

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Nu-Way Products Company, Inc.
220 Garrison Cove
West Memphis, AR 72301

RESPONDENT

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CONSENT AGREEMENT AND
FINAL ORDER

DOCKET NO. FIFRA 06-2018-0364

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 ("EPA") as Complainant, and Nu-Way Products Company, Inc. (Nu-Way Products), 220 Garrison Cove in West Memphis, AR (Respondent) in the above referenced action, have consented to the terms of this Consent Agreement and Final Order ("CAFO").

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this CAFO.

I.
PRELIMINARY STATEMENT

1. This enforcement proceeding is instituted by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") 7 U.S.C. § 136l(a), which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$7,500¹ for each violation of Section 7(c) of FIFRA, 7 U.S.C. § 136e(c) (relating to the failure to

¹The Civil Monetary Penalty Inflation Adjustment Rule (73 Fed Reg. 75340, December 11, 2008 and 81 Fed Reg. 43091, July 1, 2016) provided for increases in the statutory penalty provisions for violations which occur after the date the increases took effect. For violations after December 11, 2008, the potential maximum penalty for such violations changed from \$6,500 to \$7,500. For violations after November 2, 2015, the potential maximum penalty for such violations changed from \$7,500 to \$18,750.

file an annual pesticide production report). This proceeding was instituted by the issuance of a Consent Agreement and Final Order [hereinafter "CAFO"] incorporated herein.

2. The CAFO alleges Respondent violated regulations promulgated pursuant to the FIFRA.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

5. By signature on this CAFO, Respondent waives any right to an appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, but not limited to, subsequent purchasers.

II.

STATUTORY AND REGULATORY BACKGROUND

8. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating an establishment registered under that Section to inform the Administrator annually, as required by EPA regulations, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides:

- A. which it is currently producing,
- B. which it has produced during the past year, and
- C. which it has sold or distributed during the past year.

9. 40 C.F.R. § 167.85 requires producers to file annual pesticide production reports, in accordance with the requirements described in paragraph 8 above, on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

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

11. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1): "Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$7,500² for each offense."

12. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

III. **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. Respondent is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

14. Respondent operates a business at 220 Garrison Cove West Memphis, AR 72301.

15. The place identified in Paragraph 14 is an "establishment," as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

16. The Respondent is a "producer," as that term is defined by Section 2(w) of FIFRA,

See footnote 1.

7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.

17. During calendar year 2017, the Respondent's establishment was registered with EPA as a pesticide producing establishment, pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. § 167.20, Establishment Number 7643-AR-1.

18. Pursuant to Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85(d), Respondent was required to file an annual pesticide production report for calendar year 2017.

19. Respondent filed its annual pesticide production report March 24, 2018, 23 days after the March 1, 2018 deadline.

IV.
VIOLATIONS

20. Respondent has failed to file its annual report for 2017 due by March 1, 2018 as required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85(d).

V.
CIVIL PENALTY AND
TERMS OF SETTLEMENT

21. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), which authorizes EPA to assess a civil penalty of up to **EIGHTEEN THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$18,750.00)**³ for each violation of FIFRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop

³ See footnote 1.

the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" Section 7 (c) dated May 2010, located at:

<http://www.epa.gov/compliance/resources/policies/civil/fifra/fifra-erp-section7-051910.pdf>

It is ORDERED that Respondent be assessed a civil penalty of **THREE THOUSAND DOLLARS AND NO CENTS (\$3,000.00)**.

22. Within thirty (30) days of Respondent's receipt of this fully executed CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6."

23. Payment shall be remitted in one of the alternatives provided in the collection information section below:

COLLECTION INFORMATION

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to:
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"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact -- Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency

Account 310006
CTX Format

ON LINE PAYMENT:

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

WWW.PAY.GOV

Enter "sfo 1.1" in the search field;

Open form and complete required fields following directions for EPA Miscellaneous payments.

EPA Miscellaneous Payments - Cincinnati Finance Center

Form Number: **SFO Form Number 1.1**

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments

PLEASE NOTE: Docket number FIFRA-06-2018-0364 shall be clearly typed on the check to ensure proper credit. Respondent shall send a simultaneous notice of such payment, including a copy of the money order or check to the following:

Chuck Ruple
Pesticides Section (6MM-XP)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Respondent's adherence to this request will ensure proper credit is given to the matter at hand.

24. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

25. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11 unless otherwise prohibited by law,

EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

26. The EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an

additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11 (c).

Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**VI,
COSTS**

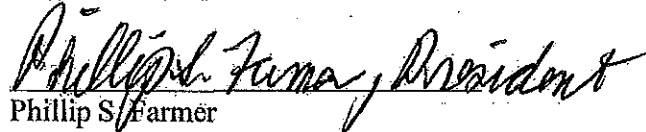
27. Each party shall bear its own costs and attorney's fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date:

9-10-18



Phillip S. Farmer

President

Nu-Way Products Company, Inc.

FOR THE COMPLAINANT:

Date:

09/11/18



Craig Carrol

Chief

Pesticides Section

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

9/17/18



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2018, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order were hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and a true and correct copy was delivered to the following individual by method indicated below:

VERIFIED EMAIL – ADOBE PDF - RETURN RECEIPT

Phillip S. Farmer
President
Nu-Way Products Company, Inc.
220 Garrison Cove
West Memphis, AR 72301



Chuck Ruple
Enforcement Officer
Pesticides Section