



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

DEC 08 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0191 0769

Mr. Mark E. Smith
Frontier Distributing
533 South Lapeer Road
Oxford, Michigan 48371

Consent Agreement and Final Order

FIFRA-05-2010-0004

Dear Mr. Smith:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on December 8, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,400 is to be paid in the manner described in paragraphs 24 and 25. Please be certain that the number **BD 2751045P004** and the docket number are written on both the transmittal letter and on the check. Payment is due by January 6, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for

Jeanne Bonacy

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No.	FIFRA-05-2010-0004
)		
Frontier Distributing, Inc.,)	Proceeding to Assess a Civil Penalty	
Oxford, Michigan,)	Under Section 14(a) of the Federal	
)	Insecticide, Fungicide, and Rodenticide	
Respondent.)	Act, 7 U.S.C. § 136l(a)	
_____)		

Consent Agreement and Final Order Commencing and Concluding the Proceeding

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 is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Frontier Distributing, Inc., a corporation doing business in the State of 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).

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.

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

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. 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. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

8. 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 of FIFRA, 7 U.S.C. § 136a.

9. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

10. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

11. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

12. 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).

13. The Administrator of EPA may assess a civil penalty against any wholesaler,

dealer, retailer, other distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 through January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

15. Respondent owned or operated a place of business located at 533 South Lapeer Road, Oxford, Michigan, during the calendar years 2004 and 2005.

16. On January 20 and 21, 2005, an inspector employed by the Michigan Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Oxford, Michigan.

17. During the January 20 and 21, 2005 inspection, the inspector collected sales invoices for the products “Doc Ackerman’s Horse Spray Flyz Away,” “Doc Ackerman’s Botanical Flea and Tick Shampoo,” “Doc Ackerman’s Botanical Flea and Tick Spray,” “Doc Ackerman’s Botanical Flea and Tick Powder,” and “Doc Ackerman’s Botanical Flea and Tick Oil.”

18. The advertising brochure for “Doc Ackerman’s Horse Spray Flyz Away,” “Doc Ackerman’s Botanical Flea and Tick Shampoo,” “Doc Ackerman’s Botanical Flea and Tick Spray,” “Doc Ackerman’s Botanical Flea and Tick Powder,” and “Doc Ackerman’s Botanical Flea and Tick Oil” collected on January 20, 2005 makes the following pesticidal claims:

- a. “Doc Ackerman’s Horse Spray Flyz Away.”
- b. “Doc Ackerman’s Botanical Flea and Tick Shampoo”: “this shampoo will rid your pet of flea and tick infestation...”

- c. “Doc Ackerman’s Botanical Flea and Tick Spray”: “effective for fighting fleas and ticks on your dog or cat.”
- d. “Doc Ackerman’s Botanical Flea and Tick Powder”: “this soft powder is an excellent way to control fleas and ticks on your pet.”
- e. “Doc Ackerman’s Botanical Flea and Tick Oil”: “Apply directly to give your pet fast relief from flea and tick infestation.”

19. “Doc Ackerman’s Horse Spray Flyz Away,” “Doc Ackerman’s Botanical Flea and Tick Shampoo,” “Doc Ackerman’s Botanical Flea and Tick Spray,” “Doc Ackerman’s Botanical Flea and Tick Powder,” and “Doc Ackerman’s Botanical Flea and Tick Oil” are each a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

20. Respondent held “Doc Ackerman’s Horse Spray Flyz Away,” “Doc Ackerman’s Botanical Flea and Tick Shampoo,” “Doc Ackerman’s Botanical Flea and Tick Spray,” “Doc Ackerman’s Botanical Flea and Tick Powder,” and “Doc Ackerman’s Botanical Flea and Tick Oil” for distribution on January 20 and 21, 2005.

21. “Doc Ackerman’s Horse Spray Flyz Away,” “Doc Ackerman’s Botanical Flea and Tick Shampoo,” “Doc Ackerman’s Botanical Flea and Tick Spray,” “Doc Ackerman’s Botanical Flea and Tick Powder,” and “Doc Ackerman’s Botanical Flea and Tick Oil” were not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on January 20 and 21, 2005.

22. Each distribution or sale by Respondent of the unregistered pesticides “Doc Ackerman’s Horse Spray Flyz Away,” “Doc Ackerman’s Botanical Flea and Tick Shampoo,” “Doc Ackerman’s Botanical Flea and Tick Spray,” “Doc Ackerman’s Botanical Flea and Tick Powder,” and “Doc Ackerman’s Botanical Flea and Tick Oil” constitutes an unlawful act

pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

23. 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 \$10,400.00. 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 EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

24. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,400.00 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
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

(For checks sent by express mail)

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must note the case title "In the Matter of: Frontier Distributing, Inc., Oxford, Michigan," the docket number of this CAFO, and the billing document number.

25. A transmittal letter, stating Respondent's name, the case title "In the Matter of:

Frontier Distributing, Inc., Oxford, Michigan,” 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-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

Jeffrey A. Cahn (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

26. This civil penalty is not deductible for federal tax purposes.
27. If Respondent does not pay the civil penalty timely, 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.
28. 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

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

30. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

34. 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.

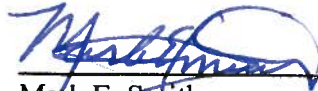
35. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**In the Matter of:
Frontier Distributing, Inc.,
Docket No.**

Frontier Distributing, Inc., Respondent

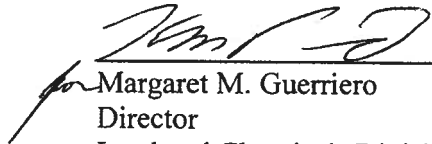
11/24/09
Date



Mark E. Smith
President
Frontier Distributing, Inc.

United States Environmental Protection Agency, Complainant

12.4.09
Date



for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Frontier Distributing, Inc.,
Docket No. FIFRA-05-2010-0004

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.

12/4/09
Date

Walter W. Karoluk
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.

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 Frontier Distributing Inc., was filed on December 8, 2009 with the Regional Hearing Clerk (E-19J), 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 0006 0191 0769, a copy of the original to the Respondents:

Mr. Mark E. Smith
Frontier Distributing
533 South Lapeer Road
Oxford, Michigan 48371

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and forwarded copies (intra-Agency) to:

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jeffery A. Cahn, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



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

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