

U. S. ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:))
))
Harrell's, LLC))
P.O. Box 807))
720 Kraft Road) Docket No. FIFRA-HQ-2014-0002
Lakeland, FL 33815))
))
Respondent.) **CONSENT AGREEMENT**
) **and**
) **FINAL ORDER**
Proceedings under Section 14(a)))
of the Federal Insecticide, Fungicide,))
and Rodenticide Act, as amended,))
7 U.S.C. Section 136l(a).))
_____))

I. INTRODUCTION

1. The United States Environmental Protection Agency ("EPA"), as Complainant, and Harrell's, LLC as Respondent ("Harrell's" or "Respondent"), enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondent of EPA's intention to assess a penalty against Harrell's for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA"), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Parts 150 – 180 ("FIFRA Regulations"). The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in their respective interests and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

RESPONDENT

4. Harrell's is a limited liability corporation organized in 2007 under the laws of the State of Florida with its principal place of business located at 720 Kraft Road in Lakeland, Florida. Harrell's, LLC was the surviving entity after it merged with Harrell's, Inc. (a Florida corporation) and Harrell's Fertilizer, Inc. (an Alabama corporation), on or about December 31, 2007.

5. Respondent *produces*,¹ *distributes*, and *sells* custom-blended fertilizers, *pesticides*, and grass seeds (and combinations thereof) to the golf course, sports turf, landscape management, and horticultural industries. Harrell's ships its products throughout the eastern United States.

6. Respondent operates pesticide-producing *establishments* at 720 Kraft Road in Lakeland, Florida (the "Lakeland Establishment") and at 151 Stewart Boulevard in Sylacauga, Alabama (the "Sylacauga Establishment").

7. Harrell's conducts a substantial portion of its business as a *supplemental distributor* for a number of pesticide products registered to other parties. At times relevant to the violations alleged herein, such other parties included Dow AgroSciences,

¹ Words that appear in italics upon first use indicate terms that are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and/or the FIFRA Regulations. Such terms are relevant to the EPA findings specified in this CAFO and, unless otherwise indicated, are intended to be used as so defined.

LLC (“Dow”) of Indianapolis, Indiana, E. I. du Pont de Nemours and Company (“DuPont”) of Wilmington, Delaware, and Bayer Crop Science, LP (“Bayer”) of Research Triangle Park, North Carolina (Dow, DuPont, and Bayer will be referred to, collectively, as the “Registrants”). As a supplemental distributor, at times relevant to the violations alleged herein, Harrell’s distributed or sold, under the Harrell’s brand name, numerous pesticide products containing pesticides registered by Dow, DuPont, or Bayer.

8. Respondent owns or operates distribution facilities from at least ten (10) locations within the United States, including the Lakeland and Sylacauga Establishments. Other product distribution centers owned or operated by Harrell’s are located at 34 Executive Drive in Danbury, Connecticut (“Danbury CT Facility”), 19 Technology Drive in Auburn, Massachusetts (“Auburn MA Facility”), 260 Eisenhower Lane in Lombard, Illinois (“Lombard IL Facility”), 53410 Grand River Avenue in New Hudson, Michigan (“New Hudson MI Facility”), 1120 NW 74th Street in Homestead, Florida (“Homestead FL Facility”), 3851 Perry Boulevard in Whitestown, Indiana (“Whitestown IN Facility”), 2476 William Flynn Highway in Butler, Pennsylvania (“Butler PA Facility”), and 3107 Espresso Way in York, Pennsylvania (“York PA Facility”).

9. Harrell’s is a *person* as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and is also a *producer* as defined by Section 2(w) of FIFRA, 7 U.S.C § 136(w), and 40 C.F.R. § 167.3.

