

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
PBI-Gordon Corporation )  
1217 West 12<sup>th</sup> Street )  
Kansas City, MO 64101 )  
)  
Respondent )

Docket No. FIFRA-07-2008-0032

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and PBI-Gordon 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).

ALLEGATIONS

Jurisdiction

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 Consent Agreement and Final Order serves as notice that 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 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 PBI-Gordon Corporation, a pesticide and herbicide manufacturer and distributor whose corporate office is located at 1217 W. 12<sup>th</sup> Street, Kansas City, MO 64101 and whose warehouse is located at 1208 W. 12<sup>th</sup> Street, Kansas City, MO 64101 (Kansas City Warehouse). Respondent also produces pesticides at its Jayhawk Plant at 7530 SE Boston Mills Road in Crestline, KS. The Respondent is 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 states of Kansas and Missouri.

#### Statutory and Regulatory Background

5. Section 3 of FIFRA, 7 U.S.C. § 136a(c)(1)(D), requires registrants to provide the complete formula of a pesticide when its application for registration is submitted to EPA.

6. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. 136j(a)(1)(C) provides that it shall be unlawful to distribute or sell any registered pesticide whose composition differs at the time of its distribution or sale from its composition stated at the time of its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

7. 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.

8. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful to distribute or sell any registered pesticide which is adulterated or misbranded.

9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide 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.

#### Factual Allegations

10. On February 21, 2006, representatives of the Kansas Department of Agriculture (KDA) inspected PBI Gordon Corporation's Jayhawk Plant in Crestline, Kansas. On March 8, 2006, KDA representatives collected physical samples of pesticide products that were produced or packaged at the Jayhawk Plant and shipped to Respondent's Kansas City Warehouse.

#### VIOLATIONS

11. The facts stated in paragraphs 5 through 10 are realleged and incorporated as if fully stated herein.

Count 1

12. On March 8, 2006, KDA representatives collected both the label and a physical sample of the registered pesticide Gordon's Barrier Ornamental Landscaping Herbicide, EPA Reg. No. 2217-675.

13. The label of the pesticide referred to in paragraph 12 stated that the pesticide contained 4.0% of the active ingredient dichlobenil.

14. The sample of the pesticide referred to in paragraph 12 was analyzed by KDA and found to contain less than 4.0% diclobenil.

15. The pesticide referred to in paragraph 12 was of a composition that differed at the time of its distribution or sale from its composition stated at the time of its registration pursuant to 7 U.S.C. § 136a(c)(1)(D).

16. The pesticide referred to in paragraph 12 was misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bears a statement relative to its ingredients which is false or misleading.

17. Respondent violated Section 12(a)(1)(C) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) and (E), by distributing or selling a misbranded and registered pesticide the composition of which differed at the time of its distribution or sale from the composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 2

18. The facts stated in paragraphs 5 through 10 are realleged and incorporated as if fully stated herein.

19. On March 8, 2006, KDA representatives collected both the label and a physical sample of the pesticide Gordon's Pronto® Fast Acting Weed & Grass Killer – Foams on Contact, EPA Reg. No. 2217-844.

20. The label of the pesticide referred to in paragraph 19 stated that the pesticide contained 2.0% of the active ingredient glyphosate

21. The sample of the pesticide referred to in paragraph 19 was analyzed by KDA and found to contain more than 2.0% glyphosate.

22. The pesticide referred to in paragraph 19 was of a composition that differed at the time of its distribution or sale from its composition stated at the time of its registration pursuant to 7 U.S.C. § 136a(c)(1)(D).

23. The pesticide referred to in paragraph 19 was misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bears a statement relative to its ingredients which is false or misleading.

24. Respondent violated Section 12(a)(1)(C) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) and (E), by distributing or selling a misbranded and registered pesticide the composition of which differed at the time of its distribution or sale from the composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 3

25. The facts stated in paragraphs 5 through 10 are realleged and incorporated as if fully stated herein.

26. On March 8, 2006, KDA representatives collected both the label and a physical sample of the pesticide Gordon's Weed Preventer Granules, EPA Reg. No. 2217-480.

27. The label of the pesticide referred to in paragraph 26 stated that the pesticide contained 1.47% of the active ingredient trifluralin.

28. The sample of the pesticide referred to in paragraph 26 was analyzed by KDA and found to contain less than 1.47% trifluralin.

29. The pesticide referred to in paragraph 26 was of a composition that differed at the time of its distribution or sale from its composition stated at the time of its registration pursuant to 7 U.S.C. § 136a(c)(1)(D).

30. The pesticide referred to in paragraph 26 was misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bears a statement relative to its ingredients which is false or misleading.

31. Respondent violated Section 12(a)(1)(C) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) and (E), by distributing or selling a misbranded and registered pesticide the composition of which differed at the time of its distribution or sale from the composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

**CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and 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 this Consent Agreement and Final Order.
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 this Consent Agreement and Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
6. This Consent Agreement and Final Order addresses and resolves all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violation of FIFRA or any other applicable law.
7. Nothing contained in 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.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
9. Respondent certifies by signing this Consent Agreement and Final Order that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.
10. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Ten Thousand Nine Hundred Twenty Dollars (\$10,920) as set forth in Paragraph 1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

**FINAL ORDER**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136i, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay by cashier or certified check, a civil penalty, in the amount of Ten Thousand Nine Hundred Twenty Dollars (\$10,920), on or before thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check which shall reference docket number (FIFRA-07-2008-0032), and shall be made payable to the "United States Treasury" and remitted to:

EPA-Region 7  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000.

Copies of the check shall be mailed to:

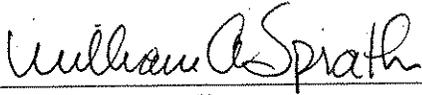
Jonathan W. Meyer  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

and

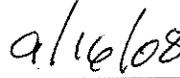
Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

3. 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.

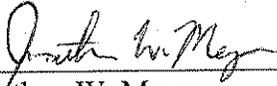
**For the Complainant:**  
The United States Environmental Protection Agency



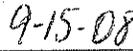
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division



Date

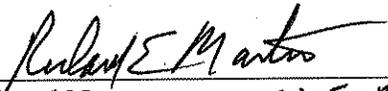


Jonathan W. Meyer  
Assistant Regional Counsel



Date

**For the Respondent:**  
PBI-Gordon Corporation

  
Printed Name: RICHARD E MARTIN  
Title: PRESIDENT

SEPT 12, 2008  
Date

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



Robert Patrick  
Regional Judicial Officer

Date September 17, 2008

IN THE MATTER OF PBI-Gordon Corporation, Respondent  
Docket No. FIFRA-07-2008-0032

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:

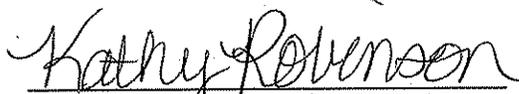
Copy hand delivered to  
Attorney for Complainant:

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

Original by Certified Mail Return Receipt to:

William J. Brinkman  
PBI-Gordon Corporation  
1217 West 12th Street  
Kansas City, Missouri 64101

Dated: 9/17/08



Kathy Robinson  
Hearing Clerk, Region 7