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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2014-0101
THE MCGREGOR COMPANY,)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER
Nezperce, Idaho)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) 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. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. 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 The McGregor Company (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO 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 CAFO 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. Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), the term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

3.3. The U.S. Environmental Protection Agency (“EPA”) promulgated the Pesticide Management and Disposal Standards for Pesticide Containers and Containment Rule in 40 C.F.R. Part 165 (the “Rule”) pursuant to Section 19(e) of FIFRA, 7 U.S.C. § 136(q)(e).

3.4. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any person to violate any regulation issued under Section 3(a) or 19 of FIFRA, 7 U.S.C. § 136a(a) or 136q.

3.5. Under 40 C.F.R. § 165.80(b)(1), owners or operators of pesticide refilling establishments who repackage agricultural pesticides and whose principal business is retail sale and who also have a stationary pesticide container or a pesticide dispensing area are subject to the secondary containment requirements of the Rule.

3.6. Under 40 C.F.R. § 165.82(a)(3), pesticide dispensing areas that are subject to the containment requirements of the Rule and must have a containment pad that complies with the requirements of the Rule include areas where agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

3.7. Respondent is a “person” under Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.8. Respondent owns or operates a business facility located at 1899 Powerline Road in Nezperce, Idaho (the “facility”).

3.9. Respondent produced pesticide products at the facility in 2013.

3.10. Respondent’s business is a refilling establishment that repackages agricultural pesticides and whose principal business is retail sale. The facility has a pesticide dispensing area at which agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container and therefore is subject to the containment requirements of the Rule.

3.11. An EPA-credentialed inspector inspected the facility on March 28, 2013.

3.12. On March 28, 2013, Respondent failed to meet the material requirements for existing containment structures because the containment structure was not designed and constructed of steel, reinforced concrete, or other rigid materials in violation of 40 C.F.R. § 165.87(a)(1).

3.13. On March 28, 2013, Respondent failed to meet the general design requirements for existing containment structures because the appurtenances in the containment structure were not sufficiently protected from operating personnel and moving equipment in violation of 40 C.F.R. § 165.87(b)(1).

3.14. On March 28, 2013, Respondent failed to meet the general design requirements for existing containment structures because the containment structure was not constructed with sufficient freeboard in violation of 40 C.F.R. § 165.87(b)(3).

3.15. On March 28, 2013, Respondent failed to meet the capacity requirements for existing containment pads in pesticide dispensing areas because the containment pad did not have a holding capacity of at least 750 gallons in violation of 40 C.F.R. § 165.87(c)(2).

3.16. On March 28, 2013, Respondent failed to meet the design requirements for containment pads in pesticide dispensing areas because the containment pad was not designed and constructed to intercept leaks and spills of pesticides in violation of 40 C.F.R. § 165.87(e)(1).

3.17. On March 28, 2013, Respondent failed to meet the design requirements for containment pads in pesticide dispensing areas because the containment pad did not have enough

surface area to accommodate at least the portion of transport vehicles dispensing pesticides where the delivery hose or device couples to the vehicle in violation of 40 C.F.R. § 165.87(e)(2).

3.18. On March 28, 2013, Respondent failed to meet the design requirements for containment pads in pesticide dispensing areas because the containment pad did not allow for the removal and recovery of spilled, leaked, or discharged material or precipitation in violation of 40 C.F.R. § 165.87(e)(3).

3.19. Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to meet the requirements of the Rule.

3.20. Under FIFRA Section 14(a)(1), 7 U.S.C. § 136l(a), 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. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

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

4.3. Respondent agrees that this settlement will be considered prior history of noncompliance under FIFRA for five years following the date of this CAFO for purposes of calculating penalty amounts in future enforcement actions.

4.4. As required by Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), 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 \$24,720.

4.5. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www.epa.gov/ocfo/finservices/payment_instructions.htm. 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.

4.7. Respondent must serve photocopies of the check described in Paragraph 4.6 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

Derrick Terada
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect any unpaid penalty

under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), together with interest, handling charges, and nonpayment penalties described below.

4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.9.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) 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.

4.9.2. 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.

4.9.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on 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.

4.10. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.9 represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.13. Except as described in Paragraph 4.9, each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.14. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.15. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

5/2/14

FOR RESPONDENT:

Alex McGregor

ALEX MCGREGOR, President
The McGregor Company

DATED:

5/12/2014

FOR COMPLAINANT:

Edward J. Kowalski

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

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO 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.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 13th day of May, 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: THE MCGREGOR COMPANY, Docket No.: FIFRA-10-2014-0101**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

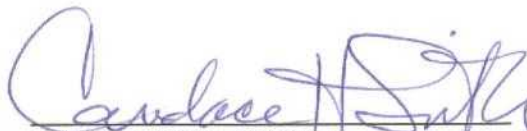
The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Rindner, Esquire
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:

Alex McGregor, President
The McGregor Company
P.O. Box 740
Colfax, Washington 99111

DATED this 14th day of May, 2014.


CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10