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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. FIFRA-10-2009-0089
)
)
HELENA CHEMICAL COMPANY)
) **CONSENT AGREEMENT AND**
) **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 United States 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 in turn has re delegated this authority to the Regional Judicial Officer.

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 hereby issues, and Helena Chemical Company ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

1 **II. PRELIMINARY STATEMENT**

2 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
3 commences this proceeding which will conclude when the Final Order contained in Part V of
4 this CAFO becomes effective.

5 2.2. Part III of this CAFO contains a concise statement of the statutory and factual
6 basis for the alleged violations of FIFRA.

7 **III. ALLEGATIONS**

8 3.1. Respondent has a Repackaging Agreement with Dusty Farm Co-operative in
9 LaCrosse, Washington. This agreement allows Dusty Farm Co-op to repackage and distribute
10 Respondent's product BARRAGE HF (EPA Reg. No. 5905-529). As the registrant, Respondent
11 is ultimately responsible for the integrity of all Barrage HF produced, sold and distributed by
12 Dusty Farms.

13 3.2. Dusty Farms Co-op owns and operates a business facility located at 101 Dusty
14 Farm in LaCrosse, Washington. This facility has been registered with EPA as a pesticide-
15 producing establishment since July 17, 1980.

16 3.3. On at least ten separate occasions in 2007, Respondent, through Dusty Farms
17 Co-op, produced, sold, and distributed BARRAGE HF with labels that were misbranded in that
18 the labels were missing critical updates to the first aid statement. Respondent committed
19 violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling and distributing
20 pesticides which were misbranded. These violations subject Respondent to the payment of a
21 civil penalty in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

22 3.4. Pursuant FIFRA Section 14(a), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA
23 may assess a civil penalty of not more than \$6,500 for each offense against any registrant,
24
25

1 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any
2 provision of Section 12 of FIFRA.

3 **IV. CONSENT AGREEMENT**

4 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional
5 allegations contained herein, but neither admits nor denies the specific factual allegations put
6 forth by EPA. Respondent waives any right to contest these allegations as well as the right to
7 appeal the accompanying Final Order. Respondent also consents to payment of the penalty as
8 stated below.

9 4.2. Respondent consents to the assessment of a civil penalty in the amount of FORTY
10 ONE-THOUSAND, SIX-HUNDRED DOLLARS and no cents (\$41,600.00). Respondent
11 consents to issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil
12 penalty set forth in this paragraph within thirty (30) days of the effective date of this Final Order.

13 4.3. Payment under this CAFO shall be made by cashier's check or certified check,
14 payable to the order of "Treasurer, United States of America" and delivered to the following
15 address:

16 US Bank - USEPA - Region 10
17 Fines and Penalties
18 Cincinnati Finance Center
19 PO Box 979077
20 St. Louis, MO 63197-9000

19 Respondent shall note on the check the title and docket number of this action.

20 4.4. Respondent shall serve photocopies of the check described in Paragraph 4.3,
21 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
22 Enforcement at the following addresses:

23 Regional Hearing Clerk
24 U.S. Environmental Protection Agency, Region 10
25 Office of Regional Counsel, ORC-158

1 1200 Sixth Avenue, Suite 900
2 Seattle, WA 98101

3 Attn: Erin Halbert
4 U.S. Environmental Protection Agency, Region 10
5 Pesticides and Toxics Unit, OCE-084
6 1200 Sixth Avenue, Suite 900
7 Seattle, WA 98101

8 4.5. Should Respondent fail to pay the penalty assessed herein in full by its due date,
9 the entire unpaid balance of penalty and accrued interest shall become immediately due and
10 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under
11 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with
12 interest, handling charges, and nonpayment penalties, as set forth below.

