



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

SEP 18 2015

REPLY TO THE ATTENTION OF:
LC- 8J

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

Mr. Rhett Atkins
Red Eagle International LLC.
5143 S. Edgewood Drive, Suite 3
Lakeland, Florida 33813

Consent Agreement and Final Order In the Matter of
Red Eagle International LLC. Docket No. **FIFRA-05-2015-0046**


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 18, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$45,000 is to be paid in the manner described in paragraphs 53 and 54. 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,

for 
Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Red Eagle International LLC)
Lakeland, Florida)
Respondent.)
Docket No. FIFRA-05-2015-0046
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 Red Eagle International LLC, a corporation doing business at and about 5143 South EdgeWood Drive, Suite 3, Lakeland, Florida 33813.

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 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 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, 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)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states that it is unlawful for any person to violate any regulation issued under Sections 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a) or 136q.

13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states, in pertinent part, no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.

14. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1), states, in pertinent part, each

applicant for registration of a pesticide shall file with the Administrator a statement which includes...(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for use.

15. 40 C.F.R. § 156.10(a) states, every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in this part. The contents of a label must show clearly and prominently, in pertinent part, the hazard and precautionary statements as prescribed in Subpart D of 40 C.F.R. Part 156 for human and domestic animal hazards.

16. 40 C.F.R. § 156.68(d), states, in pertinent part, the first aid statement must appear on the front panel of the label of all products assigned to Toxicity Category I by any route of exposure. Upon review, the Agency may permit reasonable variations in the placement of the first aid statement if a reference such as "See first aid statement on back panel" appears on the front panel.

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(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).

19. 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.

20. 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.

21. The Administrator 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

22. 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).

23. On or about May 6, 2015, Laufer Group International, located at and about 20 Vesey Street, Suite 601, New York, New York 10007 was the broker/agent for Respondent for import shipments under entry numbers MR5-0090197-7, MR5-0090731-3, MR5-0091685-0, and MR5-0092290-8.

24. On or about May 6, 2015, Respondent via its broker/agent submitted a NOA to EPA for import of a shipment of the pesticide product “Captan 80 WDG,” EPA Registration Number (EPA Reg. No.) 85678-14, from China under entry number MR5-0090197-7.

25. On or about May 26, 2015, Respondent via its broker/agent submitted a NOA to EPA for import of a shipment of the pesticide product “Captan 80 WDG,” EPA Reg. No. 34704-1075, from China under entry number MR5-0090731-3.

26. On or about June 30, 2015, Respondent via its broker/agent submitted a NOA to EPA for import of a shipment of the pesticide product “Captan 80 WDG,” EPA Reg. No. 34704-1075, from China under entry number MR5-0091685-0.

27. On or about September 2, 2015, Respondent via its broker/agent submitted a NOA to EPA for import of a shipment of the pesticide product "Captan 80 WDG," EPA Reg. No. 34704-1075, from China under entry number MR5-0092290-8.

28. The importer of record listed on the NOAs for the shipments under entry numbers MR5-0090197-7, MR5-0090731-3, MR5-0091685-0 and MR5-0092290-8 was Red Eagle International LLC.

29. 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.

30. "Captan 80 WDG" is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. On or about May 18, 2015, June 1, 2015, July 1, 2015 and July 5, 2015, shipments of "Captan 80 WDG", EPA Reg. No. 34704-1075, entered into the United States at the Chicago, Illinois port of entry under entry numbers MR5-0090197-7, MR5-0090731-3, MR5-0091685-0 and MR5-0092290-8, respectively.

32. On or about May 18, 2015, June 1, 2015, July 1, 2015 and July 5, 2015 Respondent distributed or sold the pesticide product "Captan 80 WDG", EPA Reg. No. 34704-1075 as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

33. On June 19, 2015, a representative of EPA inspected the import shipment that was imported to the United States under Entry Number MR5-0090197-7 and determined that the pesticide that was imported to the United States under Entry Number MR5-0090197-7 was "Captan 80 WDG," EPA Reg. No. 34704-1075, not "Captan 80 WDG," EPA Reg. No. 85678-14.

34. Respondent, on two separate occasions, failed to submit to EPA NOAs for shipments of "Captan 80 WDG," EPA Reg. No. 34704-1075, under entry numbers MR5-0090197-7 and MR5-0092290-8, prior to the arrival of the shipments to the United States.

35. Upon inspection of the shipment under Entry Number MR5-0090197-7, it was observed that the bags of "Captan 80 WDG," EPA Reg. No. 34704-1075 listed the signal word "Danger".

36. 40 C.F.R. § 156.64(a)(1) states, in pertinent part, any pesticide product meeting the criteria of Toxicity Category I for any route of exposure must bear on the front panel the signal word "Danger."

