

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

08 SEP 30 AM 10:19

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
 )  
Missouri Vocational Enterprises )  
 )  
 )  
 )  
Respondent )  
\_\_\_\_\_ )

Docket No. FIFRA-07-2008-0029

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 10 of the Consent Agreement and Final Order is authorized in this proceeding. Counsel for Complainant shall file the original page 10, which shall replace the facsimile of page 10, within one day of receipt of the document from Respondent.

Dated:

*September 27, 2008*

*Robert L. Patrick*

Robert L. Patrick  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 N. FIFTH STREET  
KANSAS CITY, KANSAS 66101

08 SEP 30 AM 10:13  
ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
)  
Missouri Vocational Enterprises )  
State of Missouri )  
Missouri Department of Corrections )  
2727 Highway K )  
Bonne Terre, Missouri 63628 )  
)  
Respondent )

Docket No. FIFRA-07-2008-0029

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region VII and Missouri Vocational Enterprises (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 Missouri Vocational Enterprises, a pesticide distributor located at 2727 Hwy K in Bonner Terre, Missouri. 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). Missouri Vocational Enterprises is a part of the Missouri Department of

Corrections and was created by Missouri State statute.

### **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 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.

6. Title 40 C.F.R. § 152.132 permits a registrant to supplementally distribute its product under another company's name, provided certain conditions are met, among them, that the label of the distributor product is the same as that of the registered product except for the product name, name and address of the registrant/distributor, and the product registration number includes the distributor's company number. The regulation further allows that certain claims on the basic registered product may be deleted so long as no other changes are necessary.

7. Title 40 C.F.R. § 152.132 states that the distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

8. Title 40 C.F.R. § 152.130(c) states that a product label that has been amended on the initiation of the primary registrant may be distributed or sold with the previously approved labeling for a period of 18 months after the Agency approves the revisions.

9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states 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)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(B), states a pesticide is misbranded if any word, statement, or other information required to appear on the label is not prominently placed thereon with conspicuousness so as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states 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 3(d) of this Act, are adequate to protect health and environment.

12. 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 way.

### **Factual Allegations**

13. Respondent, at all times relevant, operated as a pesticide distributor in Bonne Terre, Missouri.

14. Respondent produces and sells or distributes the following pesticides: F-436 M.V.E. 20% Powdered Fabric Softener/Sanitizer, EPA Reg. No. 1839-110-37697; F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer, EPA Reg. No. 1839-152-37697; F-202A Pine Scent Disinfectant/Detergent, EPA Reg. No. 1839-112-37697; and F-434A M.V.E. Household Fabric Softener/Sanitizer, EPA Reg. No. 1839-107-37697.

15. On or about May 18, 2005, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Missouri Vocational Enterprises, 2727 Hwy. K, Bonne Terre, Missouri, to determine the facility's compliance with FIFRA. The MDA representative collected documentary samples in the form of copies of Missouri Vocational Enterprises' invoices for sales and distribution, and physical samples and copies of labels for F-434A M.V.E. Household Fabric Softener/Sanitizer, EPA Reg. No. 1839-107-37697; F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer, EPA Reg. No. 1839-152-37697; F-436 M.V.E. 20% Powdered Fabric Softener/Sanitizer, EPA Reg. No. 1839-110-37697, and F-202A Pine Scent Disinfectant Detergent, EPA Reg. No. 1839-112-37697.

16. The MDA representative documented during the inspection that 8 1-gallon containers of F-434A M.V.E. Household Fabric Softener and Sanitizer (EPA Reg. No. 1839-107-37697), 16 1-gallon containers of F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer (EPA Reg. No. 1839-152-37697), 1 25-pound pail of F-436 M.V.E. 20% Powdered Fabric Softener/Sanitizer (EPA Reg. No. 1839-110-37697), and 8 1-gallon containers of F-202A Pine Scent Disinfectant Detergent (EPA Reg. No. 1839-112-37697) were packaged, labeled, and released for shipment at the Missouri Vocational Enterprises Bonne Terre facility at the time of inspection.

### **VIOLATIONS**

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

#### **Count 1**

18. Complainant hereby incorporates the allegations contained in paragraphs 1 through 16 above, as if fully set forth herein.

19. At the time of the inspection referenced in paragraphs 15 and 16 above, Respondent was holding in inventory one twenty-five pound container of the pesticide F-436 M.V.E. 20%

Powdered Fabric Softener/Sanitizer, EPA Reg. No. 1839-110-37697, which Respondent stated was packaged, labeled, and released for shipment.

20. During the inspection referenced in paragraphs 15 and 16, the representative of MDA collected a physical sample of the pesticide F-436 M.V.E. 20% Powdered Fabric Softener/Sanitizer, sample no. 051805F447101-03, which was packaged, labeled, and released for shipment. The inspector also collected photographs of the F-436 M.V.E. 20% Powdered Fabric Softener/Sanitizer label attached to the container from which the sample was taken, a copy of the label, and photographs of labels affixed to the cardboard cases that were packaged, labeled, and released for shipment.

