



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

REPLY TO THE ATTENTION OF:

OCT 28 2016

LC-8J

VIA EMAIL

Mr. Dan McGuire  
Director of Supply Chain  
Loveland Products, Incorporated  
3005 Rocky Mountain Avenue  
Loveland, Colorado 80538

dan.mcguire@cpsagu.com

Re: Consent Agreement and Final Order In the Matter of Loveland Products,  
Incorporated Docket Number FIFRA-05-2017-0003

Mr. McGuire:

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 10/28/2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,251 is to be paid in the manner described in paragraphs 41-42. 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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Loveland Products, Inc.  
Loveland, Colorado

Respondent.



Docket No. FIFRA-05-2017-0003

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  
Commencing and Concluding a Proceeding**

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. Respondent is Loveland Products, Inc. (Loveland Products), doing business in Loveland, Colorado.
4. 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.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. Respondent waives its rights 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 rights to appeal this CAFO.

8. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

### **Statutory and Regulatory Background**

9. 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.

10. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. § 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.

11. 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 (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).

12. 40 C.F.R. § 156.10(a) states, every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in this part.

13. 40 C.F.R. § 156.10(a)(v) states, the contents of a label must show clearly and

prominently the producing establishment number as prescribed in paragraph (f) of 40 C.F.R. § 156.10.

14. 40 C.F.R. § 156.10(f) states, the producing establishment registration number preceded by the phrase “EPA Est.” of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It must appear on the wrapper or outside container of the package if the EPA establishment registration number on the immediate container cannot be clearly read through such wrapper or container.

15. 40 C.F.R. § 156.10(a)(iii) states, 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.

16. 40 C.F.R. § 156.10(d) states, in pertinent part, 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.

17. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as “misbranded” if its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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. § 136 w(c)(1).

24. 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.

25. 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.

26. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provisions of FIFRA of up to \$18,750 for each offense occurring 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.

### **Factual Allegations and Alleged Violations**

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

28. On or about September 28, 2016, C.H. Robinson International, LLC, located at 3401 Quebec Street, Suite 7700, Denver, Colorado 80207, was a broker/agent for Respondent.

29. On or about September 28, 2016, Respondent submitted a Notice of Arrival of Pesticides or Devices (NOA or EPA Form 3540-1) to EPA, Region 5 through the port of Chicago, Illinois, for the import shipment of the pesticide “Thidiazuron Tech,” EPA Registration Number (EPA Reg. No.) 34704-1088 from China under entry number 791-08806402.

30. The Notice of Arrival identified Loveland Products as the importer of record for the shipment of “Thidiazuron Tech,” EPA Reg. No. 34704-1088.

31. On or about September 28, 2016, Respondent “distributed or sold” the pesticide product “Thidiazuron Tech,” EPA Reg. No. 34704-1088 from China, as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

32. Respondent, as importer of “Thidiazuron Tech,” EPA Reg. No. 34704-1088, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

33. “Thidiazuron Tech,” EPA Reg. No. 34704-1088 is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

34. On or about April 29, 2011, the EPA, Office of Chemical Safety and Pollution Prevention (OSCPP), accepted the amended label for “Thidiazuron Tech,” EPA Reg. No. 34704-1088 to meet all requirements set forth in the Reregistration Eligibility Decision

(RED) for Thidiazuron.

35. 40 C.F.R. § 156.10(f) states, the producing establishment registration number preceded by the phrase “EPA Est.” of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It must appear on the wrapper or outside container of the package if the EPA establishment registration number on the immediate container cannot be clearly read through such wrapper or container.”

36. Labels affixed to the 328 25-kilogram drums of “Thidiazuron Tech,” EPA Reg. No. 34704-1088, that were distributed or sold on or about September 28, 2016, stated, among other things, “EPA Est. No. 8278-CHN-001.”

37. Labels affixed to the 328 25-kilogram drums of “Thidiazuron Tech,” EPA Reg. No. 34704-1088, that were distributed or sold on or about September 28, 2016, did not contain the producing establishment registration number, “EPA Est. No. 82782-CHN-001,” which is the final establishment at which the product was produced.

38. 40 C.F.R. § 156.10(a)(iii) states, 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.

39. Labels affixed to the 328 25-kilogram drums of “Thidiazuron Tech,” EPA Reg. No. 34704-1088, that were distributed or sold on or about September 28, 2016, did not contain the net weight or measure of content.

40. The 328 25-kilogram drums of “Thidiazuron Tech,” EPA Reg. No. 34704-1088, that were distributed or sold on or about September 28, 2016, were misbranded.

41. On or about September 28, 2016, Respondent distributed or sold the pesticide “Thidiazuron Tech,” EPA Reg. No. 34704-1088 under entry number 791-08806402 with a label that did not contain the producing establishment registration number of the final establishment at

which the product was produced and failed to contain the net weight or measure of content, and thus were misbranded, which constitutes an unlawful act in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

42. 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.

43. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) 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**

44. 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.

45. 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 \$8,251. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

46. Within 30 days of the effective date of this CAFO, Respondent must pay an \$8,251 civil penalty for the FIFRA violation. Respondent must pay the penalty by an on-line payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.



47. A transmittal letter stating Respondent's name, complete address, the case title and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter and proof of payment to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

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

49. If Respondent does not pay the civil penalty timely, 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.

50. 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.

51. Respondent will relabel all violative pesticide product identified, above, as required by FIFRA before the product can be further distributed or sold.

### **General Provisions**

52. 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: [mcauliffe.mary@epa.gov](mailto:mcauliffe.mary@epa.gov) (for Complainant), and [dan.mcguire@cpsagu.com](mailto:dan.mcguire@cpsagu.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

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

55. This CAFO does not affect Respondent’s responsibilities to comply with FIFRA and other applicable federal, state, and local laws.

56. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

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

58. 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.

59. Each party agrees to bear its own costs and attorney fees in this action.

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

**In the Matter of:  
Loveland Products, Inc.**

**Loveland Products, Inc.**


10-20-66  
Date

Dan McGuire  
Dan McGuire  
Director of Supply Chain  
Loveland Products, Inc.

**In the Matter of:  
Loveland Products, Inc.**

**United States Environmental Protection Agency, Complainant**

10/27/16  
Date


  
for Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Loveland Products, Inc.**  
**Docket No. FIFRA-05-2017-0003**

**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.

October 28, 2016  
Date

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

In the matter of: Loveland Products, Incorporated  
Docket Number: FIFRA-05-2017-0003

**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 October 28, 2016, in the following manner to the addressees:

Copy by Email to  
Respondent:

Dan McGuire  
[dan.mcguire@cpsagu.com](mailto:dan.mcguire@cpsagu.com)

Copy by E-mail to  
Attorney for Complainant:

Mary McAuliffe  
[mcauliffe.mary@epa.gov](mailto:mcauliffe.mary@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: October 28, 2016

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