



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2017 SEP 28 PM 3:01

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2017-0009

IN THE MATTER OF:

MORGRO, INC.

RESPONDENT

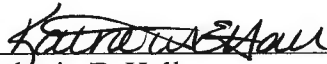
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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 28th DAY OF September, 2017.



Katherin E. Hall
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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In the Matter of:)
)
Morgro, Inc.)
145 West Central Avenue)
Salt Lake City, Utah 84107)
)
Respondent)
_____)

FILED
EPA REGION VIII
HEARING CLERK

Docket No. FIFRA-08-2017-0009

COMBINED COMPLAINT AND CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency Region 8 (EPA), and Respondent, Morgro, Inc. (Morgro), by their undersigned representatives, hereby consent and agree as follows.

I. JURISDICTION

1. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*, 40 C.F.R. Part 22.
2. This combined complaint and consent agreement (Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
3. The Administrator of the EPA is authorized to bring an action under section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a)(1), for civil administrative penalties against any person the EPA alleges has violated a requirement or prohibition of FIFRA. The authority granted to the Administrator has been delegated to the EPA signatories to this Agreement.
4. Respondent admits the jurisdictional allegations in this Agreement, and neither admits nor denies the EPA's factual allegations contained herein.

II. ALLEGATIONS

5. Respondent is a corporation organized under the laws of the state of Utah and is authorized to do business in the state of Utah.
6. Respondent is a "person" as that term is defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s), and Respondent is subject to FIFRA and the implementing regulations promulgated thereunder.
7. Morgro's place of business is located at 145 West Central Avenue, Salt Lake City, Utah 84107 (Facility).

8. Respondent is a pesticide supplemental distributor with the EPA-assigned company number 42057.
9. Bonide Products, Inc. (Bonide) is a registrant, with the EPA-assigned distributor company number 4.
10. PBI-Gordon Corporation (PBI) is a registrant with the EPA-assigned distributor company number 2217.
11. Western Garden Center Inc. (Western Garden) is a distributor, with the EPA-assigned distributor company number 55342.
12. On or about January 17, 1995, Bonide submitted a Notice of Supplemental Distribution of a Registered Pesticide Product, EPA form 8570-5, to the EPA. The 8570-5 form states that Bonide allowed Western Garden to distribute the Bonide pesticide product Bonide Permakil RTU Permethrin Spray, EPA Reg. No. 4-358, under the distributor name Western Garden Home Patrol and EPA Reg. No. 4-358-55342. The EPA stamped this form as accepted on or about January 23, 1995.
13. On or about January 17, 1995, Bonide submitted a second form 8570-5 to the EPA stating that Bonide allowed Western Garden to distribute the Bonide pesticide product Bonide Permakil RTU Permethrin Spray, EPA Reg. No. 4-358, under the distributor name Western Garden Garden Patrol and EPA Reg. No. 4-358-55342. The EPA stamped this form as accepted on or about January 23, 1995.
14. On or about August 25, 2001, Morgro entered into a formulating and packaging agreement with Bonide stating that Morgro was a processor that allowed Morgro to manufacture supplemental distributed 4-358 pesticide products.
15. 40 C.F.R. § 152.132 states that the "registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed 'supplemental distribution' and the product is referred to as a 'distributor product.' The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product...."
16. Morgro entered into a supplemental distributor sales agreement with PBI-Gordon Corporation, a Missouri corporation, on April 18, 1986. By its terms, this agreement is automatically renewed each year on April 18, unless it has been terminated by either party. The agreement was amended four times in 1986 and once in 1999 to add distributor products.
17. Under the distributor sales agreement described in paragraph 16, Morgro was a supplemental distributor of the following PBI distributor product: J & L Weed & Feed plus Trimec, EPA Reg. No. 2217-559-39727.
18. Under the distributor sales agreement described in paragraph 16, Morgro was a supplemental distributor of the following PBI distributor product: Western Garden Weed-A-Lawn, EPA Reg. No. 2217-536-55342.

19. Under the distributor sales agreement described in paragraph 16, Morgro was a supplemental distributor of the following PBI distributor product: Western Garden Weed-A-Lawn RTU, EPA Reg. No. 2217-537-55342.
20. Container labeling regulations require the following statements: a statement identifying the container as refillable or nonrefillable and a reuse statement appropriate to that container; and for nonrefillable containers, a recycling or reconditioning statement providing additional instructions for managing an empty container, a batch code for the product contained; and for some nonrefillable containers and all refillable containers, a statement providing cleaning instructions prior to container disposal, as set forth at 40 C.F.R. § 156.140.
21. All pesticide products released for shipment by a registrant must have labels that comply with the requirements of 40 C.F.R. § 156.140 by August 16, 2011. 40 C.F.R. § 156.159.
22. At all times relevant to the alleged violations, Respondent was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a “pesticide” as defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
23. “The term ‘to distribute or sell’ means 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...” Section 2(gg) of FIFRA, 7 U.S.C. § 136 (gg).
24. “The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” Section 2(p)(1) of FIFRA, 7 U.S.C. § 136 (p)(1).
25. "The term 'labeling' means 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..." Section 2(p)(2) of FIFRA, 7 U.S.C. § 136 (p)(2).
26. A pesticide is misbranded if “any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon...” Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136 (q)(1)(E).
27. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states "it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter."
28. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”

