



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

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 5467

Mr. Rajiv Lall
Vets Plus, Inc.
102 3rd AVE. East
Knapp, Wisconsin 54749

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REGIONAL HEARING CLERK
US EPA REGION V

2008 SEP 19 AM 10:40

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0026

Dear Mr. Lall:

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 19, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,920 is to be paid in the manner described in paragraphs 43 and 44. Please be certain that the number **BD** 2750845P026 and the docket number are written on both the transmittal letter and on the check. Payment is due by October 19, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2008-0026
)	
Vets Plus, Inc.)	Proceeding to Assess a Civil Penalty
Knapp, Wisconsin)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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Consent Agreement and Final Order

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 is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Vets Plus, Inc., a corporation doing business at 102 Third Avenue East, Knapp, Wisconsin 54749.
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).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
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 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 any pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.”

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

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 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).

14. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

Factual Allegations and Alleged Violations

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

16. At all times relevant to this matter, Respondent owned or operated a place of business located at 102 Third Avenue East, Knapp, Wisconsin 54749.

Specific Allegations

Count 1

17. The statements provided in paragraphs 1 through 16 are incorporated by reference as though set forth here in full.

18. On February 15, 2006, an inspector employed by the Missouri Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Charlie’s Farm and Home, located at 1583 West Pearce Boulevard, Wentzville, Missouri 63385.

19. During the February 15, 2006 inspection, the inspector collected photographs of the product “Nutricare Botanical Citronella Plus” which bore a label identifying Respondent as the distributor of the product.

20. At the time of the February 15, 2006 inspection, the label for “Nutricare Botanical Citronella Plus” made the following pesticidal claim:

-“Repels insects naturally.”

21. During the February 15, 2006 inspection, the inspector collected a "Purchase History" recording Respondent's distribution and sale of "Nutricare Botanical Citronella Plus" to Charlie's Farm and Home on June 17, 2004, and June 20, 2005.

22. "Nutricare Botanical Citronella Plus" is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. "Nutricare Botanical Citronella Plus" is not registered as a pesticide, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

24. On June 17, 2004, Respondent distributed or sold a product, "Nutricare Botanical Citronella Plus," that was unregistered.

25. The fact that Respondent distributed or sold an unregistered pesticide product, "Nutricare Botanical Citronella Plus," constitutes an unlawful act according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

26. 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 FIFRA, 7 U.S.C. § 136l(a).

Count 2

27. Complainant incorporates by reference the allegations contained in paragraphs 1 through 26 of this Complaint.

28. On June 20, 2005, Respondent distributed or sold a product, "Nutricare Botanical Citronella Plus," that was unregistered.

29. The fact that Respondent distributed or sold an unregistered pesticide product, "Nutricare Botanical Citronella Plus," constitutes an unlawful act according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

30. 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

31. Complainant incorporates by reference the allegations contained in paragraphs 1 through 30 of this Complaint.

32. On February 1, 2007, an inspector employed by the Iowa Department of Agriculture and Land Stewardship and authorized to conduct inspections under FIFRA conducted an inspection at Mills Farm and Fleet, located at 3200 4th Street West, Mason City, Iowa 50401.

33. During the February 1, 2007 inspection, the inspector collected photographs of the product "Nutricare Go Fly" which bore a label identifying Respondent as the distributor of the product.

34. At the time of the February 1, 2007 inspection, the label for "Nutricare Go Fly" made the following pesticidal claims:

- "Nutricare Go Fly"

- "Herbal, non toxic fly repellent..."

- "Go Fly not only repels house flies, mosquitoes, gnats and ticks..."

- "Concurrent spraying of animal premises is recommended for effective control."

35. "Nutricare Go Fly" is a pesticide as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

36. "Nutricare Go Fly" is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

37. During the February 1, 2007 inspection, the inspector collected a copy of the "Product/Buyer Information" recording Respondent's distribution and sale of "Nutricare Go Fly" to Mills Farm and Fleet on August 4, 2006.

38. On August 4, 2006, Respondent distributed or sold a product, "Nutricare Go Fly," that was unregistered.

39. The fact that Respondent distributed or sold an unregistered pesticide product, "Nutricare Go Fly," constitutes an unlawful act according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

40. 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).

Civil Penalty

41. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

42. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant determined an appropriate civil penalty to settle this action in the amount of \$10,920. In determining this amount, Complainant also considered

U.S. EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990.

43. Respondent must pay the \$10,920 penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

44. 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

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

46. 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 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.

47. 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

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

49. 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.

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

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

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

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

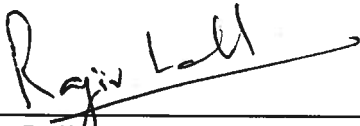
54. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Vets Plus, Inc., Respondent

09/09/08

Date

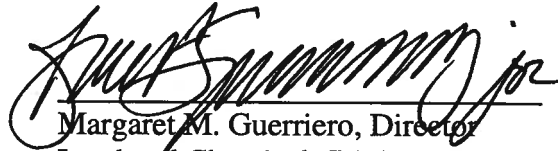


Rajiv Lall, President
Vets Plus, Inc.

United States Environmental Protection Agency, Complainant

9/17/08

Date



Margaret M. Guerriero, Director
Land and Chemicals Division

In the Matter of:
Vets Plus, Inc.
Docket No. FIFRA-05-2008-0026

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.

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9/17/08
Date

Walter W. Karaluff for
Lynn Buhl
Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
SEP 11 2008
OFFICE OF REGIONAL
COUNSEL


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 Vets Plus, Inc., was filed on September 19, 2008, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8921 5467, a copy of the original to the Respondents:

Mr. Rajiv Lall
Vets Plus, Inc.
102 3rd AVE. East
Knapp, Wisconsin 54749

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Charles Mikalian, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



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

Docket No. **FIFRA-05-2008-0026**

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