



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 27 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joel Henderson
Attorney at Law
Henderson Dantone, P.A.
241 Main Street
Greenville, Mississippi 38701

Re: McRight Services, LLC d/b/a DeltAg Formulations
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2017-3008(b)

Dear Mr. Henderson:

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.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U.S. Environmental Protection Agency. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

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.

Sincerely,

A handwritten signature in blue ink that reads "Anthony G. Toney".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures
cc: Michael Ledlow
Mississippi Department of Agriculture and Commerce

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

In the Matter of:

McRight Services, LLC d/b/a
DeltAg Formulations

Respondent.

Docket No.: FIFRA-04-2017-3008(b)

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. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is McRight Services, LLC, d/b/a DeltAg Formulations (DeltAg).
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondent.

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. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Justin T. Mullenix
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960
(404) 562-8997.

5. Respondent is located at 1709 VFW Road, Greenville, Mississippi 38701.
6. 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.

III. Specific Allegations

7. On or about April 6, 2015, the EPA received a tip/complaint alleging the production, sale and/or distribution of pesticides (plant regulators) by the Respondent that were unregistered with the EPA.

8. On or about April 20, 2016, an authorized representative of the EPA conducted an inspection at the Respondent's facility located at 1709 VFW Road, Greenville, Mississippi 38701.
9. The inspector collected documentary sample labels and labeling associated with fifteen (15) DeltAg products being produced, sold and/or distributed by the facility: Soil Solution™, Seed Coat™, PercPlus™ aka Plant Power, CropKarb®, Thrust™, Boron Plus®, Calcium Plus™, Copper Plus®, Iron Plus®, Magnesium Plus®, Manganese Plus®, Potassium Plus® aka Nutri K, Sulfur Plus™, Zinc Plus® and MicroVite™. The inspector also collected distribution and sales records associated with these products.
10. At the time of the inspection, the aforementioned DeltAg products were not registered as pesticides with the EPA.
11. The term "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), means in part, "any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant".
12. The term "plant regulator" as defined at Section 2(v) of FIFRA, 7 U.S.C. § 136(v), means, "any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof."
13. The term "label" as defined by Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), means, "the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers."
14. The term "labeling" as defined by Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), includes, "all labels and all other written, printed, or graphic matter (A) accompanying

the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

15. The labels or labeling of Respondent’s aforementioned products referenced Respondent’s website.
16. At the time of the inspection, Respondent’s website stated that “all DeltAg nutrient and biostimulant products contain Fulvore” as well as “specific vitamins, amino acids enzymes and natural plant extracts which are formulated in ratios and concentrations which have been found to enhance plant metabolism.” Fulvore is described in part as “a proprietary formula that enhances [plant] membrane permeability and translocation [...] in a way similar to Fulvic Acid [in order to] feed the plant with additions of specific Amino Acids, Vitamins, and Enzymes” (<http://www.seedcoat.com/our-chemistry.html>).
17. The above mentioned claims are considered pesticidal in that they describe the mode of action and intended purpose of a plant regulator per its definition at Section 2(v) of FIFRA, 7 U.S.C. § 136(v).
18. In addition to claims about Fulvore, which apply to all DeltAg products, the EPA identified other product-specific pesticidal (plant regulator) claims:
Seed Coat™
“...designed to enhance seedling emergence and plant growth” – label claim
“With Seed Coat your emerging seedling will develop healthier roots for improved uptake of nutrients and water much quicker;” “DeltAg Seed Coat applied to seed has shown better emergence, a better survival rate, and quicker growth;” Speed and strengthen your crop’s start;” “Get more seed up and growing;” “Seed Coat is designed to provide seed with an energy source for early emergence, strong root development and enhanced seedling vigor” – brochure claims

PercPlus™ aka Plant Power

“...designed to increase crop energy and reduce stress” – label claim

“Shield and energize your crop;” “Enhance vigor and crop development, while reducing stress associated with disease, chemical damage and Mother Nature;” “...formulated to promote root development and early growth;” “...increased metabolism;” “...can be beneficial in maximizing flower, seed, fruit or tuber production” – brochure claims

CropKarb®

“...designed to improve bloom retention, fruit and seed sizing and bulking” – label claim

