



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

SEP 15 2015

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL: No.7009 1680 0000 7641 2506
RETURN RECEIPT REQUESTED

Mr. Tom Lyons
Nufarm Americas Inc.
11901 South Austin Ave.
Alsip, Illinois 60803

Consent Agreement and Final Order In the Matter of
Nufarm Americas Inc. Docket No FIFRA-05-2015-0045

Mr. Lyons:

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 September 15, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 35 and 36. 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 blue ink, appearing to read "Estrella Calvo".

for Estrella Calvo
Pesticides and Toxics Compliance Section

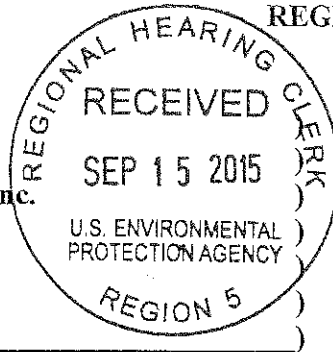
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Nufarm Americas Inc.
Alsip, Illinois

Respondent.



Docket No. FIFRA-05-2015-0045

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
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, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Nufarm Americas Inc., a corporation doing business at 11901 South Austin Avenue, Alsip, Illinois 60803.

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 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Section 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 EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 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).

12. 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 a pesticide which is adulterated or misbranded.

13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), defines a pesticide as “misbranded” if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such

conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) 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.

14. 40 C.F.R. 156.10(a)(2)(ii)(C) states that all required label text must not be obscured or crowded.

15. 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.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

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

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. The Administrator of EPA may assess a civil penalty against any registrant or 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

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

21. On or about April 20, 2015, Expeditors International, located at 849 Thomas Drive, Bensenville, Illinois 60106 was the broker/agent for Respondent for the import shipment under entry number 231-0230473-5.

22. On or about April 20, 2015, Respondent submitted a NOA to EPA for import of a shipment of the product “Purestand Selective Herbicide,” EPA Registration Number (EPA Reg. No.) 55146-143, from China under entry number 231-0230473-5.

23. The importer of record listed on the NOA for the shipment under entry number 231-0230473-5 was Nufarm Americas Inc.

24. Respondent, as the importer of record of the pesticide product, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

25. “Purestand Selective Herbicide” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about April 20, 2015, a shipment of “Purestand Selective Herbicide” entered into the United States at the Chicago, Illinois port of entry.

27. On or about April 20, 2015, Respondent distributed or sold the pesticide product “Purestand Selective Herbicide” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

28. The label on the shipment of “Purestand Selective Herbicide” that entered into the United States on or about April 20, 2015 was obscured. The following labeling requirements

were either completely covered or partially covered by other labels and markings: brand name, precautionary statements, first aid statements, environmental hazard statements, directions for use and storage and disposal language.

29. Labels found on the cartons of "Purestand Selective Herbicide" were misbranded as that term is defined at Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

Specific Allegations

30. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this Complaint.

31. On or about April 20, 2015, Respondent distributed or sold the misbranded pesticide product "Purestand Selective Herbicide," which constitutes an unlawful act, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

32. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty And Other Relief

33. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

34. Based on an evaluation of the facts alleged in this complaint, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$7,500.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of Nufarm Americas Inc.," and the docket number of this CAFO.

36. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Mark Koller(C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

38. If Respondent does not pay the civil penalty in a timely manner, 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. § 1367(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. 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

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

41. This CAFO does not 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.

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

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

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

45. 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.

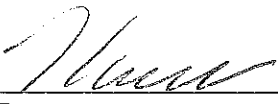
46. Each party agrees to bear its own costs and attorney's fees, in this action.

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

In the Matter of:
Nufarm Americas Inc.

Nufarm Americas Inc., Respondent

6/9/15
Date



Tom Lyons
Executive Vice President
Nufarm Americas Inc.

In the Matter of:
Nufarm Americas Inc.

United States Environmental Protection Agency, Complainant

7/20/2015

Date



Margaret M. Guerriero
Director
Land and Chemicals Division

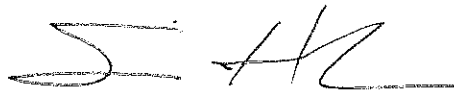
In the Matter of:
Nufarm Americas Inc.
Docket No.

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.

8-19-2015

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of: Nufarm Americas Inc.
Docket Number: FIFRA-05-2015-0045

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 15, 2015 in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Tom Lyons
Nufarm Americas Inc.
11901 South Austin Ave.
Alsip, Illinois 60803

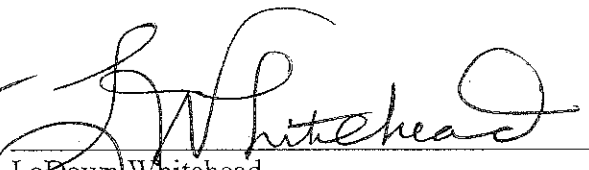
Copy by E-mail to
Attorney for Complainant:

Mark Koller
Koller.mark@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

September 16, 2015 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7641 2506