallet for sale on one occasion.

10. Vereen's 18-2-9 W/ .86 Pendimethalin 25% PSCU is a pesticide according to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which defines "pesticide" to include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
12. "Distribute or sell" is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and includes 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.
13. At the time of the inspection, the Vereens 18-2-9 W/ .86% Pendimethalin 25% PCSU label was not registered as a pesticide with EPA.
14. It is unlawful according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
15. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
16. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.

17. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
18. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of TWO THOUSAND EIGHT HUNDRED FIVE DOLLARS (\$2,805) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

III. Consent Agreement

19. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
20. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
21. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
22. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
23. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

24. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

25. **Respondent is assessed a civil penalty of TWO THOUSAND EIGHT HUNDRED FIVE DOLLARS (\$2,805) which shall be paid within 30 days from the effective date of this CAFO.**
26. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099.

The check shall reference on its face the name and the Docket Number of the CAFO ("Royster-clark, Inc., d/b/a Crop Production Services, FIFRA-04-2007-3019(b)").

27. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

Phillip Beard
Pesticides Management Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

28. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
29. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.
32. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

The remainder of this page was intentionally left blank.

V. Effective Date

33. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Royster-clark, Inc., d/b/a Crop Production Services

By: Jerry W. Blevins (Signature) Date: 5-14-2007

Name: JERRY W BLEVINS (Typed or Printed)

Title: MANAGER (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister (Signature) Date: 6/7/07

Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 7th day of June, 2007.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of: Royster-clark, Inc., d/b/a/ Crop Production Services, Docket No. FIFRA-04-2007-3019(b), and served same on the date shown below, to the parties listed in the manner indicated:

Phillip Beard
U.S. EPA, Region 4
Air, Pesticides, and Toxics
Management Division
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

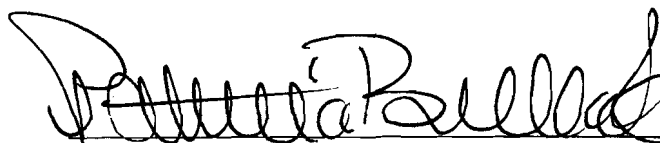
(Via EPA's internal mail)

(Respondent)

(Via Certified Mail, Return Receipt
Requested)

Mr. Jerry Blevins
Royster-clark, Inc., d/b/a
Crop Production Services
1038 Tomlin Mill Road
Statesville, NC 28625

Date: 6-11-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saund, Wilson on 6/7/07
(Name) (Date)

in the DEA, OATGL at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Royster Clark Inc d/b/a Crop Production Services
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2805
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA d/2007 3079(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |