

FILED

April 25, 2024

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**U.S. EPA REGION 7
HEARING CLERK**

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of:

Norder Supply, Inc.
Scott City, Kansas

Respondent.

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Docket No. FIFRA-07-2024-0051

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant) and Norder Supply, Inc. (Respondent) have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l and in accordance with the Consolidated Rules of Practice.

Parties

2. Complainant, by delegation from the Administrator of EPA and the Regional Administrator of EPA Region 7 is the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

3. The Respondent is a foreign for-profit corporation in good standing under the laws of the state of Nebraska doing business in the state of Kansas.

Statutory and Regulatory Background

4. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

5. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

6. Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A), states that it shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under this subchapter.

7. 40 C.F.R. § 156.10(a)(1), states that requirements of labels including that every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part.

8. 40 C.F.R. § 156.10(a)(1)(iv), states the label must show clearly and prominently the product registration number as prescribed in paragraph (e) of this section.

9. 40 C.F.R. § 156.10(a)(1)(vii), states the label must show clearly and prominently the hazard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards and subpart E of this part for environmental hazards.

10. 40 C.F.R. § 156.10(a)(1)(viii), states the label must show clearly and prominently all words, statements, graphic representations, designs or other information required on the labeling by the Act or the regulations in this part must be clearly legible to a person with normal vision, and must be placed with such conspicuousness (as compared with other words, statements, designs, or graphic matter on the labeling) and expressed in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

11. 40 C.F.R. § 156.10(a)(2)(ii)(C), states all required label text must not be obscured or crowded.

12. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties \$24,255, for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023, 2023.

General Factual Allegations

13. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

14. Respondent is a wholesale distributor of animal feeds, fertilizers, agricultural chemicals, pesticides, seeds, and other farm supplies.

15. Respondent has a branch location at 4310 E. Highway 96, Scott City, Kansas 67871.

16. Respondent's headquarters is located at 136 E. Main Street, Bruning, Nebraska 68322.

17. On March 29, 2023, a Kansas Department of Agriculture (KDA) inspector, using EPA credentials conducted a Neutral Scheme Producer Inspection (PEI) at the Scott City, Kansas location.

18. During the inspection, the KDA inspector inspected an Intermediate Bulk Container (IBC) used to transport or distribute pesticides or other farm chemicals for use or further repackaging; otherwise known as a "shuttle", on a Lo-Vol 6 Shuttle cover (Lo-Vol 6 Label).

19. The KDA inspector found a "250-Gallon 047108-KS-004" label (250-Gallon Label) placed on top of the Lo-Vol 6 Label.

20. The KDA inspector noted that the 250-Gallon Label covered the first aid instructions, the EPA registration number, and Spanish language statement on the Lo-Vol 6 Label.

Allegations of Violation

21. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

22. The facts stated in Paragraphs 13 through 21 above are herein incorporated.

23. FIFRA Sec. 12(a)(2)(A) and 40 C.F.R. § 156.10(a)(2)(ii)(C) require label text not be obscured.

24. The EPA inspection revealed that the shuttle cover on the Lo-Vol 6 Label obscured the first aid instructions, EPA registration number, and Spanish language statement of the Lo-Vol 6 Label.

25. The first aid instructions, EPA registration number, and Spanish language statements are required to be clearly and prominently shown pursuant to 40 C.F.R. §156.10(a)(1)(iv), (vii), and (viii).

26. Respondent violated Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 40 C.F.R. § 156.10(a)(2) by having an obscured label.

CONSENT AGREEMENT

27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein];
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

28. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified.

29. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

30. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

31. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *cody.lightwine@nordersupply.com*

Penalty Payment

32. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Four Thousand Eight Hundred Eighty-Five Dollars (\$4,885) based on a substantiated ability to pay claim, as set forth below.

33. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

34. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
R7_Hearing_Clerk_Filings@epa.gov; and

Anna Landis, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
landis.anna@epa.gov

35. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

36. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

37. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

38. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

39. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

40. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

41. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

42. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

43. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

44. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

45. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT

Tedman T. Norder
Signature

4/15/24
Date

Tedman T. Norder
Printed Name

COO
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Jodi Bruno
Acting Director
Enforcement and Compliance Assurance Division

Date

Anna Landis
Office of Regional Counsel

Date

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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Norder Supply, Inc., EPA Docket No. FIFRA-07-2024-0051, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Anna Landis
Office of Regional Counsel
landis.anna@epa.gov

Tracey Ramsey
Enforcement and Compliance Assurance Division
ramsey.tracey@epa.gov

Milady Peters
Office of Regional Counsel
Peters.milady@epa.gov

Copy via Email to Respondent:

Bill John
Regional Vice President
Norder Supply, Inc.
4310E. Hwy 96
Scott City, Kansas 67873
bjohn@nordersupply.com

Dated this _____ day of _____, _____.

Signed