

U. S. ENVIRONMENTAL PROTECTION AGENCY 2014 SEP 22 AM 8:30
REGION 7
11201 RENNER BOULEVARD
LENEXA, KS 66219
BEFORE THE ADMINISTRATOR

In the Matter of

Frontier Chemical, LLC

Respondent

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Docket No. FIFRA-07-2014-0013

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Frontier Chemical, LLC (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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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 (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the 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 Frontier Chemical, LLC, a pesticide producer and distributor with facilities located at 1160 24th Road in Beattie, Kansas, and at 1358 144th Road in Seneca, Kansas.

Section III

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(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. Produce is further defined by regulation at 40 C.F.R. § 167.3 as “to package, repack, label, relabel, or otherwise change the container of any pesticide or device.”

10. 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.

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to the requirements of FIFRA unless the establishment in which it is produced is registered with the EPA.

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

14. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

15. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA.

Section IV

General Factual Allegations

16. The Respondent is and was at all times referred to in this Complaint, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Kansas company qualified to do business in the state of Kansas.

17. On or about April 4, 2013, a representative of the Kansas Department of Agriculture (KDA) conducted an inspection at Respondent’s facility at 1160 24th Road in Beattie, Kansas (the Beattie facility).

18. During the inspection referenced in the preceding paragraph, the KDA representative documented that Respondent held for sale or distribution quantities of the products Parallel Plus, EPA Reg. No. 66222-132; and Buccaneer Plus, EPA Reg. No. 55467-9.

19. Respondent had repackaged the products Parallel Plus, EPA Reg. No. 66222-132; Buccaneer Plus, EPA Reg. No. 55467-9; and Atrazine 4L, EPA Reg. No. 100-497-55467, by filling mini-bulk containers from bulk containers at Respondent’s facility at 1350 144th Road in Seneca, Kansas (the Seneca facility).

Violations

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

Counts 1-2

21. The facts stated in paragraphs 16 through 19 are realleged and incorporated as if

fully stated herein.

22. On or before April 4, 2013, Respondent, at its Seneca facility, repackaged a quantity of the pesticide product Parallel Plus, EPA Reg. No. 66222-132.

23. On or about April 4, 2013, Respondent held for sale or distribution a quantity of the pesticide product Parallel Plus, EPA Reg. No. 66222-132, which label lacked a correct EPA production establishment number.

24. On or before April 4, 2013, Respondent, at its Seneca facility, repackaged a quantity of the pesticide product Buccaneer Plus, EPA Reg. No. 55467-9.

25. On or about April 4, 2013, Respondent held for sale or distribution a quantity of the pesticide product Buccaneer Plus, EPA Reg. No. 55467-9, which label lacked a correct EPA production establishment number.

26. On or about April 4, 2013, quantities of products Parallel Plus, EPA Reg. No. 66222-132; and Buccaneer Plus, EPA Reg. No. 55467-9, held for sale or distribution by Respondent, were misbranded in that their product labels lacked correct EPA production establishment numbers.

27. At all times referred to in this Complaint, Respondent's Seneca facility was not registered with the EPA as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

28. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution pesticides which were misbranded.

29. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing pesticides in an establishment that was not registered in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

Count 3

Submission of a Incorrect or Incomplete Pesticide Production Report

30. The facts stated in Paragraphs 16 through 19 are realleged and incorporated as if fully stated herein.

31. On or about February 7, 2013, Respondent filed a report of pesticide production pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

32. In the pesticide production report referenced in the preceding paragraph, Respondent identified quantities of the products Parallel Plus, EPA Reg. No. 66222-132; Buccaneer Plus, EPA Reg. No. 55467-9; and Atrazine 4L, EPA Reg. No. 100-497-55467, as having been produced at its Beattie facility when those products were in fact produced at its Seneca facility.

33. For the pesticide production report filed on or about February 7, 2013, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by submitting a production report pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e that contained incorrect or incomplete information.

Section V

Consent Agreement

34. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

35. Respondent neither admits nor denies the factual allegations set forth above.

36. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

38. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

40. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

41. The effect of settlement as described in Paragraph 38 below is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 36 above.

42. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order below. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

43. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

44. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of

processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Five Thousand Four Hundred Dollars (\$5,400.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If by wire transfer, payment should be directed to the Federal Reserve Bank of New

York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

2. 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, KS 66219;

and

Mark Leshner
Toxics and Pesticides Enforcement Branch, WWPD
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT
FRONTIER CHEMICAL, LLC**

Date: 9-4-14

By:



Travis Stube

Print Name

Member, Frontier

Title Chemical, LLC

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/16/14



Karen Flournoy

Director
Water, Wetlands, and Pesticides Division

Date: 9/17/14



Chris R. Dudding
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: 9-18-14

Karina Borrromeo

KARINA BORRROMEO

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Frontier Chemical, LLC, Respondent
Docket No. FIFRA-07-2014-0013

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 by email to Attorney for Complainant:

dudding.chris@epa.gov

Copy by First Class Mail to:

Travis Stuke
President
Frontier Chemical, LLC
1160 24th Road
Beattie, Kansas 66406

Dated: 9/22/14



Kathy Robinson
Hearing Clerk, Region 7