

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. FIFRA-10-2021-0026
)
UNIVAR SOLUTIONS USA INC.,) **CONSENT AGREEMENT**
)
Portland, Oregon,)
)
Respondent.)
)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Univar Solutions USA Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA,

7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

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

3.2. 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.”

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

3.4. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines “to distribute or sell” as “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.”

3.5. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.6. Under Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), 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], is adequate to protect health and the environment.”

3.7. Under Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), a pesticide is misbranded if “the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section [3(d) of FIFRA], is adequate to protect health and the environment.”

3.8. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” This section also defines “labeling” as “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

3.9. The regulations at 40 C.F.R. Part 156 require, among other things, that every pesticide product label bear hazard and precautionary statements, container labeling statements, and worker protection statements.

3.10. Under 40 C.F.R. § 156.10(a)(4)(ii), 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.

Distribution or Sale of a Misbranded Pesticide

3.11. Respondent is incorporated in the State of Washington. Therefore, Respondent is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.12. The product “Woodlife 1,1,1” (EPA Registration No. 92617-10) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.13. During a period of 24 months between approximately January 1, 2017 and December 31, 2018, Respondent distributed or sold the pesticide Woodlife 1,1,1 via a tank truck or other mobile or portable bulk container at least 33 times.

3.14. Respondent attached to or otherwise sent along with each shipment described in paragraph 3.13 an outdated Woodlife 1,1,1 label.

3.15. Labeling on each of the 33 Woodlife 1,1,1 shipments omitted the following information, which was required to appear on the label that was EPA-approved at the time:

- a. General precautions and restrictions: Specifically, the label omitted the instruction to “consult safety data sheet before using” and the instruction, “do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.”
- b. Safety requirements and instructions: The label omitted instructions regarding the handling, cleaning, and maintenance of clothing and personal protective equipment; personal hygiene practices to be used when handling or applying the pesticide; and steps to take if the pesticide gets inside clothing or personal protective equipment.

- c. First aid: The label omitted a direction to physicians in the event vomiting is induced after exposure to the pesticide, instructions that could be relevant in the event of eye exposure, and first aid contact information.
- d. Personal protective equipment: The label omitted the following descriptions of the personal protective equipment that mixers and loaders using the liquid formulation of Woodlife 1,1,1 must wear: long-sleeved shirt and long pants; shoes and socks, and chemical resistant gloves (such as barrier laminate, nitrile rubber, neoprene rubber or Viton, which are materials that are chemical-resistant to the product).
- e. Product disposal instructions: The label omitted instructions directing users not to reuse or refill the pesticide container, and instructions for proper rinsing after a container is emptied and before it is disposed.

3.16. The omission of information described in paragraph 3.15 constitutes multiple misbrandings under Sections 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(G) and (F).

3.17. Therefore, between January 1, 2017, and December 31, 2018, Respondent distributed or sold a misbranded pesticide on at least 33 occasions, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

ENFORCEMENT AUTHORITY

3.18. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$20,528 for each offense.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$165,000 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Nicholas Hurwit
U.S. Environmental Protection Agency
Region 10
hurwit.nicholas@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

SUSANNE VASIC, Senior Corporate Counsel
Univar Solutions USA Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2021-0026
)	
UNIVAR SOLUTIONS USA INC.,)	FINAL ORDER
)	
Portland, Oregon,)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2021.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: UNIVAR SOLUTIONS USA INC., Docket No.: FIFRA-10-2021-0026**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle Meinhardt
U.S. Environmental Protection Agency, Region 10
meinhardt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered electronically to:

Alan J. Sachs
Counsel for Univar Solutions USA Inc.
ASachs@bdlaw.com

On behalf of:
Susanne Vasic
Senior Corporate Counsel
Univar Solutions USA Inc.

DATED this _____ day of _____, 2021.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10