

FILED

April 3, 2025

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**U.S. EPA REGION 7
HEARING CLERK**

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

In the Matter of

**Van Diest Supply Company,
Webster City, Iowa**

Respondent.

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Docket No. FIFRA-07-2025-0025

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Van Diest Supply Company (Respondent) have agreed to a settlement of this action before the 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136f and in accordance with the Consolidated Rules of Practice.

Parties

2. Complainant, by delegation from the Administrator of EPA and the Regional Administrator of EPA Region 7 is the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

3. The Respondent is Van Diest Supply Company, a corporation in good standing under the laws of the state of Iowa.

Statutory and Regulatory Background

4. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. 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.*

5. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

6. 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.

7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “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, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “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.

11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “produce” to mean to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

12. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” to mean any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “producer” to mean any person who packages, repackages, labels, or relabels any pesticide, active ingredient, or device.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, 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.

14. 40 C.F.R. § 156.10(a)(1), requires that contents of the label shall bear a label containing the information specified by the Act and the regulations in this part.

15. 40 C.F.R. § 156.10(a)(1)(vii), requires hazard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards and subpart E of this part for environmental hazards.

16. 40 C.F.R. § 165.67 (c), states the registrant and repackager/refiller may be liable for any violations related to its repackaged product.

17. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties \$23,494, for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

General Factual Allegations

18. Respondent is and at all times referred to herein was, a “person” within the meaning of FIFRA.

19. Respondent is a corporation that specializes in the production and distribution of crop protection products.

20. On June 10th and 11th of 2024, the Iowa Department of Agriculture and Land Stewardship conducted an inspection at the Farm Service Cooperative facility located at 32216 385th Street in Shelby, Iowa.

21. During the inspection, the inspector documented Bulk Tank Number 4 with Restricted Use Pesticide Cornbelt Atrazine 4L herbicide with an outdated version of the label from January 29, 2010. At the time of the inspection, the current approved label was issued on November 10, 2021.

22. Cornbelt Atrazine 4L herbicide is owned and registered by Van Diest Supply Company, under Registration Number 11773-1.

23. At the time of the inspection, Cornbelt Atrazine 4L herbicide label had an accepted and enforceable label dated January 29, 2010.

24. Respondent has a repackaging agreement with Farm Service Cooperative.

Allegations of Violations

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

Count 1

26. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

27. FIFRA Sec. 12(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.

28. 40 C.F.R. § 156.10(a)(1)(vii), requires labels to contain hazard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards and subpart E of this part for environmental hazards.

29. The inspection revealed that the Cornbelt Atrazine 4L herbicide label on Bulk Tank Number 4 was from January 29, 2010. A new label was issued on March 29, 2022. The old label was missing hazard and precautionary statements that were contained in the new label.

30. Pursuant to 40 C.F.R. 165.67 (c) the registrant and repackager/refiller may be liable for any violations related to its repackaged product.

31. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136q(a)(1), by having misbranded labels that were missing information as required by 40 C.F.R. 156.10(a)(1)(vii) on the repackaged Bulk Number 4.

CONSENT AGREEMENT

32. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

33. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

34. Respondent consents to the issuance of this Consent Agreement and Final Order and consent/s for the purposes of settlement to the payment of the civil penalty specified herein.

35. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

36. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

37. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *kris.rossmiller@vdsc.com* and *jim.kumm@vdsc.com*.

Penalty Payment

38. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Six Thousand Eight Hundred and Thirty-Two Dollars (\$6,832).

39. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

40. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Anna Landis, Attorney
landis.anna@epa.gov

41. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the

full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

42. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

43. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

44. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

45. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

46. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

47. 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.

General Provisions

48. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

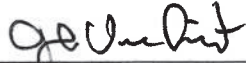
49. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing by the

Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

50. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

51. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT



Signature

4-3-25

Date

Jake Van Diest

Printed Name

President & CEO

Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

DAVID COZAD Digitally signed by DAVID COZAD
Date: 2025.04.03 09:45:00 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Anna Landis
Office of Regional Counsel

Date

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

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 via Email to Complainant:

Anna Landis
Office of Regional Counsel
landis.anna@epa.gov

Mark Leshner
Enforcement and Compliance Assurance Division
lesher.mark@epa.gov

Carrie Venerable
Office of Regional Counsel\New Solutions Workforce
venerable.carrie@epa.gov

Copy via Email to Respondent:

Kris Rossmiller (Director of Environmental Compliance)
Dr. Jim Kumm (EHS Director)
Van Diest Supply Company
1434 220th Street
Webster City, Iowa 50595
kris.rossmiller@vdsc.com
jim.kumm@vsdc.com

Dated this _____ day of _____, _____.

Signed