



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION 6
 DALLAS, TEXAS

FILED
 2016 SEP 20 PM 1:39
 REGIONAL HEARING CLERK
 EPA REGION VI.

IN THE MATTER OF:

Helm Agro US, Inc.
 401 East Jackson St
 Suite 1400
 Tampa, Florida 33602

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DOCKET NO. FIFRA 06-2016-0322

CONSENT AGREEMENT AND
 FINAL ORDER

RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and Helm Agro US, Inc. (Respondent) in the above referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). The Complaint alleges Respondent violated regulations promulgated pursuant to the FIFRA.

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised

or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth 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 Respondent is duly authorized to bind 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.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. The Respondent is Helm Agro US, Inc. located at 401 East Jackson Street, Suite 1400, Tampa, Florida 33602.

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. Section 2(s) of FIFRA defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

12. Section 2(u) of FIFRA defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

13. Section 2(gg) of FIFRA defines the term “to distribute or sell” as distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.

14. Section 2(p) of FIFRA defines “label” as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

15. Section 2(q) of FIFRA defines “misbranded” as the label having a statement, design, or graphic representation that is false or misleading.

16. Importation procedures are outlined under Section 17(c) of FIFRA, whereby the EPA determines whether or not a pesticide is adulterated or misbranded.

17. Pursuant to Section 12(a)(1)(E) of FIFRA it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor fail to sell or distribute a pesticide or device which is misbranded.

18. The Respondent is a registrant, commercial applicator, 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).

B. VIOLATION

Count I – Distribution or Sale of a Misbranded Pesticide

19. Respondent’s product, Helosate 75 SG, is a pesticide as defined in FIFRA Section 2(u).

20. 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 19.

21. A Notice of Arrival of Pesticides and Devices (NOA) was submitted for the Respondent to EPA on or about July 27, 2016 (EPA Tracking Number: NOA-16-07-9544) for the product described in paragraph 19.

22. The product described in paragraph 19 was misbranded due to the label displaying the incorrect EPA Reg. No. (EPA Reg. No. 74530-11 instead of the correct EPA Reg. No. 74530-52).

23. The NOA presented to EPA and described in paragraph 21, notified EPA that the pesticide described in paragraph 19 was being presented for import into the United States at the Port of New Orleans.

24. 19 C.F.R. § 12.112(a) specifies that an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a NOA, prior to the arrival of the shipment in the United States.

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

26. At the time of importation, the product described in paragraph 19 was misbranded.

27. By shipping the pesticide for import and requesting release of the shipment by EPA through the NOA, described in paragraph 21, the Respondent distributed the pesticide described in paragraph 19.

28. Respondent's distribution or sale of the misbranded pesticide product, Helosate 75 SG, constituted an unlawful act in violation of Section 12(a)(1)(E) of FIFRA.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

29. 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), which authorizes EPA to assess a civil penalty of up to Seven Thousand Five Hundred Dollars (\$7,500.00) for each offense¹. Upon consideration of the entire record herein, including the

Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and EPA's "FIFRA Enforcement Response Policy" dated December 2009 which requires Complainant to consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue business, and gravity of the violation, it is it is **ORDERED** that Respondent be assessed a civil penalty of **Five Thousand Dollars (\$5,000)**.

30. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza

¹ The amount of penalty that can be assessed under Section 14(a) of FIFRA was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$5,500 for violations occurring between January 30, 1997 and March 15, 2004, to \$6,500 for violations which occurred between March 15, 2004 and January 12, 2009, and to \$7,500 for violations which occurred after January 12, 2009.

SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental
Protection Agency"

PLEASE NOTE: Docket number FIFRA-06-2016-0322 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Kristin Dunbar
Pesticides and Toxics Section (6MM-XP)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

31. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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 costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest 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. *See* 40 C.F.R. § 13.11(b).

33. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that 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. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. RETENTION OF ENFORCEMENT RIGHTS

34. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from

Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.


C. COSTS

35. 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 5 U.S.C. § 504 and 40 C.F.R. Part 17.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:


Date: 9/2/16



Jan Stechmann
President
Helm Agro US, Inc.
401 East Jackson Street
Suite 1400
Tampa, Florida 33602

FOR THE COMPLAINANT:

Date: 09/20/16



Craig G. Carroll
Chief
Pesticide and Toxics Section

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l, 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 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

9/20/14



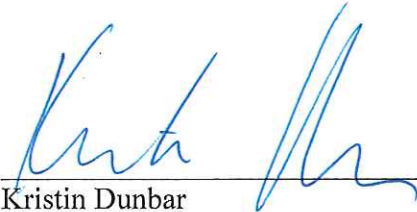
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2016, the original and one copy of the foregoing 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

Jan Stechmann
President
Helm Agro US, Inc.
401 East Jackson Street
Suite 1400
Tampa, Florida 33602



Kristin Dunbar
Enforcement Officer
Pesticide Toxics Section