

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Chemical Packaging Corporation)
2700 S.W. 14th Street)
Pompano, Florida 33069)
)
Respondent)

Docket No. FIFRA-07-2010-0004

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Chemical Packaging Corporation (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).

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 the 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 Chemical Packaging Corporation, a chemical packager and manufacturer of sanitation products located at 2700 SW 14th Street, Pompano, Florida.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and later amended it in 1972. 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, bacterial, or other micro-organism on or in living man or other living animal) 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(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

9. The term “produce” is further defined at 40 C.F.R. § 167.3 to mean to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the FIFRA, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

11. The term “producer” is further defined at 40 C.F.R. § 167.3 to mean any person, as defined by FIFRA, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

12. 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.

13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a) states that no person in any state may distribute or sell to any person any pesticide that is not registered under FIFRA.

14. Pursuant to 40 C.F.R. § 152.132, a registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product." The distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

15. Pursuant to 40 C.F.R. § 152.132(a), supplemental distribution is permitted upon notification to EPA if a number of conditions are met, including but not limited to submission by the registrant to EPA for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product.

16. Pursuant to 40 C.F.R. § 152.132(d)(1)-(3), the label of the distributor product must be the same as that of the registered product, except that: (1) The product name of the distributor product may be different (but may not be misleading); (2) The name and address of the distributor may appear instead of that of the registrant; and (3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number (obtainable from EPA upon request).

17. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

18. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a product is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

Section IV

General Factual Allegations

19. The Respondent is and was at all times referred to in this CAFO, a person and a corporation qualified to do business in the State of Florida.

20. The Respondent's EPA Establishment Number is 7405-FL-1.

21. On September 17, 2008, and October 7, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted inspections at the Navy Brand Manufacturing Company's (Navy Brand) facility located at 3670 Scarlet Oak Boulevard, St. Louis, Missouri.

22. During the September and October 2008 inspections, the MDA representative collected documentation that revealed Navy Brand was offering for distribution or sale Deo-Dis-1, EPA Registration Number (EPA Reg. No.) 7405-51-1926, as a supplemental distributor product.

23. The Deo-Dis-1 product is registered to Respondent under the name Chemi-cap HOSP-I-SEPTIC G Surface Disinfectant Deodorant, bearing the EPA Reg. No. 7405-51.

24. At the time of the inspections, Navy Brand was not a supplemental distributor and did not satisfy the conditions set forth in 40 C.F.R. § 152.132 for the supplemental distribution of Chemi-cap HOSP-I-SEPTIC G as Navy Brand Deo-Dis-1.

25. On June 16, 2009, EPA received EPA Form 8570-5, "Notice of Supplemental Distribution of a Registered Pesticide Product," from Respondent authorizing Respondent to supplementally distribute Chemi-cap HOSP-I-SEPTIC G as Deo-Dis-1.

VIOLATION

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

Count 1

27. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 25 above, as if fully set forth herein.

28. Documentation collected during the September and October 2008 inspections reveal that Respondent distributed or sold 60 units of Navy Brand Deo-Dis-1 to Navy Brand on March 30, 2005. The product label contained Navy Brand's name and address, the EPA Reg. No. 7405-51-1926, and manufacturer's statement "Sold exclusively by Navy Brand Manufacturing Co."

29. Documentation collected during the September and October 2008 inspections reveal that Respondent distributed or sold 30 units of Navy Brand Deo-Dis-1 to Navy Brand on September 25, 2007. The product label contained Navy Brand's name and address, the EPA Reg. No. 7405-51-1926, and manufacturer's statement "Sold exclusively by Navy Brand Manufacturing Co."

30. At the time of the September and October 2008 inspections, Navy Brand was not a supplemental distributor of Navy Brand Deo-Dis-1.

31. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a pesticide that is adulterated or misbranded. The product was misbranded in that the label contained statements which were false or misleading including, but not limited to, an unauthorized EPA

Registration Number, product name, manufacturer's statement, and manufacturer's address which suggest that the product was subject to a Notice of Supplemental Distribution of a Registered Pesticide Product.

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

32. For purposes of this proceeding, Respondent admits the statutory and regulatory information 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 set forth below.

33. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

34. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

35. 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.

36. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

37. This CAFO addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

39. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.* and all regulations promulgated thereunder.

40. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Three Thousand One Hundred Twenty Dollars (\$3,120.00) as set forth in Paragraph 1 of the Final Order.

41. The effect of settlement described in Paragraph 37 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 39 above.

42. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the EPA. 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.

43. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. Department of Justice (DOJ) for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

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:

Payment of Civil Penalty

1. Respondent shall pay a mitigated civil penalty of Three Thousand One Hundred Twenty Dollars (\$3,120.00). The payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order.

2. Payment of the penalty shall be by cashier or certified check and shall reference EPA Docket Number FIFRA-07-2010-0004, and made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

3. Copies of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Kelley Catlin
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. 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.

5. The effective date of this Order shall be the date on which it is filed.

6. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3-23-10

By:

Karen A. Howmoy
for William A. Spratlin
Director

Water, Wetlands and Pesticides Division

Date: 3/23/10

By:

Kelley Catlin
Kelley Catlin
Assistant Regional Counsel

RESPONDENT:

Chemical Packaging Corporation

Date: 3/16/10

By: 

Printed Name: Brian Parlment

Title: CFO

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

Date: March 31, 2010



ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Chemical Packaging Corporation, Respondent
Docket No. FIFRA-07-2010-0004

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:

Kelley Catlin
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Chemical Packaging Corporation
Attn: Brian Parliment
2700 S.W. 14th Street
Pompano, Florida 33069

Dated: 3/31/10


Kathy Robinson
Hearing Clerk, Region 7