



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

SEP 30 2016

REPLY TO THE ATTENTION OF
LC-8J

CERTIFIED MAIL: 7014 2870 0001 9580 6507
RETURNED RECEIPT REQUESTED

Ms. Jill Barnett
SunOpta Grains and Foods, Inc.
3824 SW 93rd Street
Hope, Minnesota 56046

Consent Agreement and Final Order in the Matter of:
SunOpta Grains and Foods, Inc.: Docket No. **FIFRA-05-2016-0016**

Ms. Barnett:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on 9/30/2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$14,300 is to be paid in the manner described in paragraph's 57 & 58. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

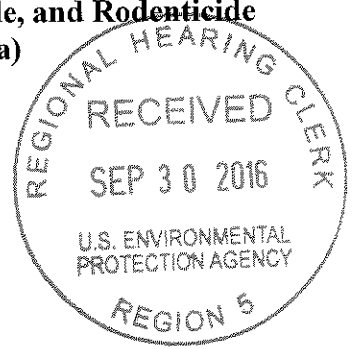
A handwritten signature in cursive script that reads "David Star".

David Star
Chief
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2016-0016
)	
SunOpta Grains and Foods, Inc.)	
d/b/a Sun Rich, Inc.)	Proceeding to Assess a Civil Penalty
Hope, Minnesota,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	



Consent Agreement and Final Order
Preliminary Statement

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. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is SunOpta Grains and Foods, Inc., a corporation doing business in the State of Minnesota.¹

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).

¹ Respondent also does business as Sun Rich, Inc.

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. §§ 136-136y.

Statutory and Regulatory Background

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

11. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states, in pertinent part, that it is unlawful for any person to violate any regulation issued under Section 19 of FIFRA.

12. Pursuant to Section 19(e) and (f) of FIFRA, 7 U.S.C. §§ 136q(e) and (f), EPA issued the final rule “Pesticide Management and Disposal; Standards for Pesticide Containers and Containment” (71 Federal Register 47330-47437), 40 C.F.R. § 165.

13. The term “distribute or sell” means to distribute, sell, offer for sale, hold or sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive (and having so received) deliver or offer to deliver. 7 U.S.C. § 136(gg).

14. The term “establishment” means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

15. A “person” means any individual, partnership, association, corporation, or any organized group or persons whether incorporated or not. 7 U.S.C. § 163(s).

16. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

17. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

18. The term “produce” means “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.” 7 U.S.C. § 136(w).

19. The meaning of the term “produce” is further defined to include “to package, repackage, label, relabel or otherwise change the container of any pesticide or device.” 40 C.F.R. § 167.3.

20. The term “producer” means “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide.” 7 U.S.C. § 136(w).

21. The term “producer” is further defined to mean “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).” 40 C.F.R. § 167.3.

22. The term “refiller” means “a person who engages in the activity of repackaging pesticide product into refillable containers.” 40 C.F.R. § 165.3

23. The term “repackage” means, “to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product’s EPA registration number, for sale or distribution. 40 C.F.R. §165.3.

24. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) provides, in pertinent part, that no person shall produce any pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator of EPA. See also 40 C.F.R. § 167.20(a).

25. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), provides, in pertinent part, that it is unlawful for any person to refuse to prepare, maintain, or submit any records required under FIFRA Sections 5, 6, 7, 8, 11, or 19.

26. 40 C.F.R. § 165.70(j)(1)(ii) and (iii) states that for each pesticide product distributed or sold in refillable containers, a refiller must maintain the following records:

- a. Written refilling residue removal procedure for the pesticide product.
- b. The written description of acceptable containers for the pesticide product.

27. 40 C.F.R. § 165.70(j)(2)(i)(ii) and (iii) states that each time a refiller repackages a pesticide product into a refillable container and distributes or sells the product, the following records must be generated and maintained for at least three years after the date of the repackaging:

- a. The EPA Registration number of the pesticide product distributed or sold in the refillable container.
- b. The date of the repackaging.
- c. The serial number of other identifying code of the refillable container.

28. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85(d) provide, in pertinent part, that any producer operating an establishment registered with EPA

under Section 7 of FIFRA shall inform the Administrator of EPA within 30 days after it is registered, and annually thereafter, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides which the producer is currently producing, has produced in the past year, and has sold or distributed during the past year.

29. 40 C.F.R. § 167.85(c) provides that the report required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 (the Annual Pesticide Production Report) must be made on a form supplied by EPA, and it is the ultimate responsibility of the producer to obtain, complete and submit the form each year.

30. 40 C.F.R. § 167.85(d) provides that the producer must submit the Annual Pesticide Production Report for the preceding year to EPA on or before March 1 of each year, even if the producer has produced no pesticide product for that reporting year.

31. 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. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

32. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

33. Respondent has been a “producer” and a “refiller” as those terms are defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. §§ 165.3 and 167.3, at all times relevant to this CAFO.

34. Respondent’s place of business, located at 3824 Southwest 93rd Street, Hope, Minnesota 56046 (Respondent’s Establishment), has been an “establishment,” as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3 at all times relevant to this CAFO.

35. On April 9, 2010, EPA issued Respondent a Notice of Violation (NOV) for the failure to file the Pesticides Report for Pesticide-Producing Establishments (EPA Form 3540-16) for the calendar year 2009 for Respondent's facility located at 3824 Southwest 93rd Street, Hope, Minnesota (Respondent's Establishment).

36. The April 9, 2010 NOV directed Respondent to respond to EPA and submit the 2009 EPA Form 3540-16 within 30 days of Respondent's receipt of the NOV.

