



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR 29 2016

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL: 7011 1150 0000 2639 8651**  
**RETURNED RECEIPT REQUESTED**

Mr. Roy Lee Carter / President  
Sharda USA LLC  
7217 Lancaster Pike, Suite A  
Hockessin, Delaware 19707

Consent Agreement and Final Order in the Matter of  
Sharda USA LLC: Docket No. **FIFRA-05-2016-0006**

Mr. Carter.:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on March 29, 2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500.00 is to be paid in the manner described in paragraph 40. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess  
Pesticides and Toxics Compliance Section

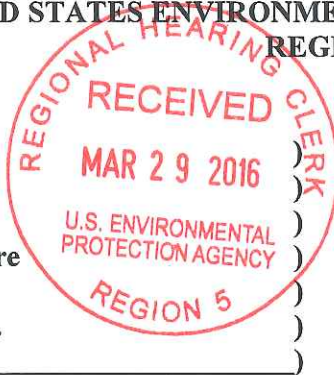
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Sharda USA, LLC  
Hockessin, Delaware

Respondent.



Docket No. FIFRA-05-2016-0006

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Sharda USA, LLC (Sharda), a limited liability company doing business at 7217 Lancaster Pike, Suite A, Hockessin, Delaware 19707.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated at 40 C.F.R. § 162.10 by the Administrator, before being permitted entry into the United States.

12. In 1988, EPA reorganized and recodified its regulations. Among other things, EPA promulgated 40 C.F.R. Part 156, revising labeling requirements for pesticides and devices and redesignating 40 C.F.R. § 162.10 as § 156.10, pursuant to its authority at 7 U.S.C. §§ 136-136y. *See* 53 Fed. Reg. 15952, 15953 and 15991 (May 4, 1998).

13. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of

Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any State to distribute or sell to any person a pesticide which is adulterated or misbranded.

15. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), defines a pesticide to be “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing -- (i) the name and address of the producer, registrant, or person for whom produced; (ii) the name, brand or trademark under which the pesticide is sold; (iii) the net weight or measure of the content; and (iv) when required by regulation the registration number assigned to the pesticide under FIFRA, and the use classification.

16. 40 C.F.R. § 156.10(a)(4) states, in pertinent part, that the label for every pesticide product shall appear on or be securely attached to the immediate container of the pesticide product; and that for purposes of this section, and the misbranding provisions of FIFRA, “securely attached” shall mean that a label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. 40 C.F.R. § 156.10(a)(4).

17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

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

19. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living 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).

20. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

21. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines a “registrant” as a person who has registered any product pursuant to the provisions of FIFRA.

22. The Administrator of EPA may assess a civil penalty against any registrant or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

23. Respondent is, and was at all times relevant to this Complaint, an individual, partnership, association, corporation, or organized group of persons and, therefore a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. Respondent is an importer.

25. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 7217 Lancaster Pike, Suite A, Hockessin, Delaware 19707.

26. On or about January 15, 2016, Respondent submitted to EPA an NOA under entry number 791-0311534-3 for an import shipment of the pesticide "Imazethapyr Technical," EPA Registration Number (EPA Reg. No.) 82633-23.

27. The NOA for the shipment under entry number 791-0311534-3 stated that Respondent was the importer of record.

28. The import shipment associated with entry number 791-0311534-3 entered the United States on or about January 22, 2016.

29. "Imazethapyr Technical," EPA Reg. No. 82633-23, is a registered "pesticide," as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

30. Respondent, as the importer of record of "Imazethapyr Technical," EPA Reg. No. 82633-23, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

31. On or about September 15, 2015, the Office of Pesticide Programs, Registration Division issued an "accepted" label for "Imazethapyr Technical," EPA Reg. No. 82633-23. The accepted label contained, among other things, the name and address of the producer, registrant, or person for whom produced; the name, brand or trademark under which the pesticide is sold; the net weight or measure of the contend; the registration number and use classification; and directions for use.

32. On February 2, 2016, an inspector employed by EPA and authorized to conduct inspections under FIFRA conducted an inspection at Channel Distribution Corporation, located at 950 Supreme Drive, Bensenville, Illinois 60106, and observed several drums in the shipment associated with entry number 791-0311534-3 with labels for "Imazethapyr Technical," EPA

Reg. No. 82633-23 that were torn, peeling, marred or otherwise not securely attached to the drums.

33. The imported quantity of "Imazethapyr Technical," EPA Reg. No. 82633-23, associated with entry number 791-0311534-3 failed to bear a label which was securely attached to the immediate containers of the pesticide product containing the EPA Reg. No. assigned to the pesticide, precautionary and hazard statements, and directions for use as required by 40 C.F.R. § 156.10(a).

34. The imported quantity of "Imazethapyr Technical," EPA Reg. No. 82633-23, associated with entry number 791-0311534-3 was "misbranded" as that term is defined by Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), and 40 C.F.R. § 156.10(a)(4).

35. On or about January 22, 2016, Respondent "distributed or sold" the pesticide "Imazethapyr Technical," EPA Reg. No. 82633-23, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

36. On or about January 22, 2016, in an import shipment associated with entry number 791-0311534-3, Respondent distributed or sold the misbranded pesticide "Imazethapyr Technical," EPA Reg. No. 82633-23, which constitutes an unlawful act, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

37. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### **Civil Penalty and Other Relief**

38. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to

continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

39. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant has determined the appropriate penalty to settle this action is \$7,500.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note "In the Matter of Sharda USA, LLC" and the docket number of this CAFO.

41. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604



Maria Gonzalez (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

42. This civil penalty is not deductible for federal tax purposes.

43. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

44. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

45. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

46. This CAFO does not 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.

47. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

48. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

49. The terms of this CAFO bind Respondent, its successors, and assigns.

50. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

51. Each party agrees to bear its own costs and attorney's fees, in this action.

52. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:  
Sharda USA, LLC**

**Sharda USA, LLC, Respondent**

3-10-16

Date



Roy Lee Carter  
President  
Sharda USA, LLC

**In the Matter of:  
Sharda USA, LLC**

**United States Environmental Protection Agency, Complainant**

3/18/2016

Date



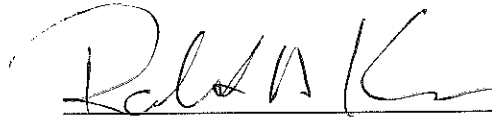
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Sharda USA, LLC**  
**Docket No. FIFRA-05-2016-0006**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-21-16  
Date

  
\_\_\_\_\_  
Robert A. Kaplan  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Sharda USA LLC.  
Docket Number: **FIFRA-05-2016-0006**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order** which was filed on March 29, 2016, in the following manner to the addressees:

Copy by Certified Mail  
Return-receipt:

Mr. Roy Lee Carter  
Sharda USA LLC  
7217 Lancaster Pike, Suite A  
Hockessin, Delaware

Copy by E-mail to  
Attorney for Complainant:

Maria Gonzales  
gonzales.maria@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: March 29, 2016

LaDawn Whitehead  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5