



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 18 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Deb Carrasquillo
Supply Chain Planner
Nichino America, Inc.
4550 Linden Hill Road
Wilmington, Delaware 19808

Re: Nichino America, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2019-3016(b)

Dear Ms. Carrasquillo:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions about this matter or your compliance status in the future, please contact Kimberly Tomczak of the U.S. Environmental Protection Agency Region 4 staff at (404) 562-8987.

Sincerely,

A handwritten signature in blue ink that reads "Anthony G. Toney".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

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RECEIVED
REGIONAL OFFICE

In the Matter of:)
)
Nichino America, Inc.)
)
Respondent.)
)
)
)
_____)

Docket No.: FIFRA-04-2019-3016(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Nichino America, Inc. (hereinafter Nichino or Respondent).
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of

the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter and has the authority to sign consent agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent Nichino is licensed to do business in the State of Delaware.
5. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
6. Respondent is a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), as the person who manufactures, prepares, compounds, propagates, or processes any pesticide.
7. The term "pesticide" is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
8. A "pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator

- declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
9. The term “establishment” is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, 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.
 10. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
 11. Pursuant to Section 17(c) FIFRA, 7 U.S.C. § 136o(c) and the regulations at 19 C.F.R. § 12.112, an importer desiring to ship pesticides into the United States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (NOA) [EPA Form 3540-1], prior to the arrival of the shipment(s) into the United States, or a United States Customs and Border Protection (CBP) Automated Commercial Environment (ACE) Data Processing System Entry, prior to the arrival of the shipment(s) into the United States.
 12. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136 (q), includes labeling which bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
 13. Pursuant to 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 offer for sale a misbranded pesticide.

III. Specific Allegations

14. On or around August 20, 2018, the licensed customs broker Mitsubishi Logistics America Corporation (Mitsubishi) submitted an NOA concurrent with the filing of entry documentation via the CBP’s ACE Data Processing System on behalf of Nichino for the

importation of one shipment, under Entry Number 113-85122194, of the pesticide product PQZ Pyrifluquinazon Insecticide (EPA Reg. No. 71711-37) which contained a total of 13 drums, each drum weighing 198 kilograms. The ACE Entry presented to the EPA as described above, notified the EPA that the pesticide PQZ Pyrifluquinazon Insecticide was being imported into the United States through the Port of Savannah, Georgia. The shipment arrived on or about August 21, 2018.

15. A copy of the product label uploaded by Mitsubishi into the ACE system for the shipment of the above-referenced pesticide did not fully match the pesticide's most current EPA-approved pesticide master label. More specifically, the statement under the Brand Name of Product, "For Indoor Greenhouse Use on Ornamental Plants, Not for residential use sites" was left off the product and the statement "For Repackaging Use Only" was added above the brand name of product. In addition, the label was missing the following sections under the Directions for Use: Agriculture Use Requirements, Non-Agriculture Use Requirements and General Information.
16. Although a label was provided via Document Image System, on August 23, 2018, Mitsubishi emailed a copy of the label to the EPA which Mitsubishi had represented to be the label on the product drums and confirmed that the label included incorrect information that did not match the EPA master label for the product.
17. Based on its determination that the drums of pesticide product were misbranded, on August 24, 2018, the EPA offered Nichino the following options: 1) Move the shipment under a CBP Permit-to-Transfer to a CBP-bonded warehouse with an EPA producer establishment number where the relabel could take place; 2) Move the shipment under a Stop Sale, Use, or Removal Order (SSURO) issued by the EPA to an EPA-registered

producer establishment. On August 27, 2018, Nichino notified the EPA via email that they are “hereby requesting appropriate Order from EPA accordingly.”

18. On August 31, 2018, the EPA issued a SSURO to the Respondent on August 31, 2018. The SSURO prohibited the Respondent from further selling, distributing, using or removing the shipment of PQZ Pyrifluquinazon Insecticide, but also provided the Respondent an opportunity to come into compliance by relabeling the drums of misbranded pesticide at an EPA-registered establishment.
19. On October 2, 2018, the EPA withdrew the SSURO after verifying the pesticide product PQZ Pyrifluquinazon Insecticide had been properly relabeled and was in compliance with FIFRA.
20. By importing the mislabeled pesticide product as described above in paragraph 14, the Respondent distributed a misbranded pesticide, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
21. The EPA alleges that the Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on one occasion, and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
22. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
23. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent’s ability to continue in business, and the gravity of the violation(s).
24. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **FOUR THOUSAND**

FOUR HUNDRED DOLLARS (\$4,400) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
26. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
27. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
28. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to its products.
29. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section III of this CAFO and shall not otherwise affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with FIFRA and other applicable federal, state and local laws and regulations.
30. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

31. Respondent is assessed a civil penalty of **FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
32. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819.

33. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960;

Kimberly Tomczak
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

34. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
35. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
37. This CAFO shall be binding upon the Respondent, its successors and assigns.
38. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

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VI. Effective Date

39. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Nichino America, Inc.

Docket No.: FIFRA-04-2019-3016(b)

By: Francis L. Winston (Signature) Date: 3/27/19

Name: Francis L. Winston (Typed or Printed)

Title: VP of Finance (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By: Carol L. Kemker Date: 4/4/19
Carol L. Kemker
Acting Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 16th day of April 2019.

Tanya Floyd
Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Nichino America, Inc. Docket Number: FIFRA-04-2019-3016(b), to the addressees listed below.

Ms. Deb Carrasquillo
Supply Chain Planner
4550 Linden Hill Road
Wilmington, Delaware 19808

(via Certified Mail, Return Receipt Requested)

Kimberly Tomczak
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

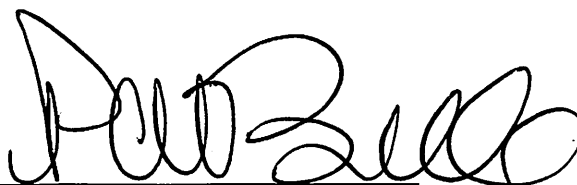
(via EPA's internal mail)

Mr. Robert Caplan
Senior Attorney
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via EPA's internal mail)

4-18-19

DATE



Patricia Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404)-562-9511