

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Greenleaf, LLC.)
13960 Palm Road)
Neosho, Missouri)

Respondent)

Docket No. FIFRA 07-2009-0010

CONSENT AGREEMENT
AND
FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Greenleaf LLC (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 Greenleaf, LLC, a pesticide dealer, located at 13960 Palm Road, Neosho, Missouri. 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).

Violations

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

6. At all time relevant to this Complaint, Respondent operated a pesticide producing facility in Neosho, Missouri. Respondent requested, and EPA assigned a pesticide-producing establishment number to Respondent's facility, EPA Establishment Number (EPA Est. No.) 083893-MO-001, on or about December 22, 2006, pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e.

7. On January 8, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Respondent's facility in Neosho, Missouri, for the purpose of determining Respondent's compliance with FIFRA. The MDA representative was provided copies of labels, bills of lading, sales records and collected physical samples.

8. 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.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) states that "to distribute or sell" means 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. 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 adulterated or misbranded.

11. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), states it shall be unlawful for any person to distribute or sell any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3 of FIFRA.

12. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) states that the term "producer" means the person who manufactures, prepares, propagates, compounds, or processes any pesticide or device or active ingredient used in producing a pesticide.

13. Title 40 C.F.R. § 167.3 states that the term "produce" to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

14. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of registered products must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

15. Section 2(q)(1)(B) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states a pesticide is misbranded if its contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to Section 25(c)(3).

16. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced.

17. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statement, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

18. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of this Act, are adequate to protect health and the environment.

19. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and environment.

20. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states a pesticide is misbranded if the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase.

21. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states a pesticide is misbranded if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the name and address of the producer, registrant, or person for whom produced.

22. Title 40 C.F.R. § 156.10 states the label shall appear on or be securely attached to the immediate container of the pesticide product.

23. Title 40 C.F.R. § 169.2(a) states all producers of pesticides, devices, or active ingredients used in producing pesticides subject to this Act shall maintain records showing the product name, EPA Registration Number, amounts per batch and batch identification numbers of all pesticides produced.

24. Title 40 C.F.R. § 169.2(c) states all producers of pesticides, devices, or active ingredients used in producing pesticides subject to this Act shall maintain records showing information regarding the receipt, by the producer, of all pesticides, devices, and active ingredients used in producing pesticides.

25. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c) and the regulations found at 40 C.F.R. § 167.85(d) require pesticide producers to file an annual pesticide production report by March 1 of each year.

26. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A), by distribution or sale of unregistered pesticides whose contents had been manipulated and did not meet the requirements of registration under Section 3 of FIFRA.

Unregistered pesticides included:

- (a) Flea & Tick Killer
- (b) Tick Killer
- (c) Flea & Tick
- (d) Weed & Feed
- (e) Ready -to-use Round-up
- (f) Ant granules
- (g) Round-up

- (h) Round-up Super Concentrate
- (i) Ant Flea & Tick
- (j) Flea & Tick Granules
- (k) Snake Away
- (l) Sevin Dust
- (m) Ant Killer
- (o) Fertilizer with Weed Control
- (p) Flea
- (q) 50.2% Round-up
- (r) 18% Round-up
- (s) 51% Weed Killer
- (t) Weed Preventer
- (u) 2% Weed Killer
- (v) High Nitrate with Herbicide
- (w) 18% Weed Killer
- (x) Tick Granules
- (y) 50% Round-up
- (z) Roach Spray

- (aa) Broad Weed Killer
- (bb) 18% Weed Control
- (cc) Ant & Flea Killer
- (dd) Weed Killer Granules
- (ee) All Purpose Insect Killer
- (ff) Grub Control
- (gg) Yard Fungus Control
- (hh) Ant, Flea & Tick Killer
- (ii) 22-2-2 with Moss Control
- (jj) Broadleaf Weed Preventer
- (kk) Broadleaf Weed Stopper
- (ll) Bug Bait
- (mm) Control of Diseases Lawn Fungicide
- (nn) Flea & Tick Carpet Powder
- (oo) Fungus Begone
- (pp) Gopher Begone
- (qq) Kills Dolarweed
- (rr) Snail & Slug Killer
- (ss) Snail& Slug Killer 1
- (tt) Snail & Slug Killer 2
- (uu) Triple Play Fertilizer and Weed Killer and Pesticide
- (vv) Yard Granules Prevents Weeds
- (ww) Weed Preventer Granules
- (xx) 5% Insect Dust
- (yy) 10% Dust
- (zz) Grub Control II
- ~~(aaa) Fall Weed & Feed (26-3-12)~~
- (bbb) Low Nitrate Weed & Feed (10-6-4)
- (ccc) Grub Control
- (ddd) Grub Control I
- (eee) Yard Fungus Control I
- (fff) Crabgrass Stopper
- (ggg) Crabgrass Preventer

