



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone: 800-227-8917
http://www.epa.gov/region08

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DOCKET NO.: FIFRA-08-2016-0014

IN THE MATTER OF:

Crop Production Services, Inc.
975 East Linwood Road
Linwood, Michigan 48634

RESPONDENT

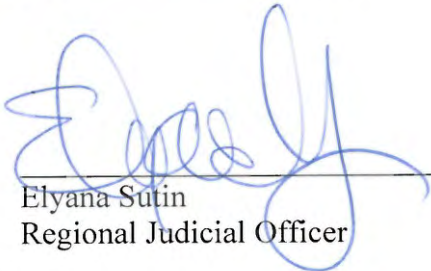
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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), 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 of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 30th DAY OF September, 2016.



Elyana Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
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HEARING CLERK

In the Matter of:)
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Crop Production Services, Inc.)
975 East Linwood Road)
Linwood, Michigan 48634)
)
Respondent)
)

Docket No.: FIFRA-08-0016-0014

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

I. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
3. The undersigned EPA officials enter into this 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 Agreement.
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 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 Agreement, but neither admits nor denies the factual allegations in paragraphs 12 through 16 in this Agreement.

II. ALLEGATIONS

6. Respondent, Crop Production Services, Inc. (CPS), 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.
7. The Respondent is headquartered at 3005 Rocky Mountain Ave., Loveland, Colorado 80538

and doing business, i.e., the sale or distribution of registered pesticides in refillable containers, at its Michigan facility located at 975 East Linwood Road, Linwood, Michigan 48634.

8. At all times relevant to the alleged violations, the Respondent was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a “pesticide” defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
9. FIFRA section 2(q)(1)(E), 7 U.S.C. § 136(q)(1)(E), states that a pesticide is misbranded if “any word statement or other information required to appear on the label or labeling is not prominently placed thereon... and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”
10. 40 C.F.R. § 156.10(f) requires “the producing establishment registration number preceded by the phrase “EPA Est.”, of the final establishment at which the product was produced” to appear in any suitable location on the label or immediate container.
11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person to distribute or sell to any person any pesticide which is misbranded.

III. VIOLATIONS

Counts 1-4

12. On May 16, 2012, a FIFRA inspection was conducted at the CPS facility in Linwood, Michigan.
13. During the inspection, the inspector documented and reviewed labels, receipts, bulk and mini bulk containers, and invoices documenting the Respondent’s production, distribution, and sale of the pesticides, Roundup Power Max, EPA Reg. No. 524-549 and Slider ATZ, EPA Reg. No. 34704-1042.
14. The label on the Roundup Power Max mini bulk and Slider ATZ containers did not contain an EPA establishment number as required by 40 C.F.R. § 156.10(f)
15. The inspector was provided with at least four sales invoices from Respondent’s facility showing recent sales of Roundup Power Max and Slider ATZ.
16. Respondent’s failure to label the Roundup Power Max and Slider ATZ mini bulk containers with the requisite EPA establishment number constitutes violations of 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

IV. PAYMENT OF CIVIL PENALTY

17. 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.

18. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(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.
19. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$6,000 against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by Administrative Order.
20. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of six thousand dollars (\$6,000.00) 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 accordingly as follows:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

US Bank
Cincinnati Finance Center Box 979077 Contact: Craig Steffen
1005 Convention Plaza 513-487-2091
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire Transfers:

Wire transfers must indicate the name and docket number of this case and 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 NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737
US Treasury Contact Information:
Randolph Maxwell: 202-874-7026
Remittance Express (REX): 1-866-234-5681

On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from 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.

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

Dennis Jaramillo (8ENF-UFO)
Technical Enforcement Program
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

and Melissa Haniewicz (8RC)
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

22. 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.
23. 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).
24. 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.
25. Respondent agrees that the civil penalty assessed herein shall not be claimed as a federal or other tax deduction or credit.

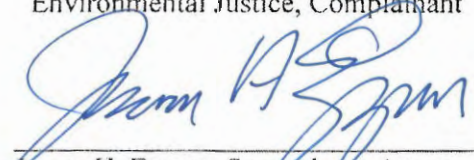
IV. TERMS AND CONDITIONS

26. This 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 Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
27. Nothing in this 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 Agreement.
28. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
29. Each party shall bear its own costs and attorney fees in connection with this matter.
30. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this 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.
31. This 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.


- 32. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
- 33. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the 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.

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

Date: 9/29/16

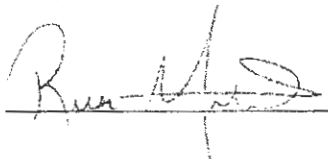
By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
Denver, Colorado 80202-1129

Date: 9/29/16

By: 
David Cobb, Acting Supervisor
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

CROP PRODUCTION SERVICES, INC.,
Respondent

Date: 9/29/16

By: 
Printed Name: Russ Martin

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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In the Matter of:)
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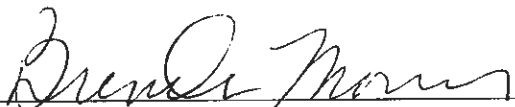
Docket No.: FIFRA-08-2016-0014

Request to File a PDF Signature

COMES NOW Complainant, United States Environmental Protection Agency, Region 8, by and through its undersigned attorney, and submits the following Request to File a PDF Signature. Respondent has provided a pdf signature of its agreement to the Combined Complaint and Consent Agreement (CCCA) that will be replaced upon receipt of the original signature. Complainant respectfully requests to file Respondent's PDF signature page in lieu of the original signature page until the original signature page is received.

Respectfully submitted this 29th day of September 2016.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.


Brenda Morris, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop St. (8ENF-L)
Denver, CO 80202-1129
Telephone: 303/312-6891
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 29, 2016, the original and one copy of the Request to File a PDF Signature and the Combined Complaint and Consent Agreement were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop St., Denver, Colorado, and that true copies of the same were delivered as follows:

Copy hand-carried to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. Environmental Protection Agency
1595 Wynkoop St. (8RC)
Denver, CO 80202-1129

Copy by email and regular mail to:

Crop Production Services, Inc.
975 East Linwood Road
Linwood, Michigan 48634

Date:

9/29/16

By:



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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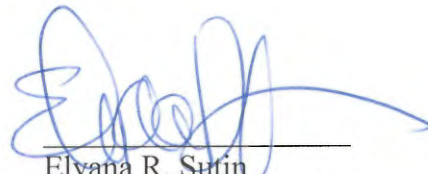
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Linwood, Michigan 48634)
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Respondent)
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Docket No. FIFRA-08-2016-0014
**ORDER AUTHORIZING
FACSIMILE FILING**

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 6 of the Consent Agreement and Final Order is authorized in this proceeding. Counsel for Complainant shall file the original page 6 within one day of receipt of that document from Respondent.

Dated: 9/30/16



Elyana R. Sutin
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **Crop Production Services, Inc; DOCKET NO.: FIFRA-08-2016-0014** was filed with the Regional Hearing Clerk on September 29, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on 9/30/16.


Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Brenda Morris, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on 9/30/16, to:

Respondent

Reese Martin
Crop Production Services, Inc.
975 East Linwood Road
Linwood, Michigan 48634

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268



John F. Pickens II
Acting Regional Hearing Clerk

