

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

2017 SEP 12 AM 9:52

In the Matter of:)
)
Monsanto Company,) **Docket No. FIFRA-07-2016-0018**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency (EPA), Region 7 and Monsanto Company (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.
4. The Respondent is Monsanto Company, a corporation in good standing under the laws of the state of Missouri.

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

10. In accordance with 40 C.F.R. § 165.67, registrants may distribute or sell pesticide products to a refiller for repackaging into refillable containers, provided that the conditions under 40 C.F.R. § 165.67(b) are satisfied. Pursuant to 40 C.F.R. § 165.67(c), both a registrant and a refiller that is repackaging the registrant’s pesticide product may be held liable for violations pertaining to the repackaged product.

11. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty of not more than \$5,000 for each offense. The EPA has adjusted this figure upward for inflation pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, which amend 40 C.F.R. Part 19, so that penalties of up to \$7,500 per day are now authorized for violations that occur from January 12, 2009, through November 2, 2015, and penalties of up to \$19,057 are authorized for violations that occur after November 2, 2015.

General Factual Allegations

12. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA.

The Offerle Cooperative Grain and Supply Company, Bucklin, Kan.

13. On or about May 7, 2014, representatives of the Kansas Department of Agriculture (“KDA”) conducted a neutral scheme producer establishment inspection of a facility owned and/or operated by The Offerle Cooperative Grain and Supply Company at 314 East Railroad Street in Bucklin, Kansas, EPA Establishment Number 073892-KS-002 (“Offerle Coop”). The KDA inspection was conducted under the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate the Offerle Coop facility’s compliance with the requirements of FIFRA. The KDA inspection report was subsequently forwarded to the EPA for review and a copy was mailed to Respondent.

14. At all times relevant to the allegations herein, Respondent owned and maintained stationary bulk pesticide storage containers at the Offerle Coop facility. At the time of the KDA inspection, and at all times relevant to the allegations herein, the EPA has documented that a bulk repackaging contract exists between Monsanto Company and Offerle Coop facility in Bucklin, Kansas.

15. At all times relevant to the allegations herein, Respondent allowed Offerle Coop to repackage Respondent’s pesticide products, including RT3, EPA Registration Number (“EPA Reg. No.”) 524-544, into refillable containers and to distribute and/or sell such repackaged products under Respondent’s registration.

Southeast Cooperative Service Company, Dexter, Mo.

16. On or about February 25, 2015, representatives of the Missouri Department of Agriculture (“MDA”) conducted a neutral scheme producer establishment inspection of a facility owned and/or operated by Southeast Cooperative Service Company at 11500 State Highway 25 in Dexter, Missouri, EPA Establishment Number 053529-MO-003 (“Southeast Coop”). The inspection was conducted under the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate Southeast Coop’s compliance with the requirements of FIFRA. The MDA inspection report was subsequently forwarded to the EPA for review, and a copy was mailed to Respondent.

17. At all times relevant to the allegations herein, Respondent owned and maintained stationary bulk pesticide storage containers at the Southeast Coop facility. At the time of the MDA inspection, and at all time relevant to the allegations herein, the EPA has documented that a bulk repackaging contract exists between Monsanto Company and Southeast Coop in Dexter, Missouri.

18. At all times relevant to the allegations herein, Respondent allowed Southeast Coop to repackage Respondent’s pesticide products—including Degree Xtra Herbicide, EPA Reg. No. 524-511 and Roundup PowerMAX II Herbicide, EPA Reg. No. 524-537—into refillable containers and to distribute and/or sell such repackaged products under Respondent’s registration.

Allegations of Violations

19. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

20. The facts stated in Paragraphs 12 through 15 above are herein incorporated.

21. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that 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 are adequate to protect health and the environment. Additionally, Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), provides that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with is adequate to protect health and the environment.

22. The KDA inspection of Offerle Coop in Bucklin, Kansas, revealed that the label affixed to a bulk storage container containing RT3, EPA Reg. No. 524-544, was weathered with portions missing, including the establishment number and the informational booklet containing the "Directions for Use" and "Environmental Hazards" sections. As such, the pesticide was misbranded pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), and Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by offering for sale and/or holding for distribution a misbranded pesticide.

Count 2

24. The facts stated in Paragraphs 12 through 15 above are herein incorporated.

25. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that 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 are adequate to protect health and the environment.

