



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

JUN - 2 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8517
RETURN RECEIPT REQUESTED

Mr. William N. Tharp
Union County Co-op
101 West Campbell St.
Liberty, Indiana 47353

Consent Agreement and Final Order In the Matter of
Union County Farm Bureau Cooperative Asst., Inc., Docket No. **FIFRA-05-2015-0039**

Mr. Tharp:

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 2, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,148 is to be paid in the manner described in paragraphs 43 and 44. 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 cursive script, appearing to read "Meghan Dunn".

Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Union County Farm Bureau)
Cooperative Association, Inc.)
Liberty, Indiana)
)
Respondent.)
_____)

Docket No. FIFRA-05-2015-0039
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 Union County Farm Bureau Cooperative Association Inc., a corporation doing business in the State of Indiana.
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. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer of a pesticide or a device or active ingredient used in producing a pesticide to violate any of the provisions of Section 7 of FIFRA.

11. 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.

12. Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa), defines “State” as a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

13. The term “producer” is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w) to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

14. The term to “produce” is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w) to mean manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

15. The term “establishment” is defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) as any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

17. 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. *See also* 40 C.F.R. § 152.15.

18. A substance is considered to be intended for a pesticidal purpose, and thus to be 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. 40 C.F.R. § 152.15(a)(1).

19. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with the Administrator.

20. Section 14(a)(1), 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 the Administrator of not more than \$5,000 for each offense.

21. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and 40 C.F.R. Part 19, the Administrator of EPA may assess against any retailer who violates any provision of FIFRA a civil penalty of up to \$7,500 for each offense that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

22. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

23. Indiana is a “State” as defined at Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa).

24. On or about February 25, 2014, EPA acquired information regarding the production of pesticides by Union County Farm Bureau Cooperative Association, Inc., located at 101 West Campbell Street, Liberty, Indiana 47353.

25. The establishment identified in paragraph 24, above, is an “establishment” within the meaning of FIFRA.

26. Respondent is the owner or operator of the establishment identified in paragraph 24 (“Respondent’s establishment”).

27. Respondent’s establishment is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

28. Prior to May 13, 2014, Respondent’s establishment did not have a valid establishment number demonstrating that it was registered with EPA in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

29. “Acetochlor ATZ,” EPA Registration Number (EPA Reg. No. 72693-12), is a “pesticide” within the meaning of FIFRA.

30. "Acetochlor ATZ" is a pesticide registered under Section 3 of FIFRA.

31. Respondent's establishment is a "producer" of the pesticide, "Acetochlor ATZ" and was a "producer" of this pesticide in 2013.

32. "Durango" (EPA Reg. No. 62719-517), is a "pesticide" within the meaning of FIFRA.

33. "Durango" is a pesticide registered under Section 3 of FIFRA.

34. Respondent's establishment is a "producer" of the pesticide, "Durango" and was a "producer" of this pesticide in 2013.

35. "Keystone" (EPA Reg. No. 62719-368), is a "pesticide" within the meaning of FIFRA.

36. "Keystone" is a pesticide registered under Section 3 of FIFRA.

37. Respondent's establishment is a "producer" of the pesticide, "Keystone" and was a "producer" of this pesticide in 2013.

38. "Buccaneer 5" (EPA Reg. No. 71368-43-55467), is a "pesticide" within the meaning of FIFRA.

39. "Buccaneer 5" is a pesticide registered under Section 3 of FIFRA.

40. Respondent's establishment is a "producer" of the pesticide, "Buccaneer 5" and was a "producer" of this pesticide in 2013.

41. Respondent produced the registered pesticides, "Acetochlor ATZ," "Durango," "Keystone," and "Buccaneer 5" at Respondent's establishment during calendar year 2013 in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) because Respondent's establishment did not have a valid establishment number demonstrating that it was registered with the EPA in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Civil Penalty

42. 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 \$5,148. 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 violations. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,148 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," by standard U.S. Postal Service mail to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note "Union County Farm Bureau Cooperative Association, Inc." and the docket number of this CAFO.

44. Respondent must send a notice of payment that states Respondent's name, complete address, 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

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

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

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

46. 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. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. 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

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

49. 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.

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

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

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

53. 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.

54. Each party agrees to bear its own costs and attorneys fees, in this action.

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

Union County Farm Bureau Cooperative Association, Inc., Respondent

4-30-15
Date

Randy Fields
Randy Fields
General Manager
Union County Farm Bureau
Cooperative Association, Inc.

United States Environmental Protection Agency, Complainant

5/21/2015
Date

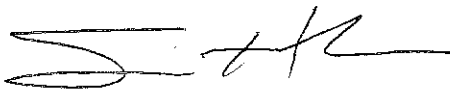
Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Union County Farm Bureau Cooperative Association, Inc.
Docket No. FIFRA-05-2015-0039

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.

5-29-2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Union County Co-op
Docket Number: FIFRA-05-2015-0039

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 2, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. William N. Tharp
Union County Co-op
101 West Campbell St.
Liberty, Indiana 47353

Copy by E-mail to
Attorney for Complainant:

Mark Palermo
Palermo.mark@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
covle.ann@epa.gov

Dated: June 2, 2015



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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8517