27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E), by distribution or sale of misbranded pesticides. Misbranded pesticides included:

- (a) Kills Dollarweed & Many Other Weeds
- (b) Yard Granules
- (c) Grub Control
- (d) Ant Flea & Tick Killer
- (e) Flea & Tick Carpet Powder
- (f) Gopher Begone
- (g) Broadleaf Weed Stopper
- (h) Crabgrass Stopper

- (i) Triple Play
- (j) Broadleaf Weed Preventer
- (k) Yard Fungus Control
- (l) Fungus Begone
- (m) Fertilizer 22-2-2
- (n) Grub Control
- (o) All Purpose Insect Killer
- (p) Low Nitrate Weed and Feed
- (q) Control of Diseases Lawn Fungicide
- (r) Fall Weed and Feed
- (s) Lawn Fungus Control
- (t) Weed Preventer Granules
- (u) 5% Insect Dust
- (v) Snail and Slug Killer 1
- (w) Snail and Slug Killer 2
- (x) Bug Bait
- (y) 10% Dust
- (z) 50% Weed Killer
- (aa) Snail and Slug Killer

28. Respondent violated Section 12(a)(1)(C) of FIFRA, , 7 U.S.C. § 136(a)(1)(C), by holding for sale or distribution registered pesticides the composition of which differed at the time of their distribution or sale from their composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136. Pesticides included :

- (a) Greenleaf's Fertilizer with Weed Control, EPA Reg. No. 83893-1
 - (b) Greenleaf's Fire ant Killer & Preventer Bait, EPA Reg. No. 83893-6
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29. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and with the regulations found at 40 C.F.R. §167.85(d) in that it did not file the 2007 annual pesticides reports for the above facilities by March 1, 2008, as required.

30. Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i) by failing to prepare, maintain, or submit any records required by or under Section 8.

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 five percent (5%) per annum for the period January 1, 2008 through December 31, 2008) 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 shall pay a civil penalty, for the violations cited herein, in the amount of One Hundred Thousand Dollars (\$100,000.00) plus interest. The penalty will be paid in thirty-six monthly payments. The initial payment of Two Thousand Nine Hundred and One Dollars and Eleven cents (\$2,901.11) must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). Each succeeding payment of Two Thousand Nine Hundred and One Dollar and Eleven Cents (\$2,901.11) will be due within 30 days after the previous payment. The payments shall be identified as **In the Matter of Greenleaf, LLC**.

11. 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

12. The payment shall reference Docket Number, FIFRA 07-2008-0010 and **In the Matter of Greenleaf, LLC**. Copies of the check shall be forwarded to:

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

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
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.

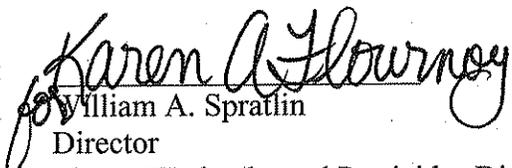
14. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

Greenleaf, LLC
Docket No. FIFRA 07-2009- 0010

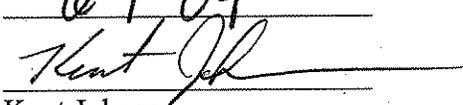
15. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

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

Date: 6-1-09

By: 
Kent Johnson
Attorney
Office of Regional Counsel

Date: 6/1/09

Greenleaf, LLC
Docket No. FIFRA 07-2009- 0010

RESPONDENT:

GREENLEAF, LLC

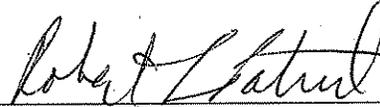
By: Tom Smith

Title: Manager

Date: 5-26-09

Greenleaf, LLC
Docket No. FIFRA 07-2009- 0010

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.



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

Date: June 16, 2009

IN THE MATTER OF Greenleaf, LLC, Respondent
Docket No. FIFRA-07-2009-0010

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:

Marilyn B. Keller
Wyrsh Hobbs & Mirakian, P.C.
1000 Walnut Street, Suite 1600
Kansas City, Missouri 64106

Dated: 6/17/09



Kathy Robinson
Hearing Clerk, Region 7