37. 40 C.F.R. § 156.68(d), states, in pertinent part, the first aid statement must appear on the front panel of the label of all products assigned to Toxicity Category I by any route of exposure. Upon review, the Agency may permit reasonable variations in the placement of the first aid statement if a reference such as "See first aid statement on back panel" appears on the front panel.

38. The bags of "Captan 80 WDG," EPA Reg. No. 34704-1075 did not have the first aid statement on the front panel of the label and contained no statement identifying the location of the first aid statements.

Specific Allegations

39. Complainant incorporates by reference the allegations contained in paragraphs 1 through 38 of this Complaint.

Count 1

“Captan 80 WDG”, EPA REG. NO. 34704-1075

Entry Number MR5-0090197-7

40. On or about May 18, 2015, Respondent failed to submit to EPA a NOA for a shipment of “Captan 80 WDG,” EPA Reg. No. 34704-1075, under entry number MR5-0090197-7, prior to its arrival to the United States.

41. Respondent’s failure to submit a NOA to EPA for the shipment identified in paragraph 40, above, constitutes an unlawful act under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and 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).

Count 2

“Captan 80 WDG”, EPA REG. NO. 34704-1075

Entry Number MR5-0090197-7

42. On or about May 18, 2015, Respondent distributed or sold the pesticide product “Captan 80 WDG,” EPA Reg. No. 34704-1075 with a label that did not contain the first aid statement on the front panel of the label, which constitutes an unlawful act, in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

43. Respondent’s violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), identified in paragraph 42, above, 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).

Count 3

“Captan 80 WDG”, EPA REG. NO. 34704-1075

Entry Number MR5-0090731-3

44. On or about June 1, 2015, Respondent distributed or sold the pesticide product

"Captan 80 WDG," EPA Reg. No. 34704-1075 with a label that did not contain the first aid statement on the front panel of the label, which constitutes an unlawful act, in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

45. Respondent's violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), identified in paragraph 44, above, 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).

Count 4

"Captan 80 WDG", EPA REG. NO. 34704-1075
Entry Number MR5-0091685-0

46. On or about July 1, 2015, Respondent distributed or sold the pesticide product "Captan 80 WDG," EPA Reg. No. 34704-1075 with a label that did not contain the first aid statement on the front panel of the label, which constitutes an unlawful act, in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

47. Respondent's violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), identified in paragraph 46, above, 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).

Count 5

"Captan 80 WDG", EPA REG. NO. 34704-1075
Entry Number MR5-0092290-8

48. On or about July 5, 2015, Respondent failed to submit to EPA a NOA for a shipment of "Captan 80 WDG," EPA Reg. No. 34704-1075, under entry number MR5-0092290-8, prior to its arrival to the United States.

49. Respondent's failure to submit a NOA to EPA for the shipment identified in paragraph 48, above, constitutes an unlawful act under Section 12(a)(2)(N) of FIFRA, 7 U.S.C.

§ 136j(a)(2)(N), and 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).

Count 6

“Captan 80 WDG”, EPA REG. NO. 34704-1075
Entry Number MR5-0092290-8

50. On or about July 5, 2015, Respondent distributed or sold the pesticide product “Captan 80 WDG,” EPA Reg. No. 34704-1075 with a label that did not contain the first aid statement on the front panel of the label, which constitutes an unlawful act, in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

51. Respondent’s violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), identified in paragraph 50, above, 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

52. 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.

53. 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 \$45,000.

54. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,000 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 Red Eagle International LLC," and the docket number of this CAFO.

55. 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

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

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

57. 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. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

58. 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

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

60. 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.

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

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

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

64. 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.

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

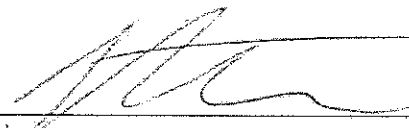
66. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Red Eagle International LLC

Red Eagle International LLC, Respondent

Date

9/10/15



Rhett Atkins
Vice President, Operations
Red Eagle International LLC

In the Matter of:
Red Eagle International LLC

United States Environmental Protection Agency, Complainant

9/15/2015

Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Red Eagle International LLC
Docket No. FIFRA-05-2015-0046

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.

9/17/2015
Date



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

Red Eagle International LLC

In the matter of:

Docket Number: FIFRA-05-2015-0046

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 18, 2015 in the following manner to the addressees:

Copy by Certified Mail

Return-receipt:

Rhett Atkins
Red Eagle International L.L.C.
5143 S. Edgewood Drive, Suite 3
Lakeland, FL 33813

Copy by E-mail to

Attorney for Complainant:


Kris Vezner
Vezner.chris@epa.gov

Copy by E-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

September 18, 2015 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2641 7154