



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

OCT 21 2016

REPLY TO THE ATTENTION OF

LC-8J

VIA EMAIL

Mr. Stephen Schein
HomeGuard Distributors, Inc.
c/o SEKO Worldwide Logistics
400 Harding Industrial Drive
Nashville, Tennessee 37211

Stephen.Schein@sekologistics.com

Re: Consent Agreement and Final Order In the Matter of HomeGuard Distributors,
Incorporated Docket Number FIFRA-05-2017-0001

Mr. Schein:

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 10/21/2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,251.00 is to be paid in the manner described in paragraphs 41-42. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Wesley".

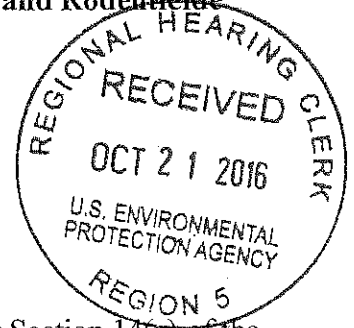
Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
HomeGuard Distributors, Incorporated)
Largo, Florida)
)
Respondent.)
_____)

Docket No. FIFRA-05-2017-0001
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)



Consent Agreement and Final Order
Commencing and Concluding a Proceeding

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 HomeGuard Distributors, Incorporated (HomeGuard), doing business in Largo, Florida.
4. 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.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (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 rights 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 rights to appeal this CAFO.

8. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

9. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

10. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States. These regulations are found at 40 C.F.R. Parts 152 and 156.

11. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (EPA Form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

12. 40 C.F.R. § 156.10(a) states, every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in this part.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(a)(A), defines a pesticide as

“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.

14. 40 C.F.R. § 156.10(a)(5) provides, that examples of statements or representations in the labeling which constitute misbranding includes... (v) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government.

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

16. 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.

17. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

18. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device.

19. 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).

20. 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.

21. 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.

22. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provisions of FIFRA of up to \$18,750 for each offense occurring after November 2, 2015 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), 40 C.F.R. Part 19, and the Civil Monetary Penalty Inflation Adjustment Rules, 81 Fed. Reg. 43091 (July 1, 2016)(to be codified at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violation

23. Respondent is, and was at all times relevant to this Complaint, a corporation, and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. On or about August 31, 2016, SEKO Worldwide Logistics (SEKO), located at 400 Harding Industrial Drive, Nashville, Tennessee 37211, was a broker/agent for Respondent.

25. On or about August 31, 2016, Respondent submitted a Notice of Arrival of Pesticides or Devices (NOA or EPA Form 3540-1) to EPA, Region 5 through the port of Chicago, Illinois, for the import shipment of 40 25-kilogram drums of the pesticide “Diflubenzuron Technical,” EPA Registration Number (EPA Reg. No.) 75313-1, which arrived from China by air transport under entry number M34-8127617-8.

26. The Notice of Arrival identified HomeGuard as the importer of record for the shipment of "Diflubenzuron Technical," EPA Reg. No. 75313-1.

27. On or about August 31, 2016, Respondent "distributed or sold" the pesticide product "Diflubenzuron Technical," EPA Reg. No. 75313-1, as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

28. Respondent was a distributor of the pesticide product "Diflubenzuron Technical," EPA Reg. No. 75313-1.

29. Respondent, as importer of "Diflubenzuron Technical," EPA Reg. No. 75313-1 and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

30. "Diflubenzuron Technical," EPA Reg. No. 75313-1 is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. On or about September 3, 2015, the EPA, Office of Chemical Safety and Pollution Prevention (OSCPP), accepted the amended label for "Diflubenzuron Technical," EPA Reg. No. 75313-1 to add changes of label verbiage to bring the master label into compliance with the current pesticide labeling regulations.

32. Labels affixed to the 40 25-kilogram drums of "Diflubenzuron Technical," EPA Reg. No. 75313-1, that were distributed or sold on or about August 31, 2016, contained, among other things, a stamp that read:

"ACCEPTED

09/03/2015

Under the Federal Insecticide, Fungicide and Rodenticide Act as amended, for the pesticide registered under EPA Reg. No. 75313-1."

33. 40 C.F.R. § 156.10(a) requires container labeling statements to be placed on the label or container as applicable.

34. 40 C.F.R. § 156.10(a)(5) provides, in pertinent part, that a pesticide is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims.

35. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(a)(A), defines a pesticide as “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.

36. Labels affixed to the 40 25-kilogram drums of “Diflubenzuron Technical,” EPA Reg. No. 75313-1, that entered into the United States on or about August 31, 2016 were false or misleading in accordance with 40 C.F.R. § 156.10(a)(5)(v), as they contained a statement directly or indirectly implying that the pesticide is recommended or endorsed by any agency of the Federal Government.

Specific Allegations

Count 1

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

38. On or about August 31, 2016, Respondent distributed or sold the misbranded pesticide “Diflubenzuron Technical,” EPA Reg. No. 75313-1, under entry number M34-8127617-8 with a label bearing a statement, design, or graphic representation relative thereto or to its or to its ingredients which was false or misleading, which constitutes an unlawful act in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

39. 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 \$8,251. 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 December 2009.

40. Within 30 days of the effective date of this CAFO, Respondent must pay an \$8,251 civil penalty for the FIFRA violation. Respondent must pay the 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

41. The check must note "In the Matter of HomeGuard Distributors, Incorporated" and the docket number of this CAFO.

42. A transmittal letter stating Respondent's name, complete address, the case title and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter and proof of payment to:

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

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

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

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

44. 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.

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.

46. Respondent will relabel all violative pesticide product identified, above, as required by FIFRA before the product can be further distributed or sold.

General Provisions

47. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-

mail at the following valid e-mail addresses: olson.erik@epa.gov (for Complainant), and Stephen.Schein@sekologistics.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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 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 responsibilities to comply with FIFRA and other applicable federal, state, and local laws.

51. This CAFO is a "final order" for purposes of 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.

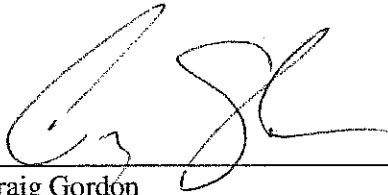
54. Each party agrees to bear its own costs and attorney fees in this action.

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

**In the Matter of:
HomeGuard Distributors, Incorporated**

HomeGuard Distributors, Incorporated

10-13-2016
Date

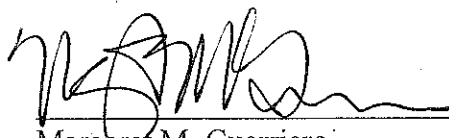


Craig Gordon
Vice President
HomeGuard Distributors, Incorporated

**In the Matter of:
HomeGuard Distributors, Incorporated**

United States Environmental Protection Agency, Complainant

10/18/2016
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
HomeGuard Distributors, Incorporated
Docket No. FIFRA-05-2017-0001

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.

October 21, 2016
Date

Ann E. Coyle
Ann Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: HomeGuard Distributors, Incorporated
Docket Number: FIFRA-05-2017-0001

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on October 21, 2016, in the following manner to the addressees:

Copy by Email to
Respondent:

Stephen Schein
Stephen.Schein@sekologistics.com


Copy by E-mail to
Attorney for Complainant:

Erik Olson
olson.erik@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
covle.ann@epa.gov

Dated: October 21, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5