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EPA -- REGION 10
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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
)
WOLFKILL FEED &)
FERTILIZER CORPORATION,)
)
)
Monroe, Washington,)
)
)
Respondent.)

DOCKET NO. FIFRA-10-2018-0199
CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Wolfkill Feed & Fertilizer Corporation (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. 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.”

3.2. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” This section also defines “labeling” as “all labels and all other written, printed, or graphic matter

(A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

3.4. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines “to distribute or sell” as “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.”

3.5. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.6. According to the regulation at 40 C.F.R. § 152.3, a product becomes “‘released for shipment’ when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment.”

3.7. According to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is misbranded if its “labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false and misleading in any particular.”

3.8. According to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if “any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared to with other words, statements, designs, or graphic matter in the

labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”

3.9. According to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if “the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under [Section 3(d) of FIFRA], is adequate to protect health and the environment.”

3.10. In accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

3.11. Respondent Wolfkill is a corporation incorporated under the laws of the State of Washington. Therefore, Respondent is a person as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.12. At all times relevant to this Consent Agreement, Respondent Wolfkill has been the registrant for the product ALL PRO Products Lawn Food with Moss Control 12-0-4 (EPA Registration No. 9240-8) (“ALL PRO Lawn food”). ALL PRO Lawn food is a pesticide as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15.

3.13. On May 5, 2010, EPA approved new labeling for the pesticide product ALL PRO Lawn food. The first aid statement on the approved label states in part: “Do not induce vomiting unless told to do so by the poison control center or doctor.”

3.14. The approved label for the pesticide product ALL PRO Lawn food includes the paragraph: “Before using this product, read the entire Precautionary Statements, Conditions of

Sale and Warranty, Directions for Use and Storage and Disposal instructions. If the Conditions of Sale and Warranty are not acceptable, return the product unopened within thirty days of purchase to the place of purchase.”

3.15. Between at least January 1, 2015, and June 9, 2015, the label on the product ALL PRO Lawn food stated: “Iron dual-action controls moss and greens lawn in one step. This formula promotes health, green lawns and improves root structures. Formulated specially for Northwest lawns.” These claims have not been substantiated through the registration process required by Section 3 of FIFRA, 7 U.S.C. § 136a, and, therefore, are misleading. Therefore, between at least January 1, 2015, and June 9, 2015, the product ALL PRO Lawn food was misbranded as the term is defined at Section 2(q)(1)(A) of FIFRA, 7 U.S.C. 136(q)(1)(A).

3.16. Between at least January 1, 2015, and June 9, 2015, the label on the product ALL PRO Lawn food stated as a Statement of Practical Treatment regarding oral exposure, “Drink 1 or 2 glasses of water and induce vomiting by touching back of throat with finger.” This statement contradicts the statement on the approved label described in paragraph 3.13, above. Therefore, between at least January 1, 2015, and June 9, 2015, the label on the product ALL PRO Lawn food was misbranded as that term is defined at Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

3.17. Between at least January 1, 2015, and June 9, 2015, the label on the product ALL PRO Lawn food omitted the language on the approved label described in paragraph 3.14, above. Therefore, between at least January 1, 2015, and June 9, 2015, the label on the product ALL PRO Lawn food was misbranded as that term is defined at Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

3.18. Between at least January 1, 2015, and June 9, 2015, Respondent Wolfkill distributed and sold the misbranded pesticide product ALL PRO Lawn food on at least 82 separate occasions in violation of FIFRA.

3.19. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense occurring between December 6, 2013, and November 2, 2015.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violations. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$1,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Young.teresa@epa.gov

Nicholas Hurwit
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Hurwit.nicholas@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT

11/28/17

Willard Cox

WILLARD COX, Manager
Wolfkill Feed & Fertilizer Corporation,
a Washington Corporation

DATED:

FOR COMPLAINANT:

12/4/2017

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. FIFRA-10-2018-0199
)
WOLFKILL FEED &)
FERTILIZER CORPORATION,) **FINAL ORDER**
)
)
Monroe, Washington,)
)
Respondent.)

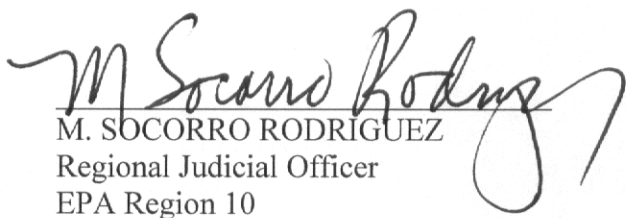
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 7th day of December, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Wolfkill Feed & Fertilizer Corporation, Docket No.: FIFRA-10-2018-0199**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:


Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Meritt Wolfkill
Registered Agent
Wolfkill Feed & Fertilizer Corporation
P.O. Box 578
Monroe, Washington 98272

Ms. Leah B. Silverthorn, Esq.
Veris Law Group PLLC
1809 Seventh Avenue, Suite 1400
Seattle, Washington 98101

DATED this 7 day of December, 2017.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10