



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

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6297

Mr. Geoff Quick  
Nufarm Americas, Inc.  
150 Harvester Drive, Suit 200  
Burr Ridge, Illinois 60527

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0023<sup>02</sup>

Dear Mr. Crawford:

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 August 8, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,500.00 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the number **BD2750845P023** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 7, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joe Lukascyk  
Pesticides and Toxics Compliance Section

Enclosures

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Nufarm Americas, Inc. )  
Burr Ridge, Illinois )  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2008-0023<sup>20</sup>  
Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

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Consent Agreement and Final Order

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 (U.S. EPA), Region 5.
3. The Respondent is Nufarm Americas, Inc., a corporation doing business in the State of Illinois and headquartered at 150 Harvester Drive, Suite 200, Burr Ridge, IL 60527-5946.
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 to 136y.

**Statutory and Regulatory Background**

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

11. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

12. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular.

14. Section 2(q)(1)(C) of FIFRA, 7 U.S.C. § 136(q)(1)(C), states that a pesticide is “misbranded” if it is an imitation of, or is offered for sale under the name of another pesticide.

15. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful

for any person in any state to distribute or sell to any person any pesticide which is misbranded.

16. The regulations at 40 C.F.R. § 156.10(e) state, “The registration number assigned to the pesticide product at the time of registration shall appear on the label....”

17. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA, of up to \$6,500 for each offense that occurred after March 15, 2004 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**

18. Respondent was, at all times relevant to this Complaint, a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

20. On May 2, 2006, an inspector employed by the Michigan Department of Agriculture (MDA) and duly authorized to conduct inspections under FIFRA, conducted an inspection under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, at UAP Distribution, Inc., located at 9755 West Grand Ledge Highway, Sunfield, Michigan 48890, to examine and collect samples of any pesticides packaged, labeled, and released for shipment.

21. During the inspection, the inspector observed thirty cases of “Mycoshield Fungicide” in the facility warehouse.

22. The outer cardboard cases of the “Mycoshield Fungicide” were marked with EPA Registration Number (EPA Reg. No.) 55146-96.

23. The correct EPA Reg. No. for “Mycoshield Fungicide” is EPA Reg. No. 55146-97.

24. The “Mycoshield Fungicide” was distributed or sold to UAP by Respondent, Nufarm on or about February 28, 2005.

25. On or about February 28, 2005, Nufarm distributed or sold “Mycoshield Fungicide” to UAP with the incorrect EPA Reg. No. on its outer cardboard cases.

26. EPA Reg. No. 55146-96 is assigned to another Nufarm pesticide, “Agri-mycin 17 Strepomycin”.

27. “Mycoshield Fungicide,” EPA Reg. No. 55146-96, (as stated on the outer shipping container label), is a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

### **Specific Allegations**

#### **Count 1**

28. The statements provided in paragraphs 1 through 27 are incorporated by reference as though set forth here in full.

28. On or about February 28, 2005, Respondent distributed or sold a misbranded pesticide, “Mycoshield Fungicide,” EPA Reg. No. 55146-96, (as stated on the outer shipping container label), in violation of Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E).

29. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty**

30. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

31. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$6,500. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990.

32. Within 30 days of the effective date of this CAFO, Respondent must pay a \$6,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

33. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Joseph G. Lukascyk (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Nidhi O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

34. This civil penalty is not deductible for federal tax purposes.
35. If Respondent does not pay the civil penalty timely, U.S. 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.
36. 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**

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.
38. Respondent certifies that to the best of its knowledge, it is now in full compliance with FIFRA and its implementing regulations.

39. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

41. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for FIFRA.

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

43. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorney's fees, in this action.

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



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In the Matter of:  
Nufarm Americas, Inc.  
Docket No. *FIFRA-05-2008-00232*

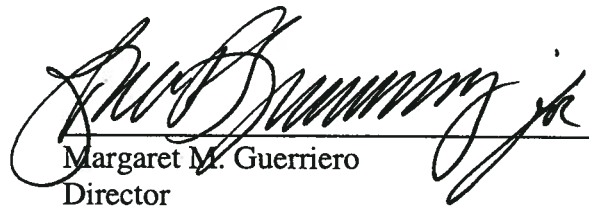
RESPONDENT  
Nufarm Americas, Inc.  
Burr Ridge, Illinois

7-18-08  
Date

  
\_\_\_\_\_  
Geoff Quick  
General Manager  
Business Manager & Regulatory Development

COMPLAINANT  
Region 5  
United States Environmental Protection Agency

8/4/08  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
Nufarm Americas, Inc.  
Docket No. FIFRA-05-2008-0023<sup>22</sup>

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**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.

8/6/08  
Date

Walter W. Koratich for  
Bharat Mathur  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
JUL 25 2008  
OFFICE OF REGIONAL  
COUNSEL

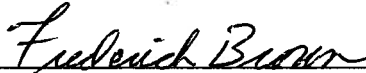
**CERTIFICATE OF SERVICE**

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 August 8, 2008 with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8921 6297, a copy of the original to the Respondents:

Mr. Geoff Quick  
Nufarm Americas, Inc.  
150 Harvester Drive, Suit 200  
Burr Ridge, Illinois 60527

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Nidhi O'Meara, Regional Judicial Officer, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



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

Docket No. FHRA-05-2008-0023<sup>20</sup>

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