STATUTORY AND REGULATORY AUTHORITY

10. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean, in pertinent part, “any insect, rodent, nematode, fungus, weed” or “any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms”

declared by EPA to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

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

12. Under FIFRA Section 2(q)(1), 7 U.S.C. § 136(q)(1), a pesticide is “misbranded” if: (a) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular [Sec. 2(q)(1)(A)]; (b) its label does not bear the registration number assigned under FIFRA Section 7, 7 U.S.C. § 136e, to each establishment in which it was produced [Sec. 2(q)(1)(D)]; (c) any word, statement, or other information required by FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared 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 [Sec. 2(q)(1)(E)]; (d) the labeling accompanying the pesticide 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 required use classification(s) under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)), are adequate to protect health and the environment [Sec. 2(q)(1)(F)]; or, (e) the label does not contain a warning or caution statement which may be necessary and, if complied with (together with any required use classification(s) under Section 3(d) of FIFRA), is adequate to protect health and the environment [Sec. 2(q)(1)(G)].

13. The FIFRA prohibition against the distribution or sale of misbranded pesticides is important because it helps ensure that end users and members of the public

have the most accurate, up-to-date, and compliant information available about pesticides in the marketplace—including ingredients, directions for use, potential hazards and safety precautions—and about the establishments in which they are produced.

14. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with EPA under FIFRA Section 7. For any producer operating a registered establishment, Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires that, among other things, the producer submit to EPA annual pesticide production reports detailing the amount of pesticides being produced and the amount produced, sold, and distributed during the prior year.

15. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any producer to violate any provision of FIFRA Section 7, 7 U.S.C. § 136e, including the requirement to produce pesticides subject to FIFRA only in an establishment which has been registered with EPA as a producing establishment as well as the requirement to submit reports to EPA concerning pesticide production.

16. The FIFRA requirements to produce pesticides in registered establishments and for registered establishments to submit reports of pesticide production, distribution, and sales are important because they help maintain the integrity of the federal pesticide program EPA implements, a primary purpose of which is to ensure that no pesticide is produced, imported, distributed, sold, or used in a manner that may pose an unreasonable risk to human health or the environment. The requirements to properly register pesticide-producing establishments and for registered establishments to report production and sales information help EPA carry out compliance, risk assessment,

and risk reduction functions important for *protecting human health and the environment* because without proper establishment registrations, EPA cannot determine where and in what manner pesticides are being produced, sold, and distributed.

17. Under Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA is authorized to issue orders prohibiting the sale, use, or removal of any pesticide by any person who owns, controls, or has custody of such pesticide whenever there is reason to believe that, *inter alia*, the pesticide is in violation of any provision of FIFRA, or the pesticide is intended to be distributed or sold in violation of any provision of FIFRA.

18. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), provides that it is unlawful for any person to violate any order issued under FIFRA Section 13.

19. Under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA and duly-designated state partners are authorized, among other things and upon presentation of credentials and written notice, to conduct inspections at producer and distributor establishments and to collect information required to be maintained by FIFRA regarding pesticide distribution or sales, including samples of pesticides that are packaged, labeled, and released for shipment.

20. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of civil penalties of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA Regulations. Under the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”) at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004 and \$7,500 for violations occurring after January 12,

2009.

GENERAL ALLEGATIONS

21. On or about April 3, 2009, duly-authorized inspectors from the Michigan Department of Agriculture (now known as the Michigan Department of Agriculture and Rural Development (“MIDARD”)) inspected Respondent’s New Hudson MI Facility. On or about April 9, 2009, MIDARD issued an “Order to Stop Prohibited Conduct” [Case No. PCT09-710-04-09-01] (the “2009 MIDARD Order”) to Harrell’s which, in Michigan, does business as “Harrell’s, LLC of Florida.” The 2009 MIDARD Order, among other things, cited nine (9) separate Harrell’s pesticide products with missing label information including, but not limited to, Precautionary Statements, Personal Protection Equipment (PPE) requirements, User Safety Requirements, Directions for Use, Environmental Hazards Statement, and Storage and Disposal Directions. The 2009 MIDARD Order directed Harrell’s to stop “selling misbranded pesticides” and specifically identified the following violative Harrell’s pesticide products:

- a. Harrell's 30-2-12 with Barricade .30%, EPA Reg. 52287-20;
- b. Harrell's 19-0-5 with Dimension 0.10 %, EPA Reg. 62719-486-52287;
- c. Harrell's 19-0-10 with Dimension 0.10 %, EPA Reg. 62719-486-52287;
- d. Harrell's 28-3-13 with Dimension 0.08 %, EPA Reg. 62719-487-52287;
- e. Harrell's 28-2-14 with Merit 0.15% Mini Grade, EPA Reg. 432-1353-52287;
- f. Harrell's 18-0-18 with Merit 0.20%, EPA Reg. 432-1344-52287;
- g. Harrell's 25-0-18 with Dimension 0.08 %, EPA Reg. 62719-487-52287;
and,
- h. Harrell's 30-2-12 Polyon 42 Fairway Formulation with Dimension 0.08%,
Reg. 62719-487-52287.