“Set & size more fruit” – brochure claim

Thrust™

“...designed to improve crop response”; “Thrust contains a high concentration of DeltAg’s proprietary Fulvore for improved plant uptake” – label claims

“...contains...very high concentrations of Fulvore, which improves membrane permeability and translocation” – brochure claim

Boron Plus®

“Set More Blooms” – website claim

“Set and Hold More Fruit;” “Enhance Sugar Transport” – brochure claims

Calcium Plus™

“Strengthen Stalk & Improve Fruit Storability” – website claim

“Better Quality Grain & Seed;” “Stronger Stalk Strength;” “Improved Root Formation;”

“Tougher Outer Layer” – brochure claims

Copper Plus®

“Vibrant Colored Blooms & Inner Fruit” – website claim

“Enhance Sugar Production and Color” – brochure claim

Iron Plus®

“Dark Green Foliage” – website claim

Magnesium Plus®

“Reduce Seedling Stress” – website claim

Manganese Plus®

“Avoid Seedling Stress - Improve Crop Color” – website claim

Potassium Plus® aka Nutri K

“Improve Fruit Size - Enhance Color” – website claim

“...has been shown to enhance crop tolerance to conditions such as drought and disease”

– brochure claim

Sulfur Plus™

“Improve Nitrogen Response” – website claim

“Improve response to Nitrogen, build more protein” – brochure claim

Zinc Plus®

“Avoid Slow Seed Growth – Improve Mast Production” – website claim

MicroVite™

“...enhance a plants ability to take in nutrients and aids in improved translocation of these materials throughout the plant” – brochure claim

General

“We sell crop response, not fertilizer” – website claim

19. At the time of the inspection, Respondent had distributed or sold the aforementioned unregistered pesticides (plant regulators).

20. 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.”
21. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
22. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
23. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least fifteen (15) occasions by distributing or selling an unregistered pesticide.
24. At the time of the inspection, Respondent had produced pesticides in an establishment that is not registered with the EPA.
25. The term “produce” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), means in part, “to manufacture, prepare, compound, propagate, or process any pesticide or active ingredient used in producing a pesticide.”
26. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person shall produce any pesticide in any State unless the establishment in which it is produced is registered with the Administrator of the EPA.
27. It is unlawful for a producer to violate Section 7(a) of FIFRA, pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
28. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), when it produced pesticides in an establishment not registered with the Administrator of the EPA.
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 **ONE HUNDRED ONE THOUSAND SIX HUNDRED DOLLARS (\$101,600)** against the Respondent for the above-described violations. 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 establishment and the products, Soil Solution™, Seed Coat™, PercPlus™ aka Plant Power, CropKarb®, Thrust™, Boron Plus®, Calcium Plus™, Copper Plus®, Iron Plus®, Magnesium Plus®, Manganese Plus®, Potassium Plus® aka Nutri K, Sulfur Plus™, Zinc Plus® and MicroVite™.
36. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state

statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

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 **ONE HUNDRED ONE THOUSAND SIX HUNDRED DOLLARS (\$101,600)**. 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. Environmental Protection Agency
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819.

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 30303-8960; and

Justin T. Mullenix
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960.

41. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. 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). 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.

THIS SECTION INTENTIONALLY LEFT BLANK


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: McRight Services, LLC d/b/a DeltAg Formulations

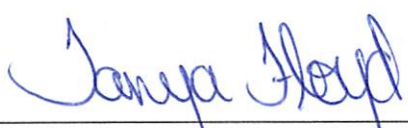
Docket No.: FIFRA-04-2017-3008(b)

By:  (Signature) Date: 5/4/17
Name: Johnny P. McRight (Typed or Printed)
Title: Manager (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By:  Date: 6/16/17
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 26th day of June 2017


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 McRight Services, LLC d/b/a DeltAg Formulations, Docket Number: FIFRA-04-2017-3008(b), to the addressees listed below:

Mr. Joel Henderson
Attorney at Law
Henderson Dantone, P.A.
241 Main Street
Greenville, Mississippi 38701

(via Certified Mail, Return Receipt Requested)

Justin Mullenix
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 6-20-17



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