



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

JAN 25 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0198 4487

Mr. Gary Hilt
Freeport Farm & Fleet, Inc.
3507 East Racine St.
Janesville, WI 53547

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0017

Dear Mr. Hilt:

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 January 25, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,600 is to be paid in the manner prescribed in paragraphs 27, 28 and 29. Please be certain that the number **BD** 2750745P019 and the docket number are written on both the transmittal letter and on the check. Payment is due by February 26, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

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

Terrence Bonace
Pesticides and Toxics Branch

Enclosures

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:)	Docket No. FIFRA-05-2007-0017
)	
Freeport Farm & Fleet, Inc.)	Proceeding to Assess a Civil Penalty
3507 East Racine Street)	Under Section 14(a) of the Federal
Janesville, Wisconsin 53547)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
)	

2007 JUN 25 PM 3:21
REGIONAL PESTICIDE
CONTROL OFFICE

Consent Agreement and Final Order Commencing and Concluding a Proceeding

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 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 (2005).
2. Complainant, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
3. The Respondent is Freeport Farm & Fleet, Inc. (Freeport), a corporation doing business in the State of Illinois under its Division, Farm & Fleet of Montgomery with a branch at 400 US Route 30, Montgomery, Illinois, and headquartered at 3507 East Racine Street, Janesville, 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) (2005).

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 entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. Freeport waives any 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.

Statutory and Regulatory Background

9. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

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.

11. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, 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).

12. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

13. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

14. The term “pests” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. § 152.5(c) as “any insect, rodent, nematode, fungus, weed,…”

15. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

16. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty of up to \$5,500 for each violation of FIFRA that occurred from January 31, 1997 to March 15, 2004, and a civil penalty of up to \$6,500 for each violation of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

Factual Allegations

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

18. On August 5, 2005, an inspector employed by the Illinois Department of Public Health and authorized to conduct inspections under FIFRA, conducted an inspection under Section 9 of FIFRA, 7 U.S.C. § 136g, at the Freeport Farm & Fleet of Montgomery branch store, 400 Route 30, Montgomery, Illinois, to examine and collect samples of any pesticides packaged, labeled, and released for shipment.

19. During the August 5, 2005 inspection, the inspector observed a bottle labeled **Ortho Home Defense Ortho-Klor Insect & Termite Killer**, EPA Reg. No. 239-2513, on a shelf in the store.

20. The product **Ortho Home Defense Ortho-Klor Insect & Termite Killer** is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

21. Respondent was distributing or selling the product, **Ortho Home Defense Ortho-Klor Insect & Termite Killer**, as defined at Section 2(gg) of FIFRA, 7 U.S.C. §136(gg).

22. The registration of **Ortho Home Defense Ortho-Klor Insect & Termite Killer** was cancelled on January 25, 2002.

Alleged Violations

Count 1

23. Complainant incorporates paragraphs 1 through 22 of this complaint, as if set forth in this paragraph.

24. At the time of the inspection, Respondent was distributing or selling the cancelled pesticide product, **Ortho Home Defense Ortho-Klor Insect & Termite Killer**.

25. Respondent's distribution or sale of the cancelled pesticide product **Ortho Home Defense Ortho-Klor Insect & Termite Killer** constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

26. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriateness of the size of the penalty to the size of the business, the effect on Respondent's ability to continue in business, and the gravity of the violation, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$2,600.

27. Respondent must pay the \$2,600 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

28. Respondent must send the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

29. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number found in the enclosed letter must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

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

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

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

31. If Respondent does not timely pay the civil penalty, 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).

32. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

Final Statement

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Alleged Violations sections of this CAFO.

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

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

36. Respondent certifies that it is complying fully with Section 12 (a) of FIFRA, 7 U.S.C. § 136j(a) and has ceased to distribute or sell the cancelled pesticide product, **Ortho Home Defense Ortho-Klor Insect & Termite Killer**.

37. The terms of this CAFO bind Freeport, and its successors, and assigns.

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

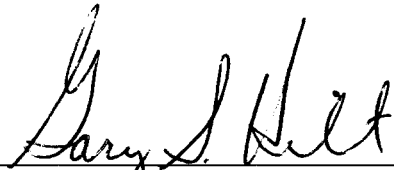
39. Each party agrees to bear its own costs and attorneys' fees in this action.

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

Consent Agreement and Final Order Commencing and Concluding a Proceeding
In the Matter of: Freeport Farm & Fleet, Inc.
Docket No. FIFRA-05-2007-0017

Freeport Farm & Fleet, Inc., Respondent


1-3-07
Date



Gary Hilt, Vice President
Freeport Farm & Fleet, Inc.


United States Environmental Protection Agency, Complainant

1-10-07
Date



Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

1/17/07
Date



Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

2007 JUN 25 PM 2:22
REGIONAL CLERK
EPA REGION 4


Consent Agreement and Final Order Commencing and Concluding a Proceeding
In the Matter of: Freeport Farm & Fleet, Inc.
Docket No. FIFRA-05-2007-0017

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

Date

1-22-07



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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REGIONAL HEARING CLERK
JUN 25 PM 2:22

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 Freeport Farm & Fleet, Inc., was filed on January 25, 2007 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 0006 0198 4487, a copy of the original to the Respondents:

Mr. Gary Hilt
Freeport Farm & Fleet, Inc.
3507 East Racine St.
Janesville, WI 53547

and forwarded copies (intra-Agency) to:

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



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0017**

17:21 JAN 25 PM 2:21
REGIONAL HEARING CLERK
EPA REGION 5