22. Under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, on or about November 19, 1990, Respondent registered the Lakeland Establishment as a

pesticide-producing establishment, subsequently identified as "EPA Est. No. 52287-FL-001."

23. Under Section 7(a) of FIFRA and 40 C.F.R. § 167.20, Respondent registered the Sylacauga Establishment as a pesticide-producing establishment, on or about May 15, 2012, subsequently identified as "EPA Est. No. 52287-AL-001."

24. Harrell's sought and obtained registration from EPA Headquarters for the following pesticides under Section 3 of FIFRA, each such pesticide produced by Respondent at the Lakeland and/or Sylacauga Establishments and identified by the EPA registration number assigned thereto:

- a. Harrell's 29-3-8 with Barricade .30 % , EPA Reg. 52287-20;
- b. Harrell's 11-0-5 with Barricade .38%, EPA Reg. 52287-19;
- c. Harrell's 22-0-11 with Barricade .38%, EPA Reg. 52287-19;
- d. Harrell's 19-0-5 with Barricade .38%, EPA Reg. 52287-19;
- e. Harrell's 30-2-12 with Barricade .30 % , EPA Reg. 52287-20;
- f. Harrell's 31-0-0 with Barricade .30 % , EPA Reg. 52287-20; and,
- g. Harrell's 30-0-8 with Barricade .30 % , EPA Reg. 52287-20;

25. Respondent is or was, at times relevant to the violations alleged herein, authorized by the registrant Dow (company number 62719), as Dow's agent, to engage in supplemental distribution by distributing and selling under the Harrell's name the following distributor products, each produced at the Lakeland and/or Sylacauga Establishments and identified by the product name and supplemental registration number assigned thereto:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- c. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287;
- d. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287;
- e. Harrell's 22-0-5 with Dimension .10%, EPA Reg. 62719-486-52287;
- f. Harrell's 10-0-5 with Dimension .125%, EPA Reg. 62719-483-52287;

- g. Harrell's 19-0-10 with Dimension .10%, EPA Reg. 62719-486-52287;
- h. Harrell's 22-0-10 with Dimension .125%, EPA Reg. 62719-483-52287;
and,
- i. Harrell's 30-0-4 with Dimension .125%, EPA Reg. 62719-483-52287.

26. Respondent is or was, at times relevant to the violations alleged herein, authorized by the registrant DuPont (company number 352), as DuPont's agent, to engage in supplemental distribution by distributing and selling under the Harrell's name the following distributor product, produced at the Lakeland and/or Sylacauga Establishments and identified by the product name and supplemental registration number assigned thereto:

- a. Harrell's 22-3-8 with 0.067% Acelepryn, EPA Reg. 352-734-52287.

27. Respondent is or was, at times relevant to the violations alleged herein, authorized by the registrant Bayer (company number 432), as Bayer's agent, to engage in supplemental distribution by distributing and selling under the Harrell's name the following distributor products, produced at the Lakeland and/or Sylacauga Establishments and identified by the product names and supplemental registration numbers assigned thereto:

- a. Harrell's 15-0-5 with Merit 0.20%, EPA Reg. 432-1349-52287;
- b. Harrell's 0-0-7 with Merit 0.20%, EPA Reg. 432-1349-52287;
- c. Harrell's 7-0-0 with Merit 0.20%, EPA Reg. 432-1349-52287; and,
- d. Harrell's 28-2-14 with Merit 0.15%, EPA Reg. 432-1353-52287.

28. On March 15, 2012 and on March 29, 2012, one or more duly-authorized inspector from the Connecticut Department of Energy and Environmental Protection ("CTDEEP") conducted FIFRA compliance inspections at the Danbury CT Facility.

