

U. S. ENVIRONMENTAL PROTECTION AGENCY -5 AM 11: 26  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219  
BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
Plant Health Care, Inc. ) Docket No. FIFRA-07-2019-0011  
 )  
Respondent. )

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Plant Health Care, Inc. (Respondent) have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Parties**

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.
4. The Respondent is a corporation in good standing under the laws of the state of Nevada and doing business in the state of Missouri.

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. § 136 et. seq.
6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.
7. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA, 7 U.S.C. § 136 et. seq.
8. Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), states it shall be unlawful for any person to knowingly falsify all or any part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, any records required to be maintained pursuant to FIFRA, any report filed under FIFRA, or any information marked as confidential and submitted to the Administrator under any provision of FIFRA.
9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
10. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean a person who has registered any pesticide pursuant to the provisions of FIFRA.
11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean (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-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to 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.
14. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), states, in pertinent part, a pesticide is misbranded if:

- a. The labeling accompanying it does not contain direction 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, 7 U.S.C. § 136a(d), are adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(F).
- b. The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(G).
- c. The label does not bear an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase. 7 U.S.C. § 136(q)(2)(A).
- d. The labeling does not contain a statement of the use classification under which the product is registered. 7 U.S.C. § 136(q)(2)(B).
- e. There is not affixed to its container, and to the outside container or wrapper of the retain package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing - (i) the name and address of the producer, registrant, or person for whom produced; (ii) the name, brand, or trademark under which the pesticide is sold; (iii) the net weight or measure of the content, except that the Administrator may permit reasonable variations; and (iv) when required by regulation of the Administrator to effectuate the purposes of FIFRA, the registration number assigned to the pesticide under FIFRA and the use classification. 7 U.S.C. § 136(q)(2)(C).

15. Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), entitled Importation of pesticides and Devices, states in pertinent part that the Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon the Administrator's request, samples of pesticides or devices which are being imported to the United States.

16. Section 17(e) of FIFRA, 7 U.S.C. § 136o(e), directs the Secretary of Treasury, in consultation with the EPA Administrator, to prescribe regulations for the enforcement of subsection (c) of Section 17, 7 U.S.C. § 136o(c).

17. Pursuant to Section 17 of FIFRA, 7 U.S.C. § 136o, the U.S. Customs and Border Protection Bureau of the U.S. Department of Homeland Security (CBP), issued the regulations found at 40 C.F.R. § 12.110 through 12.117.

18. The regulation at 19 C.F.R. § 12.110 specifies that, except as otherwise provided, the terms used in 19 C.F.R. § 12.110 through 12.117 shall have the meanings set forth for those terms in FIFRA.

19. The regulation at 19 C.F.R. § 12.112(a), Notice of Arrival of Pesticides and Devices, requires that an importer, or the importer's agent, desiring to import pesticides or devices into the United States, must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices (Notice of Arrival) on the EPA Form 3540-. . . In the alternative, the importer or importer's agent may file an electronic alternative to the Notice of Arrival, with the filing of the entry documentation, via any CBP-authorized electronic data interchange system.

20. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$7,500 for violations that occurred before November 2, 2015, and to \$19,446 for violations that occur after November 2, 2015, and are assessed after January 15, 2018.

### **General Factual Allegations**

21. Respondent is and, at all times referred to herein was, a "person" within the meaning of FIFRA.

22. Respondent is and, at all times referred to herein was, the "registrant" within the meaning of FIFRA, of ProAct, EPA Registration Number (EPA Reg. no.) 71771-3 (ProAct), a pesticide registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

23. Crane Worldwide Logistics is a customs brokerage company that all times referred to herein was Respondent's agent and acting on behalf of Respondent in submitting pesticide import documentation and information to the EPA.

24. The Automated Commercial Environment (ACE) is an electronic CBP system through which the trade community can report imports and exports and CBP and the EPA can determine admissibility. Importers of pesticidal products can use the ACE system to file a Notice of Arrival or file a disclaim code if the importer has determined that a Notice of Arrival is not required. Importers may file an import using Disclaim Code A if the product is not regulated by the EPA. Importers may file an import using Disclaim Code C if the Notice of Arrival has been filed through other means.

25. On or about June 7, 2018, the EPA conducted an inspection at Terminal Consolidation Co./KC Piggybank, located in Kansas City, Missouri, to examine a shipment of ProAct imported by Respondent and held by Terminal Consolidation Co./KC Piggybank, and evaluate Respondent's compliance with the requirements of FIFRA and the federal regulations promulgated thereunder (the inspection).

### Allegations of Violations

26. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

#### Counts 1 and 2

27. The facts stated in Paragraphs 21 through 25 above are herein incorporated.

28. Pursuant to 19 C.F.R. § 12.112(a) and Section 17 of FIFRA, 7 U.S.C. § 136o, an importer desiring to import a pesticide shall submit a Notice of Arrival to the EPA, or file an electronic alternative to the Notice of Arrival, prior to the arrival of the shipment to the United States.

