



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

October 29, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 4164
RETURN RECEIPT REQUESTED

Mr. Michael Christenson
Countryside Cooperative
514 E. Main Street
Durand, Wisconsin 54736

Consent Agreement and Final Order In the Matter of
Countryside Cooperative, Docket No. FIFRA-05-2015-0002

Dear Mr. Christenson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on October 29, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,700.00 is to be paid in the manner described in paragraphs 44 and 45. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by November 28, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2015-0002
)	
Countryside Cooperative)	Proceeding to Assess a Civil Penalty
Durand, Wisconsin)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	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 Countryside Cooperative, a membership cooperative doing business in the State of Wisconsin.

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. §§ 136-136y.

Statutory and Regulatory Background

10. 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 Section 3(a) or 19 of FIFRA, 7 U.S.C. § 136a(a) and § 136q.

11. Pursuant to the authority given the EPA Administrator in Sections 3, 8, 19 and 25 of FIFRA, 7 U.S. C. §§ 136a, 136f, 136q and 136w, on August 16, 2006, EPA promulgated the Pesticide Management and Disposal standards for Pesticide Containers and Containment Final Rule, 71 *Fed. Reg.* 47330 under 40 C.F.R. Parts 9, 156 and 165.

12. 40 C.F.R. § 165.70(e)(5) requires that refillers who are not registrants have all of the following items at their establishment before repackaging a pesticide product into any refillable container for distribution or sale:

- (1) A written contract from the pesticide registrant
- (2) The pesticide product's label and labeling
- (3) The registrant's written refilling residue removal procedure for the pesticide product; and

(4) The registrant's written description of acceptable containers for the pesticide product.

13. The term "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." 7 U.S.C. § 136(gg).

14. A "pesticide" is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

15. A "pest" is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

17. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, 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

18. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. Respondent owned or operated places of business located at W6311 US Highway 63, Ellsworth, Wisconsin and 2116 County Road S, New Richmond, Wisconsin during the calendar year 2012.

20. On June 28, 2012, inspectors authorized to conduct inspections under FIFRA conducted an inspection at Countryside Cooperative, W6311 US Highway 63, Ellsworth, Wisconsin.

21. During the June 28, 2012 inspection, the inspectors observed that Respondent repackaged Lumax Selective Herbicide, EPA Reg. No. 100-1152, and SureStart Herbicide, EPA Reg. No. 62719-570, at its Ellsworth establishment.

22. On or about May 12, 15, 18, 19, and 20, 2012, Respondent repackaged for distribution or sale Lumax Selective Herbicide, EPA Reg. No. 100-1152, at its Ellsworth establishment.

23. On or about April 6 and 30 and June 11 and 12, 2012, Respondent repackaged for distribution or sale SureStart Herbicide, EPA Reg. No. 62719-570, at its Ellsworth establishment.

24. Respondent is not the registrant of Lumax Selective Herbicide, EPA Reg. No. 100-1152, and SureStart Herbicide, EPA Reg. No. 62719-570.

25. Respondent did not have a current residue removal procedure from the pesticide registrant for Lumax Selective Herbicide, EPA Reg. No. 100-1152, at its Ellsworth establishment.

26. Respondent did not have a current written contract, written refilling and residue removal procedure and a written description of acceptable containers for SureStart Herbicide, EPA Reg. No 62719-570, at its Ellsworth establishment.

27. On June 26, 2012, inspectors authorized to conduct inspections under FIFRA conducted an inspection at Countryside Cooperative, 2116 County Road S, New Richmond, Wisconsin.

28. During the June 26, 2012 inspection, the inspectors observed that Respondent repackaged Lumax Selective Herbicide, EPA Reg. No. 100-1152, at its New Richmond establishment.

29. On or about May 7, 8, and 10, 2012, Respondent repackaged for distribution or sale Lumax Selective Herbicide, EPA Reg. No. 100-1152, at its New Richmond establishment.

30. Respondent did not have a current residue removal procedure for Lumax Selective Herbicide, EPA Reg. No. 100-1152, at its New Richmond establishment.

Count I

31. Complainant incorporates by reference the allegations contained in paragraphs 1 through 30 of this Complaint.

32. Respondent repackaged and distributed or sold the pesticide Lumax Selective Herbicide, EPA Reg. No. 100-1152 at its Ellsworth, Wisconsin establishment.

33. Respondent did not have at its Ellsworth, Wisconsin establishment the registrants' written refilling residue removal procedures for the pesticide product.

34. The repackaging and distribution or sale of the pesticide Lumax Selective Herbicide, EPA Reg. No. 100-1152 without having the registrant's written refilling residue removal procedures for the pesticide products constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

Count II

35. Complainant incorporates by reference the allegations contained in paragraphs 1 through 30 of this Complaint.

36. Respondent repackaged and distributed or sold the pesticide SureStart Herbicide, EPA Reg. No. 62719-570 at its Ellsworth, Wisconsin establishment.

37. Respondent did not have at its Ellsworth, Wisconsin establishment a current written contract from the pesticide registrant, the registrant's written refilling residue removal procedures for the pesticide product and the registrant's written description of acceptable containers for the pesticide product.

38. The repackaging and distribution or sale of the pesticide SureStart Herbicide, EPA Reg. No. 62719-570 without having a current written contract from the pesticide registrants, the registrant's written refilling residue removal procedures for the pesticide products and the registrant's written description of acceptable containers for the pesticide product constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

Count III

39. Complainant incorporates by reference the allegations contained in paragraphs 1 through 30 of this Complaint.

40. Respondent repackaged and distributed or sold the pesticide Lumax Selective Herbicide, EPA Reg. No. 100-1152 at its New Richmond, Wisconsin establishment.

41. Respondent did not have at its New Richmond, Wisconsin establishment the registrant's written refilling residue removal procedures for the pesticide product.

42. The repackaging and distribution or sale of the pesticide Lumax Selective Herbicide, EPA Reg. No. 100-1152 without having the registrant's written refilling residue

removal procedures for the pesticide products constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

Civil Penalty

43. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$9,700.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, the gravity of the violation, and Respondent's agreement to post container descriptions and residue removal procedures at its repackaging facilities. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

44. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,700.00 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

45. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Brian Barwick (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

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

47. If Respondent does not pay timely the civil penalty, 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

48. 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

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

50. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

51. This CAFO does not affect Respondent's responsibility to comply with FIFRA and

other applicable federal, state and local laws.

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

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

54. 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.

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

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

Countryside Cooperative, Respondent

9-16-2014
Date

Frank H. Brenner CEO
Frank Brenner
Chief Executive Officer
Countryside Cooperative

United States Environmental Protection Agency, Complainant

10/16/2014
Date

Michael D. Harris For M.G.
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Countryside Cooperative
Docket No. FIFRA-05-2015-0002

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.

10/24/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Countryside Cooperative, was filed on October 29, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 4164, a copy of the original to the Respondent:

Mr. Michael Christenson
Countryside Cooperative
514 E. Main Street
Durand, Wisconsin 54736

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Brain Barwick, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2015-0002