29. On April 2, 2012, one or more duly-authorized inspector from the Massachusetts Department of Agricultural Resources (“MADAR”) conducted a compliance inspection at the Auburn MA Facility.

30. On or about April 12, 2012, CTDEEP issued a “Notice of Violation” [No. NOVWSPST12-032] to Harrell’s (the “CTDEEP NOV”). The CTDEEP NOV, among other things, cited Harrell’s for selling and/or distributing eight (8) separate Harrell’s pesticide products with missing label information, including “a statement to keep out of reach of children, precautionary, first-aid and environmental hazard statements, directions for use and instructions for storage and disposal.” The CTDEEP NOV specifically identified the following violative Harrell’s pesticide products:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- c. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287;
- d. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287;
- e. Harrell's 29-3-8 with Barricade .30 % , EPA Reg. 52287-20;
- f. Harrell's 11-0-5 with Barricade .38%, EPA Reg. 52287-19;
- g. Harrell's 22-0-11 with Barricade .38%, EPA Reg. 52287-19; and,
- h. Harrell's 0-0-7 with Merit 0.20%, EPA Reg. 432-1349-52287.

31. On April 18, 2012, EPA issued a “Stop Sale, Use, or Removal Order” [Case No. SSURO-2012-003] to Respondent pursuant to FIFRA Section 13 (the “First Harrell’s SSURO”), alleging FIFRA violations and ordering Harrell’s to immediately stop the distribution, sale, use, or removal of the eight (8) separate, misbranded pesticide products identified therein. Respondent received the First Harrell’s SSURO on or about April 23, 2012. The First Harrell’s SSURO specifically stated that it pertained to all quantities and sizes of the following pesticides within the ownership, control, or custody of Respondent, wherever located:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-3-8 with Barricade .30 % , EPA Reg. 52287-20;
- c. Harrell's 0-0-7 with Merit 0.20%, EPA Reg. 432-1349-52287;
- d. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- e. Harrell's 11-0-5 with Barricade .38%, EPA Reg. 52287-19;
- f. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287;
- g. Harrell's 22-0-11 with Barricade .38%, EPA Reg. 52287-19; and,
- h. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287.

32. On April 30, May 2, May 3, and May 8, 2012 one or more duly-authorized inspector from the CTDEEP conducted further compliance inspections and gathered additional information at the Danbury CT Facility.

33. On May 1, May 17, June 1, and June 22, 2012, one or more duly-authorized inspector from Alabama Department of Agriculture (“ALDA”) conducted compliance inspections and gathered information at the Sylacauga, AL Establishment.

34. On June 4, 2012, one or more duly-authorized inspector from the U.S. Environmental Protection Agency’s Region 1 office in Boston, Massachusetts (“EPA Region 1”) conducted a compliance inspection at the Danbury CT Facility under Sections 8 and 9 of FIFRA.

35. On June 11, 2012, one or more duly-authorized inspector from the U.S. Environmental Protection Agency’s Region 5 office in Chicago, Illinois (“EPA Region 5”) conducted a compliance inspection at the Lombard IL Facility under Sections 8 and 9 of FIFRA.

36. On September 20, 2012, one or more duly-authorized inspector from MIDARD conducted a FIFRA compliance inspection at the New Hudson MI Facility under Sections 8 and 9 of FIFRA.

37. On September 24, 2012, EPA issued a second “Stop Sale, Use, or

Removal Order" [Case No. SSURO-2012-014] to Respondent pursuant to FIFRA Section 13 (the "Second Harrell's SSURO"), alleging FIFRA violations and ordering Harrell's to immediately stop any further distribution, sale, use, or removal of the five (5) separate pesticide products identified therein. Respondent received the Second Harrell's SSURO on or about November 5, 2012. The Second Harrell's SSURO stated specifically that it pertained to all quantities and sizes of the following pesticides within the ownership, control, or custody of Respondent, "wherever located":

- a. Harrell's 15-0-5 with Merit 0.20%, EPA Reg. 432-1349-52287;
- b. Harrell's 22-3-8 with 0.067% Acelepryn, EPA Reg. 352-734-52287;
- c. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- d. Harrell's 22-0-5 with Dimension .10%, EPA Reg. 62719-486-52287; and,
- e. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287.