29. On or about February 5, 2018, Crane Worldwide Logistics filed Entry Number CWL-11200335 with Disclaim Code A in the ACE system for a shipment of ProAct, that arrived to the United States on or about January 25, 2018. Respondent did not submit a Notice of Arrival to the EPA, nor file an electronic alternative to the Notice of Arrival, prior to the arrival of the Entry Number CWL-1120035 shipment to the United States.

30. On or about February 9, 2018, Crane Worldwide Logistics filed Entry Number CWL-11206845 in the ACE System with Disclaim Code A for a shipment of ProAct, that arrived to the United States on or about January 25, 2018. Respondent did not submit a Notice of Arrival to the EPA, nor file an electronic alternative to the Notice of Arrival, prior to the arrival of the Entry Number CWL-11206845 shipment to the United States.

31. Respondent's failures to submit a Notice of Arrival to the EPA, or file an electronic alternative to the Notice of Arrival, prior to the arrival of shipment Entry Number CWL-1120035 and shipment Entry Number CWL-11206845 to the United States, as required by 19 C.F.R. § 12.112(a), pursuant to Section 17 of FIFRA, 7 U.S.C. § 136o, are violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

#### Count 3

32. The facts stated in Paragraphs 21 through 25 above are herein incorporated.

33. Pursuant to 19 C.F.R. § 12.112(a) and Section 17 of FIFRA, 7 U.S.C. § 136o, an importer desiring to import a pesticide shall submit a Notice of Arrival to the EPA, or file an electronic alternative to the Notice of Arrival, prior to the arrival of the shipment to the United States.

34. On or about May 22, 2018, Crane Worldwide Logistics contacted the EPA Region 7 Imports Coordinator to request guidance on changing an entry made in ACE from Disclaim Code C to Disclaim Code A for an import of ProAct by Respondent. The EPA Region 7 Imports Coordinator informed Crane Worldwide Logistics that a submission with Disclaim Code A for ProAct would not be proper and explained that a paper or electronic Notice of Arrival was

required to be submitted for any import of ProAct because it is a registered product.

35. On or about May 22, 2018, Crane Worldwide Logistics filed Entry Number CWL-11256634 with Disclaim Code A for a shipment of ProAct, that arrived to the United States on or about May 16, 2018. Respondent did not submit a Notice of Arrival to the EPA, nor file an electronic alternative to the Notice of Arrival, prior to the arrival of the Entry Number CWL-11256634 shipment to the United States.

36. Respondent's knowing submission of Entry Number CWL-11206845 with Disclaim Code A and failure to submit a true and accurate Notice of Arrival to the EPA, or file an electronic alternative to the Notice of Arrival, prior to the arrival of shipment Entry Number CWL-11206845, as required by 19 C.F.R. § 12.112(a), pursuant to Section 17 of FIFRA, 7 U.S.C. § 136o, is a violation of Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M).

Count 4

37. The facts stated in Paragraphs 21 through 26 above are herein incorporated.

38. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

39. Information gathered as a result of the inspection revealed that a shipment containing seven hundred twenty (720) fifty-five (55) pound bags of ProAct was imported by Respondent and being held at Terminal Consolidation Co./KC Piggybank for sale or distribution that was misbranded, as that term is defined by Section 2(q) of FIFRA, 7 U.S.C. § 136q, because the label attached to the shipment did not contain directions for use, a warning statement, an ingredient statement, a statement of use classification, nor product information.

40. Respondent's holding for sale or distribution of ProAct that was misbranded, as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136q, is a violation of Section 12(a)(1)(E) of FIFRA.

### **CONSENT AGREEMENT**

41. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) Admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to any conditions specified herein;

- (e) waives any right to contest the allegations set forth herein; and
- (f) waives its rights to appeal the Final Order accompanying this Consent Agreement.

42. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

43. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

### **Penalty Payment**

44. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fourteen Thousand Forty-Three Dollars (\$14,043), as set forth below.

45. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

46. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Clarissa Howley Mills, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

47. Respondent understands that their failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or

stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **Effect of Settlement and Reservation of Rights**

48. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

49. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

50. Respondent certifies by the signing of this Consent Agreement that to the best of its knowledge it is presently in compliance with all requirements of FIFRA and its implementing regulations, and has taken appropriate actions to address and correct the alleged FIFRA violations set forth above.

51. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

52. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

### **General Provisions**

53. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

54. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

55. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

56. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**  
**PLANT HEALTH CARE, INC.**

Date: OCTOBER 26, 2018

By:

Jeffrey Hovey

JEFFREY HOVEY

Print Name

CHIEF FINANCIAL OFFICER

Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

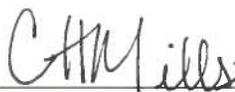
Date: 10/18/31



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Jeffery Robichaud  
Director  
Water, Wetlands and Pesticides Division

Date: 11/1/2018



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Clarissa Howley Mills  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo      Nov. 5, 2018  
Karina Borromeo      Date  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

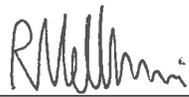
Copy via Email to Complainant:

*mills.clarissa@epa.gov*

Copy via Email to Respondent:

*cmazzone@planthealthcare.com*

Dated this 5 day of November, 2018.

  
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Signed