

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

08 FEB 11 AM 8:31

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. FIFRA 07-2008-0011
	)	
MFA Enterprises, Inc.	)	
d/b/a Parsons AGChoice	)	CONSENT AGREEMENT
3205 Boyd Street	)	AND
Parsons, KS	)	FINAL ORDER
	)	
Respondent	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and MFA Enterprises, Inc. d/b/a Parsons AGChoice (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), 22.18(b)(2), and 22.18(b)(3) 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), 22.18(b)(2), and 22.18(b)(3).

**FACTUAL ALLEGATIONS**

**Jurisdiction and Statutory Requirements**

1. This 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 Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Parties**

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is MFA Enterprises, Inc. d/b/a Parsons AGChoice, a pesticide dealer, located at 3205 Boyd Street, Parsons, Kansas. 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 a corporation qualified to do business in the state of Missouri.

### Violations

#### General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person to distribute or sell, or make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA.

7. Section 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. § 136a(d)(1)(C)(i) and (ii), state in pertinent part that a restricted use pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

8. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), defines "certified applicator" as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, to use or supervise the use of any pesticide which is classified for restricted use.

9. GRAZON P+D Herbicide is a restricted use pesticide (RUP) registered to Dow Agrosciences LLC, Indianapolis, Indiana, under EPA Registration No. 62719-182. The label of GRAZON P+D Herbicide states in pertinent part: "RESTRICTED USE PESTICIDE.....For retail sale and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification."

10. On or about December 13, 2006, representatives of the Kansas Department of Agriculture (KDA) conducted an investigation at Respondent's place of business at 3205 Boyd Street, Parsons, Kansas to determine the status of Respondent's compliance with FIFRA. During the inspection copies of invoices, statements, and photographs documenting the sale of the pesticide mentioned in paragraph 9 were collected.

#### Count 1

11. The facts stated in paragraphs 6-10 are realleged and incorporated as if fully stated herein.

12. On or about December 13, 2006, during the inspection referenced in paragraph 10, a representative of the KDA collected a copy of sales receipt 77344 and an invoice dated May 15, 2006, from Respondent. The records document Respondent's distribution and sale of 2.5 gallons

MFA Enterprises, Inc.  
d/b/a Parsons AGChoice  
Docket No. FIFRA 07-2008-0011

of GRAZON P+D Herbicide, EPA Registration No. 62719-182, to Dennis Hayes of Parsons, Kansas on May 15, 2006.

13. On or about May 15, 2006, Respondent distributed or sold, and thereby made available for use to Dennis Hayes, the restricted use pesticide, GRAZON P+D HERBICIDE, EPA Registration No. 62719-182, as documented in paragraph 12.

14. At the time of the sale referred to in paragraphs 12 and 13, Dennis Hayes was not a certified applicator as that term is defined in paragraph 8.

15. Subsequent to his purchase, Dennis Hayes applied the GRAZON P+D HERBICIDE and was not a certified applicator as that term is defined in paragraph 8 and was not working under the direct supervision of a certified applicator at the time of application.

16. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

### **CONSENT AGREEMENT**

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection

Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated 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, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently four percent (4%) per annum for the period January 1, 2007 through December 31, 2007) on the unpaid balance until such civil penalty and accrued interest are both paid in full. 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.

### **FINAL ORDER**

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount of Five Thousand Two Hundred Dollars (\$5,200.00). Payment will be made within thirty (30) days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

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

MFA Enterprises, Inc.  
d/b/a Parsons AGChoice  
Docket No. FIFRA 07-2008-0011

3. The payment shall reference Docket Number, FIFRA 07-2008-0011 and In the Matter of MFA Enterprises, Inc. d/b/a Parsons AGChoice. Copies of the check shall be forwarded to:

Kent Johnson  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

MFA Enterprises, Inc.  
d/b/a Parsons AGChoice  
Docket No. FIFRA 07-2008-0011

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By: *William A. Sprattin*  
for *William A. Sprattin*  
William A. Sprattin  
Director  
Water, Wetlands, and Pesticides Division

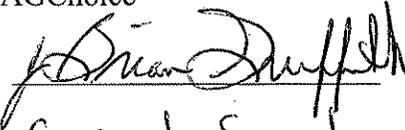
Date: *02/08/08*

By: *Kent Johnson*  
Kent Johnson  
Attorney  
Office of Regional Counsel

Date: *2/1/08*

MFA Enterprises, Inc.  
d/b/a Parsons AGChoice  
Docket No. FIFRA 07-2008-0011

RESPONDENT:  
MFA Enterprises, Inc.  
d/b/a Parsons AGChoice

By:   
Title: Corporate Secretary  
Date: 1/22/08

MFA Enterprises, Inc.  
d/b/a Parsons AGChoice  
Docket No. FIFRA 07-2008-0011

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



ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII

Date: February 11, 2008

IN THE MATTER OF MFA Enterprises, Inc. D/b/a Parsons AGChoice, Respondent  
Docket No. FIFRA-07-2008-0011

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

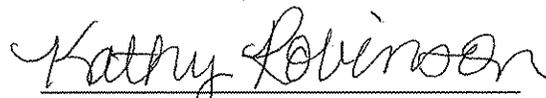
Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

J. Brian Griffith, Esq.  
MFA Incorporated  
Law Department  
201 Ray Young Drive  
Columbia, MO 65201-3599

Dated: 2/11/08



Kathy Robinson  
Hearing Clerk, Region 7