



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
JUN 12 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0005 8920 6501

Timothy S. Kavanuagh
Hercules Incorporated
1313 North Market Street
Wilmington, Delaware 19894-0001

Consent Agreement and Final Order, Docket No. *FIFRA-05-2008-0018*
SAW

Dear Ms. Bayer:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on June 12, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,137.00 is to be paid in the manner described in paragraphs 21. The docketed number of this CAFO (above), and the following billing document number **BD** 2750845P018 should be referenced with your payment and submitted by July 14, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph G. Lukascyk
Pesticides and Toxics Compliance Section

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Hercules Incorporated)
Wilmington, DE 19894)

Respondent.)
_____)

Docket No. FIFRA-05-2008-0018

Proceeding to Assess a Civil Penalty,
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

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[Signature]

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, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Hercules Incorporated, a corporation doing business in the State of Wisconsin.
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 to 136y.

Statutory and Regulatory Background

10. It is unlawful according to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) to produce a pesticide in any State unless the establishment is registered with the Administrator of U.S. EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136l.

11. Pursuant to FIFRA § 2(dd), 7 U.S.C. § 136(dd), “establishment” means “any place where a pesticide . . . is produced, or held, for distribution or sale.” Similarly, 40 C.F.R. § 167.3 provides, in pertinent part, that an “establishment” is “any site where a pesticidal product . . . is produced”

12. The Administrator of U.S. EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA, may assess a civil penalty of up to \$6,500 for each offense that occurred after March 15, 2004, 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

13. Respondent has been a “producer” and a “registrant” as those terms are defined at Section 2(w) and (y) of FIFRA, 7 U.S.C. § 136(w) and (y), at all times relevant to this CAFO.

14. Respondent’s place of business located at 5228 North Hopkins Street, Milwaukee, Wisconsin 53209 has been an “establishment” as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3 at all times relevant to this CAFO.

15. During the time period described in Respondent’s self-disclosure notification letter, Respondent’s establishment located at 5228 North Hopkins Street, Milwaukee, Wisconsin 53209, was not registered with U.S. EPA, pursuant to Section 7 of FIFRA, 7 U.S.C. § 136(e), as a pesticide producing establishment.

16. Respondent’s self-disclosure notification letter, dated March 6, 2007, informed the U.S. EPA that, Respondent’s plant located in Milwaukee, Wisconsin was producing a registered pesticide product “Spectrum XD3899,” EPA Reg. No. 8622-64-74655, even though that facility was not a registered establishment.

17. “Spectrum XD3899,” EPA Reg. No. 8622-64-74655 is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

18. In conformity with the *Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations* (the Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000), the violation of Section 7 of FIFRA by Respondent is the subject of this CAFO was voluntarily disclosed to U.S. EPA by letter dated March 6, 2007.

Civil Penalty

19. Complainant assesses a civil penalty of \$4,550.00 against Respondent for the violations of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), alleged in this CAFO,

pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), and Complainant's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, July 2, 1990."

20. Based upon the initial self-disclosure, and because the violation was not discovered through an audit or compliance management system, complainant has determined that Respondent has satisfied eight of the nine Self-Disclosure Policy criteria. Therefore, a 75 percent reduction of the gravity-based portion of the civil penalty to be assessed in this matter is appropriate under the Self-Disclosure Policy. Complainant has determined that there was no economic benefit associated with the alleged violation. Therefore, Complainant has determined that the appropriate penalty to settle this action is \$1,137.00.

21. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,137.00 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note Respondent's name, the Docket Number of this CAFO and the Billing Document (BD) number.

22. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case Docket Number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Joseph G. Lukascyk (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert L. Thompson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604]

23. This civil penalty is not deductible for federal tax purposes.

24. If Respondent does not pay the civil penalty timely, U.S. 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

25. 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

26. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

27. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

This CAFO is in full settlement of the alleged violation of section 7 of FIFRA.

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

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

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

31. 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.

32. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Hercules Incorporated, Respondent

4/16/2008
Date

Chet Cross
Chet Cross, General Manager, Americas
Hercules Incorporated

United States Environmental Protection Agency, Complainant

6/09/08
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemicals Division

FIFRA-05-2008-0018
BBW

In the Matter of:
Hercules Incorporated
Docket No.

FIFRA-05-2008-0018
JBLW

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.

6/11/08
Date

Walter W. Karaluzh
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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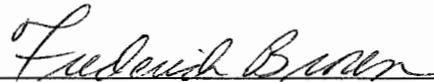
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Hercules Incorporated, was filed on June 12, 2008 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8920 6501, a copy of the original to the Respondents:

Timothy S. Kavanuagh
Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Robert L. Thompson, Counsel for Complainant/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 60604-3590

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