

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:

**HARMON & SONS PRODUCTS, LLC
3325 N 750 E
Layton, UT 84041**

Respondent.

Docket No. FIFRA-08-2020-0029

CONSENT AGREEMENT

April 24, 2020
10:20 AM

Received by
EPA Region VIII
Hearing Clerk

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to 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 of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are the undersigned U.S. Environmental Protection Agency (Complainant) and Harmon & Sons Products, LLC (Respondent).
3. Respondent owns and/or operates a facility located at 3325 N 750 E, Layton, Utah 84041 (Facility).
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

5. This Agreement is issued under the authority vested in the Administrator of the EPA by section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136/(a)(1). The undersigned EPA official has been duly authorized to institute this action.
6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a Regional Judicial Officer ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 13 6j (a)(1)(A), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered.

8. “The term ‘pesticide’ means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . .” FIFRA section 2(u), 7 U.S.C. § 136(u).
9. “The term ‘pest’ means (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 . . . which the Administrator declares to be a pest under section 136w(c)(l) of this title.” FIFRA section 2(t), 7 U.S.C. § 136(t).
10. 40 C.F.R. § 152.15 states “A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if... [t]he person who distributes or sells the substance claims, states, or implies (by labelling or otherwise) ... [t]hat the substance... can or should be used as a pesticide.”
11. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), prohibits any person from using any registered pesticide in a manner inconsistent with its label.
12. “The term ‘label’ means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” FIFRA section 2(p)(l), 7 U.S.C. § 136(p)(l).
13. Utah regulation R68-7-14(15) states that it is an unlawful act for any person to have “[a]ppplied pesticide onto any land without the consent of the owner or person in possession thereof.”

IV. ALLEGATIONS OF FACT AND LAW

14. Respondent, Harmon & Sons Products, LLC, is a “person” as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
15. Respondent is a corporation organized under the laws of the State of Utah and is authorized to do business in the State of Utah.
16. Respondent’s principal place of business is located at 3325 N 750 E, Layton, Utah 84041.
17. On November 19, 2015, an inspector with the EPA conducted soil sampling on the property adjacent to the Facility, in response to a tip and complaint.
18. The samples were positive for prodiamine, a chemical found in Prodiamine 65 WDG, EPA Registration Number 66222-89.
19. The samples were also positive for bifenthrin, a chemical found in Wisdom TC Flowable, EPA Registration Number 5481-520.
20. Prodiamine 65 WDG and Wisdom TC Flowable are products used by Respondent at the Facility.

21. Prodiamine 65 WDG's label states: "For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation." Prodiamine 65 WDG's label also states: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."
22. The sample results from the November 19, 2015 inspection demonstrate that Respondent applied Prodiamine 65 WDG in such a way that it was applied either directly or through drift onto the property of another without consent.
23. Wisdom TC Flowable's label states: "Consult the pest control regulatory agency of your State prior to use of this product." Wisdom TC Flowable's label also states: "Do not treat soil that is water saturated or frozen or in any conditions where runoff or movement from the treatment area (site) is likely to occur."
24. The samples demonstrate that Respondent applied Wisdom TC Flowable in such a way that it was applied either directly or through runoff onto the property of another without consent.
25. On August 20, 2019, an EPA inspector, accompanied by a representative of the Utah Department of Agriculture and Food, conducted an inspection at the Facility.
26. At the time of the August 20, 2019 inspection, Respondent produced, distributed, and sold a product called ArborMAX.
27. During the August 20, 2019 inspection, the EPA inspector reviewed the ArborMAX product label and found that the label contained the following words: "Fights insects/insect damage."
28. The language "Fights insects/insect damage" implies that the substance can or should be used as a pesticide.
29. The language was also found in marketing and advertising for the ArborMAX product on Respondent's webpages.
30. ArborMAX was not a registered pesticide.
31. Prior to entering into this Agreement, Respondent removed all pesticidal claims from its ArborMAX product label, advertising, and marketing.

V. ALLEGED VIOLATIONS OF LAW

32. As demonstrated in Section IV, Respondent twice used a pesticide in a manner inconsistent with its label in violation of section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.
33. As demonstrated in Section IV, Respondent distributed or sold a pesticide that was not registered in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and is

therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.

VI. TERMS OF CONSENT AGREEMENT

34. By entering into this Consent Agreement, other than as it relates to Jurisdiction in Section II, Respondent does not admit any legal assertions in this document. Respondent neither admits nor denies any liability and is settling this action in order to resolve this matter without further litigation.
35. For the purpose of this proceeding, Respondent
 - a. consents to the assessment of a civil penalty as stated below; and
 - b. waives any right to contest the allegations in this Agreement and to appeal any final order approving the Agreement.
36. Section 14(a) of FIFRA, 7 U.S.C. § 1367(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the EPA to assess a civil penalty in this matter. The maximum amounts have been adjusted for inflation under 40 C.F.R. part 19.
37. Having considered the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 1367(a)(4), the Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.
38. Penalty Payment. Respondent agrees to
 - a. pay a civil penalty in the amount of \$16,458.00 within 120 calendar days of the effective date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each payment with the docket number that appears on the final order; and
 - d. within 24 hours of payment, email proof of payment to Christine Tokarz at tokarz.christine@epa.gov (whom the Complainant designates for service of proof of payment) and the Regional Hearing Clerk for EPA Region 8 at Haniewicz.melissa@epa.gov. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.
39. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
 - b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
40. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
41. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
42. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
43. Except as qualified by Paragraph 39, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

44. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
45. The terms of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer or Regional Administrator.
46. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall

it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

47. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
48. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves all its legal and equitable rights.

VIII. EFFECTIVE DATE

49. This Agreement shall become effective on the date the final order is filed by the Regional Hearing Clerk.
50. The parties consent to service of this Agreement and any final order approving it by e-mail at the following valid e-mail addresses: tokarz.christine@epa.gov (for Complainant), and aprils1960@yahoo.com (for Respondent).

Consent Agreement In the Matter of HARMON & SONS PRODUCTS, LLC.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Complainant.**

Date: _____

By: **DAVID COBB** Digitally signed by DAVID COBB
Date: 2020.04.21 15:25:12 -06'00'

David Cobb, Section Chief
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

**HARMON & SONS PRODUCTS, LLC
Respondent.**

Date: 4-21-20

By: April Harmon - owner
April Harmon, Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT & FINAL ORDER** in the matter of **HARMON & SONS PRODUCTS, LLC; DOCKET NO.: FIFRA-08-2020-0029** were filed with the Regional Hearing Clerk on April 24, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Shaula Eakins, Enforcement Attorney, and sent via certified receipt email on April 24, 2020, to:

Respondent

April Harmon
Harmon & Sons Products, LLC
Aprils1960@yahoo.com

Legal Counsel

Michael A. Zody
Parsons Behle & Latimer
MZody@parsonsbehle.com

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 24, 2020

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2020.04.24
11:05:39 -06'00'

Melissa Haniewicz
Regional Hearing Clerk