

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No. FIFRA-05-2023-0019
	)	
Ottawa Plant Food, Inc.	)	Proceeding to Assess a Civil Penalty
Ottawa, Illinois	)	Under Section 14(a) of the Federal
	)	Insecticide, Fungicide, and Rodenticide
Respondent.	)	Act, 7 U.S.C. § 136l(a)
	)	

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Ottawa Plant Food, Inc. (OPF), a corporation doing business in the State of Illinois, located at 3076 N Illinois, Route 71, Ottawa, IL 61350.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

**Statutory and Regulatory Background**

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

11. 40 C.F.R. §152.130(a) states that a registrant may distribute or sell a registered product with the composition, packaging and labeling approved by the EPA.

12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states, in pertinent part, it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA

13. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), states any producer operating an establishment shall inform the Administrator of the types and amounts of pesticides which the producer had produced during the past year. See also 40 C.F.R. § 167.85.

14. Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), states, it shall be unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

15. Section 19 of FIFRA, 7 U.S.C. § 136q(e), requires, in pertinent part, the Administrator of the EPA to promulgate regulations for the design of pesticides containers that

will promote the safe storage and disposal of pesticides and will ensure the safe refill and reuse of containers.

16. Pursuant to Section 19 of FIFRA, the EPA promulgated regulations at 40 C.F.R. Part 165 to establish standards and requirement for pesticide containers, repackaging pesticides, and pesticide containment structures. See 73 FR 64215, October 29, 2008.

17. 40 C.F.R. § 165.70(a) states that a refiller of a pesticide product who is not the registrant must comply with 40 C.F.R. § 165.70.

18. 40 C.F.R. § 165.70(b) states that a registrant may allow a refiller who is not the registrant to repackage the registrant's pesticide product into refillable containers and to distribute or sell the repackaged pesticide product under the registrant's existing registration if all the conditions set forth in 40 C.F.R. § 165.70(b) are satisfied.

19. 40 C.F.R. § 165.70(b)(3) states that one of the conditions that must be satisfied before a refiller who is not a registrant may repackage a registrant's pesticide product is that the registrant has entered into a written contract with the refiller to repackage the pesticide product and to use the label of the registrant's pesticide product.

20. 40 C.F.R. § 165.70(c) states that repackaging a product for distribution or sale without either obtaining a registration or meeting all the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of FIFRA.

21. 40 C.F.R. § 165.70(e)(5)(i) requires refillers who are not registrants to have a written contract as referred to in 40 C.F.R. § 165.70(b)(3) from the pesticide product's registrant before repackaging a pesticide product into any refillable container for distribution or sales.

22. 40 C.F.R. § 165.70(j)(1)(i) requires refillers who are not registrants to maintain the written contract from the pesticide product's registrant for the pesticide product.

23. 40 C.F.R. § 158.300 defines “formulation” to mean “[t]he repackaging of any registered product.
24. 40 C.F.R. § 167.3 defines “produce” to include “to package, repackage, label, relabel, or otherwise change the container of any pesticide.”
25. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states it is unlawful for any person to violate any regulation issued under Section 19 of FIFRA.
26. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
27. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.” Also see 40 C.F.R. §152.3.
28. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. §152.3.
29. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. § 152.5.
30. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term “registrant” as a person who has registered any pesticide pursuant to FIFRA.

31. The Administrator of EPA may assess a civil penalty against any registrant, wholesaler, dealer, retailer, importer, or other distributor who violates any provision of FIFRA of up to \$23,494 for each offense that occurred after November 2, 2015, and assessed on or after January 6, 2023, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

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

33. On or about July 11, 2019, inspectors employed by the Illinois Department of Agriculture (IDA) and authorized to conduct federal inspections under FIFRA conducted an inspection at OPF located at 3076 N Illinois, Route 71, Ottawa, IL, 61350.

34. OPF is a repackager of pesticide products, including a pesticide it claims to be **Acuron Herbicide**, EPA Registration Number (Reg. No.) 100-1466.

35. On or about April 24, 2015, Syngenta Crop Protection, LLC (Syngenta) registered **Acuron Herbicide**, EPA Reg. No. 100-1466, a restricted use pesticide, with the EPA.

36. OPF is not the registrant for **Acuron Herbicide**, EPA Reg. No. 100-1466.

37. At all times relevant to this Complaint, Syngenta had not given OPF permission to repackage/produce **Acuron Herbicide**, EPA Reg. No. 100-1466.

38. At all times relevant to this Complaint, Syngenta had not given OPF permission to distribute or sell the repackaged pesticide, **Acuron Herbicide**, EPA Reg. No. 100-1466, under the registrant’s existing registration.

39. At all times relevant to this Complaint, Syngenta had not given OPF permission to use the label for **Acuron Herbicide**, EPA Reg. No. 100-1466.

40. Therefore, at all times relevant to this Complaint, any pesticide that OPF repackaged/produced with **Acuron Herbicide**, EPA Reg. No. 100-146, is not a registered pesticide.

41. During the inspection, the inspectors confirmed that OPF repackaged the pesticide, **Acuron Herbicide**, EPA Reg. No. 100-1466, which OPF distributed or sold.

42. During the inspection, the inspectors requested information regarding **Acuron Herbicide**, EPA Reg. No. 100-1466, including but not limited to repackaging agreements.

