

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

|                                     |   |  |
|-------------------------------------|---|--|
| <b>In the Matter of:</b>            | ) | <b>Docket No.</b>                              |
|                                     | ) |  |
| <b>Helena Agri-Enterprises, LLC</b> | ) | <b>Proceeding to Assess a Civil Penalty</b>    |
| <b>Shelby, Michigan</b>             | ) | <b>Under Section 14(a) of the Federal</b>      |
|                                     | ) | <b>Insecticide, Fungicide, and Rodenticide</b> |
| <b>Respondent.</b>                  | ) | <b>Act, 7 U.S.C. § 136l(a)</b>                 |
| <hr/>                               | ) |  |

**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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Helena Chemical Company d/b/a Helena Agri-Enterprises, LLC, a corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

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.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y and the regulations at 40 C.F.R. § 165.70.

**Statutory and Regulatory Background**

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

11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment.

12. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states that it is unlawful for any person in any state to violate any regulation issued under Sections 3(a) or 19.

13. Section 19(e)(1)(B)(iv) of FIFRA, 7 U.S.C. § 136q(e)(1)(B)(iv), states that the regulations shall ensure, to the fullest extent practicable, that the containers facilitate the safe refill and reuse of the pesticide containers. 40 C.F.R. §§ 165.70(b)(3) and 165.70(e)(5)(i) requires refillers to enter into a written contract with the registrant to repackage the pesticide product and

to use the label of the registrant's pesticide product.

14. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

15. The term “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).

16. An “establishment” means “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.” 7 U.S.C. § 136(dd).

17. The term “refiller” means “a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.” 40 C.F.R. § 165.3

18. The term “repackage” means “to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number, for sale or distribution.” 40 C.F.R. § 165.3

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

20. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1). 7 U.S.C. § 136(t).

21. The term “pesticide product” means “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed

or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.” 40 C.F.R. § 152.3

22. The term “produce” means “to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.” 40 C.F.R. § 165.3

23. The term “producer” means “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).” 40 C.F.R. § 165.3

24. 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. 40 C.F.R. § 152.15(a)(1).

25. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$21,805 for each offense that occurred after November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

26. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

27. At all times relevant to this CAFO, Respondent owned or operated an establishment at 37 West 3<sup>rd</sup> Street, Shelby, Michigan (Facility).

28. At all times relevant to this CAFO, Respondent’s Facility was a place where a pesticide or device or active ingredient used in producing a pesticide was produced, or held, for

distribution or sale.

29. Respondent's Facility is an "establishment" as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

30. At all times relevant to this CAFO, Respondent's Facility was registered with EPA and was assigned EPA Establishment Number (EPA Est. No.) 5905-MI-9.

31. On or about July 13, 2021, an inspector employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's facility (Inspection).

32. As part of the Inspection, among other things, the inspector took statements and photographs, and collected various records for Equus 720 SST Fungicide (EPA Registration Number (Reg. No.) 5481-619), Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8) and Prowl H2O Herbicide (EPA Reg. No. 241-418) which were produced at the Establishment at the time of the Inspection.

**Count 1: Failure to Maintain a Valid Repackaging Agreement with Registrant for  
Equus 720 SST Fungicide (Reg. No. 5481-619)**

33. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

34. Equus 720 SST Fungicide (Reg. No. 5481-619) is a "pesticide" as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. At all times relevant to this CAFO, Respondent was a "refiller" of Equus 720 SST Fungicide (Reg. No. 5481-619) as defined at 40 C.F.R. § 165.3.

36. At all times relevant to this CAFO, Respondent was a "producer" of Equus 720 SST Fungicide (Reg. No. 5481-619) as defined at 40 C.F.R. § 165.3.

37. At all times relevant to this CAFO, Respondent was not the registrant of Equus 720 SST Fungicide (Reg. No. 5481-619).

38. During the Inspection, the inspector collected a repackaging agreement between Helena Agri-Enterprises, LLC and Amvac Chemical Corporation, the registrant of Equus 720 SST Fungicide (EPA Reg. No. 5481-619), dated December 18, 2018, that expired on December 30, 2020.

39. On or about April 23, 2021, May 26, 2021, June 7, 2021, June 9, 2021, June 30, 2021, July 1, 2021, and July 12, 2021, Respondent repackaged Equus 720 SST Fungicide (Reg. No. 5481-619) into refillable containers.

40. Respondent failed to maintain a valid repackaging agreement on file with the registrant of Equus 720 SST Fungicide (EPA Reg. No. 5481-619), as referenced in paragraphs 38 and 39, above, in accordance with 40 C.F.R. §§ 165.70(b)(3) and 165.70(e)(5)(i).

41. Respondent's failure to maintain a valid repackaging agreement on file with the registrant of Equus 720 SST Fungicide (EPA Reg. No. 5481-619) as described in paragraphs 38 and 39, above, constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

42. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

**Count 2: Failure to Maintain a Valid Repackaging Agreement with Registrant for**

**Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8)**

43. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

44. Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8) is a "pesticide" as that

term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

45. At all times relevant to this CAFO, Respondent was a “refiller” of Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8) as defined at 40 C.F.R. § 165.3.

46. At all times relevant to this CAFO, Respondent was a “producer” of Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8) as defined at 40 C.F.R. § 165.3.

47. At all times relevant to this CAFO, Respondent was not the registrant of Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8).

48. During the Inspection, the inspector requested a repackaging agreement between Helena Agri-Enterprises, LLC and the registrant of Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8).

