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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. FIFRA-10-2016-0106
)
POMEROY GRAIN GROWERS, INC.,)
) CONSENT AGREEMENT
)
Pomeroy, 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 Pomeroy Grain Growers, 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 Office of Compliance and Enforcement, 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

3.1. The term “person” is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15(b) to mean, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t) to mean, *inter alia*, “any insect, rodent, nematode, fungus, [or] weed.”

3.4. The term “active ingredient” is defined at Section 2(a) of FIFRA, 7 U.S.C. § 136(a), to mean “an ingredient which will prevent, destroy, repel, or mitigate any pest.”

3.5. The term “distribute or sell” is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to mean “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.”

3.6. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.7. According to 40 C.F.R. § 152.3, “A product becomes ‘released for shipment’ when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment.”

3.8. The term “label” is defined at Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), to mean “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

3.9. The term “labeling” is defined at Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), to mean “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.”

3.10. In accordance with Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), “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, together with any requirements imposed under [Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)], are adequate to protect health and the environment.”

3.11. In accordance with Section 12(a)(1)(E), “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”

3.12. In accordance with Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), “it shall be unlawful for any person to violate any regulation issued under [Section 3(a) or 19 of FIFRA,] 7 U.S.C. § 136a(a) or 136q.”

3.13. EPA has promulgated pesticide labeling requirements pursuant to Section 19 of FIFRA, 7 U.S.C. § 136q, which are codified at 40 C.F.R. Part 156. In accordance with 40 C.F.R. § 156.159, after August 16, 2011, any pesticide product released for shipment by a registrant must bear a label that complies with, *inter alia*, 40 C.F.R. § 156.140 and 156.

3.14. Under Section 40 C.F.R. § 156.140, *Identification of container types*, every container bearing a pesticide product other than a plant-incorporated protectant must be identified as either refillable or nonrefillable.

3.15. Under Section 40 C.F.R. § 156.156, *Residue removal instructions for refillable containers*, the label of each pesticide product must include the applicable instructions for removing pesticide residues from the container prior to container disposal.

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

3.17. Respondent owns and operates a business facility located at 910 Main Street Pomeroy, Washington 99347.

3.18. Respondent distributes and sells “RT3 Powered by Roundup Technology” (“RT3”), EPA Registration Number 524-544, pursuant to a refiller arrangement with the registrant. Therefore, at all times relevant to this Consent Agreement, Respondent was required to comply with the conditions for refillers contained in 40 C.F.R. § 165.70.

3.19. In accordance with 40 C.F.R. § 165.70(i), the label and labeling on a pesticide product distributed in a refillable container must comply in all respects with the requirements of 40 C.F.R. Part 156.

3.20. In accordance with 40 C.F.R. § 165.70(c), “both [the refiller] and the registrant may be liable for violations pertaining to the repackaged product.”

3.21. RT3 is a pesticide as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.22. RT3 is not a plant-incorporated protectant.

3.23. On or around April 7, 2014, Respondent released for shipment at least twelve 265 gallon shuttles containing RT3 (“RT3 Shuttles”). Therefore, on or around April 7, 2014, Respondent distributed or sold RT3 as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

3.24. At all times relevant to this Consent Agreement, the RT3 Shuttles were refillable pesticide containers.

3.25. On or around April 7, 2014, the RT3 Shuttles' labeling failed to contain a statement indicating the shuttle was refillable or nonrefillable, as required by 40 C.F.R. §§ 156.140 and 165.70(i).

3.26. On or around April 7, 2014, the RT3 Shuttles' labeling failed to contain applicable instructions for removing pesticide residues from the container prior to disposal, as required by 40 C.F.R. §§ 156.156 and 165.70(i).

3.27. On or around April 7, 2014, the RT3 Shuttles' labeling failed to contain directions for use which are adequate to protect health and the environment. Therefore, the RT3 Shuttle was misbranded as that term is defined at Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

3.28. Therefore, in accordance with Sections 12(a)(1)(E) and 12(a)(2)(S), Respondent violated FIFRA by distributing or selling a misbranded pesticide and violating the regulations issued under Section 19 of FIFRA, 7 U.S.C. § 136q.

3.29. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense.

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. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violations. After

considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$3,600 (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: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

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, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.teresa@epa.gov

Gianpaolo Boccato
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
boccato.gianpaolo@gpa.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:

4.8.1. 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.

4.8.2. 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.

4.8.3. 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 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:

6/21/2016

FOR RESPONDENT:

Robert Cox

ROBERT COX, General Manager
Pomeroy Grain Growers, Inc.

DATED:

6/30/2016

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2016-0106
)	
POMEROY GRAIN GROWERS, INC.,)	FINAL ORDER
)	
Pomeroy, 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 redelegated 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.

SO ORDERED this 7th day of July, 2016.


M. SOCORRO RODRIGUEZ
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: Pomeroy Grain Growers, Inc., Docket No.: FIFRA-10-2016-0106**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Robert Cox
General Manager
Pomeroy Grain Growers, Inc.
P.O. Box 220
Pomeroy, Washington 99347

DATED this 8 day of July, 2016.



TERESA LUNA
Regional Hearing Clerk
EPA Region 10