

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. FIFRA-10-2020-0089
)
CH20, INC.,) **CONSENT AGREEMENT**
)
Tumwater, Washington,)
)
Respondent.)
)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136/(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and CH20, Inc. ("Respondent") agrees to issuance of the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of Enforcement and Compliance Assurance Division, EPA **Region 10 ("Complainant") has been delegated the authority pursuant to Section 14(a) of FIFRA, "{**

7 U.S.C. § 136/(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

A. STATUTORY AND REGULATORY BACKGROUND

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

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

3.3. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines "to distribute or sell" as 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.

3.4. 40 C.F.R. § 152.3 further defines "distribute or sell" and other grammatical variations of the term such as "distributed or sold" and "distribution or sale," as the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.

3.5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines "pesticide" to include any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

3.6. 40 C.F.R. § 152.3 further defines "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that: (1) Is a new animal drug under FFDCFA sec. 201(w), or (2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or (3) Is an animal feed under FFDCFA sec. 201(x) that bears or contains any substances described by paragraph (s) (1) or (2) of this section.

3.7. 40 C.F.R. § 152.3 defines "pesticide product" as a pesticide in the 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.

3.8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines "pest" as (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-organism (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 section 136w(c)(1) of FIFRA.

3.9. According to section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

3.10. According to section 2(q)(l)(G) , 7 U.S.C. § 136(q)(l)(G), a pesticide is misbranded if its label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of FIFRA, is adequate to protect health and the environment.

3.11. 40 C.F.R. § 156.10 requires that every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently. Each label must include, among other things, the hazard and precautionary statements, directions for use, and use classifications.

3.12. 40 C.F.R. § 156.64 requires that each pesticide product bear on the front panel a signal word, reflecting the highest Toxicity Category to which the product is assigned.

3.13. 40 C.F.R. § 156.70 requires that human hazard and precautionary statements as required must appear together on the label or labeling under the general heading "Precautionary Statements" and under appropriate subheadings.

B. VIOLATIONS

Counts 1 - 13: Distribution or Sale of Misbranded Pesticides

3.14. Between January 1, 2017 and December 31,2017, Respondent distributed or sold the pesticide product PACT-5 on at least 13 separate occasions.

3.15. On each of these occasions, the PACT-5 labeling included the signal word "Caution" when the EPA-accepted label for PACT-5 required the signal word "Danger."

3.16. On each of these occasions, the PACT-5 label omitted two full paragraphs- "User Safety Requirements" and "User Safety Recommendation"-under the "Precautionary Statements" section of the EPA-accepted label.

3.17. On each of these occasions, the PACT-5 label listed the wrong Hazardous Materials Identification System (HMIS) and National Paint Coatings Association (NPCA) Reactivity rating. The PACT-5 label listed the HMIS and NPCA rating as 0, when the EPA-approved label had a rating of 1.

C. ENFORCEMENT AUTHORITY

3.18. Respondent therefore violated section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3.19. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$20,288 for each offense.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined, and Respondent agrees that an appropriate penalty to settle this action is \$92,900 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's

check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Nick Hurwit
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
hmwit.nicholas@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however,

(SK'

that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

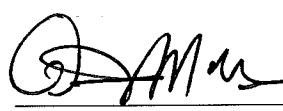
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

5/19/20

FOR RESPONDENT:

 As President, CH2O Inc.

TONY MCNAMARA, President
CH2O, Inc.

DATED:

FOR COMPLAINANT:

LAURIS DAVIES

Digitally signed by LAURIS
DAVIES
Date: 2020.05.22 11:15:47 -07'00'

LAURIS C. DAVIES, Acting Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2020-0089
)	
CH20,INC.,)	FINAL ORDER
)	
Tumwater, Washington,)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of aw. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this ____ day of _____, 2020.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10