



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
December 7, 2012

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7668 0646

Mr. Joseph Phillip Pittman
d/b/a Phil's Building Materials
540 West South Street
Dix, Illinois 62830

Consent Agreement and Final Order in the Matter of
Mr. Joseph Phillip Pittman, Phils Building Materials,
Docket No. FIFRA-05-2013-0001

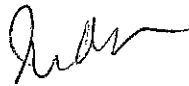
Dear Mr. Pittman,

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 7, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,500 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by January 7, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2013-0001
)	
Joseph Phillip Pittman d/b/a)	Proceeding to Assess a Civil Penalty
Phil's Building Materials)	Under Section 14(a) of the Federal
Dix, Illinois)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 (EPA), Region 5.
3. Respondent is Joseph Phillip Pittman, doing business as Phil's Building Materials, a sole proprietor doing business in the State of Illinois.
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.

Statutory and Regulatory Background

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

10. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), provides that 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.

11. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), provides that a pesticide is “misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed pursuant to Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment.

12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 136a(d) of FIFRA, are adequate to protect health and the environment.

13. Under Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), “to 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.

14. Under Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), “pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

15. Under Section 2(t) of FIFRA, 7 U.S.C. § 136(t), “pest” means 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 U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

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

Factual Allegations and Alleged Violation

17. Respondent is an individual and therefore a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. Respondent owns and operates a place of business located at 540 West South Street, Dix, Illinois.

19. On August 13, 2008, an inspector employed by the Illinois Department of Agriculture and authorized to conduct inspections under FIFRA (inspector) conducted an inspection at Respondent’s place of business located at 540 West South Street, Dix, Illinois.

20. During the August 13, 2008 inspection, Respondent was holding for distribution or sale the registered pesticide product “ChlorBrite,” EPA Reg. No. 1744-20003-69302.

21. "ChlorBrite" is a substance or mixture of substances containing sodium hypochlorite and intended for preventing, destroying, repelling, or mitigating pests, and is therefore a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

22. During the August 13, 2008 inspection, the inspector collected a label and a sales receipt for the pesticide product "ChlorBrite."

23. On August 12, 2008, the pesticide product "ChlorBrite" was distributed or sold to a customer of Respondent.

24. Respondent is a "retailer" and/or "distributor" of the pesticide product "ChlorBrite" within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1).

25. During the August 13, 2008 inspection, Respondent signed a statement verifying that the "ChlorBrite" label collected during the inspection was a true and accurate representation of the product and associated label that was sold on August 12, 2008.

26. The accepted label for "ChlorBrite" provides that its chemical composition is made up of 9.20% sodium hypochlorite and 90.80% inert ingredients.

27. Respondent's "ChlorBrite" label provides that its chemical composition is made up of 12.5% sodium hypochlorite and 87.5% inert ingredients.

28. The accepted label for "ChlorBrite" states, under the "Environmental Hazards" section: "This pesticide is toxic to fish and aquatic organisms. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or public waters unless in accordance with the requirements of a National Pollution Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the

sewage treatment plant authority. For guidance contact your State Water Board or regional office of the EPA.”

29. Respondent’s label for “ChlorBrite” collected on August 13, 2008, states, under the “Environmental Hazards” section: “This pesticide is toxic to fish. Keep out of lakes, streams, ponds. Treated effluent may not be discharged into lakes, streams, ponds or public waters without a valid discharge permit. For guidance, contact the regional office of the Environmental Protection Agency.”

30. The accepted label for “ChlorBrite” states, under the “First Aid” section: “IF ON SKIN OR CLOTHING Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice. IF IN EYES Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first five minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice. IF SWALLOWED Call poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by the poison control center or doctor. Do not give anything by mouth to an unconscious person. IF INHALED Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible. Call a poison control center or doctor for further treatment advice. Have the product container or label with you when calling a poison control center or doctor, or going for treatment.”

31. Respondent’s label for “ChlorBrite” collected on August 13, 2008, states, under the “First Aid” section: “If on skin, wash with plenty of soap and water. If in eyes, flush with water for at least 15 minutes. Get medical attention. If swallowed, drink large quantities of milk, or

gelatin solution or, if these are not available, drink large quantities of water. Do NOT give vinegar or other acids. Do NOT induce vomiting. Get prompt medical attention.”

