



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

APR 10 2017

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Ms. Jody A. Hulne-Strege
Regulatory Affairs Specialist
3M Company
3M Center Building, 225-4S-18
St. Paul, Minnesota 55144

jhulne@mmm.com

Consent Agreement and Final Order In the Matter of 3M Company
Docket Number **FIFRA-05-2017-0013**

Ms. Hulne-Strege:

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 April 10, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,251 is to be paid in the manner described in paragraphs 33-34. 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 "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

3M Company
St. Paul, Minnesota

Respondent



Docket No. FIFRA-05-2017-0013

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, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is 3M Company (3M), a corporation 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.

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

11. The importation of pesticides into the United States is governed by Section 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 the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

12. 19 C.F.R. § 12.112 states, in pertinent 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)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

14. 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.

15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “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 microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

16. 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.

17. 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.

18. 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 \$8,251 for each offense that occurred after November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 C.F.R. Part 19. Also see July 27, 2016 guidance establishing penalty policy amounts, “Amendment to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation” (Effective August 1, 2016).

Factual Allegations and Alleged Violations

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

20. On or about February 10, 2017, Respondent submitted a NOA to EPA for the import shipment of the product “41-4202-7450-2,” under entry number 336-6556757-9.

21. The importer of record listed on the NOA for the shipment under entry number 336-6556757-9 was 3M located at 3M Center Building, 225-4S-18, St. Paul, Minnesota, 55144.

22. Respondent, as the importer of record of the pesticide product, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

23. “41-4202-7450-2” contains the active ingredient N,N-Diethyl-m-toluamide 48%.

24. “41-4202-7450-2” is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. “41-4202-7450-2” is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

26. On or about February 10, 2017, a shipment of “41-4202-7450-2” entered into the United States at the Minneapolis, Minnesota port of entry.

27. On or about February 10, 2017, Respondent distributed or sold the pesticide product “41-4202-7450-2,” as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

28. Complainant incorporates by reference the allegations contained in the paragraphs above.

29. On or about February 10, 2017, Respondent distributed or sold the unregistered pesticide product “41-4202-7450-2” which constitutes an unlawful act, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

30. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), 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 and Other Relief

31. 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.

32. Based on an evaluation of the facts alleged in this complaint, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$8,251.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,251 civil penalty for the FIFRA violations. Respondent must pay the penalty 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
P.O. Box 979077
St. Louis, Missouri 63197-9000

In the comment or description field of the electronic funds transfer, include "3M Company" and the docket number of this CAFO.

34. 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 Blvd.
Chicago, IL 60604

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

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

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

36. If Respondent does not pay the civil penalty in a timely manner, 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.

37. 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

38. 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 for their respective attorneys: omeara.nidhi@epa.gov (for Complainant), and jhulne@mmm.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

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

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

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

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

44. 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.

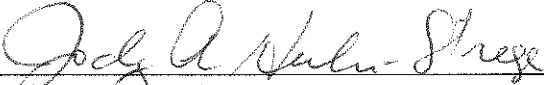
45. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**In the Matter of:
3M Company**

3M Company, Respondent

28 Mar 2017
Date


Jody A. Hulme-Strege
Regulatory Affairs Associate
3M Company

**In the Matter of:
3M Company**

United States Environmental Protection Agency, Complainant

April 5, 2017
Date

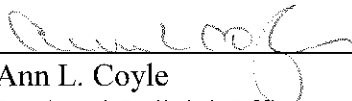
Ignacio L. Arrázola
Ignacio L. Arrázola
Acting Director
Land and Chemicals Division

In the Matter of:
3M Company
Docket No. FIFRA-05-2017-0013

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.

April 7, 2017
Date



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

Consent Agreement and Final Order
In the matter of: 3M Company
Docket Number: **FIFRA-05-2017-0013**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2017-0013**, which was filed on April 10, 2017, in the following manner to the following addressees:

Copy by E-mail to
Respondent:

Ms. Jody A. Hulne-Strege
jhulne@mmm.com

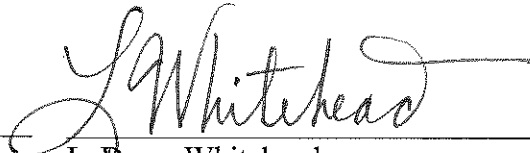
Copy by E-mail to
Attorney for Complainant:

Ms. Nidhi K. O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann Coyle
coyle.ann@epa.gov

Dated: April 10, 2017



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