13 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in full by
14 its due date, Respondent shall also be responsible for payment of the following amounts:

- 15 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate
16 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)
17 from the effective date of the accompanying Final Order, provided, however, that
18 no interest shall be payable on any portion of the assessed penalty that is paid
19 within 30 days of the effective date of the Final Order.
- 20 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge
21 of \$15 shall be paid if any portion of the assessed penalty is more than 30 days
22 past due.
- 23 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty
24 of 6% per annum shall be paid on any portion of the assessed penalty that is more
25 than 90 days past due, which nonpayment penalty shall be calculated as of the
date the underlying penalty first becomes past due.

1 4.7. The penalty described in Paragraph 4.2, above, including any additional costs
2 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA
3 and shall not be deductible for purposes of federal taxes.

4 4.8. The undersigned representative of Respondent certifies that he is fully authorized
5 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

6 4.9. Respondent shall bear its own costs and attorneys fees in connection with this
7 matter.

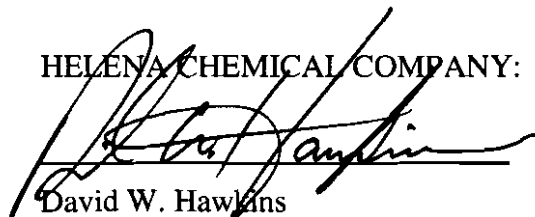
8 4.10. The provisions of this CAFO shall bind Respondent and its agents, servants,
9 employees, successors, and assigns.

10 4.11. The above provisions are STIPULATED AND AGREED upon by Respondent
11 and EPA.

12 DATED:

13 4/23/09

HELENA CHEMICAL COMPANY:



14 David W. Hawkins
15 General Counsel
16 For Respondent

17 DATED:

18 5/4/09

U.S. ENVIRONMENTAL PROTECTION AGENCY:



19 MERCER ST. PETER
20 Assistant Regional Counsel
21 For Complainant

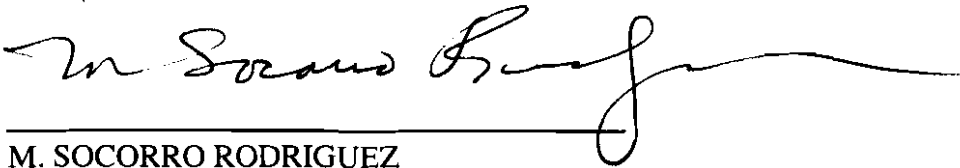
V. FINAL ORDER

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

5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations alleged above. 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 thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 6th day of May, 2009.



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 **In the Matter of: Helena Chemical Company, DOCKET NO.: FIFRA-10-2009-0089** was filed with the Regional Hearing Clerk on May 6, 2009.


On May 6, 2009, the undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 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 on May 6, 2009, to:

David W. Hawkins
General Counsel and Assistant Secretary
Helena Chemical Company
225 Schilling Blvd., Suite 300
Collierville, TN 38017

DATED this 6th day of May 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10



HELENA CHEMICAL COMPANY

225 Schilling Blvd., Suite 300
Collierville, Tennessee 38017
Telephone: 901/761-0050

April 28, 2009

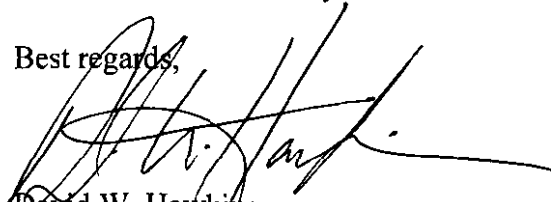
Ms. Mercer St. Peter, Assistant Regional Counsel
United States Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Re: Administrative Consent Agreement for Violation of FIFRA
Docket Number FIFRA-10-2009-0089 ←

Dear Ms St. Peter:

Enclosed, please find a check in the amount of \$41,600 as well as the Consent Agreement and Final Order which has been signed on behalf of Helena Chemical Company. I understand you return a copy to me after it has been fully executed.

Best regards,



David W. Hawkins,
General Counsel & Assistant Secretary

Encl.
c. Bill Salley
Scott Pace