

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

FEB 24 AM 10:34

In the Matter of

Dr. James Diemer

Respondent

)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
)
) Docket No. FIFRA-07-2013-0035
)

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about September 19, 2013, when the United States Environmental Protection Agency (“Complainant” or “EPA”) issued a Complaint and Notice of Opportunity for Hearing (Complaint) to Dr. James Diemer (Respondent). Pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l, the Complainant sought civil penalties for alleged violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j (a)(1)(A).

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent and Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this CAFO shall not be modified except by a subsequent written agreement between the parties.
2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.
3. Respondent waives its right to a hearing on any issue of fact or law set forth in the Complaint or this CAFO. Respondent waives its right to further contest any issue of fact or law in any subsequent proceedings to enforce the terms of this CAFO, and agrees not to appeal the Final Order accompanying this Consent Agreement.

4. Respondent neither admits nor denies the factual allegations as set forth in the Complaint.
5. Respondent and EPA agree to bear their respective costs and attorney's fees.
6. 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.
7. 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.
8. 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.
9. The effect of settlement as described in Paragraph 10 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 8.
10. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a penalty of \$5,720 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 the Complaint. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent.
11. 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.
12. Respondent 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.
13. 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 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.

III. 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 Five Thousand Seven Hundred and Twenty Dollars (\$5,720) 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
11201 Renner Boulevard
Lenexa, KS 66219

and

Demetra O. Salisbury, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

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.

RESPONDENT
DR. JAMES DIEMER

Date: 2/14/14

By: James Diemer
James Diemer _____
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2-20-14



Karen Flournoy
Director
Water, Wetlands, and Pesticides Division

Date: 2-24-14



Demetra O. Salisbury
Office of Regional Counsel

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

Date: 2-24-14

Karina Borromeo

Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Dr. James Diemer, Respondent
Docket No. TSCA-07-2013-0035

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 emailed to
Attorney for Complainant:

salisbury.demetra@epa.gov

Copy by First Class Mail to:

David J. Siegrist
Siegrist & Jones, PC
94 Main Avenue North
Britt, Iowa 50423

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated:

2/24/14



Kathy Robinson
Hearing Clerk, Region 7