



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

November 26, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7674 4188

Ms. Jennifer Mahan
FMC Corporation
1735 Market Street
Philadelphia, Pennsylvania 19103

Consent Agreement and Final Order In the Matter of
FMC Corporation, Docket No. FIFRA-05-2015-0012

Dear Ms. Mahan:

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 November 26, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 42 and 43. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by December 26, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

For Pamela Grace

Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No. FIFRA-05-2015-0012
)	
FMC Corporation)	Proceeding to Assess a Civil Penalty
Philadelphia, Pennsylvania)	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. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is FMC Corporation, a Delaware corporation doing business at 1735 Market Street, Philadelphia, Pennsylvania.
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. §§ 136-136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 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 United States Environmental Protection Agency. These regulations are found at 19 C.F.R. Part 12.

11. 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).

12. 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).

13. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

14. 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).

15. 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 any pesticide that is misbranded.

16. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), defines a pesticide as misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with is adequate to protect health and the environment.

17. 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.

18. 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.

19. Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa), defines a “state” in part as a State.

20. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(l) of FIFRA, 7 U.S.C. § 136l(a)(l), and 40 C.F.R. Part 19.

21. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, 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

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

23. Pennsylvania is a “state” as defined at Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa).

24. On August 7, 2009, in a letter to K-1 Chemicals U.S.A., Inc., EPA accepted a revised label for the product “Fluthiacet-Methyl Technical,” EPA Registration Number (EPA Reg. No.) 63588-16, that included the precautionary statement “[a]void contact with skin, eyes, or clothing.”

25. In 2010, Respondent acquired and became the registrant for the product “Fluthiacet-Methyl Technical” and EPA assigned a new registration number to “Fluthiacet-Methyl Technical,” EPA Reg. No. 279-9550.

26. BDP International, Inc. located at 100 Concord Road, Aston, Pennsylvania 19014, was a broker for Respondent (Respondent’s broker) for the import shipment identified by entry number 916-2727240-3.

27. On or about August 14, 2014, Respondent’s broker, on behalf of the Respondent, submitted to EPA a NOA, for the import of a shipment under entry number 916-2727240-3, consisting of two 400 kilogram units of “Fluthiacet-Methyl Technical,” EPA Reg. No. 279-9550.

28. Respondent, as the importer of record of “Fluthiacet-Methyl Technical,” EPA Reg. No. 279-9550, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

29. Respondent is a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

30. “Fluthiacet-Methyl Technical” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. “Fluthiacet-Methyl Technical” is an EPA-registered pesticide under Section 3 of FIFRA, 7 U.S.C. § 136*a*.

32. On or about August 15, 2014, one import shipment consisting of two 400 kilogram units of “Fluthiacet-Methyl Technical” associated with entry number 916-2727240-3 entered the United States.

33. Respondent is the “distributor” as those terms are defined at Section 2(w) and (y) of FIFRA, 7 U.S.C. § 136(w) and (y), at all times relevant to this CAFO.

34. The inspector reviewed the label of “Fluthiacet-Methyl Technical” supplied to EPA with the NOA, and confirmed with the Respondent that the label was a true and accurate representation of the label that was on the product in the shipment identified in the NOA.

35. The imported quantities of “Fluthiacet-Methyl Technical,” EPA Reg. No. 279-9550, associated with entry number 916-2727240-3 and the August 14, 2014 NOA failed to bear a complete statement on the labels for hazard and precautionary statements as required by 40 C.F.R. §§ 156.10(a)(vii) and 156.70.

36. The label provided with the NOA did not bear the statement, “[a]void contact with skin, eyes, or clothing,” found on the EPA accepted label, dated August 7, 2009, submitted to EPA in connection with the FIFRA section 3 registration of “Fluthiacet-Methyl Technical.”

37. On or about August 15, 2014, Respondent “distributed or sold” the misbranded pesticide “Fluthiacet-Methyl Technical,” EPA Reg. No. 279-9550, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

38. Respondent’s distribution or sale of the misbranded pesticide “Fluthiacet-Methyl Technical” constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

39. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

40. On October 9, 2014, an EPA inspector evaluated the shipment of “Fluthiacet-Methyl Technical” for compliance with FIFRA. The inspector confirmed that the shipment had been relabeled with a correct label bearing the statement, “[a]void contact with skin, eyes, or clothing,” as found on the EPA accepted label, dated August 7, 2009.

Civil Penalty

41. 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 \$7,500. 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.

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations by the following method:

Check sent by express mail: By sending 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 “FMC Corporation,” and the docket number of this CAFO.

43. Respondent must send a notice of payment that states Respondent’s name, complete address, the case docket number and the billing document 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

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

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

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

45. If Respondent does not pay timely the civil penalty, 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.

46. 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

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

48. 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.

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

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

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

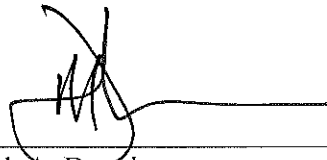
52. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

FMC Corporation, Respondent

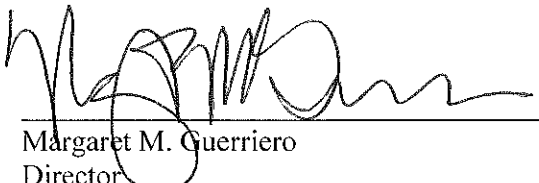
10/24/14
Date



Mark A. Douglas
President
FMC Corporation Agricultural Solutions

United States Environmental Protection Agency, Complainant

11/17/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
FMC Corporation
Docket No. FIFRA-05-2015-0012



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.

11/24/2014

Date

A handwritten signature in blue ink, appearing to be "S H L", written over a horizontal line.

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



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 FMC Corporation, was filed on November 26, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 4188, a copy of the original to the Respondent:

Ms. Jennifer Mahan
FMC Corporation
1735 Market Street
Philadelphia, Pennsylvania 19103

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mary Fulghum, Assistant Regional Counsel, 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-05-2015-0012**