



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
June 3, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7649 6636

Mr. Courtney Rossmann
Phillips Supply Company
One Crosley Field Lane
Cincinnati, Ohio 45214

Consent Agreement and Final Order In the Matter of
Phillips Supply Company. Docket No. FIFRA-05-2014-0018

Dear Mr. Rossmann:

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 June 3, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,500 is to be paid in the manner described in paragraphs 35 and 36. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by July 3, 2014, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

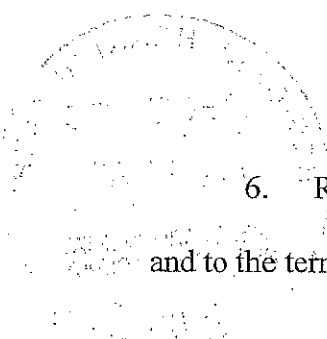


In the Matter of:)	Docket No. FIFRA-05-2014-0018
)	
Phillips Supply Company)	Proceeding to Assess a Civil Penalty
Cincinnati, Ohio,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

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, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Phillips Supply Company, a corporation doing business in the State of Ohio.
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 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. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. 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 of FIFRA, 7 U.S.C. § 136a or whose registration has been cancelled or suspended.

11. The term “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).

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

13. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provision of Section 7 of FIFRA:

14. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, 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

15. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
16. Respondent is a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).
17. Respondent owned or operated a place of business located at 1 Crosley Field Lane, Cincinnati, Ohio during the calendar year 2010.
18. On June 24, 2010, an inspector employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's place of business in Cincinnati, Ohio.
19. During the June 24, 2010 inspection, the inspector collected labels, photos, and distribution records for the pesticide products *Erase*, EPA Reg. No. 8176-20001-17004 and *Dish-San*, EPA Reg. No. 17004-3 which Respondent was holding for distribution or sale.
20. The registration for EPA Reg. No. 8176-20001 was cancelled on July 29, 2002.
21. The registration for EPA Reg. No. 17004-3 was cancelled on July 21, 2005.

Count I

22. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21 of this CAFO.
23. Respondent produced the pesticides *Erase* and *DishSan* during calendar year 2010 at its establishment at 1 Crossley Field Lane, Cincinnati, Ohio.
24. Respondent's establishment was not registered as a pesticide producing establishment with EPA during calendar year 2010 or any year.
25. Respondent's production of pesticide at an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Count II

26. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21 of this CAFO.

27. Respondent distributed or sold the pesticide *Erase* on June 24, 2010.

28. The registration of the pesticide *Erase* was canceled on July 29, 2002.

29. Respondent's distribution or sale of the unregistered pesticide *Erase* constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count III

30. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21 of this CAFO.

31. Respondent distributed or sold the pesticide *DishSan* on June 24, 2010.

32. The registration of *DishSan* was cancelled on July 21, 2005.

33. Respondent's distribution or sale of the unregistered pesticide *DishSan* constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

34. 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 \$9,500. 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 EPA's FIFRA Enforcement Response Policy, dated December 2009.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,500 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to

“Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

36. Respondent must send a notice of payment that states Respondent’s name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

Jose DeLeon (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

38. If Respondent does not pay timely the civil penalty, 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.

39. 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

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

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

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

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

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

45. 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.

46. Each party agrees to bear its own costs and attorneys fees, in this action.

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

Phillips Supply Company, Respondent

4/14/14

Date

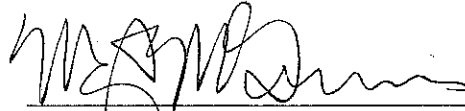


Pamela Rossman
President
Phillips Supply Company

United States Environmental Protection Agency, Complainant

5/20/2014

Date



Margaret M. Guerriero
Director

Land and Chemicals Division

In the Matter of:
Phillips Supply Company
Docket No. FIFRA-05-2014-0018



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.

5/23/2014

Date

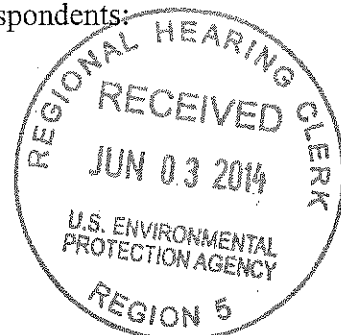
A handwritten signature in black ink, appearing to be "S H", written over a horizontal line.

Susan Hedman
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 Phillips Supply Company, was filed on June 3, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7649 6636, a copy of the original to the Respondents:

Mr. Courtney Rossmann
Phillips Supply Company
One Crosley Field Lane
Cincinnati, Ohio 45214



and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jose Deleon, 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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