26. The KDA inspection of Offerle Coop in Bucklin, Kansas, revealed that a label for RT3, EPA Reg. No. 524-544, affixed to a shuttle container did not include directions for use on Conservation Resource Program lands. As such, the pesticide was misbranded pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by offering for sale and/or holding for distribution a misbranded pesticide.

Count 3

28. The facts stated in Paragraph 12 and Paragraphs 16 through 18 above are herein incorporated.

29. Pursuant Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), it shall be unlawful for any person to distribute or sell any pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

30. The MDA inspection of Southeast Coop in Dexter, Missouri, revealed that a label for Degree Xtra, EPA Reg. No. 524-511, differed from the label submitted to and accepted by the EPA because it listed the ingredient simazine as an approved tank mixture for pre-emergence use in corn.

31. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by offering for sale and/or holding for distribution a pesticide for which labeling substantially differed from the labeling submitted to and accepted by the EPA in connection with the pesticide's registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 4

32. The facts stated in Paragraph 12 and Paragraphs 16 through 18 above are herein incorporated.

33. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that 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 are adequate to protect health and the environment.

34. The MDA inspection of Southeast Coop in Dexter, Missouri, revealed that a label for Roundup PowerMAX II, EPA Reg. No. 524-537, omitted state-specific use instructions from various portions of the label, including Sections 9.2 ("Corn"); 9.5 ("Grain Sorghum (Milo)"); 9.9.1 ("Sugarcane Ripening"); 10.0 ("Tree Vine and Shrub Crops"); and 16.0 ("Perennial Weeds Rate Section"). As such, the pesticide was misbranded pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by offering for sale and/or holding for distribution a misbranded pesticide.

CONSENT AGREEMENT

36. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations set forth herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order, as stated herein;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to further contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

37. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

38. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

39. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of Ten Thousand Five Hundred Dollars (\$10,500) as set forth below.

40. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

41. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Jared Pessetto, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

42. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

43. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

44. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

45. Respondent certifies by the signing of this Consent Agreement that it has submitted to the EPA for review and acceptance revised labeling for RT3 Powered by Roundup Technology Herbicide, EPA Reg. No. 524-544; Degree Xtra, EPA Reg. No. 524-511; and Roundup PowerMAX II, EPA Reg. No. 524-537, and from which final printed labeling that complies with Section 12 of FIFRA, 7 U.S.C. § 136j, and its implementing regulations will be prepared and used in production.

46. Respondent certifies by the signing of this Consent Agreement that it has amended product labeling for RT3, EPA Reg. No. 524-544; Degree Xtra, EPA Reg. No.

524-511; and Roundup PowerMAX II, EPA Reg. No. 524-537, and that such labeling complies with Section 12 of FIFRA, 7 U.S.C. § 136j, and its implementing regulations.

47. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

48. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

49. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

50. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

51. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

52. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
MONSANTO COMPANY

Date: 8/17/17

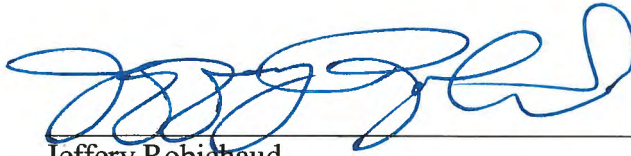
By: Tracey Cavato

Tracey Cavato
Print Name

North America Supply Chain Lead
Title


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/29/17



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

Date: 8/28/2017



Jared Pessetto
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 14(a) of TSCA, 72 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: Sept. 11, 2017

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Dated this 30 th day of August, 2017.

Name J. J. J. J.

IN THE MATTER OF
Monsanto Company, Respondent
Docket No. FIFRA-07-2017-0018

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

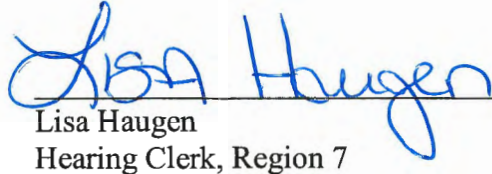
pessetto.jared@epa.gov

Copy by First Class Mail to Respondent:

Brandon W. Neuschafer
Bryan Cave, LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

Dated:

Sept. 12, 2017



Lisa Haugen
Hearing Clerk, Region 7