

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY-REGION 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

2012 OCT 30 AM 8:09

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA 07-2012-0037
)	
Rainbow Treecare Scientific Advancements Inc.)	CONSENT AGREEMENT
603 Highway 18)	AND
Minnetoka, Minnesota)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Rainbow Treecare Scientific Advancements 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), 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), 22.18(b)(2).

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 Rainbow Treecare Scientific Advancements Inc. located at 11571 K-Tell Drive, Minnetoka, Minnesota.

Statutory and Regulatory Background

5. 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.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “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 animal) which the Administrator declares to be a pest under Section 25(c)(1).

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

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether

incorporated or not.

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

10. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q), states 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.

11. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states it shall be unlawful for any person to distribute or sell any pesticide if any claims made for it as a part of distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

12. 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 misbranded.

General Factual Allegations

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

14. Optrol Insecticide , a supplemental distributor product, is a registered pesticide, EPA Registration No. 42750-115-87660.

15. On or about September 28, 2011, an inspection was conducted by the Minnesota Department of Agriculture of Highland Nursery in St. Paul, Minnesota.

16. During the inspection referenced in paragraphs 15, above, the inspector documented the presence of a display placard and a sales brochure distributed by Respondent for Optrol Insecticide which included pesticidal and nonpesticidal claims for the product.

17. Respondent's website for Optrol Insecticide also included content which made pesticidal and nonpesticidal claims for the product.

Violations

Count 1

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

19. As documented during the inspection referenced in paragraph 15, above, the insecticide "Optrol Insecticide" bearing EPA Registration Number 42750-115-87660 was distributed by Respondent to a retailer with a sales brochure and placard contained false or misleading claims differing from those contained in the accepted EPA label.

20. The pesticide referenced in Paragraph 19 was misbranded in that it was sold or distributed by Respondent with materials containing differing, false or misleading claims.

21. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed or sold a misbranded pesticide.

22. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that it distributed or sold a pesticide with claims that were substantially different from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 2

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

24. Respondent's website for the insecticide "Optrol Insecticide" bearing EPA Registration Number 42750-115-87660 advertising and offering the product for sale contained false or misleading claims differing from those contained in the accepted EPA label.

25. The pesticide referenced in Paragraph 19 was misbranded in that it was offered for sale or distributed by Respondent with materials containing differing, false or misleading claims.

26. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed or sold a misbranded pesticide.

27. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that it distributed or sold a pesticide with claims that were substantially different from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

2. Respondent neither admits nor denies the factual allegations set forth above.

3. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

5. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

7. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

8. The effect of settlement as described in Paragraph 9 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 7, above.

9. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Six Thousand Eight Hundred and Sixty-four Dollars (\$6,864.00) as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA

10. Respondent, in settlement of this matter, consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

11. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of

processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the 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 and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated 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. 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.

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Six Thousand Eight Hundred and Sixty-four Dollars (\$6,864.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If by wire transfer, payment should be directed to the Federal Reserve Bank of New

York as follows:

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"

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

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

and

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

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order 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.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By:



Karen Flournoy

Director

Water, Wetlands, and Pesticides Division

Date:

10-18-12

By:



Kent Johnson

Attorney

Office of Regional Counsel

Date:

10/15/12

RESPONDENT:

Rainbow Treecare Scientific Advancements, Inc.

By: Jaal Gu

Title: President

Date: 9/25/12

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

Karina Borromeo
KARINA BORROMEEO
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: Oct. 29, 2012

IN THE MATTER OF Rainbow Treecare Scientific Advancements Inc., Respondent
Docket No. FIFRA-07-2012-0037

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing 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 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Mail to:

Mr. Thomas Prosser
CEO
Rainbow Treecare Scientific Advancements, Inc.
11571 K-Tel Drive
Minnetonka, Minnesota 55343

Dated: 10/31/12



Kathy Robinson
Hearing Clerk, Region 7