



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
October 29, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 4126
RETURN RECEIPT REQUESTED

Mr. Daniel Shamrock
B and K Distributors, LLC
4144 Brookstone Court
Howell, Michigan 48843

Consent Agreement and Final Order In the Matter of
B and K Distributors, LLC. Docket No. **FIFRA-05-2015-0001**

Dear Mr. Shamrock:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on October 29, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner described in paragraphs 49 and 50. Please be certain that the docket number is written on both the transmittal letters and on the checks. Payment is due by November 28, 2014 (within 30 calendar days of the filing date).

Thank you for your payment and cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2015-0001
)	
B & K Distributors, LLC)	Proceeding to Assess a Civil Penalty
Howell, Michigan,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of 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.

2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is B & K Distributors, LLC, a limited liability company doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is 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.

11. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

12. The term “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.” 7 U.S.C. § 136(gg).

13. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

14. The term “pest,” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA.

15. Pursuant to its authority under FIFRA, the Administrator declared that an organism is a “pest” under circumstances that make it deleterious to man or the environment, if it is “any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug or snail but excluding any internal parasite of living man or other living animals.” 40 C.F.R. § 152.5(b).

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration under Section 3 of FIFRA, 7 U.S.C. § 136a, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

17. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Respondent is a Michigan corporation.

19. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent owned or operated a place of business located at 1247 Grand River, Howell, Michigan during the calendar years 2012 and 2013.

21. On May 7, 2013, inspectors employed by Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business located at 1247 East Grand River, Howell, Michigan 48843.

22. During the May 7, 2013 inspection, the inspectors learned that Respondent produces

and distributes the products “Wipe Out Concentrate” and “Wipe Out Ready-to-Use” (together “the Wipe-Out products”) and collected labels for the Wipe Out products.

23. On August 14 and 28, 2013, inspectors employed by MDARD and authorized to conduct inspections under FIFRA conducted an inspection at Great Lakes Garden Wholesale, 6811 Miller Drive, Warren, Michigan.

24. During the August 14 and 28, 2013 inspections, the inspectors collected samples of the Wipe Out products, labels for the Wipe Out products, and sales and distribution records of the Wipe Out products sold and distributed to Great Lakes Garden Wholesale by Respondent.

25. MDARD analyzed the samples of Wipe Out Concentrate and Wipe Out Ready-to-Use and found 79.6 ppm abamectin and 2.79 ppm abamectin, respectively.

26. Abamectin is an insecticide and a miticide.

27. Abamectin is a pesticide, as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. Respondent’s labels for the Wipe Out products collected on May 7, August 14 and 28, 2013 state: “WIPE OUT is one of the best spider mite products on the market today. It kills mites and its knock down power is amazing.”

29. A spider mite is an invertebrate animal and arthropod that causes damage to plants on which it lives.

30. A spider mite is a “pest” within the meaning of Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and 40 C.F.R. § 152.5(b).

31. The claims identified in paragraph 28 and the abamectin content indicate that the Wipe Out products are intended to prevent, destroy, repel, or mitigate a “pest.”

32. Wipe Out Concentrate and Wipe Out Ready to Use are both “pesticides” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

33. Each of the Wipe Out products is required to be registered as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

34. On December 12, 2013, inspectors employed by MDARD and authorized to conduct inspections under FIFRA conducted an inspection at Sunburst Hydroponics, LLC, doing business as GrowCo Indoor Garden Supply, located at 2055 Oak Industrial Drive, Grand Rapids, Michigan.

35. During the December 12, 2013 inspection, the inspectors collected a copy of a receipt from Respondent for the purchase of quart sized bottles, gallon bottles and 2.5 gallon bottles of a Wipe Out product by Sunburst Hydroponics, LLC, a check made out to Respondent for the amount specified in the receipt from Sunburst Hydroponics, LLC, and statements from representatives of Sunburst Hydroponics, LLC.

36. On December 19, 2013, inspectors employed by the MDARD and authorized to conduct inspections under FIFRA conducted an inspection at Halm’s Hydro, 2368 South Huron Road, Kawkawlin, Michigan.

37. During the December 19, 2013 inspection, the inspectors collected a copy of a receipt from Respondent for the purchase of quart sized bottles, gallon bottles and 2.5 gallon bottles of a Wipe Out product by Halm’s Hydro and statements from representatives of Halm’s Hydro.

38. On January 21, 2014, Complainant issued a “Stop Sale, Use, or Removal Order” pursuant to Section 13(a) of FIFRA, 7 U.S.C. §136k(a), to Respondent, which ordered Respondent to immediately cease the sale, use, or removal for disposal of the Wipe Out products

and any other unregistered pesticide products that Respondent may be offering for distribution or sale.

Count I

39. Respondent sold a Wipe Out product to Great Lakes Garden Wholesale on or about December 10, 2012.

40. Neither Wipe Out product was registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on or about December 10, 2012.

41. Respondent's distribution or sale of the unregistered pesticide Wipe Out constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count II

42. Respondent sold a Wipe Out product to Sunburst Hydroponics, LLC on or about September 23, 2013.

43. Neither Wipe Out product was registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on or about September 23, 2013.

44. Respondent's distribution or sale of the unregistered pesticide Wipe Out constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count III

45. Respondent sold a Wipe Out product to Halm's Hydro on or about October 31, 2013.

46. Neither Wipe Out product was registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on or about October 31, 2013.

47. Respondent's distribution or sale of the unregistered pesticide Wipe Out constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

48. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$1,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

49. Respondent must pay a \$1,000 civil penalty in two installments with interest as follows: \$500.83 within 30 days of the effective date of this CAFO; \$501.25 within 120 days of the effective date of this CAFO; Respondent must pay each installment of the civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

50. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses with each installment of the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Sheila McAnaney (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

51. This civil penalty is not deductible for federal tax purposes.
52. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136f(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
53. 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 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

54. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.
55. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

57. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

58. The terms of this CAFO bind Respondent, its successors and assigns.

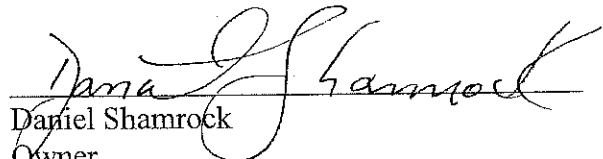
59. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

60. Each party agrees to bear its own costs and attorneys' fees, in this action.

61. This CAFO constitutes the entire agreement between the parties.

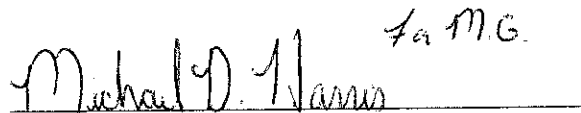
B & K Distributors, LLC, Respondent

9/9/2014
Date


Daniel Shamrock
Owner
B & K Distributors, LLC

United States Environmental Protection Agency, Complainant

10/16/2014
Date

 *for M.G.*
Margaret M. Guerriero
Director
Land and Chemicals Division

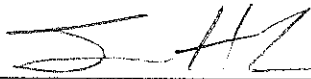
In the Matter of:
B & K Distributors, LLC
Docket No.

FIFRA-05-2015-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/24/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

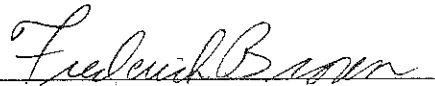
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving B and K Distributors, LLC. was filed on October 29, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 4126, a copy of the original to the Respondent:

Mr. Daniel Shamrock
B and K Distributors, LLC
4144 Brookstone Court
Howell, Michigan 48843

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Sheila McAnaney, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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