



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

SEP 11 2007

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8535

Ms. Ronda Bayer
Valspar Corporation
1101 S. Third St.
Minneapolis, Minnesota 55415-1211

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0039

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 September 11, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$32,400 is to be paid in the manner prescribed in paragraphs 61 and 62. Please be certain that the number BD 2750745P039 and the docket number are written on both the transmittal letter and on the check. Payment is due by October 11, 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 "Joseph G. Lukascyk".

Joseph G. Lukascyk
Pesticides and Toxics Compliance Section

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:)

The Valspar Corporation)
d/b/a/ Guardsman Products Division)
Grand Rapids, Michigan)

Respondent)

Docket No. FIFRA-05-2007-0039

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

RECEIVED
REGIONAL HEARING CLERK
US EPA
2007 SEP 11 AM 11:18

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, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, has been delegated the authority to settle this matter.

3. Respondent is The Valspar Corporation, doing business as Guardsman Products Division (Valspar), located at 4999 36th Street SE, Grand Rapids, Michigan.

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).

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. 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.

11. 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.

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 “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.

15. The term “pest” 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,…”

16. 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).

17. 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 and Alleged Violations

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

19. On May 7, 2004, an inspector employed by the Michigan Department of Agriculture conducted an authorized inspection under the authorities of Section 8 and Section 9 of FIFRA, 7 U.S.C. § 136f and § 136g, at Valspar located at 4999 36th Street SE, Grand Rapids, Michigan 49512.

20. During the May 7, 2004, inspection, the inspector collected a physical sample of an empty aerosol can of **Guardsman One Wipe Bathroom Cleaner**.

21. During the May 7, 2004, inspection, the inspector collected sales invoices for shipments of **Guardsman One Wipe Bathroom Cleaner** from Valspar.

22. During the inspection, the inspector observed the following language on the label of the empty aerosol can of **Guardsman One Wipe Bathroom Cleaner**: “Cleans and Removes Mildew and Soap Scum.”

23. Valspar’s label claims, states or implies that **Guardsman One Wipe Bathroom Cleaner** is a pesticide by its action of removing mildew and soap scum.

24. **Guardsman One Wipe Bathroom Cleaner** is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. **Guardsman One Wipe Bathroom Cleaner** is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

26. On January 15, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to Steiner Foods, located in New Rochelle, New York.

27. On February 5, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to Steiner Foods, located in New Rochelle, New York.

28. On March 3, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to Steiner Foods, located in New Rochelle, New York.

29. On January 22, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to Barnetts of Hallandale, located in Hallandale, Florida.

30. On January 9, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to Krasdale Foods, located in White Plains, New York.

31. On February 25, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to Krasdale Foods, located in White Plains, New York.

32. On April 22, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to Krasdale Foods, located in White Plains, New York.

33. On February 10, 2004, Valspar distributed or sold **Guardsman One Wipe Bathroom Cleaner** to White Rose Food Company, located in Somerset, New York.

34. During the inspection, Valspar representatives confirmed that the labeling on the empty aerosol can of **Guardsman One Wipe Bathroom Cleaner** which was collected by the inspector was the same as the labeling on the **Guardsman One Wipe Bathroom Cleaner** products that were packaged, labeled and shipped by Valspar to the customers reflected in the shipping records that were collected during the inspection.

35. Respondent is a “distributor” of **Guardsman One Wipe Bathroom Cleaner**; a pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Count 1

36. Complainant incorporates by reference the allegations contained in paragraphs 1 through 35 of this Complaint.

37. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on January 15, 2004 to Steiner Foods, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

38. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 2

39. Complainant incorporates by reference the allegations contained in paragraphs 1 through 38 of this Complaint.

40. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on February 5, 2004 to Steiner Foods, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

41. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 3

42. Complainant incorporates by reference the allegations contained in paragraphs 1 through 41 of this Complaint.

43. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on March 3, 2004 to Steiner Foods, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

44. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 4

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 44 of this Complaint.

46. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on January 22, 2004 to Barnetts of Hallandale, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

47. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 5

48. Complainant incorporates by reference the allegations contained in paragraphs 1 through 47 of this Complaint.

49. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on January 9, 2004 to Krasdale Foods, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

50. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 6

51. Complainant incorporates by reference the allegations contained in paragraphs 1 through 50 of this Complaint.

52. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on February 25, 2004 to Krasdale Foods, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

53. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 7

54. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

55. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on April 22, 2004 to Krasdale Foods, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

56. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 8

57. Complainant incorporates by reference the allegations contained in paragraphs 1 through 56 of this Complaint.

58. Respondent distributed, offered for sale, or sold **Guardsman One Wipe Bathroom Cleaner** on February 10, 2004 to White Rose Food Company, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

59. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty

Civil Penalty

60. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$32,400. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$32,400 civil penalty for the FIFRA violations. 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. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251 – 7531

[for checks sent by express mail]

Mellon Client Service Center
Attn: Shift Supervisor
Lockbox 371531
500 Ross Street
Pittsburgh, PA 15262 – 0001

The check must note the following: the case name, the docket number of this CAFO and the billing document number.

62. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document 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 (DT-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

64. 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

65. 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.

66. 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

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

68. Respondent certifies that it is now in full compliance with FIFRA and its implementing regulations, and has removed the pesticidal claims from the label of **Guardsman One Wipe Bathroom Cleaner** products.

69. 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.

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

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

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

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

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

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

The Valspar Corporation, Respondent

8-20-07
Date



Kate Bass, Vice President
Information Technology and FSG
Valspar Corporation

United States Environmental Protection Agency, Complainant

8/30/07
Date



Margaret M. Guerriero, Director
Land and Chemicals Division

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2007 SEP 11 AM 11:18

In the Matter of:
The Valspar Corporation
Docket No. FIFRA-05-2007-0039

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.

9/5/07
Date

Walter W. Kovalich
Mary A. Gade
Regional Administrator for
United States Environmental Protection Agency
Region 5

RECEIVED
REGIONAL HEARING CLERK
US ENVIRONMENTAL PROTECTION AGENCY
2007 SEP 11 AM 11:18

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 Valspar Corporation, was filed on September 11, 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 0185 8535, a copy of the original to the Respondents:

Ms. Ronda Bayer
Valspar Corporation
1101 S. Third St.
Minneapolis, Minnesota 55415-1211

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



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

Docket No. **FIFRA-05-2007-0039**

2007 SEP 11 AM 11:18
RECEIVED
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5