



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

DEC 23 2015

REPLY TO THE ATTENTION OF:

Mr. James Nonneman
Herrin, Ltd.
13962 Old Route 36
Buffalo, Illinois 62515

Consent Agreement and Final Order in the Matter of
Herrin, Ltd: Docket No. **FIFRA-05-2016-0003**

Mr. Nonneman:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on December 23, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,720.00 is to be paid in the manner described in paragraph 35 and 36. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Herrin, Ltd.
Buffalo, Illinois,

Respondent.



Docket No. FIFRA-05-2016-0003

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Herrin, Ltd. (Herrin), a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

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. Under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA.

12. Pursuant to its authority under Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), the EPA has promulgated regulations governing the registration of pesticide producing establishments at 40 C.F.R. Part 167.

13. Under 40 C.F.R. § 167.20(a), any establishment where a pesticidal product is produced must be registered with EPA.

14. The term “to distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. 7 U.S.C. § 136(gg).

15. The term “establishment” means any site where a pesticide or pesticidal product is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

16. The term “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. 7 U.S.C. § 136(s).

17. The term “pesticidal product” means, among other things, a pesticide. 40 C.F.R. § 167.3.

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. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide, or to package, repack, label, relabel, or otherwise change the container of any pesticide. 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

20. A “producer” is any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

21. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor 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

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

23. Respondent is a distributor subject to civil penalties for violations of FIFRA under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

24. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).
25. At all times relevant to this CAFO, Respondent owned or operated a facility located at 1583 700th Street, Mount Pulaski, Illinois 62548 (Herrin facility).
26. The Herrin facility is an “establishment,” within the meaning of Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.
27. Respondent “produced” “Roundup Powermax,” EPA Registration Number 524-549, at the Herrin facility in calendar year 2013, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.
28. Respondent “produced” “Breakfree Nxt Atz,” EPA Registration Number 62719-671-352, “Abundant Extra,” EPA Registration Number 71368-20, “Prowl H2O,” EPA Registration Number 241-418, and “Roundup Weathermax,” EPA Registration Number 524-537, at the Herrin facility in calendar year 2014, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.
29. “Roundup Powermax,” “Breakfree Nxt Atz,” “Abundant Extra,” “Prowl H2O,” and Roundup Weathermax” are “pesticides” and “pesticidal products,” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 167.3.
30. The Herrin facility was not a registered establishment with EPA for the calendar year 2013.
31. The Herrin facility was not a registered establishment with EPA for the calendar year 2014.

32. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20(a), by producing pesticides at an unregistered establishment, the Herrin facility, in calendar years 2013 and 2014.

33. Respondent's production of pesticides at 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

34. 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 \$5,720. 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.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,720 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.

36. 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

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

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

38. 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.

39. 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

40. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk (Effective Date).

41. Consistent with the "Standing Order Authorizing E-Mail Service of Orders and

Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grubb.christopher@epa.gov (for Complainant) and herrinfertilizer@yahoo.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

43. 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.

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

45. This CAFO is a “final order” for purposes of EPA’s FIFRA Enforcement Response Policy.

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

47. 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.


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

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


Herrin, Ltd., Respondent

11/27/15
Date


James Nonneman
Owner

United States Environmental Protection Agency, Complainant

12/10/2015
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Herrin, Ltd.
Docket No. FIFRA-05-2016-0003

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.

12-17-15

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Herrin, Ltd.
Docket Number: **FIFRA-05-2016-0003**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order** which was filed on December 23, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. James Nonneman
Herrin, Ltd.
13962 Old Route 36
Buffalo, Illinois 62515

Copy by E-mail to
Attorney for Complainant:

Christopher Grubb
grubb.christopher@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

December 23, 2015 

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5