



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 23 2016

REPLY TO THE ATTENTION OF
LC-8J

VIA EMAIL

Mr. Jeffrey A. Ward
Vice-President
Ohigro, Incorporated
P.O. Box 196
Waldo, Ohio 43356

jeffreyward@ohigro.com

Re: Consent Agreement and Final Order In the Matter of Ohigro, Incorporated
Docket Number FIFRA-05-2017-0005

Mr. Ward:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on 12/23/2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 29-30. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

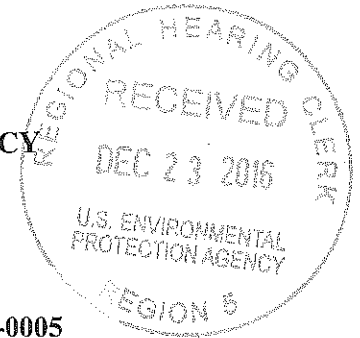
Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



IN THE MATTER OF:)
)
OHIGRO, INCORPORATED,)
WALDO, OHIO,)
)
RESPONDENT.)
_____)

Docket No.: FIFRA-05-2017-0005
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide and Rodenticide
Act, 7 U.S.C. § 136l(a)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Ohigro, Incorporated, a corporation doing business in the State of Ohio.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this

CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. According to 7 U.S.C. § 136(u), a “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Federal regulations, at 40 C.F.R. § 152.15(a)(1), provide that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

11. According to 7 U.S.C. § 136(dd), an “establishment” is any place where a pesticide or active ingredient used in producing a pesticide is produced for distribution or sale.

12. According to 7 U.S.C. § 136(w), “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or active ingredient used in producing a pesticide.

13. According to 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if it does not bear the assigned establishment registration number corresponding to the establishment at which it was produced under section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

14. According to 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a), 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 in which it is produced is registered with the Administrator of EPA.

15. According to 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person who is a producer to violate the requirement to register its establishment under 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a).

16. According to 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.

17. The Administrator of EPA may assess a civil penalty against any dealer, retailer, or distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. part 19.

Specific Allegations of Fact and Liability

18. Respondent owned or operated a place of business located at 6720 Gillette Road, Waldo, Ohio, (Ohigro facility) at all times relevant to this CAFO.

19. On April 25, 2016, an inspector employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at the Ohigro facility.

20. During the April 25, 2016, inspection, the inspector inspected records and collected copies of labels, sales receipts and sales invoices for the product "Roundup Power Max," a product which bears an EPA Registration Number 524-549 (Roundup).

21. Respondent repackages Roundup to its customers' specifications at the time of sale. Respondent asserts that it does so under a repackaging agreement with the basic registrant and original producer, Monsanto Company. Roundup is repackaged from a bulk container

received from Monsanto to smaller containers.

22. On the following dates, Respondent distributed or sold Roundup it had repackaged to its customers:

	Invoice Number	Date	Quantity (Gallons)	Consignee Name
1	027499	4/05/2016	107.77	Gerald Seckel
2	K27521	4/13/2016	120	Strine Farms
3	K27523	4/14/2016	97	Tom Seitter
4	027650	4/21/2016	110	Terry Ackerman
5	027671	4/22/2016	26.2	Avery Nauman

23. Roundup is marketed and widely used to eliminate or control weeds and is consequently a "pesticide" pursuant to 7 U.S.C. § 136(u).

24. At the Ohigro facility, Respondent repackaged, and thus produced, Roundup, as the term "produced" is defined at 7 U.S.C. § 136(w). This facility is consequently an "establishment" pursuant to 7 U.S.C. § 136(dd).

25. On the dates listed in paragraph 22, above, Respondent's establishment was not registered with the Administrator.

26. Respondent's production of Roundup on the dates listed in paragraph 22, above, at an establishment unregistered with the Administrator is a violation of section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and constitutes an unlawful act under section 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136(e), 136(a)(2)(L).

27. On the dates listed in paragraph 22, above, the containers of Roundup distributed

or sold to consumers did not bear an EPA Establishment Number. Consequently, on those dates Respondent distributed or sold a misbranded pesticide product, which are unlawful acts according to section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

28. Pursuant to section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$15,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009. Complainant further considered the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-704, section 701).

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

30. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Abigail Wesley (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

34. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

35. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this filed CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant) and jeffreyward@Ohigro.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

36. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

37. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

38. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

39. This CAFO is a final order for purposes of EPA's FIFRA Enforcement Response Policy.

40. The terms of this CAFO bind Respondent, its successors and assigns.

41. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


42. Each party agrees to bear its own costs and attorney fees, in this action.

43. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Ohigro, Incorporated, Waldo, Ohio
Docket No.**

Ohigro, Incorporated, Respondent


12/02/2016
Date



Jeffrey A. Ward
Vice-President
Ohigro, Incorporated

United States Environmental Protection Agency, Complainant

12/16/2014
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Ohigro, Incorporated, Waldo, Ohio
Docket No. FIFRA-05-2017-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

December 23, 2016
Date



Anne L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Ohigro, Incorporated

Docket Number: FIFRA-05-2017-0005

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on December 23, 2016, in the following manner to the addressees:

Copy by Email to
Respondent:

Jeffrey A. Ward
jeffreyward@ohigro.com

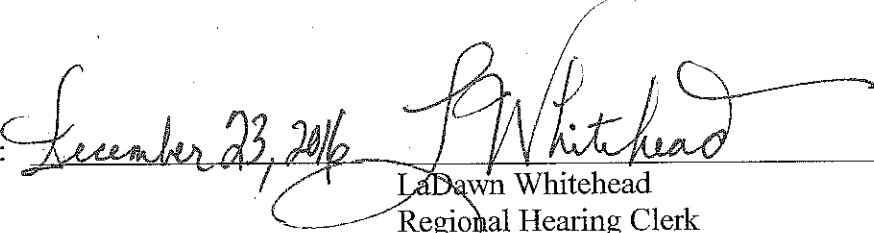
Copy by E-mail to
Attorney for Complainant:

Robert Guenther
guenther.robert@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: December 23, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5