43. On or about August 12, 2019, OPF submitted documents including a repackaging agreement, entitled "Certificate of Authorization for Repackaging and Label Use (Hold for State EPA Inspection)" that expired on December 31, 2001.

44. The repackaging agreement did not permit OPF to repackage or use Syngenta's registered label for **Acuron Herbicide**, EPA Reg. No. 100-1466.

45. On or about August 12, 2019, OPF also submitted repackaging/production records for a pesticide it claimed to be **Acuron Herbicide**, EPA Reg. No. 100-1466.

46. The records show that OPF repackaged/produced a pesticide product that it claimed to be **Acuron Herbicide**, EPA Reg. No. 100-1466, on at least 20 different occasions from on or about January 3, 2019, through on or about April 30, 2019, without having a written contract as referred to in 40 C.F.R. § 165.70(b)(3) from the pesticide product's registrant, Syngenta, before repackaging/producing the pesticide product.

47. On or about August 12, 2019, OPF also submitted distribution and/or sales records for **Acuron Herbicide**, EPA Reg. No. 100-1466.

48. The records show that OPF distributed or sold a repackaged pesticide product that it claimed to be **Acuron Herbicide**, EPA Reg. No. 100-1466 on 23 different occasions from on or about January 2, 2019, through on or about May 6, 2019, to various customers.

49. The pesticide OPF claimed to be **Acuron Herbicide**, EPA Reg. No. 100-1466, on these 23 different occasions from January 2, 2019, through May 6, 2019, is an unregistered pesticide.

50. On or about February 18, 2020, Respondent submitted an inaccurate Pesticide Report for Pesticide-Producing and Device-Producing Establishments, EPA Form 3540-16, for calendar year 2019.

#### Counts 1-20

51. Complainant incorporates the above paragraphs, as if set forth in this paragraph.

52. From on about January 3, 2019, through on or about April 30, 2019, Respondent repackaged/produced a pesticide product it claimed to be **Acuron Herbicide**, EPA Reg. No. 100-1466, for distribution or sale on at least 20 separate occasions without complying with all the requirements set forth in 40 C.F.R. § 165.70.

53. Respondent's failure to comply with all the requirements set forth in 40 C.F.R. § 165.70 on 20 separate occasions constitutes 20 separate unlawful acts pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136(a)(2)(S).

54. Respondent's violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), on 20 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a), for each of the 20 violations.

### Counts 21-43

55. Complainant incorporates the above paragraphs, as if set forth in this paragraph.

56. From on or about January 2, 2019, through May 6, 2019, Respondent distributed or sold, on 23 separate occasions, an unregistered pesticide product because OPF produced a product from **Acuron Herbicide**, EPA Reg. No. 100-1466, that was not registered under Section 3 of FIFRA nor did Syngenta give OPF permission to distribute or sell the repackaged pesticide product, **Acuron Herbicide**, EPA Reg. No. 100-1466, under the registrant's existing registration.

57. Respondent's distribution or sale of the unregistered pesticide, **Acuron Herbicide**, EPA Reg. No. 100-1466, on 23 separate occasions, constitutes 23 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

58. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on 23 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a) for each of the 23 violations.

### Count 44

59. Complainant incorporates the above paragraphs, as if set forth in this paragraph.

60. On or about February 18, 2020, Respondent submitted an inaccurate Pesticide Report for Pesticide-Producing and Device-Producing Establishments, EPA Form 3540-16, for calendar year 2019 in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

61. Respondent's violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).



### Civil Penalty and Other Relief

62. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$284,200. In determining the penalty amount, Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

63. Complainant agrees that the appropriate penalty to settle this action is \$284,200.

64. Within 30 days after the effective date of this CAFO, Respondents must pay a \$284,200 civil penalty for the FIFRA violations. Respondents must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "Ottawa Plant Food" and the docket number of this CAFO. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields. In the comment or description field of the electronic funds transfer, state "Ottawa Plant Food" and the docket number of this CAFO.

65. Respondents must send a notice of payment that states Respondents' name and the case docket number to EPA at the following addresses when it pays the penalty:

Juliane Grange  
Regional Hearing Clerk  
[R5hearingclerk@epa.gov](mailto:R5hearingclerk@epa.gov)

Claudia Niess  
[niess.claudia@epa.gov](mailto:niess.claudia@epa.gov)

Nidhi K. O'Meara  
[omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov)

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

67. If Respondents do not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

68. Pursuant to 31 C.F.R. § 901.9, Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondents must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

69. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Nidhi O'Meara at [omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov) (for Complainant), and Thomas Dimond at [Thomas.Dimond@icemiller.com](mailto:Thomas.Dimond@icemiller.com) (for Respondents). Respondents understand that the CAFO will become publicly available upon filing.

70. The Respondents' full compliance with this CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

71. This CAFO does not 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.

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

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

74. The terms of this CAFO bind Respondents, their successors, and assigns.

75. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

76. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**In the Matter of:  
Ottawa Plant Food, Inc.**

9-5-23  
Date

  
Stephen J. Strong, President  
Ottawa Plant Food, Inc.

**In the Matter of:  
Ottawa Plant Food, Inc.**

**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division

**In the Matter of:**  
**Ottawa Plant Food, Inc.**  
**Docket No. FIFRA-05-2023-0019**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5