



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
February 7, 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7662 1045

Ms. Dana Mathes
Dow AgroSciences LLC
9330 Zionsville Road, Bldg. 308/1E
Indianapolis, Indiana 46268

Complaint Docket No. FIFRA-05-2011-0007

Dear Ms. Mathes:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on January 31, 2011 with the Regional Hearing Clerk. The first copy was sent to the wrong address, therefore we are resending the enclosed document.

The civil penalty in the amount of \$22,500 is to be paid in the manner described in paragraphs 44 and 45. Please be certain that the number **BD2751145P006** and the docket number are written in the comment or description field of the electronic funds transfer. Payment is due by March 17, 2011.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Estrella Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

Cc: Ms. Sarah Kuntz

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Dow AgroSciences LLC)
Indianapolis, Indiana)
Respondent.)
_____)

Docket No. FIFRA-05-2011-0007

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136(a)

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JAN 31 2011

Consent Agreement and Final Order REGIONAL HEARING CLERK
Commencing and Concluding a Proceeding USEPA

REGION 5

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 Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Dow AgroSciences LLC (Dow), a limited liability company doing business in the States of Indiana and Michigan.
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 that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. Part 162.10) promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1, or NOA), prior to the arrival of the shipment in the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be

unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states 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, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “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 microorganism (except viruses, bacteria, or other living 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).

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

18. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

19. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12,

2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

20. At all times material and relevant to this Complaint, Respondent was a limited liability company or any organized group of persons and therefore, was a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. At all times material and relevant to this Complaint, BDP International Inc., located at 5601 Fortune Circle South Drive, Indianapolis, Indiana, 46241, was a broker/agent for Respondent.

22. On or about December 2, 2010, Respondent submitted NOAs under entry numbers 916-1861065-2, 916-1861076-9 and 916-1861061-1, to EPA (December 2 NOAs). The December 2 NOAs stated that they were related to import shipments of the pesticide “GF-2257 Herbicide,” EPA Registration Number 62719-604.

23. The import shipments associated with entry numbers 916-1861065-2, 916-1861076-9, 916-1861061-1 and the December 2 NOAs all entered the United States on or about December 19, 2010.

24. The December 2 NOAs stated that Respondent was the importer of record.

25. Respondent, as the importer of record of “GF-2257 Herbicide,” EPA Registration Number 62719-604, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

26. “GF-2257 Herbicide,” EPA Registration Number 62719-604, is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is intended to repel or mitigate a pest.

27. On or about January 5, 2009, the EPA, Office of Pesticide Programs (OPP),

Registration Division, conditionally registered “GF-2257 Herbicide” under EPA Registration Number 62719-604 and accepted the Respondent’s proposed label with comments. OPP’s comments included requiring Respondent to modify this product’s directions for use.

28. The labeling accompanying the import shipments of “GF-2257 Herbicide,” EPA Registration Number 62719-604, associated with entry numbers 916-1861065-2, 916-1861076-9, 916-1861061-1 and the December 2 NOAs, did not incorporate the directions for use that OPP required in its January 5, 2009, conditional registration.

29. On or about December 19, 2010, Respondent distributed or sold the pesticide product “GF-2257 Herbicide,” EPA Registration Number 62719-604, as those terms are defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count I

30. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this Complaint.

31. On or about December 19, 2010, in an import shipment associated with entry number 916-1861065-2, Respondent distributed or sold “GF-2257 Herbicide,” EPA Registration Number 62719-604, with labeling accompanying it that did not contain directions for use which were necessary for effecting the purpose for which the product was intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment.

32. On or about December 19, 2010, Respondent distributed or sold a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E),

subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count II

34. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this Complaint.

35. On or about December 19, 2010, in an import shipment associated with entry number 916-1861076-9, Respondent distributed or sold "GF-2257 Herbicide," EPA Registration Number 62719-604, with labeling accompanying it that did not contain directions for use which were necessary for effecting the purpose for which the product was intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment.

36. On or about December 19, 2010, Respondent distributed or sold a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

37. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count III

38. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this Complaint.

39. On or about December 19, 2010, in an import shipment associated with entry number 916-1861061-1, Respondent distributed or sold "GF-2257 Herbicide," EPA Registration Number 62719-604, with labeling accompanying it that did not contain directions for use which were necessary for effecting the purpose for which the product was intended and if complied with,

together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment.

40. On or about December 19, 2010, Respondent distributed or sold a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

41. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

42. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

43. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$22,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

44. Within 30 days of the effective date of this CAFO, Respondent must pay a \$22,500 civil penalty for the FIFRA violation. Respondent 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"

45. In the comment or description field of the electronic funds transfer, state the Respondent's name, complete address, the case title, the case docket number, and the billing document number. Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Kris P. Vezner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

46. This civil penalty is not deductible for federal tax purposes.
47. If Respondent does not pay the civil penalty timely, 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.
48. Pursuant to 31 C.F.R. § 901.9, Respondent 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

49. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

50. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

53. The terms of this CAFO bind Respondent, its successors, and assigns.

54. 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.

55. Each party agrees to bear its own costs and attorney fees in this action.

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

57. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, Chicago, Illinois.

In the Matter of:

**Dow AgroSciences LLC
Docket No.**

**RESPONDENT
Dow AgroSciences LLC
Indianapolis, Indiana**

Date

1/17/11

Dana Mathes
Dana Mathes
Vice President, Operations
Dow AgroSciences LLC *ME*

In the Matter of:

**Dow AgroSciences LLC
Docket No.**

**COMPLAINANT
Region 5
United States Environmental Protection Agency**

Date

1/29/11



**Bruce F. Sypniewski
Acting Director
Land and Chemicals Division**

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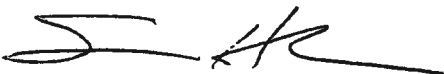
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USEPA
REGION 5**

In the Matter of:
Dow AgroSciences LLC
Docket No. FIFRA-05-2011-0007

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.

1-28-11
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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REGION 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Dow AgroSciences LLC, was filed on January 31, 2011, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and will be mailed no later than the next business day by Certified Mail, Receipt No. 7009 1680 0000 7662 1045, a copy of the original to the Respondent:

Ms. Dana Mathes
Dow AgroSciences LLC
9330 Zionsville Road, Bldg. 308/1E
Indianapolis, Indiana 46268

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Kris Vezner, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2011-0007

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