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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2014-0031
Nufarm Americas Inc.)	
)	CONSENT AGREEMENT AND
Alsip, Illinois)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) 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. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. 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 Nufarm Americas Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO 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 CAFO 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. Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), the term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

3.3. Under Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “distribute or sell” means “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.”

3.4. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide which is misbranded.

3.5. Under Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if “the labeling accompanying it 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 requirements imposed under [Section 3(d) of this Act], are adequate to protect health and the environment.”

3.6. 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, 7 U.S.C. § 136a(a) or 136q.

3.7. EPA promulgated pesticide labeling requirements under Sections 2 through 35 of FIFRA, 7 U.S.C. §§ 136 through 136y, in 40 C.F.R. Part 156.

3.8. Under 40 C.F.R. § 156.10, every pesticide product must be labeled with directions for use which, when followed, are adequate to protect the public from fraud and from personal injury and to prevent unreasonable adverse effects on the environment.

3.9. Under 40 C.F.R. § 156.140, every container bearing a pesticide product other than a plant-incorporated protectant must be identified as either refillable or nonrefillable.

3.10. Under 40 C.F.R. §§ 156.144-156, the label of each pesticide product must include the applicable instructions for removing pesticide residues from the container prior to container disposal.

3.11. Respondent is a “person” as defined by FIFRA Section 2(s), 7 U.S.C. § 136(s).

3.12. Respondent owns and operates a business facility located at 11901 South Austin Avenue in Alsip, Illinois.

3.13. Respondent imports the pesticide product "Victory Herbicide," EPA Registration Number (Reg. No.) 71368-75, through the Port of Seattle in Seattle, Washington.

3.14. Respondent imports the pesticide product "Purestand Selective Herbicide," EPA Reg. No. 71368-38, through the Port of Seattle in Seattle, Washington.

3.15. Respondent imports the pesticide product "Spyder Extra Selective Herbicide," EPA Reg. No. 228-690, through the Port of Seattle in Seattle, Washington.

3.16. Respondent imports the pesticide product "Glyphosate Technical," EPA Reg. No. 35935-46, through the Port of Seattle in Seattle, Washington.

3.17. Respondent imports the pesticide product "Metalaxyl Technical," EPA Reg. No. 35935-79, through the Port of Seattle in Seattle, Washington.

3.18. On at least one occasion in 2013, Respondent imported Victory Herbicide that did not contain adequate directions for use in violation of 40 C.F.R. § 156.10, and therefore was misbranded.

3.19. On at least one occasion in 2013, Respondent imported Purestand Selective Herbicide that did not contain adequate directions for use in violation of 40 C.F.R. § 156.10, and therefore was misbranded.

3.20. On at least one occasion in 2013, Respondent imported Spyder Extra Selective Herbicide that did not contain adequate directions for use in violation of 40 C.F.R. § 156.10, and therefore was misbranded.

3.21. On at least one occasion in 2013, Respondent imported Glyphosate Technical that was placed in containers that were not identified as refillable or nonrefillable in violation of 40 C.F.R. § 156.140, and therefore was misbranded.

3.22. On at least one occasion in 2013, Respondent imported Metalaxyl Technical that did not contain adequate residue removal instructions in violation of 40 C.F.R. §§ 156.144-156, and therefore was misbranded.

3.23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by importing misbranded pesticides.

3.24. Pursuant to FIFRA Section 14(a)(1), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each violation against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. Respondent agrees that this settlement will be considered prior history of noncompliance for purposes of assessing penalties in any future enforcement actions brought by EPA against Respondent.

4.4. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is (\$36,800.00).

4.5. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6. Payment under this CAFO may be paid by check, wire transfer, automated clearing house (ACH), or online payment. Payment instructions are available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm. Payments made by cashier's

check or certified check must be made 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.

4.7. Respondent must serve photocopies of the check described in Paragraph 4.6 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

Chad Schulze, Pesticides and Toxics Unit
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect any unpaid penalty under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), together with interest, handling charges, and nonpayment penalties described below.

4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.9.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) 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.

4.9.2. 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.

4.9.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6 percent per annum shall be paid on the 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.

4.10. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.13. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.14. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.


4.15. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

2/19/14

FOR RESPONDENT:



TOM LYONS, Executive Vice President
Nufarm Americas Inc.

DATED:

3/5/2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

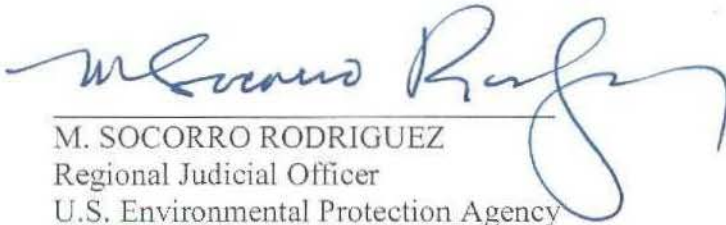
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO 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.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 7th day of March, 2014


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Nufarm Americas Inc. Docket No.: FIFRA-10-2014-0031**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

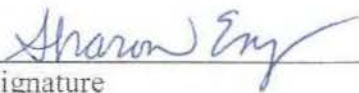
The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Rindner, Esquire
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:

Tom Lyons
Executive Vice President
Nufarm Americas Inc.
11901 South Austin Avenue
Alsip, Illinois 60803

DATED this 7th day of March, 2014



Signature

 Candace H. Smith
Regional Hearing Clerk
EPA Region 10

