

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2024-0059
)	
GEBBERS FARMS, INC.,)	CONSENT AGREEMENT
)	
Brewster, Washington,)	
)	
Respondent.)	
)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Gebbers Farms, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA,

7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

A. Statutory Background

3.1. Under Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

3.2. Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.3. Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), “pesticide” includes, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.4. Under Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), “to use any registered pesticide in a manner inconsistent with its labeling” means “to use any registered pesticide in a manner not permitted by the labeling,” subject to limited exceptions.

3.5. Under Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), “labeling” includes, *inter alia*, “all labels and all other written, printed, or graphic matter [] accompanying the pesticide or device at any time.”

3.6. Under Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), “label” means “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

B. Regulatory Background

3.7. In 1992, EPA initially promulgated the worker protection standard regulations at 40 C.F.R. Part 170. See Worker Protection Standard, 57 Fed. Reg. 38,102 (Aug. 21, 1992). EPA revised these regulations in 2015. See Pesticides; Agricultural Worker Protection Standard Revisions, 80 Fed. Reg. 67,496 (Nov. 2, 2015). The purpose of the worker protection standard is to “reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments. It requires agricultural employers and commercial pesticide handler employers to provide specific information and protections to workers, handlers and other persons when pesticides are used on agricultural establishments in the production of agricultural plants. It also requires handlers to wear the labeling-specified clothing and personal protective equipment when performing handler activities, and to take measures to protect workers and other persons during pesticide applications.” See 40 C.F.R. § 170.301.

3.8. The regulation at 40 C.F.R. § 170.2 provides, “Beginning January 2, 2017, the requirements of § 170.301 through § 170.609 of this part shall apply to any pesticide product that bears the statement ‘Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170.’”

3.9. The regulation at 40 C.F.R. § 170.305 defines “agricultural employer” to mean “any person who is an owner of, or is responsible for the management or condition of, an agricultural establishment, and who employs any worker or handler.”

3.10. The regulation at 40 C.F.R. § 170.305 defines “agricultural establishment” in part as “any farm . . . engaged in the outdoor or enclosed space production of agricultural plants.”

3.11. The regulation at 40 C.F.R. § 170.305 defines “handler employer” to mean “any person who is self-employed as a handler or who employs any handler.”

3.12. The regulation at 40 C.F.R. § 170.305 defines “handler” to include “any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:

- (1) Mixing, loading, or applying pesticides.
- (2) Disposing of pesticides.
- (3) Handling opened containers of pesticides, emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions, or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions.
- (4) Acting as a flagger.
- (5) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.
- (6) Assisting with the application of pesticides.
- (7) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by § 170.405(b)(3) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation.

(8) Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation.

(9) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established by § 170.405(b)(3) or the pesticide product labeling has been met.”

3.13. The regulation at 40 C.F.R. § 170.305 defines “worker” as “any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.”

3.14. The regulation at 40 C.F.R. § 170.305 defines “Use, as in ‘to use a pesticide’ [as] any of the following:

(1) Pre-application activities, including, but not limited to:

(i) Arranging for the application of the pesticide.

(ii) Mixing and loading the pesticide.

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(2) Application of the pesticide.

(3) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after

the restricted-entry interval, including responsibilities related to worker notification, training of workers or early-entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(4) Other pesticide-related activities, including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.”

C. General Allegations

3.15. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.16. At all times relevant to the allegations set forth herein, Respondent was the owner and operator of an agricultural establishment, located at 25985 Highway 97, Brewster, WA (“Farm”) and operates fields located within the exterior boundaries of the Confederated Tribes of the Colville Reservation. At all times relevant to the allegations set forth herein, the Farm met the definition of “agricultural establishment” in 40 C.F.R. § 170.305.

3.17. On July 28, 2021, a credentialed FIFRA inspector with the Coeur d’Alene Pesticide Enforcement Circuit Rider Program and two credentialed FIFRA inspectors with EPA Region 10 conducted a routine pesticide use inspection at three of the orchards on the Farm, namely, John’s House, Deer Farm, and Snyder Flats.

3.18. Respondent is an “agricultural employer” who employs “handlers” and “workers” who “use” pesticides as those terms are defined by 40 C.F.R. § 170.305.

3.19. "Carbaryl 4L," (EPA Registration No. 34704-447), is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). EPA classified Carbaryl 4L under Section 3 of FIFRA, 7 U.S.C. § 136a, as a "General Use Product."

3.20. "Refine 6.25L," (EPA Registration No. 62097-39), is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). EPA classified Refine 6.25L under Section 3 of FIFRA, 7 U.S.C. § 136a, as a "General Use Product."

3.21. "Luna Sensation," (EPA Registration No. 264-1090), is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). EPA classified Luna Sensation under Section 3 of FIFRA, 7 U.S.C. § 136a, as a "General Use Product."

D. Violations

Violations 1 and 2: Failure to Meet Labeling Requirements for Central Posting

3.22. On May 23, 2021, an employee of Respondent applied Carbaryl 4L and Refine 6.25L to Deer Farm.

3.23. The labeling for Carbaryl 4L and Refine 6.25L states in part: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170."

3.24. The regulation at 40 C.F.R. § 170.309(h) requires that agricultural employers "[d]isplay, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with § 170.311 if workers or handlers are on the establishment and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment."

3.25. The regulation at 40 C.F.R. § 170.311(a)(3) requires the display of pesticide safety information to include all of the points in § 170.311(a)(3)(i)-(x).

3.26. The regulation at 40 C.F.R. § 170.311(a)(7) mandates that the “pesticide safety information must remain legible at all times when the information is required to be displayed.”

3.27. At all times relevant to the allegations herein, Respondent purported to satisfy the requirements for the Deer Farm via the Deer Farm Central Posting.