37. On August 19, 2010, EPA issued Respondent a Notice of Intent to Terminate Establishment Registration (NITER) for Respondent's Establishment due to Respondent's continued failure to submit the EPA Form 3540-16 for calendar year 2009.

38. The August 19, 2010 NITER directed Respondent to respond to EPA and submit the 2009 EPA Form 3540-16 within 30 days of Respondent's receipt of the NITER.

39. On October 21, 2010, EPA issued Respondent a Notice of Termination of Establishment Registration (NOTER) informing Respondent that the registration of Respondent's Establishment was terminated due to Respondent's continued failure to submit the EPA Form 3540-16 for calendar year 2009.

40. On March 22, 2013, an inspector employed by the Minnesota Department of Agriculture (MDA) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's Establishment in Hope, Minnesota.

41. During the March 22, 2013 inspection, the inspector collected a repackaging agreement, repackaging records, and distribution records for the product "Touchdown" that was repackaged at Respondent's Establishment.

42. "Touchdown" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

43. Respondent's Establishment was not registered under Section 7 of FIFRA, 7 U.S.C. § 136e, after October 21, 2010.

44. The repackaging records collected during the March 2013 inspection show that the product "Touchdown" was repackaged at Respondent's Establishment after October 21, 2010.

45. The repackaging records show that Respondent repackaged the following into refillable containers on or about June 12, 2012:

- a. 22 gallons of "Touchdown" for the customer "Pelinka Farms," and
- b. 120 gallons of "Touchdown" for the customer "Jirele Farms."

46. On or about June 19, 2012, Respondent sold 22 gallons of "Touchdown" to "Pelinka FMS LTD Partnersh" (sic), located at 4379 SW 18th Street, Owatonna, Minnesota 55060.

47. On or about June 25, 2012, Respondent sold 120 gallons of "Touchdown" to "Jirele Farms," located at 1854 SE 88th Street, Owatonna, Minnesota 55060.

48. The repackaging records show that Respondent repackaged 100 gallons of "Touchdown" into refillable containers for the customer "Todd Hansen" on or about June 15, 2012.

49. On or about June 25, 2012, Respondent sold 100 gallons of "Touchdown," EPA Registration Number 100-1169, to "Todd & Raquel Hansen," located at 6001 SW 81st Street, Owatonna, Minnesota 55060.

50. Respondent's production of pesticides in an unregistered establishment constitutes an unlawful act pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

51. Respondent's production of pesticides in an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

52. During the March 22, 2013 inspection, Respondent was unable to provide the inspector with copies of the written refilling residue removal procedure and the written

description of acceptable containers for the pesticide “Touchdown.”

53. Respondent’s failure to maintain and furnish copies of the written refilling residue removal procedure and the written description of acceptable containers for the pesticide “Touchdown” are an unlawful acts pursuant to Sections 12(a)(2)(B)(i) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B)(i) and 136j(a)(2)(S), and 40 C.F.R. §§ 165.70(j)(1)(ii) and (iii).

54. Respondent has not filed Annual Pesticide Production Reports for Pesticide-Producing Establishments (EPA Form 3540-16) for the calendar years 2009 through 2016.

55. Respondent’s failure to file each Annual Pesticide Production Report for Pesticide-Producing Establishments on EPA Form 3540-16 for the calendar years 2009 through 2016 violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. §§ 167.85 (c) and(d).

56. Respondent’s failure to file each Annual Pesticide Production Report for Pesticide-Producing Establishments on EPA Form 3540-16 for the calendar years 2009 through 2016 is an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Civil Penalty

57. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$14,300. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009, and EPA’s Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations, dated March 2012. Complainant has determined that there was no economic benefit associated with the alleged violations. Therefore, Complainant has determined that the appropriate penalty to settle this action is \$14,300.

58. Respondent agrees to the assessment of a civil penalty in the amount of \$14,300 for its FIFRA violations as described in this CAFO.

59. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,300 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

For a check sent by Express Mail, next business day delivery, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note the Respondent's name and the docket number of this CAFO.

For payment through electronic funds transfer, the amount of \$14,300 shall be payable to "Treasurer, United States of America," and submitted to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, the Respondent's name and the docket number of this CAFO must be stated.

For payment through Automated Clearinghouse (ACH) also known as REX or remittance

express, ACH electronic funds transfer shall be payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

To pay on-line, go to www.pay.gov. and use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

60. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

David Star (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Cynthia N. Kawakami (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

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

62. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the United States 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.

63. 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

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

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

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

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

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

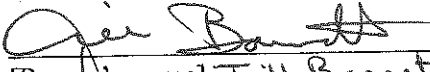
69. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

70. Each party agrees to bear its own costs and attorneys' fees, in this action.

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


In the Matter of:
SunOpta Grains and Foods, Inc.
Docket No. FIFRA-05-2016-0016

9-28-16
Date


[Person's name] Jill Barnett
[Person's title] General Counsel
SunOpta Grains and Foods, Inc.

United States Environmental Protection Agency, Complainant

9/29/2016
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
SunOpta Grains and Foods, Inc.
Docket No. FIFRA-05-2016-0016

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.

9/30/14
Date



Robert A. Kaplan
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: SunOpta Grains & Foods, Inc.

Docket Number: **FIFRA-05-2016-0016**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on September 30, 2016 this day in the following manner to the addressees:

Copy by certified mail

Return-receipt requested:

Ms. Jill Barnett
SunOpta Grains & Foods, Inc.
3824 SW 93rd Street
Hope, Minnesota 56046
Jill.barnett@sunopta.com

Copy by e-mail to

Attorney for Complainant:

Cynthia N. Kawakami
kawakami.cynthia@epa.gov

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 30, 2016

L. Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

7014 2870 0001 9580 6507