49. During the Inspection, the inspector collected email communications dated May 19, 2021, through June 3, 2021, illustrating that Helena Agri-Enterprises, LLC attempted to enter a repackaging agreement with the supplier of Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8) but was unsuccessful.

50. On or about June 8, 2021, June 11, 2021, June 14, 2021, and June 18, 2021, Respondent repackaged Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8) without a repackaging agreement on file with the registrant.

51. Respondent failed to maintain a repackaging agreement on file with the registrant of Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8), as referenced in paragraphs 49 and 50, above, in accordance with 40 C.F.R. §§ 165.70(b)(3) and 165.70(e)(5)(i).

52. Respondent’s failure to maintain a repackaging agreement on file with the registrant of Ag Saver Glyphosate 41% Plus (EPA Reg. No. 83772-8) as described in paragraphs 49 and 50, above, constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C.

§136j(a)(2)(S).

53. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

**Counts 3 through 5: Distribution or Sales of Misbranded Pesticide: Prowl H2O**

**Herbicide (EPA Reg. No. 241-418)**

54. Complainant incorporates paragraphs 1 through 32 of this CAFO as though set forth in this paragraph.

55. Prowl H2O Herbicide (EPA Reg. No. 241-418) is a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

56. EPA accepted the master label for Prowl H2O Herbicide (EPA Reg. No. 241-418) on March 26, 2003. The most recent label amendment accepted on March 27, 2020, added detailed information about personal protection equipment, nontarget organisms, herbicide resistance management, and drift reduction that was not included on the previous label amendment accepted by EPA on October 23, 2019.

57. The cover letter for the March 27, 2020, label amendment specified that products shipped after 12 months from the date of the amendment must bear the new revised label.

58. On or about April 15, 2021, Respondent sold or distributed 124-gallons of the pesticide product Prowl H2O Herbicide (EPA Reg. No. 241-418) to Oomen Veggie Co. in Hart, Michigan, identified as invoice number 127740594.

59. On or about May 4, 2021, Respondent sold or distributed 120-gallons of the pesticide product Prowl H2O Herbicide (EPA Reg. No. 241-418) to Todd Grenier Farms Packing LLC in Hart, Michigan, identified as invoice number 127741124.

60. On or about May 12, 2021, Respondent sold or distributed 32.5-gallons of the



pesticide product Prowl H2O Herbicide (EPA Reg. No. 241-418) to Dennert Farms LLC in Hart, Michigan, identified as invoice number 127741433.

61. The bin labels included in the shipments described in paragraphs 57-60, above, included language that mirrored the master label amendment accepted by EPA on October 23, 2019, and failed to include the updated language in the March 27, 2020, label amendment.

62. Prowl H2O Herbicide (EPA Reg. No. 241-418), as referenced in paragraphs 57-60, above, was misbranded as that term is defined by Section 2(q)(1)(F) of FIFRA.

63. Respondent's distributions or sales of misbranded Prowl H2O Herbicide (EPA Reg. No. 241-418), as referenced in paragraphs 57-60 above, constitute at least three unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

64. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### **Civil Penalty**

65. 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 \$38,250. 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 and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Pesticide Container / Containment Regulations (Appendix H).

66. Within 30 days after the effective date of this CAFO, Respondent must pay a \$38,250 civil penalty for the FIFRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Helena Agri-Enterprises, LLC and the docket number of this CAFO.

67. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

Angela Bouche (ECP-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
[bouche.angela@epa.gov](mailto:bouche.angela@epa.gov)  
and  
[R5lecab@epa.gov](mailto:R5lecab@epa.gov)

Sophie Grueterich (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
[grueterich.sophie@epa.gov](mailto:grueterich.sophie@epa.gov)

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

69. 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

70. 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**

71. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [grueterich.sophie@epa.gov](mailto:grueterich.sophie@epa.gov) (for Complainant), and [hawkinsd@helenaagri.com](mailto:hawkinsd@helenaagri.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

72. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

73. 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.

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

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

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

77. 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.

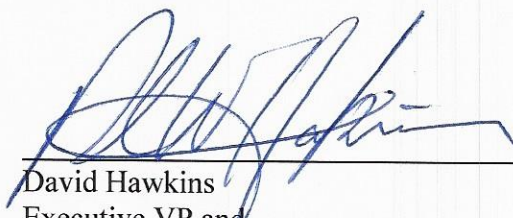
78. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**Helena Agri-Enterprises, LLC, Respondent**

9/23/2022

Date



David Hawkins  
Executive VP and  
Chief Legal Officer  
Helena Agri-Enterprises, LLC

**United States Environmental Protection Agency, Complainant**

---

Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division

**In the Matter of:  
Helena Agri-Enterprises, LLC  
Docket No.**

**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.

---

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

Consent Agreement and Final Order  
In the Matter of: Helena Chemical Co d/b/a Helena Agri-Enterprises  
Docket Number:

**CERTIFICATE OF SERVICE**

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

Copy by E-mail to  
Attorney for Complainant:

Ms. Sophie Grueterich  
[grueterich.sophie@epa.gov](mailto:grueterich.sophie@epa.gov)

Copy by E-mail to  
Respondent:

Mr. David Hawkins  
General Counsel  
Helena Chemical Co d/b/a Helena Agri-Enterprises, LLC  
225 Schilling Boulevard Suite 300  
Collierville, Tennessee 38017  
[hawkinsd@helenaagri.com](mailto:hawkinsd@helenaagri.com)

Copy by E-mail to  
Regional Judicial Officer:

Ms. Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Juliane Grange  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5