



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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September 24, 2020
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Received by

EPA Region VIII

Hearing Clerk

DOCKET NO.: FIFRA-08-2020-0057

IN THE MATTER OF:

NUFARM AMERICAS 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 24TH DAY OF SEPTEMBER, 2020.

KATHERIN HALL
Digitally signed by KATHERIN HALL
Date: 2020.09.24 14:36:25 -06'00'

Katherin E. Hall
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)

Nufarm Americas Inc.)
11901 South Austin Avenue)
Alsip, Illinois 60803)

Respondent.)

) Docket No. FIFRA-08-2020-0057

) September 24, 2020
) 2:37 PM

) Received by

) EPA Region VIII

) CONSENT AGREEMENT

) Hearing Clerk
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I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to 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 as codified at 40 C.F.R. part 22.
2. EPA and Nufarm Americas Inc. (Respondent), having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this agreement.

II. JURISDICTION

3. This agreement is issued under the authority vested in the administrator of the EPA by section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136(a)(1). The undersigned EPA official has been duly authorized to institute this action.
4. The regional judicial officer is authorized to approve this agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
5. The final order approving this agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

6. 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."
7. "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." FIFRA § 2(gg), 7 U.S.C. § 136(gg).

8. A “pesticide is misbranded if . . . the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . are adequate to protect health and the environment.” FIFRA § 2(q)(1)(F), 7 U.S.C. § 136 (q)(1)(F).
9. “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.” FIFRA § 2(p)(2), 7 U.S.C. § 136 (p)(2).
10. “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.” FIFRA § 2(p)(1), 7 U.S.C. § 136 (p)(1).
11. All pesticide products distributed or sold 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.
12. Container labeling regulations require “the following statements, as applicable,” to be placed on the label or container: 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. 40 C.F.R. § 156.140.
13. 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 [FIFRA], and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.” 40 C.F.R. § 152.132.

IV. ALLEGED FACTS

14. Respondent, Nufarm Americas Inc., is a “person” as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
15. 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).
16. Respondent is a corporation organized under the laws of the state of Illinois and is authorized to do business in the state of Illinois.
17. Respondent’s primary place of business is located at 11901 South Austin Avenue, Alsip, Illinois 60803.
18. Respondent is a registrant with EPA-assigned company number 228.

19. Central Garden & Pet Company, Inc. is a corporation organized under the laws of the state of Delaware and authorized to do business in the state of Colorado.
20. One of Central Garden's distributing facilities is Gro Tec II, Inc. (Gro Tec), which is located at 2389 Highway 66, Longmont, Colorado (facility).
21. According to the EPA pesticide production database, Gro Tec II, Inc. has EPA registered pesticide production company number of 37351.
22. On February 1, 2011, Respondent renewed a Product Supply and Supplemental Registration Agreement with Gro Tec, which allowed Gro Tec to act as a supplemental distributor of several Nufarm pesticide products.
23. On July 29, 2016, an EPA inspector inspected the facility to ensure compliance with FIFRA.
24. The inspection revealed the facility packaged Colorado's Own Premium Weed & Feed 20-10-5 (20 lb bag), EPA Reg. No. 228-179-37351, an herbicide pesticide product, in labeling that did not comply with FIFRA and its regulations. The facility should have been packaging the product in the label that was approved by EPA on January 29, 2010, but instead was using a label approved on July 31, 2003, or earlier. The label was also missing language required by 40 C.F.R. section 156.159.
25. During the inspection, the inspector requested and obtained copies of distribution records, which demonstrated the facility had distributed the Colorado's Own Premium Weed & Feed 20-10-5 (20 lb bag), EPA Reg. No. 228-179-37351, product on at least 10 occasions.

V. ALLEGED VIOLATIONS OF LAW

26. As demonstrated in section IV, Respondent 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 10 separate occasions, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136f.

VI. TERMS OF CONSENT AGREEMENT

27. For the purpose of this proceeding, Respondent
 - a. admits the jurisdictional allegations in section II of this agreement;
 - b. neither admits nor denies the factual allegations stated in section IV of this agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the issuance of any specified compliance or corrective action order;
 - e. acknowledges this agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

- f. waives any and all available rights to judicial or administrative review or other remedies Respondent may have with respect to any issue of fact or law or any terms and conditions set forth in this agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706; and
 - g. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with this agreement or final order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
28. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes EPA to assess a civil penalty in this matter.
29. In determining the amount of the penalty to be assessed, EPA considered the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent’s ability to continue in business, and the gravity of the violation, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).
30. Based on the alleged violations of law, and after consideration of the statutory factors in paragraph 29, EPA has determined a civil penalty of \$80,000.00 is appropriate to settle this matter.
31. Penalty Payment. Respondent agrees to
- a. pay a civil penalty in the amount of \$80,000.00 within 30 calendar days of the effective date of this agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each payment with the docket number that appears on the final order;
 - d. within 24 hours of payment, email proof of payment to Daniel Webster and Erin Agee at webster.daniel@epa.gov and agee.erin@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 payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
32. If Respondent fails to timely pay any portion of the penalty assessed under this agreement, EPA may
- a. request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States’ enforcement expenses;
 - b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
33. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this agreement for federal tax purposes.
34. This agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Any change in ownership or corporate control 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.
35. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this agreement and has the legal capacity to bind the party he or she represents to this agreement.
36. Except as qualified by paragraph 32 each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

37. In accordance with 40 C.F.R. section 22.18(c), completion of the terms of this agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
38. The terms, conditions, and compliance requirements of this agreement may not be modified or amended except upon the written agreement of both parties, and approval of the environmental appeals board/regional judicial officer, or other delegatee.
39. Nothing in this agreement shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on or determination of any issue related to any federal, state, or local permit.
40. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare or the environment.
41. If and to the extent EPA finds, after signing this agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves all its legal and equitable rights.

42. The parties consent to service of the final order by e-mail at the following valid e-mail addresses: agee.erin@epa.gov (for Complainant), and thomas.ryan@nufarm.com (for Respondent).


VIII. EFFECTIVE DATE

43. This agreement shall become effective on the date the final order is filed by the hearing clerk.

Consent Agreement In the Matter of NUFARM AMERICAS INC.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

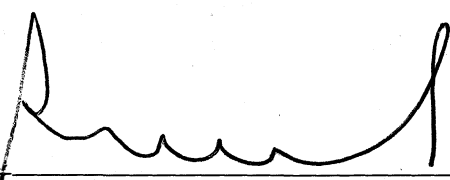
Date: _____

By: **SUZANNE
BOHAN**  Digitally signed by SUZANNE
BOHAN
Date: 2020.09.21 09:35:35
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Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**NUFARM AMERICAS INC.
Respondent.**

Date: 18/9/2020

By:  _____
Brendan Deck, Regional General Manager – North America

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **NUFARM AMERICAS INC.; DOCKET NO.: FIFRA-08-2020-0057** was filed with the Regional Hearing Clerk on September 24, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Erin Agee, Enforcement Attorney, and sent via certified receipt email on September 24, 2020, to:

Respondent's Legal Counsel

Thomas Ryan
Legal Counsel
Nufarm Americas Inc.
Thomas.ryan@nufarm.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

September 24, 2020

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2020.09.24
14:42:08 -06'00'

Melissa Haniewicz
Regional Hearing Clerk