3.28. During the July 28, 2021, inspection, the inspectors documented that the Deer Farm Central Posting was illegible because it was extremely worn and sun-bleached.

3.29. From May 23, 2021, through June 24, 2021, Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), at least twice by applying Carbaryl 4L and Refine 6.25L in a manner inconsistent with its labeling and the Worker Protection Standards at 40 C.F.R. § 170.311.

Violations 3 and 4: Failure to Meet Labeling Requirements for Decontamination

3.30. On July 20 and 21, 2021, an employee of Respondent applied Luna Sensation to cherries on John’s House Farm.

3.31. The labeling for Luna Sensation states in part: “Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170... Applicators and other handlers must wear long-sleeved shirt and long pants, shoes plus socks, chemical resistant (such as nitrile or butyl) gloves and protective eyewear.”

3.32. The regulation at 40 C.F.R. § 170.509(d)(2) requires that: “Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.”

3.33. During the July 28, 2021, inspection, the inspectors documented that two, 16.9-ounce empty plastic bottles and two, 1-ounce Eye Clean eyewash unopened dropper bottles were observed on the air blast sprayer application equipment operated by a handler.

3.34. Therefore, on at least two occasions between July 20 and 21, 2021, Respondent violated FIFRA Section 12(a)(2)(G) by using a registered pesticide inconsistent with its labeling and the Worker Protection Standards at 40 C.F.R. § 170.509.

Violations 5 and 6: Failure to Meet Labeling Requirements for Storage and Disposal

3.35. An employee of Respondent applied Carbaryl 4L on May 21, 2021, to John's House Farm and on May 23, 2021, to Deer Farm.

3.36. The labeling for Carbaryl 4L states in part: "PESTICIDE STORAGE: Store unused Carbaryl 4L insecticide in original container only, in cool, dry area out of reach of children and animals. Do not store in areas where temperatures frequently exceed 100 °F. If container is damaged, before cleaning up, put on Personal Protective Equipment. PESTICIDE DISPOSAL: Open dumping is prohibited. Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility. CONTAINER HANDLING: Nonrefillable Container (five gallons or less): Do not reuse or refill this container. Triple rinse or pressure rinse container (or equivalent) promptly after emptying."

3.37. During the July 28, 2021, inspection, the inspectors observed two, 2.5-gallon containers of Carbaryl 4L that were opened, unrinsed, and placed on top of a personal protection equipment (PPE) storage box on the ground adjacent to the mixing and loading site.

3.38. Therefore, on at least two occasions, i.e., the two containers of Carbaryl 4L, Respondent violated FIFRA Section 12(a)(2)(G) by using a registered pesticide inconsistent with its labeling.

E. Enforcement Authority

3.39. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19, for any private applicator or other person not included in Section 14(a)(1) of FIFRA who violates any provision of 7 U.S.C. Subchapter II subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, EPA may assess a civil penalty of not more than \$3,558 for each offense.

3.40. On October 24, 2019, Respondent was assessed a civil penalty in the amount of nine hundred dollars in a Default Order issued by the Washington State Department of Agriculture for violations in 2019 of the Washington Pesticide Control Act, Washington Pesticide Application Act, and the rules implementing those laws, including chapter 16-233 of the Washington Administrative Code that contains the federal EPA worker protection standard as listed in 40 C.F.R. Part 170.¹ Specifically, these violations included Respondent's failure to provide full required handler decontamination supplies within ¼ mile of handlers while conducting their tasks and failure to provide handlers with one pint of immediately available eye-flush when applying pesticides that require protective eyewear. See Wash. Admin. Code § 16-223-221 (2019).

3.41. On September 10, 2020, Respondent was issued a Notice of Correction by the Washington State Department of Agriculture for violations in 2020 of the Washington Pesticide Control Act, Washington Pesticide Application Act, and the rules implementing those laws, including chapter 16-233 of the Washington Administrative Code that contains the federal EPA

¹ Wash. Rev. Code §§ 15.58 and 17.21; Wash. Admin. Code. §§ 16-228 and 16-233.

worker protection standard as listed in 40 C.F.R. Part 170.² The Notice of Correction stated that the condition of the safety poster was not in compliance when it was accessible but not legible due to weather exposure. See Wash. Admin. Code §§ 16-223-021 and 16-223-026 (2020).

IV. TERMS OF SETTLEMENT

- 4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.
- 4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$17,078 (the “Assessed Penalty”).
- 4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.
- 4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: www.epa.gov/financial/makepayment. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

*Address format for standard delivery
(no delivery confirmation requested):*

*Address format for signed receipt confirmation
(FedEx, DHL, UPS, USPS certified, registered,
etc):*

U.S. Environmental Protection Agency
P.O. Box 979078

U.S. Environmental Protection Agency
Government Lockbox 979078

² Wash. Rev. Code §§ 15.58 and 17.21; Wash. Admin. Code. §§ 16-228 and 16-233.

St. Louis, MO 63197-9000

3180 Rider Trail S.
Earth City, MO 63045

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Bethany Plewe
U.S. Environmental Protection Agency
Region 10
plewe.bethany@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:



CHRIS MCCARTHY, Chief Operating Officer
Gebbers Farms, Inc.

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2024-0059
)	
GEBBERS FARMS, INC.,)	FINAL ORDER
)	
Brewster, Washington,)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Gebbers Farms, Inc., Docket No.: FIFRA-10-2024-0059**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Shannon Rebersak
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

rebersak.shannon@epa.gov

Chris McCarthy
Chief Operating Officer
Gebbers Farms, Inc.
25985 Highway 97
Brewster, Washington 98812

chrism@gebbersfarms.com

Regional Hearing Clerk
EPA Region 10