21. The pesticide, F-436 M.V.E. 20% Powdered Fabric Softener/Sanitizer, also failed to bear the current First Aid Statement and language which appears on the EPA-accepted label for EPA Reg. No. 1839-110, dated July 29, 2003, which states, in pertinent part: "First Aid – Have the product container or label with you when calling a poison control center or doctor, or going for treatment. . . ."

"If in eyes: . . . Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice."

"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."

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

### Count 2

23. Complainant hereby incorporates the allegations contained in paragraphs 1 through 22 above, as if fully set forth herein.

24. At the time of the inspection referenced in paragraphs 15 and 16 above, Respondent was holding in inventory 16 1-gallon containers of F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer (EPA Reg. No. 1839-152-37697), which Respondent stated was packaged, labeled, and released for shipment.

25. During the inspection referenced in paragraphs 15 and 16, the representative of MDA collected a physical sample of the pesticide F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer, sample no. 051805F447101-04, which was packaged, labeled, and released for shipment. The inspector also collected photographs of the F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer label attached to the container from which the sample was taken, a copy of the label, and photographs of labels affixed to the cardboard cases that were packaged, labeled, and released for shipment.

26. The pesticide, F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer, failed to bear the current First Aid Statement and language which appears on the EPA-accepted label for EPA Reg. No. 1839-152, dated August 7, 2003, which states, in pertinent part: "First Aid – Have the product container or label with when calling a poison control center or doctor, or going for treatment. . . ." "If in eyes: . . . Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice." "If on skin or clothing: . . . Call a poison control center or doctor for treatment advice." "If swallowed: . . . Do not induce vomiting unless told to do so by a 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, than give artificial respiration, preferably mouth-to-mouth, if possible. Call a poison control center or doctor for further treatment advice."

27. The pesticide, F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer, failed to bear the current Precautionary Statements which appears on the EPA-accepted label for EPA Reg. No. 1839-152, dated August 7, 2003, which states, in pertinent part: . . . "May be fatal if absorbed through skin. . . . Harmful if inhaled. Avoid breathing spray mist."

28. The pesticide, F-205A M.V.E. 7.5% Solution Disinfectant/Sanitizer, failed to bear the current Fungicidal Activity statement which appears on the EPA-accepted label for EPA Reg. No. 1839-152, dated August 7, 2003, which states, in pertinent part: . . . " (Athlete's Foot Fungus), when used as directed on hard surfaces found in bathrooms, shower stalls, locker rooms, exercise facilities, or other clean, non-porous, hard surfaces commonly contacted by bare feet."

29. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distribution or sale of a misbranded pesticide.

### 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 into 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 Seven Thousand Two Hundred Eighty dollars (\$7,280) 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 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.

13. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice 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 Seven Thousand Two Hundred Eighty Dollars (\$7,280). The payment of the civil penalty shall be made within thirty days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check which shall reference Docket Number FIFRA-07-2008-0029 and In the Matter of Missouri Vocational Enterprises. Cashier or certified check shall 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, Attorney  
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.

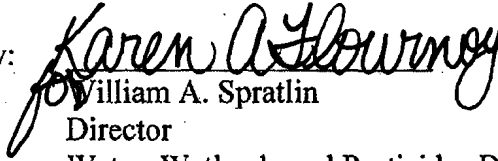
6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9-29-2008

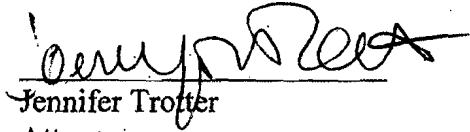
By:

  
William A. Spratlin

Director  
Water, Wetlands and Pesticides Division

Date: 9.29.2008

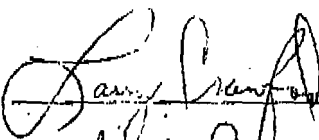
By:

  
Jennifer Trotter

Attorney  
Assistant Regional Counsel

Missouri Vocational Enterprises  
State of Missouri  
Missouri Department of Corrections

Date: September 26, 2008

By:   
Printed Name: Larry Crawford  
Title: Director MDOE

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

Date:

September 30, 2008 

ROBERT L. PATRICK

Regional Judicial Officer

U.S. Environmental Protection Agency

Region VII

IN THE MATTER OF Missouri Vocational Enterprises, Respondent  
Docket No. FIFRA-07-2008-0029

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order were sent this day in the following manner to the addressees:

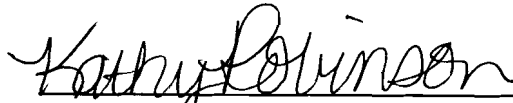
Copy hand delivered to  
Attorney for Complainant:

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

Original by Certified Mail Return Receipt to:

Gerald Meyr, Legal Counsel  
Missouri Department of Corrections  
Office of General Counsel  
2729 Plaza Drive  
PO Box 236  
Jefferson City, Missouri 65102

Dated: 9/30/08



Kathy Robinson  
Hearing Clerk, Region 7