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**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. FIFRA-07-2013-0014
)	
Main Street Feeds, Inc.)	
)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Main Street Feeds, 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 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 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 Main Street Feeds, Inc., 109 Main Street, Monett, Missouri 65708.

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 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(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.

10. According to 40 C.F.R. § 167.3, the term “custom blend” means any establishment which provides the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when: (1) The blend is prepared to the order of the customer and is not held in inventory by the blender; (2) the blend is to be used on the customer's property (including leased or rented property); (3) the pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend; (4) the blend is prepared from registered pesticides; (5) the blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of mixture; and (6) no other pesticide production activity is performed at the establishment.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

12. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(e), states a pesticide is misbranded if any words, statements, or other information required by FIFRA are not prominently placed on the label in such a way as to make it readable or understandable.

13. 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 which is misbranded.

Section IV

General Factual Allegations

14. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA and is registered to do business in the State of Missouri.

15. On May 21, 2012 and again on June 4, 2012, the Missouri Department of Agriculture agency (MDA) conducted inspections at the Main Street Feeds store located at 109 Main Street, Monett, Missouri.

16. On May 22, 2012 MDA conducted an inspection of the Main Street Feeds store located at 8270 West Highway 266, Springfield, Missouri.

17. Tri-State Fescue Buster + Rabon is produced by Tri-State Agri Services, L.L.C., located in Afton, Oklahoma. The product is a pesticide that is produced by blending the EPA registered pesticide Rabon 7.76 Oral Larvacide Pre-Mix, EPA Registration Number (EPA Reg. No.) 61483-48, with Fescue Buster. The pesticide product was blended in bulk for general consumption. It does not meet the definition of a custom blended pesticide.

18. Over the span of multiple years, Main Street Feeds purchased more than 15,800 pounds of Tri-State Fescue Buster + Rabon from Tri-State Agri Services.

19. On April 18, 2011, the Main Street Feeds Monett store distributed or sold the pesticide product Tri-State Fescue Buster + Rabon to a customer/vendor identified as “Hesewi.”

20. On April 26, 2011, the Main Street Feeds Springfield store sold the pesticide product Tri-State Fescue Buster + Rabon to a customer/vendor identified as “Mitcpa.”

21. At the time of the inspections, Main Street Feeds held the product “Tri-State Fescue Buster + Rabon” for distribution or sale.

22. At the time of the inspections, Respondent had sold or distributed the pesticide product, “Tri-State Fescue Buster + Rabon.”

23. The Tri-State Fescue Buster + Rabon held for sale bore a label that was missing the required First Aid and Environmental Hazard language.

24. On May 21, 2012, MDA issued a Stop Sale, Use, or Removal Order (SSURO) on the product Tri-State Fescue Buster + Rabon to Main Street Feeds at its Monett Missouri Store and on May 22, 2012 to Main Street Feeds at its Springfield Missouri store.

Violations

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

Count 1

26. The facts stated in paragraphs 14 through 24 are realleged and incorporated as if fully stated herein.

27. On or about April 18, 2011, Respondent distributed or sold a quantity of Tri-State Fescue Buster + Rabon from the Monett, Missouri Main Street Feeds store.

28. On the date it was sold and/or distributed, the pesticide product sold as Tri-State Fescue Buster + Rabon was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, nor did it meet the definition of a custom blend product.

29. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

30. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

31. The facts stated in paragraphs 14 through 24 are realleged and incorporated as if fully stated herein.

32. On or about April 26, 2011, Respondent distributed or sold a quantity of Tri-State Fescue Buster + Rabon from the Springfield Main Street Feeds store.

33. On the date it was sold and/or distributed, the pesticide product sold as Tri-State Fescue Buster + Rabon was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, nor did it meet the definition of a custom blend product.

34. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 3

35. The facts stated in paragraphs 14 through 24 are realleged and incorporated as if fully stated herein.

36. At the time of the inspections, Respondent was holding for sale a quantity of Tri-State Fescue Buster + Rabon, a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a(a), nor did it meet the definition of a custom blend product.

37. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

38. At the time of the inspections, the pesticide product, Tri-State Fescue Buster + Rabon, that was being held for distribution was missing certain required label information and was therefore misbranded.

39. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed, sold, or held for distribution or sale a misbranded pesticide.

40. Respondent's violation of Sections 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and (E) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a).

Section V

Consent Agreement

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

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

43. 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.

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

45. 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.

46. 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 Main Street Feeds, Inc. to it.

47. 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.

48. The effect of settlement as described in Paragraph 49 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 47 above.

49. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of nine thousand dollars (\$9,000) as set forth in Paragraph 1 of the Final Order. 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.

50. 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.

51. Late Payment Provisions: 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. 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 nine thousand dollars (\$9,000) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

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, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency".

2. 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

Demetra O. Salisbury, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. 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.

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

**RESPONDENT
MAIN STREET FEEDS, INC.**

Date: 8/12/13

By: 
Tim Dieckhoff President
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/16/13



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date: 8/20/13



Demetra O. Salisbury
Assistant Regional Counsel
Office of Regional Counsel

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

Date: 8-22-13

Karina Borromeo

KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Main Street Feeds, Inc., Respondent
Docket No. FIFRA-07-2013-0014

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:

salisbury.demetra@epa.gov

Copy by First Class Mail to Respondent:

Tim Dieckhoff, President
Main Street Feeds, Inc.
109 Main Street
Monett, Missouri 65708

Dated: 8/23/13



Kathy Robinson
Hearing Clerk, Region 7