

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

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BEFORE THE ADMINISTRATOR

In the Matter of)
)
Nufarm Americas, Inc.) **Docket No. FIFRA-07-2017-0001**
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Nufarm Americas, Inc. (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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

COMPLAINT

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

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. 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. Respondent is a corporation in good standing under the laws of the state of Illinois located at: 11901 S. Austin Avenue, Alsip, Illinois 60803.

Statutory and Regulatory Background

5. Congress enacted FIFRA 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. 7 U.S.C. 136 *et. seq.*
6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell to any person any pesticide which is misbranded.
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), 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.
9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, *inter alia*, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
10. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “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).
11. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), defines the circumstances and conditions under which a pesticide is misbranded under Section (a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
12. Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii) states, in pertinent part, that a pesticide is misbranded if the label accompanying it does not bear the net weight or measure of the content.
13. Every pesticide product shall bear a label containing the information specified by FIFRA and the regulations contained in 40 C.F.R. Part 156. 40 C.F.R. § 156.10(a)(1).
14. The regulation at 40 C.F.R. § 156.10(a)(1)(iii) requires that every pesticide product shall bear a label clearly and prominently displaying the net contents of the pesticide.
15. Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), authorizes the EPA Administrator to assess a civil penalty of up to \$5,000 for each violation of FIFRA. The EPA has adjusted this figure upward for inflation pursuant to the 2008 Civil Monetary Penalty

Inflation Adjustment Rule and the Federal Civil Penalties Inflation Adjustments Improvements Act of 2015, which amended 40 C.F.R. Part 19 so that penalties of up to \$7,500 per day are now authorized for violations that occur from January 12, 2009 through November 2, 2015, and penalties of up to \$18,750 are authorized for violations that occur after November 2, 2015.

General Factual Allegations

16. Respondent is, and at all times referred to herein, was a corporation doing business in the state of Missouri.

17. 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).

18. On or about March 13, 2014, a representative of the Nebraska Department of Agriculture (NDA) conducted an inspection for bulk products of a facility owned and operated by Lamar Fertilizer, Inc. located at 73994 314th Avenue, Lamar, Nebraska 69023 (“the Facility”). The inspection was conducted under the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate Lamar Fertilizer Inc.’s and Lamar Fertilizer Inc.’s affiliated registrant’s compliance with the requirements of FIFRA and the federal regulations promulgated thereunder. The NDA inspection was subsequently forwarded to EPA for review.

19. At the time of the NDA inspection, and at all times relevant to the allegations herein, the Facility maintained stationary bulk pesticide storage containers containing Respondent’s registered pesticides. At the time of the inspection, photographic documentation was collected of the labels appearing on the stationary bulk pesticide storage containers at the Facility.

20. At the time of the NDA inspection, and at all times relevant to the allegations herein, at least one such bulk pesticide storage container at the Facility bore the product label and contained and held for sale pesticides registered to Respondent, namely, Abundit Extra Herbicide, EPA Registration Number (“EPA Reg. No.”) 71368-20.

21. At all times relevant to the allegations herein, Respondent allowed Lamar Fertilizer, Inc. to repackage certain pesticide products registered to Respondent, including Abundit Extra Herbicide, EPA Reg. No. 71368-20, into refillable containers and to distribute and/or sell such repackaged products under Respondent’s registration.

22. As a result of the inspection and documentation obtained by the EPA, Complainant has determined that violations of FIFRA and the federal regulations promulgated thereunder have occurred.

Allegations of Violations

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

Count 1

24. The facts stated in paragraphs 16 through 22 are re-alleged and incorporated as if fully stated herein.

25. Photographic documentation collected during the NDA inspection referenced in paragraph 19 revealed that the label affixed to the bulk pesticide storage container holding, Abundit Extra Herbicide, EPA Reg. No. 71368-20, did not clearly and prominently display the net contents of the pesticide product.

26. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product, Abundit Extra Herbicide, EPA Reg. No. 71368-20, being held for sale or distribution, was misbranded for failing to clearly and prominently display the net contents of the pesticide product.

CONSENT AGREEMENT

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

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

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

Penalty Payment

29. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a civil penalty of Four Thousand Seven Hundred and Fifty-Seven Dollars (\$4,757.00) within thirty (30) days of the effective date of this Consent Agreement and Final Order. Such payment shall identify Respondent by name and docket number and shall be submitted by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

30. A copy of the check or other information confirming payment shall be simultaneously sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Clarissa Howley Mills, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

31. Respondent understands its failure to timely pay any portion of the civil penalty or any portion of a stipulated penalty as stated in Paragraph 29 may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

32. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

Effect of Settlement and Reservation of Rights

33. Payment of the civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of FIFRA or other applicable law.

34. The effect of settlement described in Paragraph 33 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 32 of this Consent Agreement and Final Order.

General Provisions

35. Respondent and Complainant shall each bear their own costs and attorney's fees incurred as a result of this matter.

36. 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.

37. This Consent Agreement and Final order shall apply and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for Respondent with respect to matters included herein, comply with the terms of this Consent Agreement and Final Order.

38. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

39. By signing this 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 Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

40. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT
NUFARM AMERICAS, INC.

Date: 12/20/16

By: _____



Print Name

Tom Lyons

Title

FUP. Operations

COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1-17-17

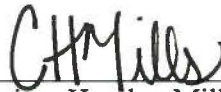


Karen Flournoy

Director

Water, Wetlands, and Pesticides Division

Date: 12/22/2016



Clarissa Howley Mills


Office of Regional Counsel

FINAL ORDER

Pursuant to the provisions of FIFRA, 7 U.S.C. § 136 *et. seq.* 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.

IT IS SO ORDERED.


Karina Borrromeo
Regional Judicial Officer


Date

IN THE MATTER Of Nufarm Americas, Inc., Respondent
Docket No. FIFRA-07-2017-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

mills.clarissa@epa.gov

Copy by email and First Class Mail to Respondent:

bill.robison@us.nufarm.com

Bill Robison
Nufarm Americas, Inc.
11901 S. Austin Avenue
Alsip, Illinois 60803

Dated: 1/18/17



Kathy Robinson
Hearing Clerk, Region 7