32. The accepted label for “ChlorBrite,” under the “Directions for Use” section, includes, among other things, separate and distinct directions for the sanitization of nonporous food contact surfaces and porous food contact surfaces. Under the “Sanitization of Nonporous Food Contact Surfaces” section, the label has specific directions for a “rinse method,” an “immersion method,” a “flow/pressure method,” a “clean-in-place method,” and a “spray/fog method.” Under the “Sanitization of Porous Food Contact Surfaces” section, the label has specific directions for a “rinse method,” an “immersion method” and a “spray/fog method.”

33. Respondent’s label for “ChlorBrite” collected on August 13, 2008, under the “Directions for Use” section, provides, among other things, directions for “Sanitizing Food Processing or Dairy Equipment.” The “ChlorBrite” label does not contain a distinction between the sanitization of porous and non-porous food contact surfaces and does not contain the eight specific cleaning methods identified in paragraph 32, above.

Count 1

34. Complainant incorporates by reference the allegations contained by Paragraphs 1 through 33 of this Complaint.

35. On or about August 12, 2008, Respondent distributed or sold the pesticide product “ChlorBrite,” that was misbranded because the label stated that its ingredients were composed of 12.5% sodium hypochlorite and 87.5% inert ingredients, while the accepted label states that the ingredients are composed of 9.20% sodium hypochlorite and 90.80% inert ingredients.

Respondent’s label contained a statement relative to its ingredients which was false and/or

misleading and is therefore “misbranded” within the meaning of Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

36. On or about August 12, 2008, Respondent distributed or sold the pesticide product “ChlorBrite,” that was misbranded because the label did not contain the necessary accepted label information with respect to the “Environmental Hazards” section as described in paragraphs 28 and 29, above. Respondent’s label did not contain a warning or caution statement which may be necessary and, if complied with, is adequate to protect health and the environment and was therefore “misbranded” within the meaning of Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

37. On or about August 12, 2008, Respondent distributed or sold the pesticide product “ChlorBrite,” that was misbranded because the label did not contain the necessary accepted label information with respect to the “First Aid” section as described in paragraphs 30 and 31, above. Respondents’ label did not contain a warning or caution statement which may be necessary and, if complied with, is adequate to protect health and the environment and was therefore “misbranded” within the meaning of Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

38. On or about August 12, 2008, Respondent distributed or sold the pesticide product “ChlorBrite,” that was misbranded because the label did not contain the necessary accepted label information under the “Directions for Use” section with respect to the sanitization of porous and nonporous food contact surfaces, as described in paragraphs 32 and 33, above. Respondent’s label did not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate to protect health and the environment and was therefore “misbranded” within the meaning of Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

39. The distribution or sale of the misbranded pesticide, "ChlorBrite," constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

40. 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 \$2,500. 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 FIFRA Enforcement Response Policy, dated December 2009.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,500 civil penalty for the FIFRA violation by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name, the docket number of this CAFO and the billing document number.

42. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

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

44. If Respondent does not pay timely the civil penalty, 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.

45. 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

46. Respondent certifies that he is complying with FIFRA, 7 U.S.C. §§ 136-136y.

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

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

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

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

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

52. 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.

53. Each party agrees to bear its own costs and attorneys fees in this action.

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

Joseph Phillip Pittman d/b/a Phil's Building Materials, Respondent

November 1, 2012
Date

Joseph Phillip Pittman
Joseph Phillip Pittman
Owner
Phil's Building Materials

United States Environmental Protection Agency, Complainant

November 30, 2012
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Joseph Phil Pittman d/b/a Phil's Building Materials
Docket No. FIFRA-05-2013-0001

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.

December 13, 2012

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



DEC 07 2012

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 Mr. Joseph Phillip Pittman, d/b/a Phil's Building Materials, was filed on December 7, 2012 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.7009 1680 0000 7668 0646 a copy of the original to the Respondent:

Mr. Joseph Phillip Pittman
d/b/a Phil's Building Materials
540 West South Street
Dix, Illinois 62830

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Kasey Barton, 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

Docket No.FIFRA-05-2013-0001

RECEIVED
DEC 07 2012

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**