



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 21 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dave Olson
Director of Regulatory Affairs
United Phosphorus, Inc.
630 Freedom Business Center, Suite 402
King of Prussia, Pennsylvania 19406

Re: United Phosphorus, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2016-3013(b)

Dear Mr. Dave Olson:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U.S. Environmental Protection Agency. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Dr. Karen Hill of the EPA Region 4 staff at (404) 562-8972.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief

Chemical Safety and Enforcement Branch

Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings

Securities and Exchange Commission Regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) require disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K, or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceeding to the SEC. This notice does not create, modify, or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by government authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel of the SEC's Division of Corporation Finance. The phone number is (202) 551-3500.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

DIRECTOR GENERAL
OFFICE OF REGIONAL
ADMINISTRATION

2017 FEB 21 AM 7:15

HEARING CLERK

In the Matter of:)
))
United Phosphorus Inc.)
))
Respondent.)

Docket No.: FIFRA-04-2016-3013(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is United Phosphorus Inc.

2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Karen M. Hill
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-8972.

5. Respondent United Phosphorus Inc. is licensed to do business in the State of Pennsylvania and the company's corporate office is located at 630 Freedom Business Center, Suite 402, King of Prussia, Pennsylvania. United Phosphorus, Inc. was incorporated in the State of Delaware.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder

by the Secretary of the Treasury in consultation with the Administrator of the EPA. These regulations are found in 19 C.F.R. Part 12.

8. Pursuant to FIFRA Section 17(c) and 19 C.F.R. § 12.112, an importer of pesticides or devices into the United States is required to submit a Notice of Arrival of Pesticides and Devices (NOA) to the EPA using EPA Form 3540-1, prior to the arrival of the shipment in the United States. Pursuant to 19 C.F.R. § 12.113(b), when a shipment of pesticides or devices arrives in the United States without the presentation by the importer or its agent to the U. S. Customs and Border Protection (CBP) an NOA reviewed by the EPA, the shipment shall be detained by CBP until the completed NOA is presented or other disposition is ordered by the EPA.
9. On or about June 6, 2016, the EPA received an NOA from Respondent requesting permission for entry of a pesticide product Ethofumesate Technical into the United States through the port of Charleston, South Carolina. The Respondent's pesticide product shipment of Ethofumesate Technical arrived at the port of Charleston, South Carolina on June 9, 2016. The EPA review of the NOA submitted by the Respondent revealed that the EPA Producer Establishment Number included on the NOA was cancelled on or about February 12, 2012. Further, the EPA discovered that the identical inactive EPA Producer Establishment Number was included on four additional separate NOAs submitted by the Respondent to the EPA after February 12, 2012, for the importation of the same pesticide product listed in the NOA submitted June 6, 2016.
10. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for a registrant, wholesaler, dealer, retailer, or other distributor to fail to file any reports required by this Act. A NOA is a report that must be filed with the EPA in accordance with Section 12(a)(2)(N) of FIFRA. A NOA submitted to the EPA for review must

provide accurate information to enable the EPA and CBP to adequately review and process the information included in the NOA pertaining to the pesticides or devices that are to be imported.

11. Respondent failed to submit accurate NOAs to the EPA prior to the importation of the pesticide shipments into the United States as described in paragraph 9 above. Therefore, the EPA alleges that Respondent has violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), on five separate occasions.
12. On or about June 16, 2016, the EPA obtained photographs of the pesticide labels that were within the shipments reported on the five separate NOAs described in paragraph 9 above. The EPA review of the pesticide labels revealed that the inactive EPA Producer Establishment Number was imprinted on the pesticide labels within the shipments.
13. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded. Pursuant to Sections 2(q)(1)(A) and (D) of FIFRA, 7 U.S.C. § 136q(1)(A) & (D), a pesticide is misbranded if its labeling: (A) bears any statement which is false or misleading in any particular and (D) does not bear the registration number assigned under Section 136e of FIFRA to each establishment in which it was produced.
14. By means of importing pesticides with labels bearing incorrect, inactive establishment numbers, as described in paragraph 12 above, Respondent distributed misbranded pesticides on five separate occasions. Therefore, the EPA alleges that Respondent has violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on five separate occasions.
15. In 2013, 2014 and 2015, Respondent submitted annual pesticide production reports to the EPA that included the pesticide product listed on the five NOAs described above. These

annual production reports listed the EPA Producer Establishment number that had been cancelled in 2012. Therefore, during the years 2013, 2014 and 2015, the establishment where the pesticide products listed in Respondent's annual pesticide reports were produced was not registered with the EPA.

16. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment is registered with the EPA. Under 40 C.F.R. § 167.20(a), any establishment where a pesticide product is produced must be registered with the EPA. Further, pursuant to 40 C.F.R. § 167.20(a)(3), any foreign establishment producing a pesticide for import into the United States must be registered with the EPA.
17. 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 provision of Section 7 of FIFRA, 7 U.S.C. § 136e. By producing pesticides in an establishment that was not registered with the EPA during 2013, 2014 and 2015, Respondent violated Section 7 of FIFRA. Therefore, the EPA alleges that Respondent has violated Section 12(a)(2)(L) of FIFRA on three separate occasions.
18. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
19. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation(s).
20. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **SEVENTY-FOUR THOUSAND, FOUR HUNDRED DOLLARS (\$74,400)** against the

Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
22. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
23. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
24. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state Statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
25. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

26. Respondent is assessed a civil penalty of **SEVENTY-FOUR THOUSAND, FOUR HUNDRED DOLLARS (\$74,400)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

27. Respondent shall remit payment of the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check.

The check shall reference on its face the name of the Respondent and Docket number of this CAFO.

Payment of the penalty shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

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

Address for payment by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819.

28. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960;

Karen M. Hill
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
30. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
31. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
32. This CAFO shall be binding upon the Respondent, its successors and assigns.
33. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

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VI. Effective Date

34. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: United Phosphorus, Inc.

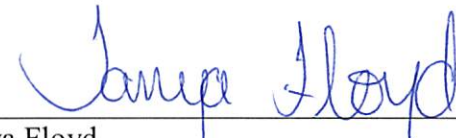
Docket No.: FIFRA-04-2016-3013(b)

By:  (Signature) Date: 12/21/2016
Name: VICENTE GONGOLA (Typed or Printed)
Title: AS HEAD UPI (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By:  Date: 1/20/17
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 17th day of February 2016.


Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of United Phosphorus, Inc. Docket Number: FIFRA-04-2016-3013(b), to the addressees listed below.

Mr. Dave Olson
Director of Regulatory Affairs
United Phosphorus, Inc.
630 Freedom Business Center, Suite 402
King of Prussia, Pennsylvania 19406

(via Certified Mail, Return Receipt Requested)

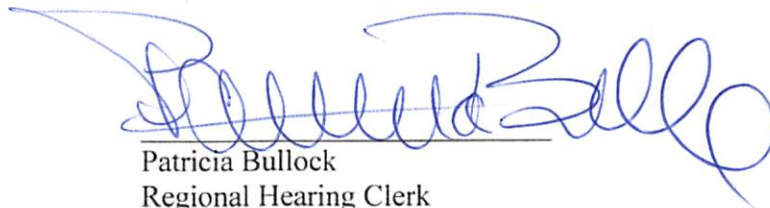
Mr. Robert Caplan
Senior Attorney
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

Karen M. Hill, Ph.D.
Air, Pesticides and Toxics
Management Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

2-21-17
DATE



Patricia Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9511