

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

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ENVIRONMENTAL PROTECTION
AGENCY REGION 7
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Dow AgroSciences, LLC)
9330 Zionsville Road)
Indianapolis, Indiana 46268)
)
Respondent)

Docket No. FIFRA-07-2011-0012

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Dow AgroSciences, LLC (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).

Section I

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. § 136f.
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.

Section II

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 Dow AgroSciences, LLC, a pesticide producer located at 9330 Zionsville Rd., Indianapolis, Indiana, 46268. 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 Indiana.

Section III

Statutory and Regulatory Background

5. Registrants who distribute or sell pesticide products to refillers for repackaging may do so if the pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refillers' EPA establishment number. 40 C.F.R. § 165.679(b)(5).

6. The term "to distribute or sell" means 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 U.S.C. § 136(gg).

7. Every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R Part 156. 40 C.F.R. § 156.10(a)(1).

8. The label of each pesticide product must bear hazard and precautionary statements as prescribed in the regulations. 40 C.F.R. § 156.10(a)(1)(vii).

9. 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. 7 U.S.C. § 136(q).

10. Section 12(a)(1)(E) of FIFRA states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded. 7 U.S.C. § 136j(a)(1)(E).

Section IV

General Factual Allegations

11. On April 26, 2010, the Iowa Department of Agriculture and Land Stewardship conducted an inspection at the facility of First Cooperative Association, located in Alta, Iowa.

12. Dow AgroSciences, LLC is the registrant for "DURANGO DMA Herbicide", EPA Registration No. 62719-556.

13. First Cooperative Association is a bulk repackager and has a repackaging agreement with Dow AgroSciences, LLC, to repackage DURANGO DMA Herbicide into shuttle tanks, which were held at the First Cooperative Association facility for sale or distribution.

14. The inspection showed that the required precautionary statement on the pesticide label on a shuttle tank containing DURANGO DMA Herbicide did not include the word "skin" from the EPA-accepted label statement, "Avoid contact with skin, eyes, or clothing."

15. The inspection also showed that the required First Aid Statement on the pesticide label on the shuttle tank did not include the phrase from the EPA-accepted label statement, "If on skin: Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice."

VIOLATIONS

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

Count 1

17. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15, above, as fully set forth herein.

18. Respondent had a contract with a refiller, First Cooperative Association, for the refiller to repackage Respondent's pesticide product.

19. The label on a repackaged pesticide product did not have the required precautionary statements from the EPA-accepted label for the pesticide product, and was thereby misbranded.

20. The misbranded pesticide was held at the refiller's facility for distribution or sale.

21. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and 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 and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement and Final Order 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 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.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
9. Respondent certifies by signing this Consent Agreement and Final Order that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.
10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Three Thousand One Hundred and Seventy Six Dollars (\$3,176.00) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in paragraph 10, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9, above.

12. 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.

13. 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.

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 in the Consent Agreement, shall pay by cashier's or certified check; a civil penalty for the violations cited herein, in the amount of Three Thousand One Hundred and Seventy Six Dollars (\$3,176.00) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier's or certified check which shall reference Docket Number FIFRA-07-2010-0038, and made payable to "United States Treasury" and remitted to:

U.S. 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:

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

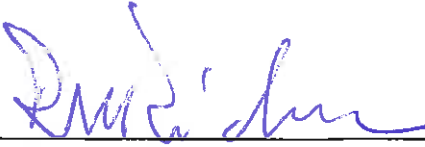
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

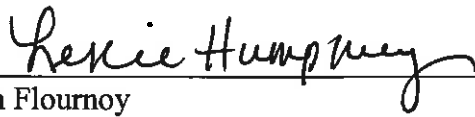
5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed 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 8/15/11

By 
for Karen Flournoy
Acting Director
Water, Wetlands and Pesticides Division

Date 8-16-2011

RESPONDENT:
Dow AgroSciences, LLC
Indianapolis, Indiana



By *W. M. G. G. G.*

Title *Vice President, Secretary, & General Counsel*

Date *8/11/2011*

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

By Karina Borromeo
~~Robert L. Patrick~~ KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date Aug. 23, 2011

IN THE MATTER OF Dow AgroSciences, LLC, Respondent
Docket No. FIFRA-07-2011-0012

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 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Eileen B. Salathé Gernhard
Regulatory and EH&S Counsel
Dow AgroSciences LLC Legal Department
9330 Zionsville Road
Indianapolis, Indiana 46268

Dated: 8/24/11



Kathy Robinson
Hearing Clerk, Region 7