



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 31 2018

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Lawrence A. Miller  
Partner  
Proactive, LLC  
10529 Heritage Bay Boulevard  
Naples, Florida 34120

Re: Proactive, LLC  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2018-3013(b)

Dear Mr. Miller:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions about this matter or your compliance status in the future, please contact Kimberly Tomczak of the U.S. Environmental Protection Agency Region 4 staff at (404) 562-8987.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief

Chemical Safety and Enforcement Branch

Enclosure

cc: Sarah Oglesby, FDA&CS



the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Respondent Proactive is licensed to do business in the State of Florida.
5. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
6. Respondent is a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), as the person who manufactures, prepares, compounds, propagates, or processes any pesticide.
7. The term "pesticide" is defined by Section 2(u) of FIFRA, 7 U.S.C § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
8. A "pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as 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 (except viruses, bacteria, or other

- 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).
9. The term “establishment” is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, to mean, any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
  10. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
  11. Pursuant to Section 17(c) FIFRA, 7 U.S.C. § 136o(c) and the regulations at 19 C.F.R. § 12.112, an importer desiring to ship pesticides into the United States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (NOA) [EPA Form 3540-1], prior to the arrival of the shipment(s) into the United States.
  12. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136 (q), includes labeling which bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
  13. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or offer for sale a misbranded pesticide.

### **III. Specific Allegations**

14. On or around November 1, 2017, the licensed customs broker Kuehne + Nagel, Inc. (Kuehne + Nagel) submitted a NOA via the U. S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) Data Processing System on behalf of Proactive for the importation of a shipment of thirty (30) super sacks, each sack weighing 500 kilograms, of the pesticide product active ingredient Prodiamine Technical (EPA

Registration Number 74468-5). The ACE Entry presented to the EPA as described above, notified the EPA that the pesticide product Prodiamine Technical was being presented for import into the United States at the Port of Savannah.

15. The product label submitted to the EPA for the shipment of the above-referenced pesticide did not correspond with the pesticide's most current EPA-approved pesticide master label. More specifically, the Prodiamine Technical pesticide label included incorrect language regarding storage and disposal. The EPA Master Label requires the following language: "Non-refillable containers. Do not reuse or refill this container," however, the label uploaded by Kuehne + Nagel to the ACE Entry System states the following non-compliant language: "Plastic Containers-Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill..."
16. On November 9, 2017, the EPA Region 4 informed Proactive by email that the label that was submitted into the ACE Document Imaging System for the imported Prodiamine Technical pesticide product did not correspond with the pesticide's most current EPA-approved pesticide master label. Subsequently, on November 9, 2017, Proactive confirmed in an email to the EPA Region 4 that the super sack bags of Prodiamine Technical that had arrived in the Port of Savannah on November 1, 2017, bore product labels with incorrect storage and disposal instructions.
17. On December 7, 2017, the EPA Region 4, issued a Stop Sale, Use or Removal Order (SSURO), to the Respondent pertaining to the shipment of the pesticide product Prodiamine Technical after determining that the product was misbranded. The SSURO prohibited the Respondent from further selling, distributing, using or removing the shipment of Prodiamine Technical, but also provided the Respondent an opportunity to

come into compliance by relabeling the misbranded pesticide product at an EPA-registered establishment.

18. On December 13, 2017, the EPA withdrew the SSURO after verifying the pesticide product Prodiamine Technical had been properly relabeled and was in compliance with FIFRA.
19. By importing the mislabeled pesticide product as described above in paragraphs 15 and 16, the Respondent distributed a misbranded pesticide, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
20. The EPA alleges that the Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on one occasion, and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. 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.
22. 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 the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation(s).
23. 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 **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500)** 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.

#### **IV. Consent Agreement**

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
25. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
26. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section III of this CAFO and shall not otherwise affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with FIFRA and other applicable federal, state and local laws and regulations.
29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

**V. Final Order**

30. Respondent is assessed a civil penalty of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
31. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819.

32. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:



Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303-8960;

Kimberly Tomczak  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960.

33. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
34. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
36. This CAFO shall be binding upon the Respondent, its successors and assigns.
37. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

**The remainder of this page is intentionally left blank.**

**VI. Effective Date**

38. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent:** Proactive, LLC

**Docket No.:** FIFRA-04-2018-3013(b)

By:  (Signature)

Date: APRIL 26, 2018

Name: LAWRENCE A. MILLER (Typed or Printed)

Title: MANAGING PARTNER (Typed or Printed)

**Complainant:** U. S. Environmental Protection Agency

By: 

Date: 5/11/18

Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

**APPROVED AND SO ORDERED** this 31<sup>st</sup> day of May 2018.



Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, **In the Matter of Proactive LLC**. Docket Number: FIFRA-04-2018-3013(b), to the addressees listed below.

Mr. Lawrence A. Miller  
Proactive LLC  
10529 Heritage Bay Boulevard  
Naples, Florida 34120

(via Certified Mail, Return Receipt Requested)

Kimberly Tomczak  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

(via EPA's internal mail)

Mr. Robert Caplan  
Senior Attorney  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(via EPA's internal mail)

5-31-18  
DATE



Patricia Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404)-562-9511