38. On September 24, 2012, EPA issued a "Stop Sale, Use, or Removal Order" [Case No. SSURO-2012-013] to Dow pursuant to FIFRA Section 13 (the "Dow Order"), alleging FIFRA violations and ordering Dow, as a registrant liable for the actions of its supplemental distributor (Harrell's) under the FIFRA Regulations at 40 C.F.R. § 152.132, to immediately stop any distribution, sale, use, or removal of the following four (4) separate pesticide products identified therein that were within the ownership, control, or custody of Dow, wherever located:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- c. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287; and,
- d. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287.

39. On September 24, 2012, EPA issued a "Stop Sale, Use, or Removal Order" [Case No. SSURO-2012-015] to DuPont pursuant to FIFRA Section 13 (the "DuPont

Order”), alleging FIFRA violations and ordering DuPont, as a registrant liable for the actions of its supplemental distributor (Harrell’s) under 40 C.F.R. § 152.132, to immediately stop any distribution, sale, use, or removal of the following pesticide product identified therein within the ownership, control, or custody of DuPont, wherever located:

- a. Harrell's 22-3-8 with 0.067% Acelepryn , EPA Reg. 352-734-52287.

40. On September 24, 2012, EPA issued a “Stop Sale, Use, or Removal Order” [Case No. SSURO-2012-016] to Bayer pursuant to FIFRA Section 13 (the “Bayer Order”), alleging FIFRA violations and ordering DuPont, as a registrant liable for the actions of its supplemental distributor (Harrell’s) under 40 C.F.R. § 152.132, to immediately stop any distribution, sale, use, or removal of the following pesticide product identified therein within the ownership, control, or custody of Bayer, wherever located:

- a. Harrell's 15-0-5 with Merit 0.20%, EPA Reg. 432-1349-52287.

41. On January 3, 2013, one or more duly-authorized inspector from the Office of the Indiana State Chemist and Seed Commissioner (“INSCSC”) conducted a FIFRA compliance inspection at the Whitestown IN Facility.

III. EPA FINDINGS

42. Based upon information collected during or as a result of the inspections conducted by EPA, CTDEEP, MADAR, ALDA, MIDARD, and INSCSC as well as further investigation by EPA, the FIFRA violations documented by EPA and alleged in this CAFO include the following, as further detailed below: (a) distributing or selling

misbranded pesticides in violation of Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. Part 156; (b) producing pesticides in an unregistered establishment in violation of Sections 12(a)(2)(L) and 7(a) of FIFRA and the FIFRA Regulations at 40 C.F.R. Part 167; and, (c) violating a stop sale, use, or removal order issued by EPA under Section 13 of FIFRA, in violation of Section 12(a)(2)(I).

43. Upon information and belief, each of the violations alleged in Counts 1, 3, 4, and 6 of this CAFO involved one or more of the following pesticides identified by the product names and EPA registration numbers indicated:

| | <u>Product Name</u> | <u>EPA Reg. No.</u> |
|-----|--|----------------------------|
| 1. | Harrell's 30-0-7 with Dimension .10% | EPA Reg. 62719-486-52287 |
| 2. | Harrell's 29-3-8 with Barricade .30 % | EPA Reg. 52287-20 |
| 3. | Harrell's 0-0-7 with Merit 0.20% | EPA Reg. 432-1349-52287 |
| 4. | Harrell's 29-0-7 with Dimension .10% | EPA Reg. 62719-486-52287 |
| 5. | Harrell's 11-0-5 with Barricade .38% | EPA Reg. 52287-19 |
| 6. | Harrell's 24-0-12 with Dimension .10% | EPA Reg. 62719-486-52287 |
| 7. | Harrell's 22-0-11 with Barricade .38% | EPA Reg. 52287-19 |
| 8. | Harrell's 18-0-7 with Dimension .17% | EPA Reg. 62719-485-52287 |
| 9. | Harrell's 15-0-5 with Merit 0.20% | EPA Reg. 432-1349-52287 |
| 10. | Harrell's 22-3-8 with Acelepryn 0.067% | EPA Reg. 352-734-52287 |
| 11. | Harrell's 41-0-0 with Barricade .30 % | EPA Reg. 52287-20 |
| 12. | Harrell's 22-0-5 with Dimension .10% | EPA Reg. 62719-486-52287 |
| 13. | Harrell's 19-0-5 with Barricade .38% | EPA Reg. 52287-19 |
| 14. | Harrell's 30-2-12 with Barricade .30 % | EPA Reg. 52287-20 |
| 15. | Harrell's 30-0-8 with Barricade .30 % | EPA Reg. 52287-20 |
| 16. | Harrell's 10-0-5 with Dimension .125% | EPA Reg. 62719-483-52287 |
| 17. | Harrell's 19-0-10 with Dimension .10% | EPA Reg. 62719-486-52287 |
| 18. | Harrell's 22-0-10 with Dimension .125% | EPA Reg. 62719-483-52287 |
| 19. | Harrell's 30-0-4 with Dimension .125% | EPA Reg. 62719-483-52287 |
| 20. | Harrell's 7-0-0 with Merit 0.20% | EPA Reg. 432-1349-52287 |
| 21. | Harrell's 28-2-14 with Merit 0.15% | EPA Reg. 432-1353-52287 |

