



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
March 24, 2014

REPLY TO THE ATTENTION OF:  
LC- 8J

**CERTIFIED MAIL: No.7009 1680 0000 7647 6270**  
**RETURN RECEIPT REQUESTED**

Nufarm Americas, Inc  
ATTN: Ms. Kitty Kranz  
11901 South Austin Avenue  
Alsip, Illinois 60527

Consent Agreement and Final Order In the Matter of  
Nufarm Americas Inc, Docket No. FIFRA-05-2014-0010

Mr. Kranz:

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 March 24, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 39 and 40. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by April 23, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Meghan Dunn".

Meghan Dunn  
Pesticides and Toxics Compliance Section

Enclosure



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 the pesticidal products that are the subject of this CAFO shall be in compliance with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states that it is unlawful for

any person to violate any regulation issued under Section 19 of FIFRA.

14. Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136q(a)(1)(B), states, in pertinent part, that the Administrator may require under Section 3 that the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of any container of the pesticide.

15. Section 19(e)(1)(B) of FIFRA, 7 U.S.C. § 136q(e)(1)(B), states, in pertinent part, that the Administrator shall promulgate regulations that facilitate the safe disposal or refill and reuse of pesticide containers.

16. 40 C.F.R. § 156.144 provides, in pertinent part, that for pesticide products other than residential/household use products, gases, articles, and transport vehicles, a residue removal statement must be on the label.

17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean 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.

18. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

19. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

20. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

21. The Administrator may assess a civil penalty against any registrant who violates any

provision of FIFRA 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. § 136(a)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

22. Respondent submitted to EPA on or about January 14, 2014, a NOA for the import of 15 units of 1,220 kilogram containers of "2,4-D BEE Technical," having EPA Registration Number 35935-98,

23. At all times relevant to this CAFO, Respondent is the importer of record for the NOA referenced in paragraph 22.

24. Respondent, as the importer of record of "2,4-D BEE Technical," EPA Reg. No. 35935-98, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

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

26. Respondent is a "registrant" as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

27. "2,4-D BEE Technical" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. "2,4-D BEE Technical" is an EPA registered pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

29. The import shipment associated with entry number 231-8002636-5 entered the United States on or about January 15, 2014.

30. The inspector reviewed the label of "2,4-D BEE Technical" supplied to EPA with the NOA, and confirmed with the respondent that the label was a true and accurate representation

of the label that was on the product in the shipment identified in the NOA.

31. The imported quantities of “2,4-D BEE Technical,” EPA Reg. No. 35935-98, associated with entry number 231-8002636-5 and the January 14, 2014 NOA failed to bear a complete statement on the labels for container disposal as required by 40 C.F.R. § 156.146.

32. As observed on the label provided with the NOA, the label stated residue removal could be performed by means of a pressure rinse, as allowed by 40 C.F.R. § 156.146.

33. The label provided with the NOA did not bear the instructions for residue removal. If pressure rinse is listed as an option for residue removal, 40 C.F.R. § 156.146(c) requires the label to also include specific language pertaining to pressure rinse residue removal instructions provided in 40 C.F.R. § 156.146(c).

34. As observed on the label provided with the NOA, the following required language from 40 C.F.R. § 156.146(c)(1) was absent from the imported “2,4-D BEE Technical” labels: “Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip.”

35. On or about January 15, 2014, Respondent “distributed or sold” the misbranded pesticide “2,4-D BEE Technical,” EPA Reg. No. 35935-98, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

36. Respondent’s distribution or sale of the misbranded pesticide “2,4-D BEE Technical” constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).

37. Respondent’s violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S), subjects Respondent to assessment of a civil penalty under

Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty**

38. 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 \$7,500. 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.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations by

Check sent by express mail: By sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Nufarm Americas, Inc. and the docket number of this CAFO.

40. Respondent must send a notice of payment that states Respondent's name, complete address 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

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

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

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

42. 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). 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**

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

44. 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.

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

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

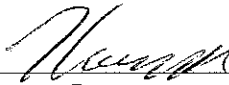


Policy.

47. The terms of this CAFO bind Respondent, its successors and assigns.
48. 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.
49. Each party agrees to bear its own costs and attorneys fees, in this action.
50. This CAFO constitutes the entire agreement between the parties.

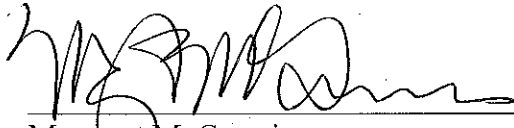
**Nufarm Americas, Inc., Respondent**

2/26/14  
Date

  
Thomas Lyons  
Executive Vice President  
Nufarm Americas, Inc.

**United States Environmental Protection Agency, Complainant**

3/17/2014  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Nufarm Americas, Inc.**  
**Docket No. FIFRA-05-2014-0010**



**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.

3/20/2014

Date

A handwritten signature in blue ink, appearing to be "S Hedman", written over a horizontal line.

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 Nufarm Americas, Inc., was filed on March 24, 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 7647 6270, and a copy of the original to the Respondent:

Nufarm Americas, Inc  
ATTN: Ms. Kitty Kranz  
11901 South Austin Avenue  
Alsip, Illinois 60527



and forwarded copies (intra-Agency) to:

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

A handwritten signature in blue ink that reads "Frederick Brown".

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

Docket No. FIFRA-05-2014-0010