

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

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Farmers Mill, Inc.)
3324 100th Street)
Protivin, Iowa 52163)
)
Respondent)

Docket No. FIFRA-07-2009-0005

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Farmers Mill, 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).

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 (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 VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.
4. The Respondent is Farmers Mill, Inc. (Farmers Mill), a pesticide dealer located at 3324 100th Street in Protivin, Iowa. 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), and a corporation qualified to do business in the state of Iowa.

Statutory and Regulatory Background

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

6. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states 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. 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.

8. 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, as authorized to use or supervise the use of any pesticide which is classified for restricted use.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136gg, 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.

Factual Allegations

10. Atrazine 90 is a restricted use pesticide that at the time of sale was registered to Loveland Products, Inc., P.O. Box 1286, Greeley, Colorado, under EPA Registration Number 34704-622 (EPA Reg. No. 34704-622).

11. The label of Atrazine 90, EPA Reg. No. 34704-622, states, in pertinent part, ‘RESTRICTED USE PESTICIDE. Ground and surface water concerns. 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 November 26, 2007, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted a routine pesticide dealer inspection at the Respondent’s facility in Protivin, Iowa, for the purpose of determining Respondent’s compliance with the FIFRA, including review of restricted use pesticide (RUP) sales and application records.

VIOLATIONS

13. The Complainant hereby states and alleges that Respondent has violated FIFRA and

federal regulations promulgated thereunder, as follows:

Count 1

14. The facts stated in paragraphs 5 through 12 are realleged and incorporated as if fully stated herein.

15. On November 26, 2007, during the inspection referenced in paragraph 12, a representative of IDALS collected a computer printout copy of an invoice for Art Bina Farms dated June 7, 2007, from Respondent. The invoice documents Respondent's distribution and sale of 150 pounds of the restricted use pesticide Atrazine 90, EPA Reg. No. 34704-622, to Mr. Art Bina on June 7, 2007.

16. The label of Atrazine 90, EPA Reg. No. 34704-622, states, in pertinent part, 'RESTRICTED USE PESTICIDE. Ground and surface water concerns. 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.'

17. At the time of the sale referred to in paragraph 15, and subsequent use by Mr. Art Bina, he was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

18. On January 11, 2008, the IDALS representative obtained from Mr. Art Bina a statement in which Mr. Bina acknowledged purchasing and applying the restricted use pesticide, Atrazine 90, without supervision by a certified applicator.

19. 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 classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.
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 and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This CAFO 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 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.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
9. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.* and all regulations promulgated thereunder.
10. The effect of settlement described in paragraph 13 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above.
11. 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.
12. 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.
13. Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP)

and other relevant factors, EPA has determined that an appropriate total mitigated civil penalty to settle this action is in the amount of One-Thousand Three Hundred dollars (\$1,300) as set forth in Paragraph 1 of the Final Order.

14. Respondent consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and the performance of the SEP as described in Paragraph 15 of the Consent Agreement.

15. **SEP:** As part of the settlement of this matter, Respondent agrees to supply seed to the Turkey River Pheasants Forever Chapter and assist the Chapter in distributing and managing wildlife food plots. During distribution of the seed, Farmers Mill will assist land owners with fertilizer and herbicide decisions on these plots. The food plots will benefit the environment by helping to control soil erosion caused by wind and precipitation. The food plots will also assist in feeding a wide variety of wildlife and providing habitat for many species. Respondent agrees to supply the seed and assist in the distribution of the seed as follows:

