



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

September 25, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 3839
RETURN RECEIPT REQUESTED

Mr. Jerry Gallagher
Gallaghers Farm Service
4227 Ostrom Road
Delding, Michigan 48809

Consent Agreement and Final Order, In the Matter of
Gallaghers Farm Service, LLC. Docket No. FIFRA-05-2014-0031

Dear Mr. Gallagher:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on September 25, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 was received on August 26, 2014.

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

Enclosures

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. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

11. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states, in part, no person shall produce any pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator.

12. The term “produce” means “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.” 7 U.S.C. § 136(w).

13. The meaning of the term “produce” is further defined to include “to package, repack, label, relabel or otherwise change the container of any pesticide or device.” 40 C.F.R. § 167.3.

14. The term “producer” means “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide.”

7 U.S.C. § 136(w).

15. The term “producer” is further defined to mean “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).” 40 C.F.R. § 167.3.

16. The term “establishment” means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd).

17. The term “person,” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

18. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

19. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

20. The Administrator of EPA may assess a civil penalty against any registrant 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

21. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. Respondent owned or operated a place of business located at 4227 Ostrum Road,

Belding, Michigan during the calendar year 2010.

23. Respondent's Belding, Michigan facility is an "establishment" as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

24. On September 29, 2009 the registration of Respondent's Belding, Michigan establishment under Section 7 of FIFRA was cancelled.

25. On August 17, 20, and 24, 2010, inspectors employed by Michigan Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's Belding, Michigan establishment.

26. During the August 2010 inspection, the inspectors collected production records for pesticides that were repackaged at the Respondent's Belding, Michigan establishment.

27. The production records collected during the August 2010 inspection state the following products were repackaged at Respondent's Belding, Michigan establishment after September 29, 2009:

- a. "Acumen Herbicide," EPA Registration Number 241-337-55467;
- b. "Buccaneer Plus Glyphosate Herbicide," EPA Registration Number 55467-9;
- c. "Keystone Herbicide," EPA Registration Number 62719-368;
- d. "Lumax Selective Herbicide," EPA Registration Number 100-1152;
- e. "Sure Start Herbicide," EPA Registration Number 62719-570; and
- f. "Volley ATZ Tenkoz Herbicide," EPA Registration Number 55467-13.

28. "Acumen Herbicide," EPA Registration Number 241-337-55467, "Buccaneer Plus Glyphosate Herbicide," EPA Registration Number 55467-9, "Keystone Herbicide," EPA Registration Number 62719-368, "Lumax Selective Herbicide," EPA Registration Number 100-1152, "Sure Start Herbicide," EPA Registration Number 62719-570, and "Volley ATZ Tenkoz

Herbicide,” EPA Registration Number 55467-13, are “pesticides” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

29. Respondent “produced” “Acumen Herbicide,” EPA Registration Number 241-337-55467, “Buccaneer Plus Glyphosate Herbicide,” EPA Registration Number 55467-9, “Keystone Herbicide,” EPA Registration Number 62719-368, “Lumax Selective Herbicide,” EPA Registration Number 100-1152, “Sure Start Herbicide,” EPA Registration Number 62719-570, and “Volley ATZ Tenkoz Herbicide,” EPA Registration Number 55467-13, as that term is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 CFR § 167.3.

30. Respondent’s production of pesticides in an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Civil Penalty

31. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$1,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009. Complainant has determined that there was no economic benefit associated with the alleged violation.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000 civil penalty for the FIFRA violations by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

33. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

Deborah Carlson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

35. If Respondent does not pay timely the civil penalty, 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.

36. 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

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

38. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

42. 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.

43. Each party agrees to bear its own costs and attorneys fees, in this action.

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

Gallaghers Farm Service LLC, Respondent

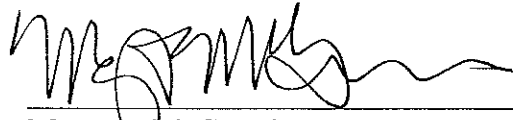
8-26-14
Date

Jerry M. Gallagher
Jerry Gallagher

United States Environmental Protection Agency, Complainant

9/19/2014

Date



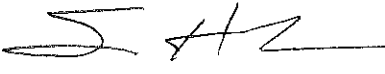
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Gallaghers Farm Service
Docket No. FIFRA-05-2014-0031

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.

9/22/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5


CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Gallaghers Farm Service, LLC, was filed on September 25, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 3839, a copy of the original to the Respondent:

Mr. Jerry Gallagher
Gallaghers Farm Service
4227 Ostrom Road
Delding, Michigan 48809

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Deborah Carlson, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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