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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270**

**REGIONAL HEARING CLERK
EPA REGION 6**

In the Matter of	§	
	§	
McAbee Farms Feed & Garden Supply, LLC	§	Docket No. FIFRA-06-2024-0377
dba Grand Prairie Feed & Garden,	§	
	§	
Respondent.	§	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and McAbee Farms Feed & Garden Supply, LLC dba Grand Prairie Feed & Garden ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding 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 the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is McAbee Farms Feed & Garden Supply, LLC dba Grand Prairie Feed & Garden, a corporation incorporated and conducting business in the state of Texas.

Statutory and Regulatory Background

5. Congress enacted FIFRA, 7 U.S.C. 136 et. seq., in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States.

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

7. Pursuant to the regulation at 40 C.F.R. § 152.15, in relevant part, no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or

implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

8. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$23,494 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

Definitions

9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines "pest" to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

12. Pursuant to the authority in Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1), the Administrator established that "an organism is declared to be a pest under circumstances that

make it deleterious to man or the environment, if it is: . . . [a]ny fungus, bacterium, virus, prion, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs . . . and cosmetics . . .” 40 C.F.R. § 152.5(d).

13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “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.

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

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

16. Section 25(b) of FIFRA, 7 U.S.C. § 136w(b), provides that the Administrator may exempt certain pesticides from the requirements of FIFRA through issuing regulations.

17. The regulations in 40 C.F.R. § 152.25(f) exempt listed minimum risk pesticides from the requirements of FIFRA, provided that certain criteria are met, including a requirement in 40 C.F.R. § 152.25(f)(3)(i) that the active and inert ingredients of the substance are listed on the label and a requirement in 40 C.F.R. § 152.25(f)(3)(vi) that the label make no false and misleading claims such as those listed in 40 C.F.R. § 156.10(a)(5).

18. The list of examples false and misleading claims in 40 C.F.R. § 156.10(a)(5) includes item (ix), asserting that the product is “safe.”

EPA Findings of Fact and Conclusions of Law

19. Respondent is, and at all times referred to herein was, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent owns and operates a store located at: 1229 East Main Street, Grand Prairie, Texas 75050 (the “Facility”).

21. Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA conducted an inspection of the Facility on May 30, 2023, to determine Respondent’s compliance with FIFRA and the federal regulations promulgated thereunder (the “Inspection”).

22. During the Inspection, the EPA identified a product, Cedar Warrior Insect Barrier (the “Product”), that was offered for sale by the Respondent, and the EPA reviewed its label.

23. The Product name itself, “Cedar Warrior Insect Barrier,” and the Product label claim to “repel insects” including “all ants, aphids, bees, chiggers, flies, fleas, fungus gnats, grasshoppers, leaf loopers, leaf miners, leaf rollers, mosquitoes, spiders, spider mites, thrips, wasps and whiteflies” indicate that the product is intended to mitigate pests—insects—making it a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. The Product is not a pesticide registered with the EPA in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a.

25. The Product label, on the back panel, included a statement that the Product “has not been registered by the US EPA” but that the product qualifies for an exemption from FIFRA.

26. The Product label did not include a list of inert ingredients as described in 40 C.F.R. § 152.25(f)(3)(i).

27. Lacking a list of inert ingredients on the Product label, the Product does not satisfy the criteria for exemption from registration for minimum risk pesticides under 40 C.F.R. § 152.25(f).

28. On June 26, 2023, the EPA sent Respondent a Stop Sale, Use, or Removal Order for the Product identified above.

EPA Findings of Violation

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

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

Count 1

Cedar Warrior Insect Barrier

31. At the time of the Inspection, the label for the Product claimed, stated, or implied that the product could or should be used as a pesticide.

32. Because Respondent claimed, stated, or implied by labeling that the Product can or should be used as a pesticide, the Product was intended for a pesticidal purpose and required registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

33. At the time of the inspection, the Product was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

34. At the time of the inspection, the Product failed to qualify for an exemption from registration pursuant to Section 25(b) of FIFRA, 7 U.S.C. § 136w(b), as it did not meet the criteria for a minimum risk pesticide as promulgated under 40 C.F.R. § 152.25(f).

35. Respondent's distribution or sale of the Product, a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

CONSENT AGREEMENT

36. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its right to appeal the Final Order accompanying this Consent Agreement.

37. Respondent consents to the issuance of this Consent Agreement and Final Order and consent for the purposes of settlement to the payment of the civil penalty specified herein.

38. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

39. For the reasons set forth above, the Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Upon consideration of the entire records herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and EPA's "FIFRA Enforcement Response Policy" dated December 2009 (as adjusted for inflation) which requires the Complainant to consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, it is ORDERED that Respondent be assessed a civil penalty of ZERO DOLLARS (\$0.00). EPA has considered the appropriateness of the penalty pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), including economic circumstances affecting Respondent's ability to continue in business, and has determined that the appropriate penalty for the violation is zero dollars (\$0.00).

Effect of Settlement and Reservation of Rights

40. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the FIFRA or any other applicable law.

41. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondents' representations to the EPA, as memorialized in paragraph directly below.

42. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

43. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the FIFRA and regulations promulgated thereunder.

44. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

45. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

46. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

47. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

48. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

49. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

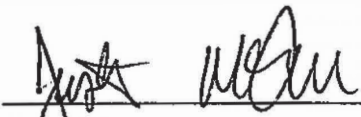
To EPA: *henley.hollis@epa.gov*

To Respondent: *jtmcabee2020@outlook.com*

RESPONDENT:

McAbee Farms Feed & Garden Supply, LLC dba Grand Prairie Feed & Garden

ate: 7-29-2024


Signature

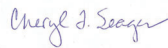
Justin McAbee
Name

Owner
Title

OMPLAINANT:

**U.S. ENVIRONMENTAL PROTECTION
AGENCY**

Date: _____



Digitally signed by
CHERYL SEAGER
Date: 2024.08.08
12:31:34 -05'00'

Cheryl T. Seager
Director
Enforcement
and Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents' (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

THOMAS
RUCKI

Digitally signed by
THOMAS RUCKI
Date: 2024.08.09
13:33:00 -04'00'

Thomas Rucki
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

henley.hollis@epa.gov

Copy via Email to Respondent:

jtmcabee2020@outlook.com

**LORENA
VAUGHN**

Digitally signed by
LORENA VAUGHN
Date: 2024.08.12
13:04:22 -05'00'

**Regional Hearing Clerk
EPA Region 6**