

FILED

2012 AUG 29 PM 2:35

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
Economy Mud Products Co.)
435 East Anderson Road)
Houston, Texas 77047)
)
Respondent.)
_____)

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. FIFRA 06-2012-0339

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency ("EPA") and Respondent Economy Mud Products Company ("Economy Mud") agree to this action and consent to the entry of this Consent Agreement and Final Order ("CAFO") before taking testimony and without any adjudication of any issues or law or fact herein.

I. NATURE OF ACTION

1. This is a civil administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or the "Act"), as amended, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules") as codified at 40 C.F.R. Part 22. This action imposes civil penalties pursuant to Section 14(a) of FIFRA.
2. Complainant and Respondent have conferred for the purposes of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, without any admission of violation, or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), the Complainant and Respondent agreed to the execution of this CAFO.

II. THE PARTIES

3. The Complainant is, by lawful delegation, the Director, Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency, Region 6.

4. The Respondent is Economy Mud Products Company, a Texas corporation that owns a place of business at 435 E. Anderson Rd. Houston, TX 77047.

III. PRELIMINARY STATEMENT

5. Respondent certifies that it is in full compliance with respect to the violations alleged in this CAFO.
6. Respondent admits that Complainant has jurisdiction over the subject matter of this CAFO and waives any defenses it might have as to venue and jurisdiction.
7. Respondent waives its right to request a hearing, any right to contest the allegations in this CAFO, and its right to appeal this CAFO as provided at 40 C.F.R. Part 22.
8. Respondent neither admits nor denies the findings of fact and conclusions of law set forth in Sections IV and V of this Consent Agreement.
9. Respondent consents to the assessment of the civil penalty specified in this CAFO, and agrees to comply with the terms of this CAFO.

IV. STATUTORY AND REGULATORY BACKGROUND

10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define a "pesticide," in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
12. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a "label" as the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
13. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines "labeling" as all labels and all other written, printed or graphic matter that accompanies the pesticide at any time or to which reference is made on the label.
14. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), states, in part, that a pesticide is "misbranded" if its labeling bears any statement, design, or graphic representation which is false and misleading or 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, statements, 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.

15. 40 C.F.R. § 156.10(b) states that no name, brand, or trademark may appear on the label which is false or misleading, or has not been approved by the Administrator through registration or supplemental registration as an additional name pursuant to § 152.132.
16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3 state that “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.
17. Section 3(a) of FIFRA, 7 U.S.C. § 136(a) states that no person in any State may distribute or sell to any person any pesticide that is not registered.
18. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under 136(a) of this title or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.
19. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.
20. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA. The maximum statutory civil penalty is \$7,500 for each offense that occurred after January 12, 2009.¹

V. EPA ALLEGATIONS AND DETERMINATIONS

21. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
22. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
23. At all times relevant to this CAFO, Respondent's products EPA Reg. No. 9386-13-84149 (sold as “Econo-398,” “BI-55” and “Econocide-35DP”) and EPA Reg. No. 9386-3-84149

¹ 73 Fed. Reg. 75340, Civil Monetary Penalty Inflation Adjustment Rule (Dec. 11, 2008).

(Sold as "LBI-648L," "TBC-2" and "BI-50L.") are "pesticides" as defined in FIFRA Section 2(u).

24. It is alleged that in May 2012, Respondent obtained EPA registration (EPA Reg. No. 9386-13-84149) for its pesticide product "Econo-398" containing 98% Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, also known as Dazomet.
25. It is alleged that at no time prior to May 2012 did Respondent hold an EPA registration for its pesticide product "Econo-398" (also sold as "BI-55" and "Econocide-35DP") containing 98% Dazomet.
26. It is alleged that on at least 45 occasions from on or about June 2010 to on or about April 2012, Respondent sold or distributed its pesticide product "Econo-398," "BI-55" and "Econocide-35DP" containing 98% Dazomet prior to EPA registration.
27. Therefore, it is alleged that Respondent's distribution or sale of pesticide product "Econo-398," "BI-55" and "Econocide-35DP" containing 98% Dazomet on at least 45 occasions constitutes distribution or sale of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
28. In May 2007, Respondent obtained EPA registration (EPA Reg. No. 9386-3-84149) for its pesticide product "ECONO-B648L" containing 24% Dazomet.
29. It is alleged that on at least 212 occasions from on or about May 2010 to on or about April 2012, Respondent sold or distributed EPA Reg. No. 9386-3-84149 with a label that was "misbranded" as that term is defined under FIFRA § 2(q) because the labeling was false and misleading and failed to bear words, statements or other information required by or under the authority of FIFRA on the product label.
30. Therefore, it is alleged that Respondent's distribution or sale of EPA Reg. No. 9386-3-84149 on at least 212 occasions from on or about May 2010 to on or about April 2012 constitutes distribution or sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

VI. TERMS OF SETTLEMENT

31. Respondent consents to issuance of this Consent Agreement and to its terms, and consents, for the purposes of settlement, to the payment of the civil penalty set forth in Section VII.
32. Respondent's compliance with the terms of this CAFO shall fully settle all civil claims or civil causes of action alleged in Section V.

33. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulations for violations occurring after the date of this Consent Agreement, or any violations of FIFRA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
34. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent.

VII. CIVIL PENALTY

35. Complainant determined that an appropriate civil penalty to settle this action is \$151,051. In determining the penalty amount, Complainant considered the statutory penalty factors listed in Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4); EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act" (December 2009); and "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) ("Audit Policy").
36. The penalty agreed upon by the Parties for settlement purposes is \$151,051.
37. Within thirty (30) calendar days following the execution of the Final Order, Respondent shall either:
- a. Dispatch a cashier's or certified check in the amount of \$151,051, payable to the "Treasurer, United States of America" and bearing the docket number FIFRA-R6-2012-0339, to the following address:
 - U.S. Environmental Protection Agency
 - Fines and Penalties
 - Cincinnati Finance Center
 - P.O. Box 979077
 - St. Louis, MO 63197-900

or

 - b. Make an electronic payment by wire transfer in the amount of \$151,051 with the notation, "Economy Mud Products Civil Penalty Docket No. FIFRA-R6-2012-0339, by using the following instructions:
 - Federal Reserve Bank of New York
 - ABA = 021030004
 - Account = 68010727
 - SWIFT address = FRNYUS33
 - 33 Liberty Street
 - New York, NY 10045
 - Field Tag 4200 of the Fedwire message should read "D 68010727

Environmental Protection Agency”

38. To ensure a record of compliance with this Consent Agreement, Respondent shall forward a copy of the check or wire transfer to the EPA to the attention of:

Region 6 Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

and

Brenda Mosley
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 2249A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

39. If Respondent does not pay the civil penalty of \$151,051 within thirty (30) calendar days of the execution of the Final Order, then EPA may refer the matter to the United States Department of Justice to recover such amount by action in federal court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
40. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, Respondent must pay a six (6) percent per year penalty on any principal amount ninety (90) days past due.
41. This civil penalty is not deductible for federal tax purposes.

VIII. OTHER MATTERS

42. This CAFO does not relieve Respondent of the duty to comply with all applicable provisions of FIFRA and with other federal, state, tribal, and local laws and regulations.
43. The terms of this CAFO bind Respondent and its successors, and assigns.

44. The undersigned representative of each party to this CAFO certifies that he or she has the authority to sign this agreement for the party whom he or she represents, and to bind that party to its terms.
45. Respondent's obligations under this Consent Agreement shall terminate when Respondent has paid the civil penalty, and any applicable interest or late charges, as specified in Section VII of the Consent Agreement in accordance with the Final Order.
46. Each party agrees to bear its own costs and attorney fees in this matter.

WE AGREE TO THIS:

FOR COMPLAINANT:

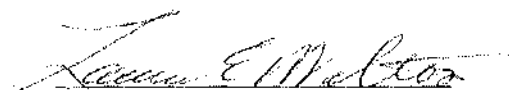


Carl Edlund, Director
Multimedia Planning and Permitting Division
U.S. Environmental Protection Agency

AUG 28 2012

Date

FOR RESPONDENT:


Lawrence Walton, President
Economy Mud Products Company

Date August 22, 2012

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. 136/(a), it is hereby ORDERED THAT:

1. Respondent shall comply with all of the terms of the Consent Agreement, incorporated herein by reference;
2. Respondent is assessed a civil penalty in the sum of \$151,051 pursuant to the terms of the Consent Agreement;
3. Respondent shall, within thirty (30) calendar days of the execution of the Final Order, either:
 - a. Dispatch a cashier's or certified check in the amount of \$151,051, payable to the "Treasurer, United States of America" and bearing the docket number FIFRA-R6-2012-0339, to the following address:

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

or
 - b. Make an electronic payment by wire transfer in the amount of \$151,051 with the notation, "Economy Mud Products Company Civil Penalty Docket No. FIFRA-R6-2012-0339, by using the following instructions:

Federal Reserve Bank of New York
ABA = 02103004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

This order shall be in effect forthwith.

IT IS SO ORDERED.

Date: 8/29/12

By: 

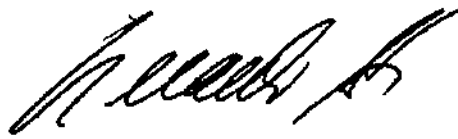
Pat Rankin
Regional Judicial Officer, Region 6
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing Consent Agreement and Final Order in the matter of Economy Mud Products Co., Docket No. FIFRA 06-2012-0339, were served and hand delivered to the Regional Hearing Clerk, U.S. EPA – Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following person, this 29th day of August, 2012 :

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Mary W. Koks
Counsel for Economy Mud Products Company
Munsch, Hardt, Kopf & Harr, PC
Bank of America Center
700 Louisiana Street, Suite 4600
Houston, TX 77002-2845



Gerardo Acosta
Enforcement Coordinator
Pesticides Section
EPA Region VI