



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

JUN 19 2015

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8463
RETURN RECEIPT REQUESTED

Mr. Chester Phillips
Gerald Grain Center, Inc.
14540 County Road U
Napoleon, Ohio 43545

Consent Agreement and Final Order In the Matter of
Gerald Grain, Inc. Docket No. **FIFRA-05-2015-0040**

Mr. Phillips:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on June 19, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,860 is to be paid in the manner described in paragraphs 27 and 28. Please be certain that the docket number is written on both the transmittal letter and on the check.

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

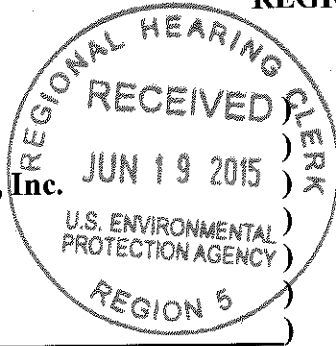
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Gerald Grain Center, Inc.
Hamler, Ohio,

Respondent.



Docket No. FIFRA-05-2015-0040

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. Respondent is Gerald Grain Center, Inc., a corporation doing business in the State of Ohio.
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. §§ 136-136y.

Statutory and Regulatory Background

10. Under FIFRA, no person shall produce any pesticide unless the establishment in which it is produced is registered with the Administrator of EPA. 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a).

11. Under FIFRA, it is unlawful for any person who is a producer to violate any of the provisions of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

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

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

14. The terms “pesticide” and “pesticidal product” mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Section 2(u) of

FIFRA, 7 U.S.C. § 136(u); and 40 C.F.R. § 167.3

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

16. The term to “distribute or sell” means 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. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

17. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(l) of FIFRA, 7 U.S.C. § 136l(a)(l), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. At all times relevant to this CAFO, Respondent has been a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. At all times relevant to this CAFO, Respondent has owned or operated a facility located at 115 North Main Street, Hamler, Ohio 43524 (Gerald Grain facility).

20. Respondent “produced” “Cornerstone Plus” at the Gerald Grain facility in 2013, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w); and 40 C.F.R. 167.3.

21. “Cornerstone Plus” constitutes a “pesticide and “pesticidal product” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u); and 40 C.F.R. § 167.3.

22. The Gerald Grain facility constitutes an “establishment,” within the meaning of Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd); and 40 C.F.R. § 167.3.

23. At all times relevant to this CAFO, the establishment was not registered with EPA.

24. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a); and 40 C.F.R. § 167.20(a) by producing a pesticide at the unregistered establishment identified in Paragraph 20.

25. Respondent's violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), also constituted a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Civil Penalty

26. 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 \$2,860. 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.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,860 penalty for the FIFRA violation 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

for checks sent by express mail, sending a cashier's or 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

The check must note Respondent's name and the docket number of this CAFO.

28. 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 Boulevard
Chicago, Illinois 60604

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

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

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

30. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 31, below, 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.

31. 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

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

33. 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.

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

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

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

37. 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.

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

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

Gerald Grain Center, Inc., Respondent


5/26/15
Date

Chester Phillips
Chester Phillips
General Manager
Gerald Grain Center, Inc.

In the Matter of:
Gerald Grain Center, Inc.
United States Environmental Protection Agency, Complainant

6/12/2015

Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Gerald Grain Center, Inc.
Docket No. FIFRA-05-2015-0040

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.

15 June 2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Gerald Grain Center, Inc.
Docket Number: FIFRA-05-2015-0040

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 June 19, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Chester Phillips
Gerald Grain Center, Inc.
14540 County Road U
Napoleon, Ohio 43545


Copy by E-mail to
Attorney for Complainant:

Mony Chabria
Chabria.mony@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

June 19, 2015 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8463