- a) Within sixty (60) days from the effective date of this CAFO, Respondent shall provide Complainant with an Interim SEP Report containing the following information:
 - i. How much seed will be provided to the Turkey River Pheasants Forever Chapter;
 - ii. The wholesale cost of the seed that will be provided to the Turkey River Pheasants Forever Chapter;
 - iii. The contact information for the Turkey River Pheasants Forever Chapter that will receive the seed; and
 - iv. A description of the areas where the seed will be distributed.
- b) Within six months from the effective date of this CAFO, Respondent shall provide seed to Turkey River Pheasants Forever Chapter. Respondent will assist in the distribution and management of the wildlife food plots by assisting land owners receiving seed with their fertilizer and herbicide decisions. The seed provided by the Respondent shall have a wholesale cost of no less than Three Thousand Nine-Hundred Dollars (\$3,900).
- c) Within seven months of the effective date of this CAFO, Respondent shall submit a SEP Completion Report to Complainant. The SEP Completion Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
 - ii. A signed statement by the Turkey River Pheasants Forever Chapter certifying (1) how much seed was supplied by Respondent and (2) that all of the seed provided was distributed for wildlife plots in the manner described above in Paragraph 15 b; and
 - iii. A description of the specific environmental and/or public health benefits resulting from implementation of the SEP.
 - iv. Certification by Respondent that the SEP has been fully implemented pursuant to the provisions of the CAFO.
- d) In itemizing its costs in the Interim SEP Report and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute the individual costs of the good and/or services for which payment is being made.
- e) The Interim SEP Report and SEP Completion Report shall include the following statement. The Respondent, through an officer, must sign and certify the following statement under penalty of law:
- I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there may be significant penalties for submitting false information, including the possibility of fines and imprisonment, in violation with an applicable law.
- f) The Interim SEP Report and SEP Completion Report shall be submitted on or before the due date to:

Akilah Nicks, WWPD
Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

- g) Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP shall include the following language:

This project was undertaken in connection with the settlement of an Enforcement action taken by the U.S. Environmental Protection Agency For alleged violations for FIFRA §§12(a)(2)(F).

- h) Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the activities undertaken as the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by an other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.
- i) Respondent agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for the purpose of Federal, state, or local taxes.

16. Stipulated Penalties: Respondent agrees to the payment of stipulated penalties as follows:

- a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP as set forth in Paragraph 15 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 15, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. Except as provided in subparagraph (ii) and (iii) immediately below, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraph 15, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of One Thousand Three Hundred dollars (\$1,300.00);
 - ii. If Respondent fails to timely and completely submit the Interim SEP Report or the SEP Completion Report required by Paragraph 15, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$30.00 for each day after the due date until a complete report is submitted; and

- iii. If the SEP is not completed in accordance with Paragraph 15, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
- b) The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 2 of the Final Order.

17. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13 (d) and (e).

18. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval or endorsement of the product provided by the Respondent in connection with the SEP undertaken pursuant to this Agreement.

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 One Thousand Three Hundred Dollars (\$1,300). 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-07-2009-0005 and In the Matter of Farmers Mill, Inc. 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 CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

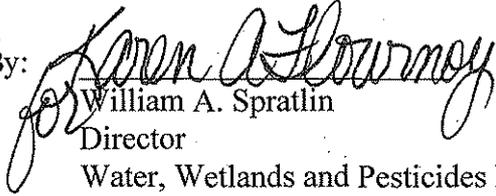
5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

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

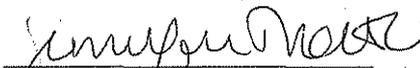
COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1-21-2009

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

Date: 1-21-2009

By: 
Jennifer Trotter
Attorney
Assistant Regional Counsel

RESPONDENT:

Farmers Mill, Inc.

Date: 1-14-2009

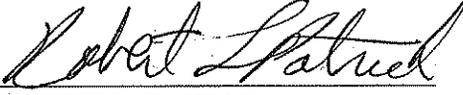
By: Joel P. Merrick

Printed Name: JOEL P. MERRICK

Title: V.P.

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

Date: January 26, 2009



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

IN THE MATTER OF Farmers Mill, Inc., Respondent
Docket No. FIFRA-07-2009-0005

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:

Jennifer Trotter
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:

Joel P. Meirick, Vice President
Farmers Mill, Inc.
3324 100th Street
Protivin, Iowa 52613

Dated: 1/26/09


Kathy Robinson
Hearing Clerk, Region 7