

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

11 OCT 31 PM 2:35
ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

In the Matter of

Dairy Solutions, Inc.

Respondent

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Docket No. FIFRA-07-2011-0015

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Dairy Solutions, 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) and 22.18(b)(2) 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) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding 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 Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Dairy Solutions, Inc. located at P.O. Box 227, Raymore, Missouri. Respondent is incorporated in the state of New Mexico.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. 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.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

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 40 C.F.R. § 152.132, a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

11. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), states that a pesticide is “misbranded” if, among other things, its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

12. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

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

Section IV**General Factual Allegations**

14. Respondent is and, at all times referred to herein, was a "person" within the meaning of FIFRA.
15. On or about April 27, 2001, Respondent entered into a supplemental distribution agreement with McLaughlin Gormley King, Co. for the Distributor Product.
16. The Distributor Product is KattleGuard II bearing the EPA Registration Number (EPA Reg. No.) 1021-1739-73103.
17. On or about January 6, 2011, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at IodiTech, Inc. located at 501 Santa Fe Street, Kansas City, Missouri (Inspection).
18. During the Inspection, it was determined that IodiTech, Inc. was formulating, packaging and distributing the Distributor Product.
19. During the Inspection, the MDA representative collected a packaging agreement between Respondent and IodiTech, Inc. which authorized IodiTech, Inc. to formulate, package and distribute the Distributor Product.
20. During the Inspection, the MDA representative collected a representative label of the Distributor Product. The Distributor Product label failed to include all of the first aid instructions and all of the precautionary statements as provided in the EPA approved label.
21. During the Inspection, the MDA representative collected approximately ten (10) invoices documenting the sale and distribution of the Distributor Product.

Violations

22. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

23. The facts stated in Paragraphs 14 through 21 are realleged and incorporated as if fully stated herein.

24. Invoices collected during the Inspection reveal that on or about July 19, 2010, a quantity of the Distributor Product was sold or distributed.

25. The label on the Distributor Product was misbranded because it failed to include the complete first aid instructions and the complete precautionary statements as provided in the EPA approved label.

26. Respondent, as a supplemental distributor, violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when the Distributor Product was sold or distributed with a label that was adulterated or misbranded.

Count 2

27. The facts stated in Paragraphs 14 through 21 are realleged and incorporated as if fully stated herein.

28. Invoices collected during the Inspection reveal that on or about July 14, 2010, a quantity of the Distributor Product was sold or distributed.

29. The label on the Distributor Product was misbranded because it failed to include the complete first aid instructions and the complete precautionary statements as provided in the EPA approved label.

30. Respondent, as a supplemental distributor, violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when the Distributor Product was sold or distributed with a label that was adulterated or misbranded.

Section V

Consent Agreement

31. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

32. Respondent neither admits nor denies the factual allegations set forth above.

33. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

34. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

35. 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.

36. 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.

37. 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.

38. The effect of settlement as described in Paragraph 39 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 37 above.

39. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Six Thousand Three Hundred Fifty Dollars (\$6,350.00) 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 this document. 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.

40. 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.

41. 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 below 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.

Section VI

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 Six Thousand Three Hundred Fifty Dollars (\$6,350.00) 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, Missouri 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."

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
901 North 5th Street
Kansas City, Kansas 66101;

and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

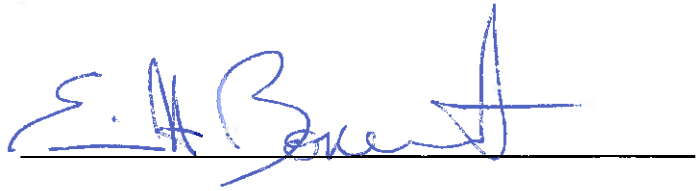
2. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

3. 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
Dairy Solutions, Inc.

Date: 25 Oct 2011

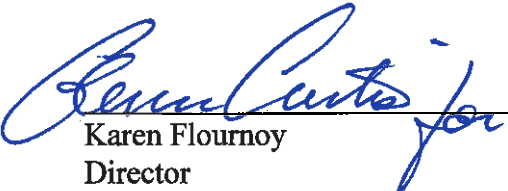
By:

A handwritten signature in blue ink, appearing to read "Eric H. Bonewitz", written over a horizontal line.

ERIC H. BONEWITZ PRESIDENT
Print Name Title


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10-26-11



Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date: 10/26/11



Kelley Catlin
Assistant Regional Counsel
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective upon filing with the Regional Hearing Clerk.

Date:

Oct. 31, 2011



ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Dairy Solutions, Inc., Respondent
Docket No. FIFRA-07-2011-0015

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:

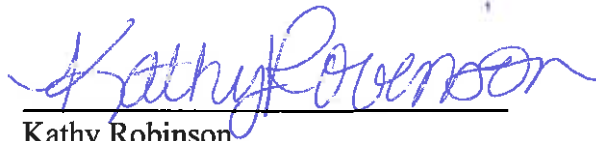
Copy hand delivered to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ric Bonewitz
Dairy Solutions, Inc.
P.O. Box 227
Raymore, Missouri 64083

Dated: 11/1/2011



Kathy Robinson
Hearing Clerk, Region 7