44. Upon information and belief, each of the violations alleged in Counts 2 and 5 of this CAFO involved numerous pesticide products that were produced by

Harrell's at the Sylacauga Establishment and associated with the following EPA registration numbers and containing the active ingredients indicated:

| | <u>EPA Reg. No.</u> | <u>Active Ingredient</u> |
|-----|--------------------------|-------------------------------|
| 1. | EPA Reg. 52287-6 | 0.21% Barricade |
| 2. | EPA Reg. 52287-20 | 0.30% Barricade |
| 3. | EPA Reg. 52287-19 | 0.38% Barricade |
| 4. | EPA Reg. 52287-7 | 0.45% Barricade |
| 5. | EPA Reg. 62719-487-52287 | 0.08% Dimension |
| 6. | EPA Reg. 62719-486-52287 | 0.1% Dimension |
| 7. | EPA Reg. 62719-483-52287 | 0.125% Dimension |
| 8. | EPA Reg. 62719-504-52287 | 0.15% Dimension |
| 9. | EPA Reg. 62719-485-52287 | 0.17% Dimension |
| 10. | EPA Reg. 62719-488-52287 | 0.19% Dimension |
| 11. | EPA Reg. 62719-494-52287 | 0.25% Dimension |
| 12. | EPA Reg. 52287-1 | 0.95% Ronstar |
| 13. | EPA Reg. 52287-14 | 1.2% Ronstar |
| 14. | EPA Reg. 325-734-52287 | 0.067% Acelepryn |
| 15. | EPA Reg. 432-1353-52287 | 0.15% Merit |
| 16. | EPA Reg. 432-1349-52287 | 0.2 % Merit |
| 17. | EPA Reg. 62719-262-52287 | 0.68% Confront |
| 18. | EPA Reg. 52287-18 | 1.0% Pendimethalin |
| 19. | EPA Reg. 52287-12 | Fertilizer with Starteem #3 |
| 20. | EPA Reg. 241-424-52287 | 0.86% Pendimethalin |
| 21. | EPA Reg. 241-422-52287 | 1.15% Pendimethalin |
| 22. | EPA Reg. 52287-17 | 0.75% Pendimethalin |
| 23. | EPA Reg. 52287-3 | 0.67% Ronstar |
| 24. | EPA Reg. 52287-9 | 0.75% Ronstar |
| 25. | EPA Reg. 279-3408-52287 | 0.375% Echelon |
| 26. | EPA Reg. 279-3164-52287 | 0.20% Talstar |
| 27. | EPA Reg. 279-3445-52287 | 0.096% Talstar |
| 28. | EPA Reg. 279-3321-52287 | 0.5% Echelon |
| 29. | EPA Reg. 279-3322-52287 | 0.3% Echelon |
| 30. | EPA Reg. 279-3216-52287 | 0.069% Talstar |
| 31. | EPA Reg. 52287-15 | Harrell's Granular Fertilizer |
| 32. | EPA Reg. 432-1422-52287 | 0.00572% Top Choice |
| 33. | EPA Reg. 241-421-52287 | 0.66% Pendimethalin |
| 34. | EPA Reg. 70506-52-52287 | 0.75% Surflan |

45. At all times relevant to the violations alleged in Section IV of this CAFO, below, Respondent produced, distributed, sold, offered for sale, shipped, and/or delivered

for shipment one or more of the pesticides or pesticide products listed or otherwise referenced in Paragraphs 43 and 44, above, each of which is a "pesticide" as defined by FIFRA.

