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2015 MAR 26 AM 9:20

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

REGIONAL HEARING CLERK
EPA REGION VI

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|-------------------|---|-------------------------------|
| IN THE MATTER OF: | § | |
| | § | DOCKET NO. FIFRA 06-2015-0301 |
| Nova Mud Inc. | § | |
| 5800 Nova Drive | § | |
| Hobbs, NM 88240 | § | |
| | § | |
| | § | CONSENT AGREEMENT AND |
| | § | FINAL ORDER |
| RESPONDENT | § | |

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and Nova Mud Inc., located in Hobbs, New Mexico, (Respondent) in the above referenced action, have consented to the terms of this Consent Agreement and Final Order (CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this CAFO.

I.
PRELIMINARY STATEMENT

1. This enforcement proceeding is issued by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a) (FIFRA) and concluded pursuant to 40 Code of Federal Regulations (“C.F.R.”) § 22.18(b)(2) and (3).

2. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. The CAFO resolves only those violations which are alleged herein.

5. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including but not limited to, subsequent purchasers.

II. **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8. The Respondent is Nova Mud Inc. located at 5800 Nova Drive, Hobbs, New Mexico 88240.

9. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA.

10. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

11. Respondent's product, glutaraldehyde, which is known as R-Treat B 100, is a pesticide as defined in FIFRA Section 2(u).

12. At all relevant times, the Respondent was a "distributor," as that term is defined at Section 2(gg) of FIFRA, of the pesticide described in paragraph 11.

13. A New Mexico Department of Agriculture inspector conducted an Inspection on or about May 30, 2013 (SB-050313-A) for the product described in paragraph 11.

14. The product described in paragraph 11 was not registered by the EPA.

15. As identified during the inspection referenced in paragraph 13, Respondent produced and sold the pesticide described in paragraph 11 without prior registration.

16. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to sell or distribute an unregistered pesticide.

17. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it shall be unlawful for any person who is a producer to violate any of the provisions of section 7.

IV. **VIOLATIONS**

Counts 1-5: Five Counts of Distribution or Sale of an Unregistered Pesticide

18. The allegations in paragraphs 1-17 are incorporated herein by reference.

19. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under [Section 3 of FIFRA, 7 U.S.C. § 136a].

20. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) as meaning “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under [7 U.S.C. § 136w(c)(1)].”

21. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as meaning “(1) any substances or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer....”

22. Glutaraldehyde, which was sold as “R-Treat B-100,” is intended to prevent, destroy, repel, or mitigate pests.

23. “Glutaraldehyde” is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. “R-Treat B-100” is not a registered pesticide.

25. 40 C.F.R. § 152.15 provides that no person may distribute or sell any pesticide product which is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30.

26. 40 C.F.R. § 152.3 defines “pesticide product” as meaning “a pesticide in a 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.”

27. “R-Treat B-100” is a “pesticide product” as that term is defined by 40 C.F.R. § 152.3.

28. On or about May 30, 2013, the Respondent provided invoices to the inspector showing five separate sales or distributions of “R-Treat B-100.”

29. Therefore, the Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing and selling an unregistered pesticide.

Count 6: One Count of Failure to Register a Pesticide Establishment

30. The allegations in paragraphs 1-29 are realleged and incorporated herein.

31. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) provides that it is unlawful for any producer to violate any provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

32. Section 7 of FIFRA, 7 U.S.C. § 136e, requires that no person may produce a pesticide unless the establishment in which it is produced is registered with the Administrator.

33. Section 2 of FIFRA, 7 U.S.C. § 136, defines “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient in producing a pesticide.”

34. Section 2 of FIFRA, 7 U.S.C. § 136, defines “produce” as “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

35. Respondent purchased 55 gallon drums of glutaraldehyde and relabeled it for sale as “R-Treat B-100.”

36. By creating a new product name for the glutaraldehyde and by labeling the glutaraldehyde with the product name, Respondent prepared a pesticide within the meaning of Section 2 of FIFRA, 7 U.S.C. § 136.

37. Respondent has not registered with the Administrator the establishment where Respondent prepared glutaraldehyde within the meaning of Section 2 of FIFRA, 7 U.S.C. § 136.

38. Therefore, the Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to register the establishment where a pesticide was produced.

V.
CIVIL PENALTY AND TERMS OF SETTLEMENT

i. Penalty

39. For the reasons set forth above, Respondent has agreed to pay a civil penalty, which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which Respondent neither admits nor denies and which are hereby adopted and made a part hereof, the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of \$36,300.00. It is ORDERED that Respondent be assessed a civil penalty of **THIRTY SIX THOUSAND THREE HUNDRED DOLLARS AND NO CENTS (\$36,300.00).**

40. The penalty shall be made payable to the Treasurer United States.

41. The penalty will be paid according to the following schedule:

- a. On or before 30 days after the Effective Date of this CAFO: \$20,000
- b. On or before 60 days after the Effective Date of this CAFO: \$2,724.71
- c. On or before 90 days after the Effective Date of this CAFO: \$2,724.71
- d. On or before 120 days after the Effective Date of this CAFO: \$2,724.71
- e. On or before 150 days after the Effective Date of this CAFO: \$2,724.71
- f. On or before 180 days after the Effective Date of this CAFO: \$2,724.71
- g. On or before 210 days after the Effective Date of this CAFO: \$2,724.71

42. The following are Respondent's options for transmitting the penalties:

Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

43. The case name and docket number (In the Matter of Nova Mud, Inc., Docket No. FIFRA-06-2015-0301) shall be documented on or within your chosen method of payment to ensure proper credit.

44. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Blake Sieminski
Pesticide Section (6PD)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

45. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. Costs

46. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

iii. Termination and Satisfaction

47. At such time as the Respondent has complied with all requirements of this CAFO, it may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

iv. Effective Date of Settlement


48. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO AGREED:

FOR THE RESPONDENT:

Nova Mud, Inc.


Date: 3/18/2015



Ken Bromley, President
5800 Nova Drive
Hobbs, NM 88240

FOR THE COMPLAINANT:

Date: 3/24/15



Wren Stenger
Director
Multimedia Planning and Permitting Division
U.S. EPA - Region 6

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 Final Order shall resolve only those causes of action and/or violations alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 3-25-15



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of MARCH, 2015, the original and one copy of the foregoing Complaint Consent Agreement and Final Order ("Complaint CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ken Bromley
President
Nova Mud Inc.
5800 Nova Drive
Hobbs, NM 88240



Blake Sieminski
Enforcement Officer
Pesticides Section