UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF	)	
	)	Docket No. FIFRA-07-2008-0008
Kansas Correctional Industries	)	
4th and Kansas	)	CONSENT AGREEMENT
P.O. Box 2	)	AND
Lansing, Kansas 66043	)	FINAL ORDER
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 ("EPA" or "Complainant"), and Kansas Correctional Industries (Respondent) have agreed to a settlement of this action before filing 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).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

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. § 136*l*.

2. This Consent Agreement and Final Order (CAFO) 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 7, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region 7.

4. The Respondent is Kansas Correctional Industries, a pesticide producer, located at 4th and Kansas, Lansing, Kansas. The Respondent is and was at all times referred to in this CAFO, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. 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.

7. Section 12(a)(1)(C) of FIFRA § 136(a)(1)(C), states it shall be unlawful for any person to distribute or sell any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

8. 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 pesticide except for the product name, name and address of the registrant/distributor, and the product registration number includes the distributor's number. The regulation further allows that certain claims on the basic registered product may be deleted so long as no other changes are necessary.

9. 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.

10. 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.

11. 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 particular way.

12. Respondent produces and sells or distributes the following pesticides: Sunflo Max-128 Germicidal Detergent, EPA Registration No. 106-72-56148, and Sunflo Max-256 Germicidal Detergent, EPA Registration No. 106-73-56148.

13. On or about November 21, 2006, representatives of the Kansas Department of Agriculture (KDA) conducted an inspection at Kansas Correctional Industries in Lansing, Kansas, to determine the facility's compliance with FIFRA. The KDA representatives collected

documentary samples in the form of copies of Kansas Correction Industries' invoices for sales and distribution, identified as invoices 70308 and 70993, and physical samples and photographs of labels for Sunflo Max-128 Germicidal Detergent, EPA Reg. No. 106-72-56148, and Sunflo Max-256 Germicidal Detergent, EPA Reg. No. 106-73-56148. Physical samples of Sunflo Max-128 and Sunflo Max-256 produced by Kansas Correctional Industries were collected for analyses on November 21, 2006, at the Lansing, Kansas, facility. The results of the analyses revealed the active ingredients were within established guidelines.

Count 1

14. Complainant hereby incorporates the allegations contained in paragraphs 6 through 13, above, as if fully set forth herein.

15. On November 21, 2006, during the inspection referenced in paragraph 13, representatives of KDA collected physical samples of the labels and copies of invoices from the facility. Invoice number 70993, dated October 3, 2006, documented the sale of one case of Sunflo Max-128 containing four one-gallon containers to Ellsworth, Kansas.

16. At the time of the inspection, Kansas Correctional Industries distributed or sold Sunflo Max-128, EPA Reg. No. 106-72-56148, with a label that was misbranded in that it stated, in pertinent part:

SUNFLO MAX-128
GERMICIDAL DETERGENT
***
STAPHLOCIDAL PSEUDOMONACIDAL
VIRUCIDAL FUNGICIDAL

ACTIVE INGREDIENTS:
Alkyl (C_{14},50%,C_{12},40%,C_{16},10%) dimethyl benzyl ammonium chloride.....2.80%
Octyl decyl dimethyl ammonium chloride.....2.10%
Didecyl dimethyl ammonium chloride.....1.62%
Dioctyl dimethyl ammonium chloride.....0.84%
INERT INGREDIENTS.....92.64%
TOTAL.....100.00%

EPA REG. NO. 106-72-56148
EPA EST. NO. 56148-KS-1
***
KANSAS CORRECTIONAL INDUSTRIES
P.O. BOX 2
LANSING, KS 66043
***

17. At the time of distribution or sale, Brulin and Company, Indianapolis, Indiana, was the registrant of EPA Registration No. 106-72. Brulin and Company listed the active ingredients as: 2.80% Alkyl (C_{14},50%;C_{12},40%;C_{10},10%) dimethyl ammonium chloride; 2.10% Octyl decyl dimethyl ammonium chloride; 1.42% Didecyl dimethyl ammonium chloride; 1.05% Dioctyl dimethyl ammonium chloride; and 92.63% inert ingredients at the time it updated its label for EPA Registration No. 106-72, which was accepted by EPA on October 18, 1999.

