

RECEIVED

14 DEC 19 AM 10:47

HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2015-0036
)	
CHS INC. D/B/A)	CONSENT AGREEMENT
PRIMELAND COOPERATIVES,)	
)	
Kendrick, Idaho,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and CHS Inc. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The term “person” is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t) to mean, *inter alia*, “any weed.”

3.4. The term “producer” is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.”

3.5. The term “produce” is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

3.6. The term “establishment” is defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), to mean “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

3.7. Under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), “[n]o person shall produce any pesticide subject to [7 U.S.C. §§ 136–136y] or active ingredient used in producing a pesticide subject to [7 U.S.C. §§ 136–136y] in any state unless the establishment in which it is produced is registered with the Administrator.”

3.8. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person “who is a producer to violate any of the provisions of [Section 136e of FIFRA, 7 U.S.C. § 136e].”

3.9. Respondent is a corporation incorporated under the laws of Minnesota and is, therefore, a person under Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.10. At all times relevant to this CAFO, Respondent owned and operated a facility located at 4384 Cavendish Highway, Kendrick, Idaho (“Facility”).

3.11. Monsanto RT 3 is intended to destroy, repel, and mitigate weeds and is therefore a pesticide under Section 2(u) of FIFRA, 7 U.S.C. § 136(u). Monsanto RT 3 is registered as a pesticide with EPA and is assigned Registration Number 524-544.

3.12. After March 27, 2013, Respondent repackaged Monsanto RT 3 at the Facility. Repackaging involves processing. Therefore, Respondent produced a pesticide under Section 2(w) of FIFRA, 7 U.S.C. § 136(w), at the Facility and, thus, is a producer under Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

3.13. Therefore, the Facility is an establishment under Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

3.14. Respondent deactivated the establishment registration for the Facility on or around March 27, 2013. Therefore, Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

3.15. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect

on Respondent's ability to continue in business, and the gravity of the violation. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$5,120.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Smith.candace@epa.gov

Erin Williams
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Williams.erin@epa.gov

4.7. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and

accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

12/10/2014

FOR RESPONDENT:



PETER MUTSCHLER, EHS Manager
CHS Inc.

DATED:

12-12-14

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2015-0036
)	
CHS INC. D/B/A)	FINAL ORDER
PRIMELAND COOPERATIVES,)	
)	
Kendrick, Idaho,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 18th day of December, 2014.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: CHS Inc. d/b/a Primeland Cooperatives, Docket No.: FIFRA-10-2015-0036**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Peter Mutschler
EHS Manager
CHS Inc.
CHS, Inc. d/b/a Primeland Cooperatives
5500 Cenex Drive, M/S 305
Inver Grove Heights, Minnesota 55077

Alicia Wagner Brown
Environmental Compliance Specialist
CHS, Inc. d/b/a Primeland Cooperatives
5500 Cenex Drive, M/S 305
Inver Grove Heights, Minnesota 55077

DATED this 19th day of Dec, 2014.



CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10

