

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2023-0086
)	
FARMERS SUPPLY COOPERATIVE,)	CONSENT AGREEMENT
)	
Vale, Oregon,)	
)	
Respondent.)	
)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Farmer’s Supply Cooperative (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA,

7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The term “person” is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any person to violate any regulation issued under Section 19 of FIFRA, 7 U.S.C. § 136q.

3.4. Pursuant to Section 19(e) of FIFRA, 7 U.S.C. § 136q(e), the EPA Administrator promulgated regulations pertaining to standards for pesticide containers and pesticide containment structures (“the Container/Containment regulations”), which are codified at 40 C.F.R. Part 165.

3.5. 40 C.F.R. § 165.3 defines “agricultural pesticide” as “any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.”

3.6. 40 C.F.R. § 165.3 defines “establishment” as “any site where a pesticidal product . . . is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or

whether the site is foreign and producing any pesticidal product for import into the United States.”

3.7. “Refilling establishment” is defined by 40 C.F.R. § 165.3 as “an establishment where the activity of repackaging pesticide product into refillable containers occurs.”

3.8. 40 C.F.R. § 165.3 defines “repackage,” for the purposes of the Container/Containment regulations, as “to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product’s EPA registration number, for sale or distribution.”

3.9. 40 C.F.R. § 165.3 defines “facility” as “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person).”

3.10. “Operator” is defined by 40 C.F.R. § 165.3 as “any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located.”

3.11. “Owner” is defined by 40 C.F.R. § 165.3 as “any person who owns a facility at which a containment structure is required.”

3.12. “Refiller” is defined by 40 C.F.R. § 165.3 as “a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.”

3.13. Under 40 C.F.R. § 165.80(b)(1), owners or operators of refilling establishments who repackage agricultural pesticides, whose principal business is retail sale, and who also have a stationary pesticide container or a pesticide dispensing area are subject to the requirements of 40 C.F.R. Part 165, Subpart E.

3.14. Under 40 C.F.R. § 165.81(b), Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to 40 C.F.R. Part 165, Subpart E.

3.15. Under 40 C.F.R. § 165.95, a facility owner or operator subject to 40 C.F.R. Part 165, Subpart E must maintain, *inter alia*, records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances. Such records must be kept for 3 years and must include the following information: (1) name of the person conducting the inspection and maintenance; (2) date the inspection or maintenance was conducted; (3) conditions noted; (4) specific maintenance performed.

3.16. Respondent is an association organized under the laws of Oregon and is therefore a “person” under Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.17. Respondent is the owner and operator of a facility that is a refilling establishment, located at 550 Harrison Street West, Vale, Oregon (the “Facility”).

3.18. At all times relevant to this Consent Agreement, Respondent was a refiller of the registered pesticide Roundup PowerMAX (EPA Registration No. 524-549) at the Facility and Respondent was not the registrant of Roundup PowerMAX.

3.19. Roundup PowerMAX is an agricultural pesticide as that term is defined in 40 C.F.R. § 165.3.

3.20. At all times relevant to this Consent Agreement, the Respondent stored the liquid pesticide Roundup PowerMAX at the Facility in one stationary pesticide container with a design capacity of 1,492 gallons (the “Container”).

3.21. At all times relevant to this Consent Agreement, the Facility repackaged agricultural pesticides, its principal business was retail sale, and it had at least one stationary pesticide container designed to hold undivided quantities of agricultural pesticides greater than 500 gallons of liquid pesticide.

3.22. Therefore, all times relevant to this Consent Agreement, the Facility was subject to the requirements of 40 C.F.R. Part 165, Subpart E.

3.23. On at least April 22, 2022, Respondent failed to maintain or keep records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances at the Facility in violation of 40 C.F.R. 165.95 and FIFRA.

3.24. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$23,494 for each offense.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$4,391 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions

are available at: <https://www.epa.gov/financial/makepayment>. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

Address format for standard delivery (no delivery confirmation requested):

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10,
R10_RHC@epa.gov

Marie Hallinen
U.S. Environmental Protection Agency
Region 10,
Hallinen.marie@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

STEVE MENDIOLA, General Manager
Farmers Supply Cooperative

DATED:

FOR COMPLAINANT:

STACY A. MURPHY, Acting Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2023-0086
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FARMERS SUPPLY COOPERATIVE,)	FINAL ORDER
)	
Vale, Oregon,)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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 does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

I certify that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Farmers Supply Cooperative, Docket No.: FIFRA-10-2023-0086**, was filed with the Regional Hearing Clerk; and a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Brett S. Dugan
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Dugan.brett@epa.gov

Steve Mendiola
General Manager
Farmers Supply Cooperative
514 SW 4th Avenue
Ontario, Oregon 97914
smendiola@farmerssc.com

Regional Hearing Clerk
EPA Region 10