18. At the time Kansas Correctional Industries distributed or sold the Sunflo Max-128, EPA Reg. No. 106-72-56148, which was documented on the invoice referenced in paragraph 15, it was misbranded in that the label bore a statement of active ingredients other than that listed on Brulin and Company's EPA Registration No. 106-72, accepted by EPA on October 18, 1999.

19. 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

20. Complainant hereby incorporates the allegations contained in paragraphs 6 through 13, above, as if fully set forth herein.

21. On November 21, 2006, during the inspection referenced in paragraph 13, representatives of KDA collected physical samples of the labels and copies of invoices from the facility. Invoice number 70308, dated July 31, 2006, documented the sale of seven cases of Sunflo Max-256 containing four one-gallon containers each to Glen Elder State Park, Glen Elder, Kansas.

22. At the time of the inspection, Kansas Correctional Industries distributed or sold Sunflo Max-256, EPA Reg. No. 106-73-56148, with a label that was misbranded in that it stated, in pertinent part:

SUNFLO MAX-256
GERMICIDAL DETERGENT
***
STAPHLOCIDAL PSEUDOMONACIDAL
VIRUCIDAL FUNGICIDAL

ACTIVE INGREDIENTS:
Alkyl (C_{14},50%,C_{12},40%,C_{16},10%) dimethyl benzyl ammonium chloride.....5.60%
Octyl decyl dimethyl ammonium chloride.....4.20%
Didecyl dimethyl ammonium chloride.....3.26%
Dioctyl dimethyl ammonium chloride.....1.68%
INERT INGREDIENTS.....85.26%
TOTAL.....100.00%

EPA REG. NO. 106-73-56148
EPA EST. NO. 56148-KS-1
***
KANSAS CORRECTIONAL INDUSTRIES
P.O. BOX 2
LANSING, KS 66043
***

23. At the time of distribution or sale, Brulin and Company, Indianapolis, Indiana, was the registrant of EPA Registration No. 106-73. Brulin and Company listed the active ingredients as: 5.60% Alkyl (C_{14},50%;C_{12},40%;C_{10},10%) dimethyl ammonium chloride; 4.20% Octyl decyl dimethyl ammonium chloride; 2.83% Didecyl dimethyl ammonium chloride; 2.10% Dioctyl dimethyl ammonium chloride; and 85.26% inert ingredients at the time it updated its label for EPA Registration No. 106-73, which was accepted by EPA on August 3, 2000.

24. At the time Kansas Correctional Industries distributed or sold the Sunflo Max-256, EPA Reg. No. 106-73-56148, which was documented on the invoice referenced in paragraph 21, it was misbranded in that the label bore a statement of active ingredients other than that listed on Brulin and Company's EPA Registration No. 106-73, accepted by EPA on August 3, 2000.

25. 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 the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of

allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance, and will comply with the terms of the 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 certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.,* and all regulations promulgated thereunder.

6. 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.

7. 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.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

11. The effect of the settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5, above.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136*l*, 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 in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty for the violations cited herein, in the amount of $8,320 within thirty (30) days of the effective date this Final Order. Such payment shall identify the Respondent by name and document number, and shall be by cashier's or certified check made payable to "Treasurer, United States of America" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. A copy of the check shall simultaneously be sent to the following:

Robert W. Richards
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. 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.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

5. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By _____
Robert W. Richards
Assistant Regional Counsel

Date 1/23/07

By _____
for William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date 01/28/07

RESPONDENT:
Kansas Correctional Industries
Lansing, Kansas

By Rodney Crawford

Title Director

Date 1/22/08

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

By: Robert L. Patrick

Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date January 29, 2008

IN THE MATTER OF Kansas Correctional Industries, Respondent
Docket No. FIFRA-07-2008-0008

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Kansas Correctional Industries
Ms. Shelly Starr, Legal Counsel
Kansas Department of Corrections
Landon State Office Building
900 SW Jackson Street, 4th Floor
Topeka, Kansas 66612

Dated: 1/30/08

Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7