



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 17 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Don Rosie
Safety Director
Meherrin Agriculture & Chemical Company
413 Main Street
Severn, North Carolina 27877

Re: Meherrin Agriculture & Chemical Company
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2019-9961(b)

Dear Mr. Rosie:

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.

Should you have any questions about this matter or your compliance status in the future, please contact Justin Mullenix of the EPA Region 4 staff at (404) 562-8997 or mullenix.justin@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief
Chemical Safety and Land Enforcement Branch

Enclosures
cc: Jennifer Johnston
NC Department of Agriculture and Consumer Services

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

In the Matter of:)
)
Meherrin Agriculture & Chemical)
Company)
)
Respondent.)
)
)
)
_____)

Docket No.: FIFRA-04-2019-9961(b)

RECEIVED
APR 17 2019 11:16
OFFICE OF GENERAL COUNSEL
U.S. ENVIRONMENTAL PROTECTION AGENCY

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.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 4, who has been delegated the authority to settle civil administrative penalty proceedings under Section 14(a) of FIFRA. Respondent is Meherrin Agriculture & Chemical Company (“Meherrin Ag”).
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. Respondent is a company with its headquarters located at 413 Main Street, Severn, North Carolina 27877.
5. 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.
6. Respondent is a "producer" defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, as the person who manufactures, prepares, compounds, propagates, processes any pesticide, packages, repackages, labels, relabels, or otherwise changes the container of any pesticide.
7. The term "pesticide" is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
8. A pest is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus, weed or any form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
9. The term "establishment" is defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, to mean, any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
10. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.

11. The term “label” is defined by Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), to mean, the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
12. Pursuant to Section 2(q)(1)(C) of FIFRA, 7 U.S.C. § 136(q)(1)(C), a pesticide is “misbranded” if it is an imitation of, or is offered for sale under the name of, another pesticide.
13. Pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is “misbranded” if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced.
14. Pursuant to Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii), a pesticide is “misbranded” if there is not affixed to its container a label bearing the net weight or measure of the content.

III. Specific Allegations

15. Respondent owns and/or operates several EPA-registered Establishments in the Southeastern United States where pesticide products are produced, distributed and/or sold.
16. On or about May 2, 2017, an inspector authorized by the EPA conducted a pesticide producer establishment inspection at a Meherrin Ag facility located at 5724 Sydney Road, Belhaven, North Carolina 27810 (EPA Est. No. 4139-NC-5).
17. On or about May 5, 2017, the inspector conducted a follow up inspection at Respondent’s company headquarters located at 413 Main Street, Severn, North Carolina 27877.
18. On or about May 12, 2017, the inspector conducted a secondary follow up inspection at the home of a customer of Meherrin Ag, located in Bath, North Carolina 27808.

19. The inspector collected photographs and statements from Respondent and the customer that indicated to the EPA that there appeared to be issues with Respondent's compliance with the Standards for Repackaging Pesticide Products into Refillable Containers as promulgated under 40 C.F.R. Part 165, Subpart D.
20. 40 C.F.R. § 165.70(e)(3) requires that refillers who are not registrants must repackage a pesticide product only into a refillable container that is identified on the description of acceptable containers for that pesticide product provided by the registrant. Evidence obtained during the above-referenced inspections indicates that Respondent distributed or sold the pesticide "Roundup Power Max II" (EPA Reg. No. 524-537) contained within a refillable container not listed on the product registrant's list of approved containers on at least one (1) occasion from its Belhaven facility. Furthermore, the container was not durably marked with a serial number or other identifying code as required under 40 C.F.R. § 165.45(d) and did not comply with the standards for openings as described under 40 C.F.R. § 165.45(e).
21. 40 C.F.R. § 165.70(e)(5) requires, in part, that refillers must have at their establishment before repackaging a pesticide product into any refillable container for distribution or sale, all of the following: (1) a written contract with the pesticide product registrant to repackage the pesticide product and to use the label of registrant's pesticide product; (2) the pesticide product's label and labeling; (3) the registrant's written refilling residue removal procedure for the pesticide product; and (4) the registrant's written description of the acceptable containers for the pesticide product. Evidence obtained during the inspections indicates that Respondent was unable to demonstrate that it had the records corresponding to (1), (3) and (4) upon request of the inspector at its Belhaven facility.