IV. ALLEGATIONS OF VIOLATION

COUNT 1

Distributing or Selling Misbranded Pesticides (Absent or Illegible Labels)

46. Upon information and belief, on at least 356 occasions between June 1, 2011 and September 20, 2012, Respondent distributed or sold, or offered for sale, one or more of the pesticides listed in Paragraph 43, above, that was misbranded in that the EPA-approved labels required for such pesticides under the FIFRA Regulations at 40 C.F.R. § 156.10 were either entirely absent or illegible.

47. Accordingly, on at least 356 occasions between June 1, 2011 and September 20, 2012, Respondent violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

COUNT 2

Distributing or Selling Misbranded Pesticides (Labels without EPA Establishment Number)

48. Upon information and belief, on at least 1,259 occasions between May 1, 2010 and April 30, 2012, Respondent distributed or sold, or offered for sale, one or more of the pesticide products referenced in Paragraph 44, above, with labels that did not bear a valid establishment registration number assigned under FIFRA Section 7 to the establishment in which the pesticides were produced, as required by 40 C.F.R. § 156.10.

49. Accordingly, on at least 1,259 occasions between May 1, 2010 and April 30, 2012, Respondent violated Sections 12(a)(1)(E) of FIFRA and the FIFRA

Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed pursuant to FIFRA Section 14(a)(1).

COUNT 3

Distributing or Selling Misbranded Pesticides (Labels with Missing Information)

50. Upon information and belief, on at least 20 occasions between April 30, 2012 and June 18, 2012, Respondent distributed or sold, or offered for sale, one or more of the pesticides listed in Paragraph 43, above, with labels that did not include important precautionary language on the front panel, such as “Caution” and “Keep Out of Reach of Children,” required under 40 C.F.R. § 156.10.

51. Accordingly, on at least 20 occasions between April 30, 2012 and June 18, 2012, Respondent violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed pursuant to FIFRA Section 14(a)(1).

COUNT 4

Distributing or Selling Misbranded Pesticides (Labels with Wrong Product Registration Number)

52. Upon information and belief, on at least 3 occasions between April 30, 2012 and June 18, 2012, Respondent distributed or sold, or offered for sale, one or more of the pesticides listed in Paragraph 43, above, with labels that did not bear the correct EPA product registration number (EPA Reg. No.), as required by 40 C.F.R. § 156.10.

53. Accordingly, on at least 3 occasions between April 30, 2012 and June 18, 2012, Respondent violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed pursuant to FIFRA Section 14(a)(1).

COUNT 5

Producing Pesticides in an Unregistered Establishment

54. Upon information and belief, on numerous occasions before May 15, 2012, Respondent produced one or more of the pesticide products referenced in Paragraph 44, above, in the Sylacauga Establishment when the Sylacauga Establishment was not registered as a pesticide-producing establishment under Section 7(a) of FIFRA.

55. Accordingly, by producing pesticides in the Sylacauga Establishment at a time when the Sylacauga Establishment was not registered as a pesticide-producing establishment under FIFRA Section 7(a), Respondent violated Sections 12(a)(2)(L) and 7(a) of FIFRA and the FIFRA Regulations at 40 C.F.R. Part 167 on numerous occasions before May 15, 2012, each of which is a violation for which penalties may be assessed pursuant to FIFRA Section 14(a)(1).

COUNT 6

Violating a Stop Sale, Use and Removal Order Issued under Section 13 of FIFRA

56. Upon information and belief, on at least 1 occasion after April 23, 2012, Respondent distributed or sold, or offered for sale, one or more of the noncompliant pesticides specified in the First Harrell's SSURO and identified in Paragraph 43, above, in violation of the First Harrell's SSURO that was issued by EPA on April 18, 2012.

