

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA-07-2007-0011
)	
Heimsoth Agri Services, Inc.)	CONSENT AGREEMENT
305 Coal Street)	AND
Corder, Missouri 64021)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Heimsoth Agri Services, 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), and 22.18(b)(3) 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), and 22.18(b)(3).

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 Heimsoth Agri Service, Inc., a pesticide dealer, located at 305 East Coal Street, Corder, Missouri 64021. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Missouri.

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean 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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest.

8. 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, any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and any nitrogen stabilizer.

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. Pursuant to FIFRA Section 2(w), 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, the term "produce" means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

11. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) defines the term “establishment” to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

12. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if there is not a label affixed to the pesticide container, and to the outside wrapper of the retail package if the required information on the immediate container cannot be clearly read, a label bearing the name and address of the producer, registrant or person for whom produced; the name, brand, or trademark under which the pesticide is sold; the net weight or measure of the content; and, when required by regulation, the registration number assigned to the pesticide and the use classification.

13. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the label does not contain directions for use which make the product effective and to adequately protect health and the environment.

14. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement adequate to protect health and the environment.

15. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states a pesticide is misbranded if the label does not bear an ingredient statement on the immediate container which is presented or displayed under customary conditions of purchase.

16. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term “registrant” to mean a person who has registered any pesticide pursuant to the provisions of FIFRA.

17. 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the EPA before the product as modified may be distributed or sold.

18. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

19. Respondent requested, and EPA assigned a pesticide-producing establishment number to Respondent’s facility, EPA Establishment Number (EPA Est. No.) 57451-MO-001, on or about March 5, 1987, pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e.

20. Gly Star Plus is a pesticide registered under EPA Registration Number (EPA Reg. No.) 42750-61, to the registrant, Albaugh, Inc., Germantown, Tennessee. The label submitted by Albaugh, Inc. for EPA Reg. No. 42750-61 was accepted by EPA on November 13, 2002, and was the label in effect for EPA Reg. No. 42750-61 on March 1, 2005. EPA accepted Albaugh, Inc.’s amended label for EPA Reg. No. 42750-61 to include instructions for weed resistance on February 26, 2004.

21. Registrant, Albaugh, Inc., and Respondent entered into a bulk repackager agreement on February 3, 2004, which authorized Respondent's use of the registered labels for Gly Star Plus, EPA Reg. No. 42750-61, for application to approved reusable containers of a capacity greater than 55 gallons upon Respondent's transfer of Gly Star Plus, EPA Reg. No. 42750-61, from Respondent's bulk tank containing the pesticide.

22. On March 1, 2005, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Respondent's facility to determine Respondent's compliance with FIFRA. The MDA representative collected signed statements, photographs and copies of documents during the inspection, and copies of Respondent's invoices which documented Respondent's sales of Gly Star Plus, EPA Reg. No. 42750-61.

Count 1

23. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

24. Respondent provided to the MDA representative a copy of Respondent's Invoice #578 dated April 20, 2004, which documents Respondent's sale of 1.5 gallons of Gly Star Plus, EPA Reg. No. 42750-61, to the City of Corder, Missouri.

25. Respondent's signed statement indicated Respondent sold the 1.5 gallons of Gly Star Plus, EPA Reg. No. 42750-61, to the City of Corder, Missouri, in a small non-refillable container.

26. Respondent's signed statement indicated Respondent failed to label the repackaged pesticide with the registrant's accepted label dated November 13, 2002, which displays required information as detailed in paragraphs 12 through 15.

27. The repackaged pesticide was not encompassed within the terms of the original product registration and constitutes the production of a new pesticide product which requires separate product registration under Section 3 of FIFRA prior to product sale.

28. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), by distributing or selling an unregistered and misbranded pesticide.

Count 2

29. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

30. Respondent provided to the MDA representative a copy of Respondent's Invoice #1439 dated July 19, 2004, which documents Respondent's sale of 2 gallons of Gly Star Plus, EPA Reg. No. 42750-61, to the City of Corder, Missouri.

31. Respondent's signed statement indicated Respondent sold the 2 gallons of Gly Star Plus, EPA Reg. No. 42750-61, to the City of Corder, Missouri, in a small non-refillable container.

32. Respondent's signed statement indicated Respondent failed to label the repackaged pesticide with the registrant's accepted label dated November 13, 2002, which displays required information as detailed in paragraphs 12 through 15.

33. The repackaged pesticide was not encompassed within the terms of the original product registration and constitutes the production of a new pesticide product which requires separate product registration under Section 3 of FIFRA prior to product sale.

34. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), by distributing or selling an unregistered and misbranded pesticide.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order.

10. The effect of the settlement described above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5 above.

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, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount of Five Thousand Two Hundred Dollars (\$5,200.00), on or before thirty (30) days of the effective date this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

**Regional Hearing Clerk
United States Environmental Protection Agency
Region VII,
c/o Mellon Bank
P.O. Box 371099M,
Pittsburgh, Pennsylvania 15251.**

3. The payment shall reference Docket Number, FIFRA 07-2007-0011 and **In the Matter of Heimsoth Agri Services, Inc.** Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

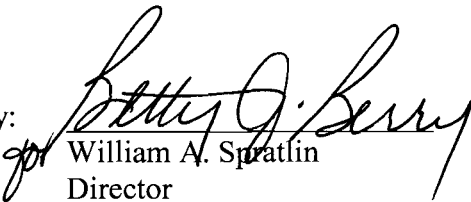
5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

Heimsoth Agri Services, Inc.
FIFRA-07-2007-0011


6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 
for William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 07/13/07

By: 
for Kent Johnson
Attorney
Office of Regional Counsel

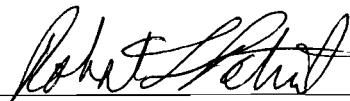
Heimsoth Agri Services, Inc.
FIFRA-07-2007-0011

RESPONDENT:

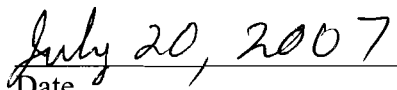
Heimsoth Agri Services, Inc.

By: Eric R. Heimsoth
Title: President
Date: 7-10-07

Heimsoth Aari Services, Inc.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII



Date

IN THE MATTER OF Heimsoth Agri Services, Inc., Respondent
Docket No. FIFRA-07-2007-0011

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to:

Kent Johnson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Eric R. Heimsoth, Jr.
President
Heimsoth Agri Services, Inc.
305 Coal Street
Corder, Missouri 64021

7/20/07
Dated


Kathy Robinson
Hearing Clerk, Region 7