

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5th STREET

KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)

Krusemark Ag, Inc.)

58395 849th Road)

Pender, Nebraska)

Respondent)

Docket No. FIFRA-07-2009-0026

CONSENT AGREEMENT

AND

FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Krusemark Ag, 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).

FACTUAL ALLEGATIONS

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. § 136j.

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 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, Krusemark Ag, Inc., is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Alleged Violations

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

6. Respondent's facility is located at 58395 849th Road, Pender, Nebraska, and is a registered pesticides producing establishment with EPA Establishment Number 62201-NE-001.

7. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R. § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

8. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136(c), and with the regulations found at 40 C.F.R. § 167.85(d) in that it did not file the 2008 annual pesticides reports for the above facility by March 1, 2009, as required.

9. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any person who is a pesticides producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

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. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty, 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 three

percent (3%) per annum for the period January 1, 2009, through December 31, 2009) 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.

10. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashiers or certified check, a civil penalty, for the violations cited herein, in the amount of Five Hundred Dollars (\$500.00). Payment will be made within thirty (30) days of the effective date of this Order. The payment shall be identified as "In the Matter of Krusemark Ag, Inc.," and reference the docket number.

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

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

12. The payment shall reference Docket Number FIFRA-07-2009-0026 and "In the Matter of Krusemark Ag, Inc." Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

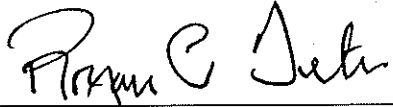
Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

13. 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.


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

15. This executed Consent Agreement and Final Order 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

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

Date: 11/25/09

By: 
Kent Johnson
Attorney
Office of Regional Counsel

Date: 11/23/09

RESPONDENT:
KRUSEMARK AG, INC.

By: Brent Krusemark

Title: Vice-Pres

Date: 11/20/09

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



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Date: December 1, 2009

IN THE MATTER OF Krusemark Ag, Inc., Respondent
Docket No. FIFRA-07-2009-0026

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
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:

Brent Krusemark, Vice President
Krusemark Ag, Inc.
58395 849th Road
Pender, Nebraska 68047

Dated: 12/1/09


Kathy Robinson
Hearing Clerk, Region 7