

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 N. FIFTH STREET
KANSAS CITY, KANSAS 66101

09 JUL 13 AM 10:37
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Wild West Pest, L.L.C.)

117 Daisy Drive)

Springview, Nebraska 68778)

Respondent)

Docket No. FIFRA-07-2009-0017

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Wild West Pest, L.L.C. (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).

ALLEGATIONS
Jurisdiction

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 Consent Agreement and Final Order serves as notice that 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 Wild West Pest, L.L.C., a pesticide producer/distributor with a facility located at 117 Daisy Avenue in Springview, Nebraska. The Respondent is and was at all times referred to in this Consent Agreement and Final Order, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a limited liability company qualified to do business in the state of Nebraska.

Statutory and Regulatory Background

5. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

6. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

7. Section 2(c) of FIFRA, 7 U.S.C. § 136(c), states the term “adulterated” applies to any pesticide if its strength or purity falls below the professed standard quality as expressed on its labeling under which it is sold.

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

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

Factual Allegations

10. On April 1, 2008, a representative of the Nebraska Department of Agriculture conducted an inspection (inspection) at Respondent’s facility, located at 117 Daisy Avenue in Springview, Nebraska, for the purpose of determining Respondent’s compliance with FIFRA. The Nebraska Department of Agriculture representative collected a copy of the label for the pesticide known as Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, an invoice listing a record of sales for the Eckroat Gopher Getter Bait and samples of the pesticide known as Eckroat Gopher Getter Bait, EPA Registration No. 8007-1.

11. At the time of the inspection, the Nebraska Department of Agriculture representative documented fifty 50-pound bags of the pesticide known as Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, that were being held for distribution or sale.

12. The label for the fifty 50-pound bags of the pesticide, Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, that was collected at the time of the inspection, stated that the pesticide contained 0.50% of the active ingredient.

13. Samples of the fifty 50-pound bags of the pesticide known as Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, collected during the inspection were tested. The test results

showed that the samples had strength or purity of 0.328% of the stated active ingredient in the pesticide formulation testing.

14. The label for Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, collected at the time of the inspection, had a professed standard of quality of 0.50% of the active ingredient in the pesticide formulation testing.

15. At the time of the inspection, the fifty 50-pound bags of the pesticide known as Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, being held for distribution or sale by the Respondent had a strength or purity (0.328%) which fell below the professed standard of quality (0.50%) expressed on its labeling.

VIOLATIONS

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

Count 1

17. Complainant hereby incorporates the allegations contained in paragraphs 5 through 15 above, as if fully set forth herein.

18. The fifty 50-pound bags of the pesticide known as Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, being held for distribution or sale by the Respondent at the time of the inspection were adulterated in that the pesticides strength of purity (0.328%) fell below the professed standard of quality (0.50%) expressed on the labeling under which it was sold.

19. The Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(a)(1)(E), by holding for sale or distribution a pesticide which was adulterated.

Count 2

20. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15 above, as if fully set forth herein.

21. The fifty 50-pound bags of the pesticide known as Eckroat Gopher Getter Bait, EPA Registration No. 8007-1, being held for distribution or sale by the Respondent at the time of the inspection were misbranded in that the pesticide label stated that the pesticide contained 0.50% of the active ingredient while samples taken at the time of the inspection showed that the pesticide contained only 0.328% of the active ingredient.

22. The Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and 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 and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

7. 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.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

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

10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Four Thousand Three Hundred Eighty- Four Dollars (\$ 4,384.00) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above.

12. 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 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.

13. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice (DOJ) for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

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 above, shall pay by cashier or certified check, a mitigated civil penalty, for the violations cited herein, in the amount of Four Thousand Three Hundred Eighty-Four Dollars (\$4,384.00), plus interest of Seventy-One Dollars and Sixty Cents (\$71.60) over a period of one (1) year for a total payment of Four Thousand Four Hundred Fifty-Five Dollars and Sixty Cents (\$4,455.60). The total civil penalty of \$4,455.60 shall be paid in twelve (12) monthly payments of Three Hundred Seventy-One Dollars and Thirty Cents (\$371.30) each. The first payment must be received at the address below on or before thirty (30) days after the effective date of this CAFO. Each succeeding payment will be due thirty (30) days after the previous payment.

2. Payment of the penalty shall be by cashier or certified check which shall reference Docket Number FIFRA-07-2009-0017, and made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

3. A copy of the check shall simultaneously be sent to the following:

Jennifer Trotter
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
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.

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:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7-1-09

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

Date: 6/30/2009

By: Jennifer Trotter
Jennifer Trotter
Assistant Regional Counsel

RESPONDENT:

Wild West Pest, L.L.C.

Date: 6/20/09

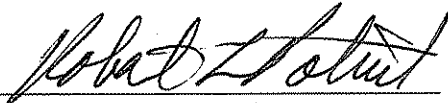
By: Wesley H. Hitchcock

Printed Name: Wesley H. Hitchcock

Title: Owner

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

Date: July 13, 2009



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

IN THE MATTER OF Wild West Pest, LLC, Respondent
Docket No. FIFRA-07-2009-0017

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:

Jennifer Trotter
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Wesley H. Hitchcock
Wild West Pest, LLC
117 Daisy Drive
Springview, Nebraska 68778

Dated: 7/13/09



Kathy Robinson
Hearing Clerk, Region 7