

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 SEP 21 P 2:27  
OFFICE OF HEARING  
OFFICER

-----X  
In the Matter of :  
 :  
 Dale Supply : **CONSENT AGREEMENT**  
 : **AND FINAL ORDER**  
 Respondent :  
 : Docket No. FIFRA-02-2009-5205  
 Proceeding under the Federal :  
 Insecticide, Fungicide, and :  
 Rodenticide Act, as amended :  
-----X

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 136 i(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. ("FIFRA" or "the Act"). Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing to Respondent, Dale Supply, located at 208 Laurelton Drive, Buffalo, New York 14224.

The Complainant charged Respondent with two (2) violations of 7 U.S.C. § 136e(c)(1) and 40 C.F.R. § 167.85, the requirements under FIFRA governing the submission of annual Pesticide

Reports for Pesticide-Producing Establishments ("Pesticide Report"). Said violations are unlawful under FIFRA §12(a)(2)(L), 7 U.S.C. § 136j (a)(2)(L).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Parties to this Consent Agreement agree that the title to this proceeding should properly read "In the Matter of Dale Supply".

2. This Consent Agreement is being entered into by Respondent on behalf of Dale Supply, and the Respondent is authorized for purposes of this Consent Agreement to bind Dale Supply.

3. Respondent's establishment is registered under Section 7 of FIFRA, 7 U.S.C. § 136e. Its assigned EPA Establishment Number is 063454-NY-001.

4. Pursuant to Section 7(c) of FIFRA and 40 C.F.R. § 167.20(f), any producer operating an establishment registered under Section 7 shall annually submit to the EPA the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, has produced during the past year, and has sold or distributed during the past year.

5. Title 40 C.F.R. § 167.85 provides that a producer operating an establishment must submit its annual pesticide production report (the "Report") on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

6. Respondent failed to submit annual pesticide production reports for 2007 and 2008.

7. Therefore, Respondent violated Section 7(c)(1) of FIFRA, Section 12(a)(2)(L) of FIFRA, and 40 C.F.R. § 167.85.

8. Respondent requested inactivation of their pesticides establishment.

## CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent agrees to waive any jurisdictional objections regarding proper service of the Complaint and/or any other questions concerning acquisition of personal jurisdiction of Dale Supply.
3. Respondent shall comply at all times with the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e and the applicable regulations.
4. Respondent admits the specific factual allegations set forth in the Findings of Fact and the Conclusions of Law in this Consent Agreement.
5. Complainant agrees to waive all penalties assessed in the Complaint due to Respondent's request for termination of its establishment registration. Such waiver is consistent with the provisions of the FIFRA Enforcement Response Policy (ERP).
6. Respondent's establishment registration has been terminated. If Dale Supply re-registers the establishment during the five year statute of limitation time period, any subsequent non-reporting violations are subject to a civil penalty.
7. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other environmental laws.
8. Nothing in this Consent Agreement and Final Order shall preclude Complainant from further enforcement action, including the assessment of civil penalties, arising from the violation of any environmental laws.
9. This Consent Agreement is being entered into by the parties in full settlement of all civil

liabilities. Respondent has read the Consent Agreement and Final Order, finds it reasonable, and consents to its issuance and its terms.

10. Respondent explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

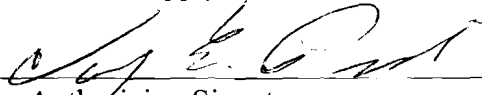
12. This Consent Agreement shall be binding on both parties to this action, their officers, directors, employees, successors, and assigns.

13. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement and bind that party to it.

14. Each party shall bear its own costs and attorney's fees in the action resolved by this Consent Agreement.

15. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: Dale Supply

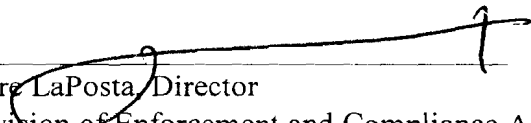
BY:   
Authorizing Signature

NAME: CONRAD P. ROCCO  
(PLEASE PRINT)

TITLE: OWNER

DATE: 8/2/2010

COMPLAINANT:

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007

DATE: SEPTEMBER 10, 2010

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**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

DATE: September 14, 2010

In the Matter of Dale Supply  
Docket No. FIFRA-02-2009-5205

**CERTIFICATE OF SERVICE**

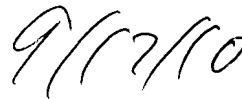
I certify that I have this day caused to be sent the foregoing Notice of Opportunity and Consent Agreement the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
by Interoffice Mail:

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

USPS First Class Mail

Dale Supply  
208 Laurelton Drive  
Buffalo, New York 14224

A handwritten signature in black ink, appearing to read "Dale Supply".A handwritten date in black ink, "9/17/10".