



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

MAY 10 2017

REPLY TO THE ATTENTION OF:
LC-17J

VIA EMAIL

Mr. Bruce Davison
President
Mid America Distributing, LLC
820 East 10th Street
Fairmont, Minnesota 56031

bdavison@frontiernet.net

Re: Consent Agreement and Final Order In the Matter of Mid America Distributing, LLC
Docket Number FIFRA-05-2017-0028

Mr. Davison:

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 May 10, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$13,243 is to be paid in the manner described in paragraphs 50-51. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due 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 "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Cc: William Donald
Prolific Agricultural Services, Incorporated
9584 161st Street West
Lakeville, MN 55044
prolificagservices@outlook.com



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
MID AMERICA DISTRIBUTING, LLC)
FAIRMONT, MINNESOTA,)
)
RESPONDENT.)
_____)

Docket No.: FIFRA-05-2017-0028
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. The Respondent is Mid America Distributing, LLC (Mid America Distributing), a Limited Liability Company doing business in the State of Minnesota.
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.

Jurisdiction and Waiver of Right to Hearing

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

7. 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.

Statutory and Regulatory Background

8. 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.

9. Section 25(c)(1) of FIFRA, 7 U.S.C. § 136(t) defines “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest.

10. The regulation at 40 C.F.R. § 167.3 defines the term “pesticidal product” as a pesticide, active ingredient, or device.

11. Under the regulation at 40 C.F.R. § 152.15(a)(1), a substance is considered to be intended for a pesticidal purpose, and thus a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

12. 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.

13. Respondent is, and was at all times relevant to this CAFO, a Limited Liability Company, and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

14. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3 defines the term “produce” as to manufacture, prepare, compound, propagate, or process any pesticide, or to package, repackage, label, relabel or otherwise change the container of any pesticide.

15. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and the regulation at 40 C.F.R. § 167.3, define the term “establishment” to mean any site where a pesticide or pesticidal product is produced, or held, for distribution or sale.

16. At all times relevant to this matter, the Respondent operated a facility at 820 East 10th Street, Fairmont, Minnesota 56031, at which it packaged, repackaged, distributed, sold pesticides and pesticide products (“the Facility”).

17. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.

18. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1), provides in part that each applicant for registration of a pesticide shall file with the Administrator a statement which includes, in pertinent part, ... (C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for use and ... (D) the complete formula of the pesticide.

19. Section 19 (a)(1)(B) of FIFRA, 7 U.S.C. § (a)(1)(B), provides that the Administrator may require under Section 3 or 6 of FIFRA that the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of the pesticide, any container of the pesticide, any rinsate containing the pesticide, or any other material used to contain or collect excess or spilled quantities of the pesticide.

20. The regulation at 40 C.F.R § 156.10(a), provides that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in this part.

21. The regulation at 40 C.F.R. § 156.10(a)(iii) provides that the contents of a label

must show clearly and prominently the net contents as prescribed in paragraph (d) of 40 C.F.R. § 156.10.

22. The regulation at 40 C.F.R. § 156.10(d) provides, in pertinent part, that the net weight or measure of content shall be exclusive of wrappers or other materials and shall be average content unless explicitly stated as a minimum quantity.

23. Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii), defines a pesticide as “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the net weight or measure of the content except that the Administrator may permit reasonable variations.

24. 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 a pesticide which is adulterated or misbranded.

25. The regulation at 40 C.F.R. § 156.10(i)(2)(ix), provides, in pertinent part, that the contents of the directions for use shall include the following under “Directions for Use”: specific directions concerning the storage, residue removal and disposal of the pesticide and its container, in accordance with subpart H of 40 C.F.R. Part 156 for Container Labeling. These instructions must be grouped and appear under the heading “Storage and Disposal.”

26. The regulation at 40 C.F.R. § 156.140 provides, in pertinent part, that for nonrefillable containers, the following statements must be placed on the label or container of a pesticide product: a statement identifying the container as nonrefillable, one of the prescribed reuse statements, and one of the prescribed recycling or reconditioning statements.

27. The regulation at 40 C.F.R. § 161.175, provides, in pertinent part, that an applicant

must propose certified limits for the ingredients in the product. Certified limits become legally binding limits upon approval of the application.

