

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103

U.S. EPA-REGION 3-RHC
FILED-23MAY2019pm2:21

In the Matter of: : U.S. EPA Docket No. FIFRA-03-2019-0086
:
Wakefield Farm Service, Inc. : **Proceeding under Section 14(a) of the Federal**
150 Sussex Avenue : **Insecticide, Fungicide and Rodenticide Act, as**
Wakefield, VA 23888 : **amended, 7 U.S.C. § 136l(a).**
:
Respondent. :
:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Wakefield Farm Service, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 14(a) of FIFRA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under FIFRA (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(1).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
13. At all times relevant to the violations alleged herein, Respondent was a Virginia corporation with a principle place of business located at 150 Sussex Avenue Wakefield, Virginia.
14. At all times relevant to the violations alleged herein, Respondent was a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
15. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
16. In 2018, Respondent produced, and distributed or sold the following three (3) products:
 - a. Roundup POWERMAX II (EPA Reg. No.524-537),
 - b. GLYFOS X-TRA (EPA Reg. No. 4787-23), and
 - c. VAPAM HL (EPA Reg. No. 5481-468).

17. At all times relevant to the violations alleged herein, each of the three (3) products identified in Paragraph 16 was a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
18. Respondent is a “wholesaler, dealer, retailer or other distributor” as described in Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 1-37
Sales or Distributions of Misbranded Pesticides

19. The allegations of Paragraphs 1 through 18 of this Consent Agreement are incorporated herein by reference.
20. Section 12(a)(1)(E) of FIFRA, 7 U.S.C § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is misbranded.
21. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C § 136(q)(1)(E), a pesticide is “misbranded” if, *inter alia*, “any word, statement, or other information required by or under the 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 to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”
22. On at least thirteen (13) occasions in calendar year 2018, Respondent distributed or sold Roundup POWERMAX II (EPA Reg. No.524-537) with labels that omitted words, statements, or other information required by or under the authority of FIFRA, including required directions for use for mixing 25-gallon spray solutions at 0.4% and 0.7% concentrations and required directions for spray drift management for use on food and feed crops, rendering it misbranded under Section 2(q)(1)(E) of FIFRA, 7 U.S.C § 136(q)(1)(E).
23. On at least nineteen (19) occasions in calendar year 2018, Respondent distributed or sold GLYFOS X-TRA (EPA Reg. No. 4787-23) with labels that omitted words, statements, or other information required by or under the authority of FIFRA, including required container disposal requirements, rendering it misbranded under Section 2(q)(1)(E) of FIFRA, 7 U.S.C § 136(q)(1)(E).
24. On at least five (5) occasions in calendar year 2018, Respondent distributed or sold VAPAM HL (EPA Reg. No. 5481-468) with labels that omitted words, statements, or other information required by or under the authority of FIFRA, including required container disposal requirements, including the required word “Poison” or skull and crossbones symbol, rendering it misbranded under Section 2(q)(1)(E) of FIFRA, 7 U.S.C § 136(q)(1)(E).

25. By distributing or selling misbranded Roundup POWERMAX II (EPA Reg. No.524-537), GLYFOS X-TRA (EPA Reg. No. 4787-23), and VAPAM HL (EPA Reg. No. 5481-468), Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
26. Each of the thirty-seven (37) occasions that Respondent distributed or sold Roundup POWERMAX II (EPA Reg. No.524-537), GLYFOS X-TRA (EPA Reg. No. 4787-23), and VAPAM HL (EPA Reg. No. 5481-468) constitutes a separate unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

CIVIL PENALTY

27. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of forty-three thousand and forty dollars (\$43,040), which Respondent shall be liable to pay in accordance with the terms set forth below.
28. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), including, the following: the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act* which reflects the statutory penalty criteria and factors set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
29. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, U.S. EPA Docket No. FIFRA-03-2019-0086;
 - b. All checks shall be made payable to the "United States Treasury";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Jennifer M. Abramson
Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029
Abramson.Jennifer@epa.gov

30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
31. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
32. INTEREST: In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
33. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

34. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
35. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

36. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
37. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

38. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement. Respondent further certifies that it understands that pesticide labels must be reviewed for currency to make sure the most recent EPA accepted or otherwise allowable version of the label is applied to all pesticide products being distributed or sold.

OTHER APPLICABLE LAWS

39. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, 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 the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the FIFRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

40. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

41. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE


42. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

43. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

For Respondent: Wakefield Farm Service, Inc.


Date: 4/30/19

By: 

David Owens, President
Wakefield Farm Service, Inc.

For the Complainant: U.S. Environmental Protection Agency, Region III

Date: 5/9/19

By: 
Jennifer M. Abramson
Senior Assistant Regional Counsel

After reviewing the Consent Agreement and other pertinent matters, the Director of the Enforcement & Compliance Assurance Division of the U.S. Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: MAY 16 2019

By: 
Karen Melvin, Director
Enforcement & Compliance Assurance Division

U.S. EPA-REGION 3-RHC
FILED-23MAY2019PM2122

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

**Wakefield Farm Service, Inc.
150 Sussex Avenue
Wakefield, VA 23888**

Respondent.

EPA DOCKET NO. FIFRA-03-2019-0086

FINAL ORDER

**Proceeding under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, 7 U.S.C. § 136l(a)**

FINAL ORDER

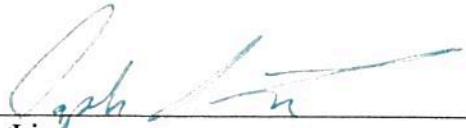
Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Wakefield Farm Service, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***FORTY-THREE THOUSAND AND FORTY DOLLARS (\$43,040)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

May 23, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-23MAY2019PM2:22

In the Matter of:)
) DOCKET NO.: FIFRA-03-2019-0086
)
)
Wakefield Farm Service, Inc.)
150 Sussex Avenue) Proceeding Under Section 14(a) of the
Wakefield, VA 23888) Federal Insecticide, Fungicide and
) Rodenticide Act, 7 U.S.C. § 136l(a)
)
Respondent.)

CERTIFICATE OF SERVICE

I certify that on MAY 23 2019, the original and one (1) copy of foregoing **Consent Agreement and Final Order**, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:


Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Patrick H. O'Donnell
Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510-1665

Copy served via **Hand Delivery or Inter-Office Mail and via E-mail** (at Abramson.Jennifer@epa.gov), to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: MAY 23 2019



Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 70172620 000091432996