

RECEIVED

15 JUN -8 PM 2: 18

HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2015-0109
)	
HUNTONS' SURE CROP)	CONSENT AGREEMENT
FARM SERVICE, INC.,)	
)	
Junction City, Oregon,)	
)	
Respondent.)	

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 Hunttons' Sure Crop Farm Service, Inc. ("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. The term “person” is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t), to mean, *inter alia*, “any weed.”

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

3.5. Respondent is a corporation incorporated under the laws of Oregon and is, therefore, a person under Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.6. At all times relevant to the allegations set forth herein, Respondent owned and operated a facility located at 28410 Milliron Road, Junction City, Oregon (“Facility”).

3.7. Respondent held Honcho Plus at the Facility for distribution and sale between calendar years 2011 and 2015.

3.8. Honcho Plus is intended to destroy, repel, and mitigate weeds and is therefore a pesticide under Section 2(u) of FIFRA, 7 U.S.C. § 136(u). Honcho Plus is registered as a pesticide with EPA and is assigned Registration Number 524-454.

3.9. Therefore, the Facility is an establishment under Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

3.10. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, the Facility is assigned EPA establishment number 044893-OR-001.

VIOLATION I - COUNTS 1 THROUGH 24: MISBRANDING

3.11. The allegations contained in paragraphs 3.1 through 3.10 are incorporated by reference and restated herein.

3.12. Under 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.”

3.13. Under Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), “A pesticide is misbranded if its label does not bear the registration number assigned under [Section 7 of FIFRA, 7 U.S.C. § 136e] to each establishment in which it was produced.”

3.14. Between January 1, 2013, and February 20, 2014, Respondent distributed or offered for sale Honcho Plus at least 24 times.

3.15. All of the containers of Honcho Plus distributed between January 1, 2013, and February 20, 2014, were labelled with “EPA EST. OR-044893,” indicating that the containers originated from a facility with the EPA establishment number of “OR-044893.”

3.16. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, EPA assigned the Facility the EPA establishment number 044893-OR-001.

3.17. Therefore, in accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), Respondent violated FIFRA by distributing a misbranded pesticide at least 24 times between January 1, 2013, and February 20, 2014.

VIOLATION II – COUNT 25: FAILURE TO MAINTAIN RECORDS OF INSPECTION AND MAINTENANCE OF CONTAINMENT STRUCTURE

3.18. The allegations contained in paragraphs 3.1 through 3.17 are incorporated by reference and restated herein.

3.19. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any person to violate any regulation issued under section 3(a) or 19 of FIFRA.

3.20. Pursuant to Section 19 of FIFRA, EPA promulgated 40 C.F.R. Part 165 on August 16, 2006. 71 Fed. Reg. 47330.

3.21. In accordance with 40 C.F.R. §§ 165.80(b) and 165.95(a), refilling establishments who repackage agricultural products and whose principal business is retail sale must maintain records of inspection and maintenance for each containment structure.

3.22. The term “refilling establishment” is defined at 40 C.F.R. § 165.3 to mean “an establishment where the activity of repackaging pesticide product into refillable containers occurs.”

3.23. The term “containment structure” is defined at 40 C.F.R. § 165.3 to mean “either a secondary containment unit or a containment pad.”

3.24. The term “containment pad” is defined at 40 C.F.R. § 165.3 to mean “any structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area.”

3.25. The term “pesticide dispensing area” is defined at 40 C.F.R. § 165.3 to mean “an area in which pesticide is transferred out of or into a container.”

3.26. Since at least 2010, Respondent has repackaged pesticide products into refillable containers at the Facility.

3.27. Therefore, the Facility is a “refilling establishment” as that term is defined at 40 C.F.R. § 165.3.

3.28. Since at least 2010, Respondent has repackaged pesticide products into refillable containers at the Facility by transferring pesticide products from bulk containers into refillable containers on a structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment wash water.

3.29. Therefore, since at least 2010, Respondent has had a containment structure, as that term is defined at 40 C.F.R. § 165.3, at the Facility.

3.30. Respondent’s principal business is retail sale.

3.31. Between January 2010 and February 2013, Respondent failed to maintain records of inspection and maintenance for the containment structure at the Facility.

3.32. Therefore, Respondent violated 40 C.F.R. § 165.95(a) and FIFRA by failing to maintain records of inspection and maintenance for each containment structure.

ENFORCEMENT AUTHORITY

3.33. 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 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

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 violation. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$26,960.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. Payment 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-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Smith.candace@epa.gov

Erin Williams
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Williams.erin@epa.gov

4.7. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of 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 penalty assessed by this Consent Agreement and the Final Order 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 penalty described in Paragraph 4.3, 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

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

4.13. Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

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

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

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

DATED:

15 May 2015

FOR RESPONDENT:



THOMAS HUNTON, General Manager
Huntons' Sure Crop Farm Service, Inc.

DATED:

5/26/2015

FOR COMPLAINANT:



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-10-2015-0109
HUNTONS' SURE CROP)	
FARM SERVICE, INC.,)	FINAL ORDER
)	
Junction City, Oregon,)	
)	
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 8th day of June, 2015.



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: Hunttons' Sure Crop Farm Service, Inc., Docket No.: FIFRA-10-2015-0109**, 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-158
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:

Thomas Hunton, General Manager
Hunttons' Sure Crop Farm Service, Inc.
28410 Milliron Road
Junction City, Oregon 97448-9433

DATED this 5th day of June, 2015.



CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10