

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2014 SEP 30 PM 4:40

DOCKET NO.: FIFRA-08-2014-0011

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Helena Chemical Company)
12836 Energy Road)
Fort Morgan CO, 80701,)
)
RESPONDENT)

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

In addition, Complainant's Motion for to File Adobe PDF Signature filed, September 30, 2014, pursuant to 40 C.F.R. § 22.5(a)(1), is **GRANTED**. Respondent's original signature page shall be filed within ten (10) days of this Order.

SO ORDERED THIS 30th of September, 2014.



Elyana R. Sutin
Regional Judicial Officer
US EPA, Region 8

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No.: **FIFRA-08-2014-0011**

In the Matter of:)
)
Helena Chemical Company) Motion to File PDF Signature Page
12836 Energy Road)
Fort Morgan, CO 80701,)
)
Respondent.)

Comes Now Complainant, the United States Environmental Protection Agency, Region 8 and Respondent, Helena Chemical Company, Inc., requesting that the Regional Judicial Officer (RJO) accept the filing of Respondent's pdf signature page. Complainant and Respondent have been in negotiations for some time and reached a final settlement agreement on September 30, 2014. Respondent agrees to send the original signature page to Complainant, and Complainant will replace the pdf'd signature page with the RJO's office upon receipt from Respondent. The Parties request that the RJO grant this Motion to File a pdf Signature.

Respectfully submitted this 30th day of September, 2014.



Brenda L. Morris, Attorney
U.S.EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the Motion to File a Pdf Signature Page was hand-carried to the Regional Hearing Clerk:

Tina Artemis, Region 8 Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

And that a true copy of the same was sent via CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

The Corporation Company, Registered Agent
Helena Chemical Company
1675 Broadway, Suite 1200
Denver, Colorado 80202

Brenda Morris Date 9-30-14

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 30 PM 2:02

Docket No.: FIFRA-08-2014-0011

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Helena Chemical Company)
12836 Energy Road)
Fort Morgan, CO 80701,)
)
Respondent.)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency (EPA), Region 8, and Respondent, Helena Chemical Company, by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement (Consent Agreement) is issued to Respondent for selling and/or distributing misbranded pesticides in violation of section 12(a)(1)(E) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(1)(E).
2. The undersigned EPA officials enter into this Consent Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Consent Agreement.
3. This section authorizes the EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Consent Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Respondent admits the jurisdictional allegations in this Consent Agreement, but neither admits nor denies the factual allegations in this Consent Agreement, including all allegations alleged in sections B and C below.

B. GENERAL ALLEGATIONS

1. Respondent, Helena Chemical Company, is a “person” as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. Respondent’s place of business is located at 12836 Energy Road, Fort Morgan, Colorado. The primary business of Respondent is the sale or distribution of registered pesticides in refillable containers.
3. At all times relevant to the alleged violations, Respondent was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
4. At all times relevant to the alleged violations, Respondent produced, sold, and distributed the registered pesticides, Gly Star Plus (EPA Reg. No. 42750-61) and Outlaw (EPA Reg. No. 5905-574).
5. A “pesticide” as defined by FIFRA section 2(u), 7 U.S.C. § 136(u) and 40 C.F.R. section 152.3, means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
6. A pesticide is “misbranded,” as defined by FIFRA section 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F), if “the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment.” After August 16, 2011, all pesticide products sold in refillable containers are subject to the pesticide container containment rule must include specific language on the product’s label as required by 40 C.F.R §§ 156.140 through 156.159.
7. On or about April 18, 2013, authorized representatives of the EPA conducted an inspection at Respondent’s establishment and reviewed Respondent’s records.
8. These General Allegations are incorporated into each of the violations listed below.

C. SPECIFIC VIOLATIONS

1. From approximately 2012 through 2013, Respondent sold and distributed the registered pesticides, Gly Star Plus and Outlaw with labels that did not include the required label language codified in 40 C.F.R §§ 156.140 through 156.159.
2. At all times relevant to the alleged violations, the Gly Star Plus and Outlaw pesticide labels did not include label language required by 40 C.F.R §§ 156.140

through 156.159, and were therefore misbranded pesticides as the term is defined in FIFRA section 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F).

3. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person to distribute or to sell to any person any pesticide which is misbranded.
4. During the timeframe denoted in this Consent Agreement, Respondent sold and distributed Gly Star Plus and Outlaw on five occasions.
5. Respondent's sales or distributions of Gly Star Plus and Outlaw from approximately May 1, 2012, through May 6, 2013, constitute two (2) violations of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

D. **PAYMENT OF CIVIL PENALTY**

1. 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.
2. 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 Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
3. 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 \$8,720 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.
4. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a final order (Final Order) in this matter and agrees to pay the civil penalty of \$8,720 within thirty days of the effective date of the Final Order as follows:
 - a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and

docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

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

Automated Clearinghouse (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

U.S. Treasury Contact Information:
John Schmid 1-202-874-3420
Remittance Express (REX): 1-866-234-5681

On-line debit and credit card payment: There is now an on-line payment option available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

c. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Daniel Webster (8ENF-UFO)	and	Tina Artemis (8RC)
Technical Enforcement Program		Regional Hearing Clerk
U.S. EPA Region 8		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop St.
Denver, CO 80202-1129		Denver, CO 80202-1129

d. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

e. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).

f. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees,

costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

5. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

E. TERMS AND CONDITIONS

1. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Consent Agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
2. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
3. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.
4. Each party shall bear its own costs and attorneys fees in connection with this matter.
5. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Consent Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Consent Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
6. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
7. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
8. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

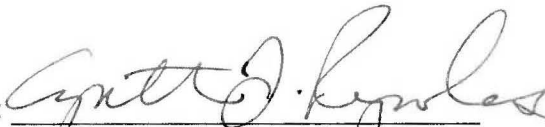
**In the Matter of Helena Chemical Company (Fort Morgan, Colorado)
(Continued)**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
Office of Enforcement, Compliance
and Environmental Justice,

Complainant

Date: 9/30/14

By:



Cynthia J. Reynolds, Acting Director
Technical Enforcement Program
UIC-FIFRA-OPA
Office of Enforcement, Compliance
and Environmental Justice

SEP 30 2014

Date: _____

By:



James H. Eppers, REU Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

In the Matter of Helena Chemical Company (Fort Morgan, Colorado)
(Continued)

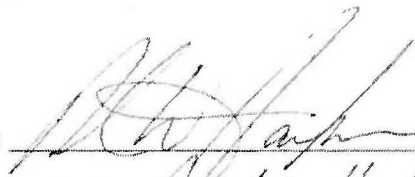
Helena Chemical Company,

Respondent

Date:

9/29/14

By:



Name, Title:

David W. Hopkins Asst. Secy G.C.