28. The regulation at 40 C.F.R. § 161.175(a) provides, in pertinent part, that certified limits are required on the following ingredients of a pesticide product... (1) An upper and lower limit for each active ingredient.

29. Section 12(a)(1)(C) of FIFRA, 7.U.S.C. § 136j(a)(1)(C), provides that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA.

30. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), provides that the Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of FIFRA.

31. The regulation at 40 C.F.R. § 169.2 provides, in pertinent part, that all producers of pesticides, devices, or active ingredients used in producing pesticides subject to this Act, shall maintain the following records... (a) Records showing the product name, EPA Registration Number, Experimental Permit Number if the pesticide is produced under an Experimental Use Permit, amounts per batch and batch identification (numbers, letters, etc.) of all pesticides produced and... (d) Records showing the following information regarding the shipment of all pesticides, devices, and active ingredients used in producing pesticides: (1) Brand name of pesticide or device, or the common or chemical name of the pesticide active ingredient; (2) Name and address of consignee; (3) Where the pesticide is produced pursuant to an experimental use permit (FIFRA Section 5), a special exemption (Section 18), or a special local need (Section

24), the information required under these Sections and any regulations promulgated thereto regarding the distribution of such pesticides; (4) Name of originating carrier; (5) Date shipped or delivered for shipment; and (6) Quantities shipped or delivered for the shipment.

32. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), provides that it is unlawful for a person to refuse to prepare, maintain, or submit any records required by or under Section 5, 7, 8, 11 or 19 of FIFRA.

33. 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.

34. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

35. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device.

36. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 note, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$18,750 for each offense occurring after November 2, 2015.

Factual Allegations and Alleged Violations

“Clean Field 88.8 WDG,” EPA Reg. No. 83411-2

37. During calendar years 2013 and 2014, Respondent repackaged “Clean Field 88.8 WDG,” EPA Reg. No. 83411-2. Respondent asserts that it did so under a repackaging agreement with the basic registrant and original producer, Glystoria, LLC. Respondent repackaged “Clean Field 88.8 WDG,” EPA Reg. No. 83411-2, from a bulk container received from Glystoria, LLC into 40 pound bags.

38. Distribution and sales records show that Respondent distributed or sold a quantity of “Clean Field 88.8 WDG,” EPA Reg. No. 83411-2, in 40-pound bags that it had repackaged, on at least 15 separate occasions during calendar years 2013 and 2014:

	Invoice Number	Date
1	66161	1/30/2013
2	66162	1/31/2013
3	66177	2/12/2013
4	66185	2/19/2013
5	66201	3/11/2013
6	14367	4/3/2013
7	16105	5/14/2013
8	16198	6/18/2013
9	16203	6/19/2013
10	16276	7/17/2013
11	16282	7/22/2013
12	16371	9/18/2013
13	66396	11/1/2013

14	1131	4/2/2014
15	66481	4/15/2014

39. On the dates listed in paragraph 38, above, the bags of “Clean Field 88.8 WDG,” EPA Reg. No. 83411-2, that were distributed or sold by the Respondent, were misbranded, as their labels did not show clearly and prominently the net contents as prescribed in paragraph (d) of 40 C.F.R. § 156.10, which constitutes unlawful acts according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

40. On the dates listed in paragraph 38, above, the bags of “Clean Field 88.8 WDG,” EPA Reg. No. 83411-2, that were distributed or sold by Respondent, failed to bear on the containers or a label attached to the immediate containers of the pesticide product, a statement identifying the container as nonrefillable, as required by 40 C.F.R. § 156.140, which constitutes unlawful acts in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

41. On the dates listed in paragraph 38, above, Respondent’s distribution and sales records for 40-pound bags of “Clean Field 88.8 WDG,” EPA Reg. No. 83411-2, failed to identify the name of the originating carrier, which constitutes an unlawful act in violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

42. Production records for “Clean Field 88.8 WDG,” EPA Reg. No. 83411-2, collected from the Respondent for calendar years 2013 and 2014, failed to identify the EPA Reg. No., which constitutes an unlawful act in violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

“Clean Field 41% Plus,” EPA Reg. No. 83411-1

43. At the Facility, Respondent produces, packages, labels, and then distributes or sells “Clean Field 41% Plus,” EPA Reg. No. 83411-1.

