



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2008 JAN -3 AM 10:30

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2008-0005

IN THE MATTER OF:)	
)	
CENTRAL FARMERS COOPERATIVE)	FINAL ORDER
200 West Main Street)	
P. O. Box 208)	
Canova, SD 57321)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 30th DAY OF January, 2008.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No. FIFRA-08-2008-0005

EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Central Farmers Cooperative)
200 West Main St.)
P.O. Box 208)
Canova, SD 57321)

Respondent)
_____)

**COMPLAINT AND EXPEDITED
SETTLEMENT AGREEMENT (CESA)**

A. JURISDICTION

1. This complaint and Expedited Settlement Agreement ("CESA") are issued to Central Farmers Cooperative ("Respondent") for two violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E) and 40 C.F.R. part 156.
2. The undersigned Environmental Protection Agency ("EPA"), Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a).
3. This section authorizes EPA to bring an action under Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of FIFRA.

B. ALLEGED VIOLATION

1. Respondent is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is therefore subject to regulation.
2. Respondent is a "distributor/seller" as defined by Section 2(gg) of FIFRA 7 U.S.C. § 136(gg) and a "producer" as defined by Section 2(w) of FIFRA 7 U.S.C. § 136(w).
3. Respondent produces, sells and distributes "pesticide(s)" within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) states in part, "[i]t shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded...."

5. 7 U.S.C. § 136(q)(1)(D), FIFRA § 2(q)(1)(D) and 40 C.F.R. § 156.10(a)(v) defines the failure to have the EPA registration number for each establishment on the label of the pesticide where it was produced as a misbranded pesticide.
6. On May 3, 2007, Mr. David Nolz, an inspector for the South Dakota Department of Agriculture, performed an inspection at Respondent's facility located at 200 West Main St., Canova, SD.
7. During that inspection, Mr. Nolz reviewed records evidencing two sales of the pesticide, Round-Up Weather Max, showing that the pesticide was directly pumped into the customer's sprayer and documenting the failure to have a valid EPA establishment number for the Canova Facility on the label.
8. At the time of the inspection, the Round-Up Weather Max label, evidenced the Respondent's EPA establishment number for its Salem facility and not the Respondent's Canova facility because the Canova facility establishment number had been inactivated.
9. On June 14, 2007, Dennis Jaramillo, an authorized EPA Inspector, reviewed the information provided by the South Dakota Inspector and determined that there were two violations of 7 U.S.C. § 136(q)(1)(D), FIFRA § 2(q)(1)(D) and 40 C.F.R. § 156.10(a)(v).
10. The Respondent, by distributing or selling to any person any pesticide which is misbranded, has violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and its implementing regulations at 40 C.F.R. Part 156--Labeling Requirements for Pesticides and Devices.
11. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, **its good faith and immediate effort to comply once informed of the violations**, other matters as justice may require, and upon consideration of the entire record herein, EPA offers this CESA under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of eight thousand three hundred and twenty dollars (\$8,320).

C. CIVIL PENALTY

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in the CESA and neither admits nor denies the specific factual allegations contained in the CESA.
2. Respondent, consents and agrees, for the purposes of settlement, to pay a civil penalty in the amount of eight thousand three hundred and twenty dollars (\$8,320) in the manner described in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 12:00 p.m. Central Standard Time to be considered as received that day.
- b. Payment shall be made by one of the following methods:

i. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

ii. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

iii. **On Line Payment:**

This option is available through the Department of Treasury.

www.pay.gov

Enter sfo 1.1 in the search field

Open form and complete the required fields.

- c. A copy of the check or record of payment if sent by other means shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

and

Dennis Jaramillo
Environmental Engineer (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

- d. Respondent, agrees that the payment provided for herein shall never be claimed as a federal or other tax deduction or credit.
3. 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. **Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due.** Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 CFR § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 CFR §§ 102.13(d) and (e).

D. GENERAL TERMS

1. Nothing in this Consent Agreement shall relieve the Respondent of the duty to comply with FIFRA and its implementing regulations.
2. Failure by Respondent, to comply with the terms of this Consent Agreement shall constitute a breach of this Consent Agreement and shall render this Consent Agreement null and void as to all parties.
3. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

4. The undersigned representative of Respondents certify that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
5. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
6. Each party shall bear its own costs and attorneys fees in connection with this matter.
7. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 12/19/07

By: Mark Chalfant
Mark Chalfant
Director
Technical Enforcement Program

Date: DEC 27 2007

By: David Janik
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 12-27-07

By: Brenda L. Morris
Brenda L. Morris, Attorney
Legal Enforcement Program

**CENTRAL FARMERS COOPERATIVE,
Respondent.**

Date: 12/10/07

By: Stacy G.M.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter **CENTRAL FARMERS COOPERATIVE; DOCKET NO.: FIFRA-08-2008-0005** was filed with the Regional Hearing Clerk on January 3, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on January 3, 2008, to:

Michael Healey
Central Farmers Cooperative
Agronomy Division Manager
P. O. Box 357
Marion, SD 57043

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

January 3, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