57. Accordingly, on at least 1 occasion after April 23, 2012, Respondent violated Section 12(a)(2)(I) of FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

V. TERMS OF SETTLEMENT

58. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

59. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's findings or allegations of violation herein, consents to the issuance of this CAFO and to the payment of the civil penalty specified, below.

60. Respondent acknowledges that it has been informed of its right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

61. By signing this CAFO, Respondent certifies, to the best of its knowledge and belief, that it is presently operating in compliance with FIFRA and the FIFRA Regulations promulgated thereunder and that it has fully addressed the violations alleged by EPA herein including, but not limited to, those associated with each of the pesticide products listed or otherwise referenced in Paragraphs 43 and 44, above. By signing this CAFO, Respondent also certifies, to the best of its knowledge and belief, that the information it has provided to EPA, CTDEEP, MADAR, ALDA, MIDARD, and INSCSC during the course of the investigation of this matter is true and complete.

62. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 FIFRA Enforcement Response Policy issued by the Waste and Chemical Enforcement Division of the EPA Headquarters Office of Enforcement and Compliance Assurance in Washington, D.C., the DCIA and Penalty Inflation Rule, and other factors as justice may require, EPA has determined that it is fair

and appropriate that Respondent pay a civil penalty in the amount of one million seven hundred thirty-six thousand five hundred and sixty dollars (\$1,736,560) in settlement of the violations alleged herein.

63. Respondent shall pay the penalty of \$1,736,560 within thirty (30) days of the effective date of this CAFO.

64. Respondent shall make the payment due under this CAFO by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the appropriate amount to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Alternatively, Respondent may make payment by electronic funds transfer via:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

Respondent shall simultaneously submit a copy of the penalty payment check or confirmation of electronic wire transfer to:

Clerk, Environmental Appeals Board
U.S. Environmental Protection Agency
MC 1103B
Ariel Rios
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES 04-3)
Boston, MA 02109-3912

Respondent shall include the case name and docket number (*In the Matter of Harrell's, LLC*, FIFRA-HQ-2014-0002) on the face of the check or wire transfer confirmation.

65. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty (with interest at current prevailing rates from the date of the Final Order), plus enforcement expenses and any nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

66. The civil penalty due and any interest, non-payment penalties, or charges

that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

67. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the specific violations alleged in Section IV of this CAFO. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

68. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards.

69. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

70. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

71. Respondent's obligations under the CAFO shall end when Respondent has

paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted the documentation required by the CAFO.

72. Each of the Parties shall bear its own costs and fees in this proceeding, including attorneys' fees, and specifically waives any right to recover such costs from the other party under the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

73. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Environmental Appeals Board.

74. Each undersigned representative of the Parties certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

For Respondent, Harrell's, LLC:

(Signature)

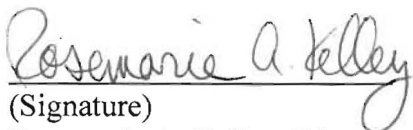
Jack Harrell, Jr.

Chairman and Chief Executive Officer
Harrell's, LLC

(Date)

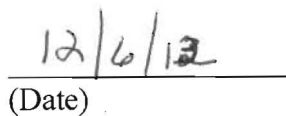
11/18/13

For Complainant, United States Environmental Protection Agency:

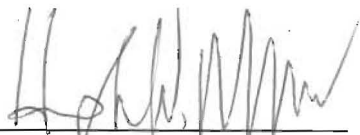


(Signature)

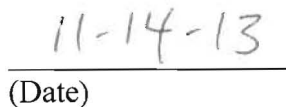
Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA



(Date)



Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
U.S. EPA - Region 1



(Date)

In the Matter of:)

Harrell's, LLC)

P.O. Box 807)

720 Kraft Road)

Lakeland, FL 33815)

Respondent.)

Proceedings under Section 14(a))

of the Federal Insecticide, Fungicide,)

and Rodenticide Act, as amended,)

7 U.S.C. Section 136l(a).)

) Docket No. FIFRA-HQ-2014-0002

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Clerk for the Environmental Appeals Board.

(Date)

Judge
Environmental Appeals Board