44. A 2.5-gallon container of “Clean Field 41% Plus,” EPA Reg. No. 83411-1, which was collected from Respondent’s inventory that was packaged, labeled, and released for shipment, was analyzed by the Office of Indiana State Chemist and Seed Commissioner (OISC).

45. The analytical results of the 2.5-gallon container of “Clean Field 41% Plus,” EPA Reg. No. 83411-1, evaluated by OISC, show that the glyphosate acid equivalent was over the legal certified limits as approved by EPA on the pesticide registration application. The container’s composition differed at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3, which constitutes an unlawful act in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C.

§ 136l(a)(1)(C).

46. Distribution and sales records for “Clean Field 41% Plus,” EPA Reg. No. 83411-1, collected for calendar years 2013 and 2014, failed to identify the name of the originating carrier, which constitutes an unlawful act in violation of Section 12(a)(2)(B)(i), 7 U.S.C.

§ 136j(a)(2)(B)(i).

47. Production records for “Clean Field 41% Plus,” EPA Reg. No. 83411-1, collected for calendar years 2013 and 2014, failed to identify the EPA Reg. No., which constitutes an unlawful act in violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Civil Penalty

48. 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 \$13,243. 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.

49. Respondent agrees to pay a civil penalty in the amount of \$13,243, in the manner set forth below.

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,243.00 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

or for checks sent by express mail, send a 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

51. Respondent must send a notice of payment, that (1) states Respondent's name and the case docket number and (2) includes a copy of the cashier's or certified check, 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

Abigail Wesley (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

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

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

53. 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). Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

54. 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

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

56. 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.

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

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

59. This CAFO constitutes a Final Order pursuant to Section 22.31 of the Consolidated Rules.

60. The terms of this CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns.

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

62. Each party agrees to bear its own costs and attorneys' fees in this action.

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

64. Consistent with the "Standing Order Authorizing E-Mail Service of Order 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: daugavietis.andre@epa.gov (for Complainant) and bdavison@frontiernet.net and prolificagservices@outlook.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

65. The effective date of this CAFO shall be the day it is filed with the Regional Hearing Clerk as required by § 22.18(b)(3) of the Consolidated Rules.

**In the Matter of:
Mid America Distributing, LLC**

Mid America Distributing, LLC, Respondent

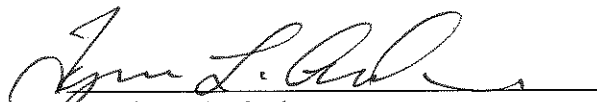
4/03/2017
Date

Bruce Davison
Bruce Davison
President
Mid America Distributing, LLC

**In the Matter of:
Mid America Distributing, LLC**

United States Environmental Protection Agency, Complainant

May 2, 2017
Date



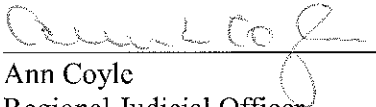
Ignacio L. Arrázola
Acting Director
Land and Chemicals Division

In the Matter of:
Mid America Distributing, LLC
Docket No. FIFRA-05-2017-0028

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.

May 9, 2017
Date


Ann Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Mid America Distributing, LLC
Docket Number: FIFRA-05-2017-0028

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 May 10, 2017, in the following manner to the addressees:

Copy by Email to
Respondent:

Bruce Davison
bdavison@frontiernet.net

William Donald
prolificagservices@outlook.com

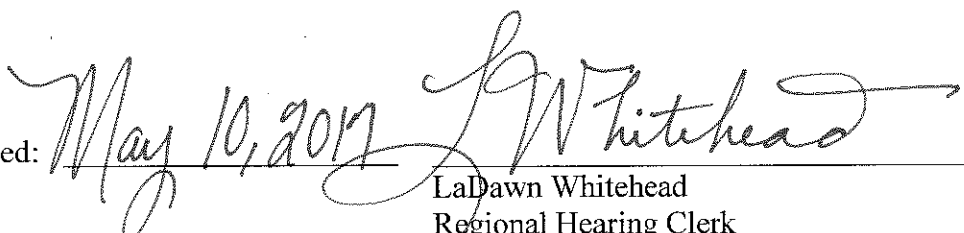
Copy by E-mail to
Attorney for Complainant:

Andre Daugavietis
daugavietis.andre@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: May 10, 2017



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