



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
July 5, 2011

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7665 8973

Ms. Kristina Woods
Hercules Incorporated
5200 Blazer Parkway
Dublin, OH 43017

Consent Agreement and Final Order Docket No. FIFRA-05-2011-0017

Dear Ms. Woods:

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 July 5, 2011, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the number **BD 2751145P017** and the docket number are written on both the transmittal letter and on the check. Payment is due by August 4, 2011, (within 30 calendar days of the filing date).

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Hercules Incorporated

Respondent.

) Docket No. FIFRA-05-2011-0017
)
)

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

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Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Hercules Incorporated (Hercules), a corporation doing business at 6121 Almeda-Genoa Road, Huston, Texas, 77048.
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 complying 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 Section 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. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

13. Section 12(a)(2)(N) states it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer or other distributor to fail to file reports required by FIFRA.

14. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as “misbranded” if its label does not bear the EPA establishment number assigned under section 3 of FIFRA to each establishment in which the pesticide was produced.

15. Section 2(q)(2)(C)(iv) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iv), defines a pesticide as “misbranded” if there is not affixed to its container a label bearing the registration number assigned to the pesticide under FIFRA.

16. 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.

17. 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).

18. 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.

19. 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.

20. 40 C.F.R. § 156.10(a)(1) states, in pertinent part, that every pesticide product shall bear a label containing (i) the name, brand, or trademark under which the product is sold; (ii) the name and address of the producer, registrant, or person for whom produced; (iii) the

net contents; (iv) the product registration number; (v) the producing establishment number; (vi) an ingredient statement; (vii) hazard and precautionary statements; (viii) the directions for use; and (ix) the use classification(s).

21. 40 C.F.R. § 156.10(a)(4)(ii) states, in pertinent part, that when any registered pesticide product is transported in a tank car, tank truck or other mobile or portable bulk container, a copy of the accepted label must be attached to the shipping papers, and left with the consignee at the time of delivery.

22. The Administrator of EPA may assess a civil penalty against any registrant or other distributor 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. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

23. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. On or about March 24, 2011, Respondent imported a shipment (Entry Number 300-2481582-9) of the pesticide product, “Drew 3025,” EPA Reg. No. 74655-28, into the United States.

25. The pesticide product, “Drew 3025,” EPA Reg. No. 74655-28, was transported in a tank truck in bulk form.

26. “Drew 3025” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. On or about March 8, 2011, the Respondent submitted a Notice of Arrival (NOA) for “Drew 3025,” EPA Reg. No. 1757-108.

28. Respondent failed to submit a NOA for “Drew 3025,” EPA Reg. No. 74655-28.
29. The label submitted with the NOA for “Drew 3025,” EPA Reg. No. 1757-108, did not contain the correct EPA registration number (EPA Reg. No. 74655-28) on it.
30. The label submitted with the NOA for “Drew 3025,” EPA Reg. No. 1757-108, did not specify the EPA establishment number in which the pesticide was produced on it.
31. The trucker transporting the “Drew 3025,” EPA Reg. No. 74655-28, did not have a copy of the accepted label attached to the shipping papers.
32. As a result, a copy of the accepted label for “Drew 3025,” EPA Reg. No. 74655-28, was not left with the consignee at the time of delivery in the United States.

Specific Allegations

Count 1

33. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this Complaint.
34. On or about March 24, 2011, Respondent failed to file a NOA for the pesticide product “Drew 3025,” EPA Reg. No. 74655-28, imported into the U.S., as required by Section 17(c) of FIFRA, in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).
35. Respondent’s violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), 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) for each separate unlawful act.

Count 2

36. Complainant incorporates by reference the allegations contained in

paragraphs 1 through 32 of this Complaint.

37. On or about March 24, 2011, Respondent distributed or sold the pesticide product "Drew 3025," EPA. Reg. No. 74655-28, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) because the import shipment of the pesticide product was not accompanied with an accepted label of the product and the label accompanying the NOA did not contain the correct EPA registration number and did not identify the EPA establishment number on it.

38. 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 And Other Relief

39. 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.

40. Based on an evaluation of the facts alleged in this complaint, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated Dec, 2010, Complainant has determined the appropriate penalty to settle this action is \$15,000.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of Hercules Incorporated," the docket number of this CAFO and the billing document (BD) number.

42. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
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

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

43. This civil penalty is not deductible for federal tax purposes.

44. 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.

45. 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

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

47. This CAFO does not 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.

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

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

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

51. 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.

52. Each party agrees to bear its own costs and attorney's fees, in this action.

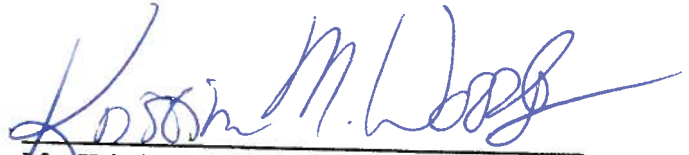
53. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Hercules Incorporated**

Hercules Incorporated, Respondent

June 8, 2011

Date



Ms. Kristina Woods
Senior Environmental Counsel
Hercules Incorporated

**In the Matter of:
Hercules Incorporated**

United States Environmental Protection Agency, Complainant

6/29/11
Date


Michael D. Harris *for MG.*
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Hercules Incorporated
Docket No. FIFRA-05-2011-0017

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.

6-30-11
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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JUL 14 2011
OFFICE OF REGIONAL
COUNSEL

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 Hercules Incorporated, was filed on July 5, 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 7665 8973, a copy of the original to the Respondents:

Ms. Kristina Woods
Hercules Incorporated
5200 Blazer Parkway
Dublin, OH 43017

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, 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-05-2011-0017

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