



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

January 5, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7011 1150 0000 2643 8173

Ms. Nikki Riley
Southern FS, Inc.
2002 East Main St.
Marion, Illinois 62959

Consent Agreement and Final Order In the Matter of
Southern FS, Inc., Docket No. FIFRA-05-2015-0018

Dear Ms. Riley:

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 January 5, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,000 is to be paid in the manner described in paragraph 11. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 4, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Pamela Grace

For Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2015-0018
)	
Southern FS Inc.)	Proceeding to Assess a Civil Penalty
Marion, Illinois,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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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 Southern FS Inc., a corporation doing business in the State of Illinois.

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)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded.

11. Section 2(q)(1)(A), 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients which is false or misleading in any particular. *See* 40 C.F.R. 156.10(a)(5)(i).

12. 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).

13. The term “person,” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

14. A “pest,” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), means 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.

15. A “pesticide,” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

General Allegations

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

18. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

19. At all times relevant to the Complaint, Respondent owned or operated a place of business located at 90 Buffalo Lane, Jacob, Illinois.

20. Respondent produces pesticides at this producing establishment.

21. EPA has assigned EPA establishment number (EPA Est. No.) 40499-IL-019 to Respondent’s producing establishment, located at 90 Buffalo Lane, Jacob, Illinois.

22. **Lexar Herbicide**, EPA Reg. No. 100-1201, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. Respondent produced **Lexar Herbicide**, EPA Reg. No. 100-1201 at its producing establishment, located at 90 Buffalo Lane, Jacob, Illinois in April of 2013.

24. On or about April 12, 2013, an inspector employed by the Illinois Department of Agriculture (IDA) and authorized to conduct inspections under FIFRA, conducted an inspection

at Respondent's place of business.

25. During the April 12, 2013 inspection, the inspector collected a sample of the pesticide product, **Lexar Herbicide**, EPA Reg. No. 100-1201, which Respondent produced and was holding for distribution or sale, from a 250 gallon container.

26. On or about May 28, 2013, the IDA completed a formulation analysis of the sample of **Lexar Herbicide**, EPA. Reg. No. 100-1200, that was collected during the April 12, 2013 inspection.

27. The IDA's analysis of the sample of **Lexar Herbicide**, EPA Reg. No. 100-1200, collected during the April 12, 2013 inspection showed that the total concentration of atrazine was 22.92 % and the total concentration of mesotrione was 3.17% .

28. The label of **Lexar Herbicide**, EPA Reg. No. 100-1200, stated that the pesticide product contained a total concentration of atrazine at 18.61% and mesotrione at 2.44%.

29. On April 12, 2013, Respondent distributed or sold a pesticide, **Lexar Herbicide**, EPA Reg. No. 100-1200 that was misbranded as that term is defined by Sections 2 (q)(1)(A) and 2(q)(2)(B)(iii), 7 U.S.C. §§ 136(q)(1)(A) and 136(q)(2)(B)(iii).

30. Respondent's distribution or sale of **Lexar Herbicide**, EPA Reg. No. 100-1200 on or about April 12, 2013, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

31. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty

10. 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 \$4,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty relative to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

11. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,000 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

The check must note Southern FS Inc. and the docket number of this CAFO. 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

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

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

13. 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.

14. 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

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

16. 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.

17. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

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

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

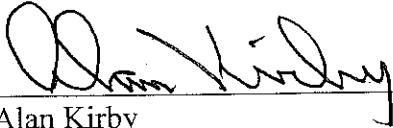
20. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

21. Each party agrees to bear its own costs and attorneys' fees in this action.

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


Southern FS Inc., Respondent

11-18-14
Date


Alan Kirby
General Manager
Southern FS Inc.

United States Environmental Protection Agency, Complainant

12/10/2014
Date

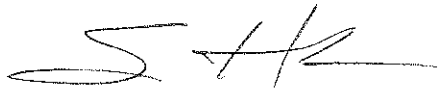

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Southern FS Inc.
Docket No. FIFRA-05-2015-0018

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.

12/22/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

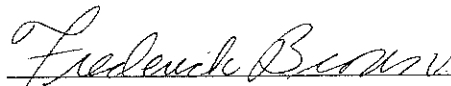
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Southern FS, Inc., was filed on January 5, 2015, 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. 7011 1150 0000 2643 8173, a copy of the original to the Respondent:

Ms. Nikki Riley
Southern FS, Inc.
2002 East Main St.
Marion, Illinois 62959

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Connie Puchalski, Assistant Regional Counsel, 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

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