

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Farley Fertilizer, Inc.) Docket No. FIFRA-07-2009-0009
920 Simon Road)
Farley, Iowa 52046) CONSENT AGREEMENT
) AND
Respondent) FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 ("EPA" or "Complainant"), and Farley Fertilizer, Inc. ("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).

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. § 136j.

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 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 Farley Fertilizer, Inc., a pesticide dealer and distributor, located at 920 Simon Drive, Farley, Iowa 52046.

Statutory and Regulatory Background

5. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states, in pertinent part, that it shall be unlawful for any person to distribute or sell, or make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

6. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. §§ 136a(d)(1)(C)(i) and (ii), state, in pertinent part that a restricted use pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

7. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), defines “certified applicator” as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, to use or supervise the use of any pesticide which is classified for restricted use.

8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, define 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.

9. In accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), EPA may assess a civil penalty to any dealer who violates any provision of FIFRA.

Factual Allegations

10. 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), and a corporation qualified to do business in the state of Iowa.

11. Aztec 2.1% Granular Insecticide® (hereinafter “Aztec 2.1% Granular” or “Aztec”), is a restricted use pesticide that at the time of sale was registered to Bayer CropScience of Research Triangle Park, NC, under EPA Registration No. 264-813. The label of Aztec states in pertinent part, “Restricted Use Pesticide . . . For retail sale to and use only by certified applicators or persons under their direct supervision, and only for those uses covered by the certified applicator’s certification.”

12. On or about January 24, 2008, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted a routine records inspection at Respondent’s facility in Farley, Iowa. The purpose of the inspection was to determine Respondent’s compliance with FIFRA, including review of restricted use pesticide (RUP) sales and application records.

Count 1

13. The Complainant hereby incorporates the allegations contained in paragraph 1 through 12 above, as if fully set forth herein, and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

14. On or about January 24, 2008, during the inspection referenced in paragraph 12 above, a representative of IDALS collected a copy of sales record from Respondent. The sales record documents Respondent's distribution and sale of 50 pounds of the RUP Aztec 2.1% Granular to Mr. Martin Vaske on May 2, 2007.

15. Respondent distributed or sold, and thereby made available for use to Mr. Martin Vaske, the RUP Aztec 2.1% Granular.

16. On or about March 14, 2008, a representative from IDALS collected a statement from Mr. Martin Vaske, in which he admitted to using the RUP Aztec 2.1% Granular.

17. At the time of the sale referred to in paragraph 14, and the application referred to in paragraph 16, Mr. Martin Vaske was not certified as an applicator as that term is defined in paragraph 7, nor was he working under the direct supervision of a certified applicator at the time of application.

18. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide for a use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

19. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 10 through 18, Respondent is assessed a civil penalty as specified in paragraph 1 of the Final Order for its failure to comply with Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F).

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This CAFO is being entered into by the parties in settlement of 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 CAFO 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 CAFO.

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 CAFO 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 EPA. Nothing contained in the Final Order portion of this CAFO 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 (DOJ) for collection. If payment is not received on or before the due dates, 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 CAFO.

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

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 shall pay a mitigated civil penalty of Four Thousand One Hundred and Sixty Dollars (\$4,160), plus interest of Thirty Six dollars and Forty Six Cents (\$36.46) over a period of six (6) months for a total payment of Four Thousand One Hundred and Ninety Six Dollars and Forty Six Cents (\$4,196.46). The total civil penalty of Four Thousand One Hundred and Ninety Six Dollars and Forty Six Cents (\$4,196.46) shall be paid in six (6) monthly payments of Six Hundred Ninety Nine Dollars and Forty One Cents (\$699.41) each. The first payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order (the date by which payment must be received shall hereafter referred to as the "due date"). Each succeeding payment will be due thirty (30) days after the previous payment.

2. Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury.

3. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

Regional Hearing Clerk
U.S. EPA - Region 7
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

4. The payment shall reference Docket Number, FIFRA 07-2009-0009 and **In the Matter of Farley Fertilizer, Inc.** Copies of the check shall be forwarded to:

Demetra O. Salisbury
Office of Regional Counsel
U.S. EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
U.S. EPA – Region 7
901 North 5th Street
Kansas City, Kansas 66101.

5. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

6. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

7. This executed CAFO shall be filed with the Regional Hearing Clerk, EPA, Region 7, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

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

Date: 4/22/07

By: Demetra O. Salisbury
Demetra O. Salisbury
Attorney
Office of Regional Counsel

Date: April 24, 2009

RESPONDENT:

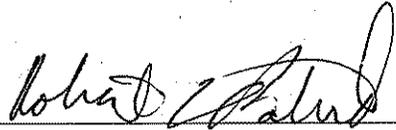
Farley Fertilizer, Inc.

By: 

Title: Manager

Date: 4-14-09

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



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

April 28, 2009
Date

IN THE MATTER OF Farley Fertilizer, Inc., Respondent
Docket No. FIFRA-07-2009-0009

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:

Demetra O. Salisbury
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:

Rustin J. Kimmell
Lathrop & Gage
2345 Grand Boulevard
Suite 2800
Kansas City, MO 64108-2001

Dated: 4/28/09


Kathy Robinson
Hearing Clerk, Region 7