

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219  
BEFORE THE ADMINISTRATOR

2016 SEP 30 PM 1:58

In the Matter of )  
 ) Docket No. FIFRA-07-2016-0021  
 )  
St. Charles County Co-Operative Co. )  
 )  
 )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and St. Charles County Co-Operative Co. (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## **Section II**

### **Parties**

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is St. Charles County Co-Operative Co. located in St. Charles, Missouri.

## **Section III**

### **Statutory and Regulatory Background**

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

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

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

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to 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.

10. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

13. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for these violations. The EPA has adjusted this figure upward for inflation pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, which amend 40 C.F.R. Part 19, so that penalties of up to \$7,500 per day are now authorized for violations that occur from January 12, 2009, through November 2, 2015, and penalties of up to \$18,750 are authorized for violations that occur after November 2, 2015.

## **Section IV**

### **General Factual Allegations**

14. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA.

15. On or about October 7, 2014, a Missouri Department of Agriculture (MDA) inspector conducted a routine market place inspection at Respondent’s facility located at 24 Main Street, St. Charles Missouri.

16. During the Inspection, approximately five (5) registered product labels were collected. Respondents’ representative certified that the collected labels were identical to the labels attached to repackaged products sold to customers. Invoices documenting the sale of these products were also collected.

17. Specifically, the following product labels were collected during the Inspection:

(i) BASF Prowl H2O Herbicide bearing the EPA Reg. No. 241-418.

(ii) BASF RUP Guardsman Max Herbicide bearing the EPA Reg. No. 7969-192.

(iii) BASF Extreme Herbicide bearing the EPA Reg. No. 241-405.

(iv) BASF Outlook Herbicide bearing the EPA Reg. No. 7969-156.

(v) BASF Verdict X Herbicide bearing the EPA Reg. No. 7969-279.

(vi) SYNGENTA RUP Lexar Herbicide bearing the EPA Reg. No. 100-1201.

### **Violations**

18. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

**Count 1**

19. The facts stated in paragraphs 14 through 17 are realleged and incorporated as if fully stated herein.

20. Respondent's representative certified that the collected label for BASF Prowl H2O was identical to the label attached to a bulk container which was repackaged and sold on May 20, 2014. The invoice for the sale of BASF Prowl H2O on May 20, 2014 was also collected.

21. The collected label failed to contain the complete container handling instructions and directions for use.

22. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when it sold or distributed a misbranded pesticide product which failed to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

**Count 2**

23. The facts stated in paragraphs 14 through 17 are realleged and incorporated as if fully stated herein.

24. Respondent's representative certified that the collected label for BASF RUP Guardsman Max Herbicide was identical to the label attached to a bulk container which was repackaged and sold on May 8, 2014. The invoice for the sale of BASF RUP Guardsman Max Herbicide on May 8, 2014 was also collected.

25. The collected label failed to contain the complete first aid statements, precautionary statements, correct personal protective equipment statement, disposal instructions, and directions for use.

26. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E),

when it sold or distributed a misbranded pesticide product which failed to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

**Count 3**

27. The facts stated in paragraphs 14 through 17 are realleged and incorporated as if fully stated herein.

28. Respondent's representative certified that the collected label for BASF Extreme Herbicide was identical to the label attached to a bulk container which was repackaged and sold on July 30, 2014. The invoice for the sale of BASF Extreme Herbicide on July 30, 2014 was also collected.

29. The collected label failed to contain the complete product information and directions for use.

30. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when it sold or distributed a misbranded pesticide product which failed to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

**Count 4**

31. The facts stated in paragraphs 14 through 17 are realleged and incorporated as if fully stated herein.

32. Respondent's representative certified that the collected label for BASF Outlook Herbicide was identical to the label attached to a bulk container which was repackaged and sold on July 30, 2014. The invoice for the sale of BASF Outlook Herbicide on July 30, 2014 was also collected.

33. The collected label failed to contain the complete product information and directions for use.

34. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when it sold or distributed a misbranded pesticide product which failed to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

#### **Count 5**

35. The facts stated in paragraphs 14 through 17 are realleged and incorporated as if fully stated herein.

36. Respondent's representative certified that the collected label for BASF Verdict X Herbicide was identical to the label attached to a bulk container which was repackaged and sold on October 7, 2014. The invoice for the sale of BASF Verdict X Herbicide on October 7, 2014 was also collected.

37. The collected label failed to contain the complete product information and directions for use.

38. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when it sold or distributed a misbranded pesticide product which failed to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

#### **Count 6**

39. The facts stated in paragraphs 14 through 17 are realleged and incorporated as if fully stated herein.

40. Respondent's representative certified that the collected label for SYNGENTA

RUP Lexar Herbicide was identical to the label attached to a bulk container which was repackaged and sold on June 8, 2013. The invoice for the sale of SYNGENTA RUP Lexar Herbicide on June 8, 2013 was also collected.

41. The collected label failed to contain the complete precautionary statements, agriculture use requirements, general information, and directions for use.

42. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when it sold or distributed a misbranded pesticide product which failed to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

## Section V

### Consent Agreement

43. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

44. Respondent neither admits nor denies the factual allegations set forth above.

45. Respondent waives the right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

46. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

47. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

48. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind



Respondent to it.

49. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

50. The effect of settlement as described in Paragraph 51 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 49 above.

51. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Thirty-Six Thousand Dollars (\$36,000) as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

52. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

53. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period.

Additionally, as provided by 31 U.S.C. ' 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

## **Section VI**

### **Final Order**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Thirty-Six Thousand (\$36,000) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency  
Fines and Penalties - CFC  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard

Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT**

St. Charles County Co-Operative Co.

Date: 9/22/16


By: 

Tommy Kreuger  
Print Name

GM  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 9/29/16

  
\_\_\_\_\_  
Karen Flournoy  
Director  
Water, Wetlands, and Pesticides Division

Date: 9/29/2016

  
\_\_\_\_\_  
Kelley Catlin  
Office of Regional Counsel

*Sr*

**IT IS SO ORDERED.**

Date: Sept. 29, 2016

Karina Borrromeo  
Karina Borrromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER Of St. Charles County Co-Operative Co., Respondent  
Docket No. FIFRA-07-2016-0021

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by First Class Mail to Respondent:

Susie Snyders  
Business Manager  
St. Charles County Co-Operative Co.  
24 Main Street  
St. Charles, Missouri 63301

Dated: 10/3/16

  
Kathy Robinson  
Hearing Clerk, Region 7