22. 40 C.F.R. § 165.70(e)(8) requires, in part, that refillers must clean each refillable container in accordance with 40 C.F.R. § 165.70(g) or (h), if required by those sections, by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container if: (1) the container's tamper-evident device and one-way valve is no longer intact, and (2) the refillable container is not being refilled with the same pesticide product. Evidence obtained during the inspections indicates that Respondent repackaged the pesticide product "Roundup Power Max II" into a refillable container that (1) did not have a tamper-evident device intact and (2) was labeled for a different formulation, "Roundup Power Max" (EPA Reg. No. 524-539), without conducting the required residue removal procedure on at least one (1) occasion at its Belhaven facility.
23. 40 C.F.R. § 165.70(e)(9) provides, in part, that refillers must ensure that each refillable container is properly labeled in accordance with 40 C.F.R. § 165.70(i), which in turn requires that the label must comply in all respects with the requirements of 40 C.F.R. Part 156. Evidence obtained during the inspections indicated that a refillable container labeled for "Roundup Power Max" was distributed or sold from its Belhaven facility containing the "Roundup Power Max II" pesticide product and that the container's label did not bear an EPA Establishment Number or a Net Contents statement as required on at least one (1) occasion.
24. 40 C.F.R. § 165.70(e)(10) requires that refillers must maintain records in accordance with 40 C.F.R. § 165.70(j). Pursuant to 40 C.F.R. § 165.70(j)(2), each time a refiller repackages a pesticide product into a refillable container and distributes or sells the product, the EPA Registration Number of the pesticide product and the serial number or other identifying code of the refillable container must be recorded and maintained for at

least 3 years after the date of the repackaging. Evidence obtained during the inspections indicates that such records were not being generated by Respondent at the time of the inspection at its Belhaven facility.

25. Based on the foregoing, the EPA alleges Respondent failed to comply with Sections 19(e) and (f) of FIFRA, 7 U.S.C. §§ 136q(e) and (f), and the regulations promulgated at 40 C.F.R. 165, Subpart D.
26. Pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it shall be unlawful for any person to violate any regulation issued under Section 19 of FIFRA, 7 U.S.C. § 136q.
27. Evidence obtained by the EPA during the inspections as set forth in paragraph 23 indicates that Respondent distributed or sold a pesticide (Roundup Power Max II) from its Belhaven facility that was misbranded in that it: (1) was an imitation of, or was offered for sale under the name of, another pesticide (Roundup Power Max); (2) did not bear the registration number assigned under Section 7 to each establishment in which it was produced; and (3) did not bear the net weight or measure of the content on at least one (1) occasion.
28. 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. The EPA alleges that Respondent violated Section 12(a)(1)(E) by selling or distributing a misbranded pesticide.
29. 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.
30. 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).

31. 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 **EIGHT THOUSAND THREE HUNDRED DOLLARS (\$8,300)** against the Respondent for the above-described violation(s). Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

32. 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.
33. 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.
34. 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.
35. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to its establishments.
36. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section III of this CAFO and shall not otherwise affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with FIFRA and other applicable federal, state and local laws and regulations.

37. 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

38. Respondent is assessed a civil penalty of **EIGHT THOUSAND THREE HUNDRED DOLLARS (\$8,300)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
39. 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.

Electronic Payment:

Any electronic payment method as indicated in EPA's electronic payment options website found at:
<https://www.epa.gov/financial/makepayment#electronic>

40. 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 S.W.
Atlanta, Georgia 30303

Justin T. Mullenix
Chemical Safety Section
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303

41. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. 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.
42. 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.

- 43. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
- 44. This CAFO shall be binding upon the Respondent, its successors and assigns.
- 45. 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.


VI. Effective Date

46. 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: Meherrin Agriculture & Chemical Company

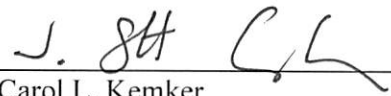
Docket No.: FIFRA-04-2019-9961(b)

By:  (Signature) Date: 10/31/2019

Name: DON ROSIE (Typed or Printed)

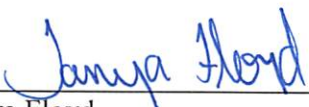
Title: Safety Dir. (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By:  Date: 11/27/2019

For Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

APPROVED AND SO ORDERED this 16th day of December 2019.


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 Meherrin Agriculture & Chemical Company, Docket Number: FIFRA-04-2019-9961(b), to the addressees listed below:

Mr. Don Rosie
Safety Director
Meherrin Agriculture & Chemical Company
413 Main Street
Severn, North Carolina 27877

(via Certified Mail, Return Receipt Requested)

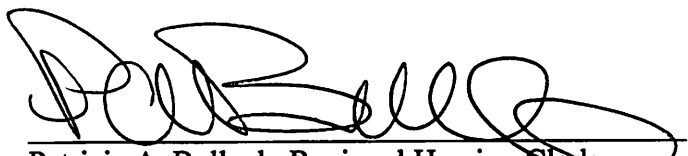
Justin Mullenix
Chemical Safety Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 12-17-19


Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9511