



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
May 19, 2014

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL: No.7009 1680 0000 7679 4922
RETURN RECEIPT REQUESTED

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

Consent Agreement and Final Order In the Matter of
Nufarm Americas Inc. Docket No. FIFRA-05-2014-0016

Mr. Lyons:

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 May 19, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by June 18, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2014-0016
)	
Nufarm Americas, Inc.)	
Alsip, Illinois)	
)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
Respondent.)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
_____)	



**Consent Agreement and Final Order
Commencing and Concluding a Proceeding**

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. (Nufarm), a corporation doing business in Alsip, Illinois.

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, to the best of its knowledge, it is currently in compliance 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 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 EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated at 40 C.F.R. § 162.10 by the Administrator, before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in 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 in the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person in any state to distribute or sell any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under FIFRA.

14. 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.

15. 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 micro-organism (except viruses, bacteria, or other living micro-organisms 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. § 136 w(c)(1).

16. 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.

17. 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.

18. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

19. The Administrator 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

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

21. At all times relevant to this CAFO, Respondent was a “registrant” as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

22. On or about March 31, 2014, Respondent submitted to EPA an NOA under entry number 231-8017555-0 for an import shipment of “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10.

23. On or about April 1, 2014, Respondent submitted to EPA an NOA under entry number 231-8018150-9 for an import shipment of “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10.

24. Respondent is the registrant of “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10.

25. The NOAs referenced in Paragraphs 22 and 23 above stated that Respondent was the importer of record.

26. Respondent, as the importer and registrant of “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

27. The import shipment associated with entry number 231-8017555-0 entered the United States on or about April 7, 2014.

28. The import shipment associated with entry number 231-8018150-9 entered the United States on or about April 9, 2014.

29. “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10, is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

30. On April 8, 2003, EPA’s Office of Pesticide Programs issued an “accepted” label for “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10.

31. The imported quantities of “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10, associated with entry numbers 231-8017555-0 and 231-8018150-9, bore labels with a first aid statement which substantially differed from the April 8, 2003 “accepted” label.

32. On or about April 7 and 9, 2014, Respondent “distributed or sold” the pesticide “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

33. Complainant incorporates by reference paragraphs 1 through 32 of this CAFO.

34. On or about April 7, 2014, in an import shipment associated with entry number 231-8017555-0, Respondent distributed or sold the pesticide “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10, in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

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

Count 2

36. Complainant incorporates by reference paragraphs 1 through 32 of this CAFO.

37. On or about April 9, 2014, in an import shipment associated with entry number 231-8018150-9, Respondent distributed or sold the pesticide “Nufarm Mepiquat Chloride Technical,” EPA Reg. No. 61272-10, in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

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

Civil Penalty

39. 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.

40. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$15,000. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

41. Within 30 days of the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the alleged 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.

42. 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

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

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

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

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

45. Pursuant to 40 C.F.R. § 13.11 and 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.

46. Respondent relabeled the pesticide referenced in paragraph 31 of this CAFO such that first aid statement does not substantially differ from the “accepted” label.

47. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Sections 12(a)(1)(B) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.

General Provisions

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

49. 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.

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

51. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

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


53. 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.

54. Each party agrees to bear its own costs and attorney fees in this action.

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

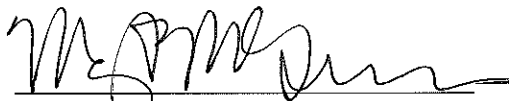
Respondent:
Nufarm Americas, Inc.
Alsip, Illinois

4/30/14
Date


Tom Lyons
Executive Vice President
Nufarm Americas, Inc.

Complainant:
Region 5
U.S. Environmental Protection Agency

5/12/2014
Date

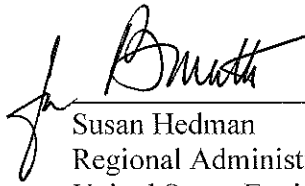

Margaret M. Guerriero, Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of:
Nufarm Americas
Docket No. FIFRA-05-2014-0016

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.

5-14-14
Date



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 Nufarm Americas, Inc., was filed on May 19, 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 7649 4922, a copy of the original to the Respondent:

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

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mony Chabria, Regional Judicial Officer, 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-05-2014-0016