III. VIOLATIONS

Distributing and/or Selling Misbranded Pesticides

29. On May 13, 2014, an EPA-credentialed inspector conducted a routine FIFRA inspection at the Morgro facility.
30. During the inspection the inspector requested and obtained labeling that was applied to all pesticide products distributed at the Morgro facility. A label review was conducted finding that labeling for the pesticide products identified in paragraphs 12, 13, 17, 18 and 19 did not contain the language as required pursuant to 40 C.F.R. §156.159, to be included by August 16, 2011.
31. During the inspection the inspector requested and obtained copies of distribution records. These records demonstrated that Respondent had distributed both the PBI and Bonide pesticide products with labels that did not contain required language.
32. Respondent produced, distributed, or sold misbranded pesticides in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.

Distributing and/or Selling Unregistered Pesticides

33. In a letter to the EPA Document Processing Desk of the Office of Pesticide Programs dated September 23, 2002, Bonide requested cancellation of the supplemental distributor registrations identified in paragraphs 12 and 13.
34. In a letter to the EPA Document Processing Desk of the Office of Pesticide Programs dated October 5, 2011, Bonide requested cancellation of the supplemental distributor registrations identified in paragraphs 12 and 13.
35. In a letter to the EPA Document Processing Desk of the Office of Pesticide Programs dated December 1, 2011, PBI requested cancellation of 938 supplemental distributor products, including the supplemental distributor products identified in paragraphs 17, 18 and 19.
36. During the inspection the inspector requested and obtained copies of distribution records. These records demonstrated that Respondent had distributed both the unregistered PBI and Bonide pesticide products.
37. Respondent produced, distributed, or sold unregistered pesticides in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least one occasion, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.

IV. PAYMENT OF CIVIL PENALTY

38. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by administrative order.

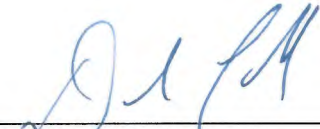
39. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on the Respondent's ability to continue in business, and the gravity of the violation.
40. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$7,500 against the Respondent for the above-described violations.
41. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a final order in this matter (Final Order) and agrees to pay the civil penalty of \$7,500 within thirty days of the effective date of the Final Order as follows:
- a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. Respondent shall:
 - i. pay the penalty using any method provided on the following website:
<https://www.epa.gov/financial/makepayment>;
 - ii. identify each and every payment with the docket number assigned to this Agreement and the Final Order; and
 - iii. within 24 hours of payment, email proof of payment to Mr. Dan Webster at webster.daniel@epa.gov. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the docket number assigned to this matter.
42. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the first late day, 30 days of interest will have accrued).
43. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6 percent per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6 percent penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

V. TERMS AND CONDITIONS

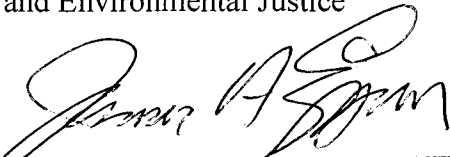
44. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
45. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
46. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
47. Each party shall bear its own costs and attorney fees in connection with this matter.
48. Pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554, and 40 C.F.R. § 22.15, the Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement. By signing and returning this Agreement to the EPA, the Respondent waives its opportunity for a hearing.
49. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
50. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
51. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
52. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter by the EPA to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,**
Office of Enforcement, Compliance
and Environmental Justice,
Complainant

Date: 9/27/17

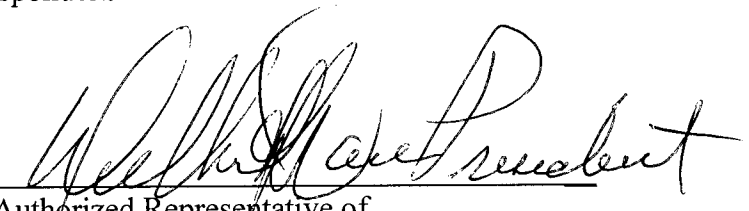
By: 
David Cobb, Supervisor
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9/27/17

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

MORGRO, INC.,
Respondent

Date: 9/21/17

By: 
Authorized Representative of
Morgro, Inc.

Printed Name: Delbert L. Davis

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **MORGRO, INC.**; **DOCKET NO.: FIFRA-08-2017-0009** was filed with the Regional Hearing Clerk on September 28, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Charles L. Figur, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 28, 2017, to:


Respondent

Delbert L. Davis, Registered Agent
145 West Central Avenue
Salt Lake City, Utah 84107

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 28, 2017


Melissa Haniewicz
Regional Hearing Clerk