

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
E.I. DuPont de Nemours and Co., Inc.)
Wilmington, Delaware) Docket No. FIFRA-07-2010-0013
)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (“EPA”), Region 7 and E.I. DuPont de Nemours and Co., Inc. (“DuPont” or “Respondent”) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order (“CAFO”) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.
4. The Respondent is E.I. DuPont de Nemours, Co., a registrant of agricultural pesticides. Respondent is a Delaware corporation that is registered to do business in the state of Missouri.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution, and use of pesticides in the United States. 7 U.S.C. 136 et seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean: (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacterial, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

9. The term “produce” is further defined at 40 C.F.R. § 167.3 to mean to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

11. The term “producer” is further defined at 40 C.F.R. § 167.3 to mean any person, as defined by FIFRA, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

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

13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a) states that no person in any State may distribute or sell to any person any pesticide that is not registered under this Act.

14. Section 2(q) of FIFRA, 7 U.S.C. § 136(q)(1)(A) states that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation which is false or misleading.

15. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

16. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a) states that the Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of this subchapter and to make the records available for inspection and copying in the same manner as provided in subsection (b) of this section.

17. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

18. The regulation at 40 C.F.R. § 165.70(b)(3) states that for a repackager to repackage a registered product under a registrant's existing registration, the repackager must have a written contract with the registrant to repackage the pesticide product and to use the label of the pesticide product.

Section IV

General Factual Allegations

19. The Respondent is and was at all times referred to in this CAFO, a person, incorporated in the state of Delaware and registered to do business in the state of Missouri.

20. On May 28, 2009, a representative of the Missouri Department of Agriculture ("MDA") conducted an inspection of the Silex and Olney, Missouri, facilities of Central Elevator, Inc ("Central Elevator").

21. During the May 2009 inspection, the MDA representative collected information that Central Elevator repackaged the pesticide DuPont Steadfast Herbicide, EPA Registration Number (EPA Reg. No.) 352-608 (hereinafter "Steadfast"). Steadfast is registered to E.I. DuPont de Nemours and Company, Wilmington, Delaware.

22. During the May 2009 inspection, the MDA representative collected information that indicates that Central Elevator repackaged Steadfast only when a customer submitted an order.

23. Central Elevator and E.I. DuPont de Nemours and Company entered into a Contract Repackaging/Label Authorization Agreement for Steadfast on November 22, 2005. This agreement covered the time period from November 22, 2005, through September 30, 2006. There was no additional agreement in place until another Contract Repackaging/Label Authorization Agreement was executed on May 29, 2009.

VIOLATIONS

24. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

25. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

26. Documentation collected during the May 2009 inspection reveals that Central Elevator distributed or sold several ounces of repackaged product bearing the Steadfast label on May 26, 2007.

27. There was no written agreement between Respondent and Central Elevator to produce Steadfast for the date the product was produced and distributed. Therefore, this product was considered unregistered and misbranded.

28. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

29. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a pesticide that was misbranded.

30. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts above, Respondent is assessed a civil penalty for its failure to comply with Section 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E).

Count 2

31. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

32. Documentation collected during the May 2009 inspection reveals that Central Elevator distributed or sold several ounces of repackaged product bearing the Steadfast label on May 30, 2007.

33. There was no written agreement between Respondent and Central Elevator to produce Steadfast for the dates the product was produced and distributed. Therefore, this product was considered unregistered and misbranded.

34. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

35. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a pesticide that was misbranded.

36. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts above, Respondent is assessed a civil penalty for its failure to comply with Section 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E).

Count 3

37. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

38. Documentation collected during the May 2009 inspection reveals that Respondent distributed or sold several ounces of repackaged product bearing the Steadfast label on May 31, 2007.

39. There was no written agreement between Respondent and Central Elevator to produce Steadfast for the dates the product was produced and distributed. Therefore, this product was considered unregistered and misbranded.

40. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

41. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a pesticide that was misbranded.

42. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts above, Respondent is assessed a civil penalty for its failure to comply with Section 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E).

Count 4

43. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

44. Documentation collected during the May 2009 inspection reveals that Respondent distributed or sold several ounces of repackaged product bearing the Steadfast label on June 11, 2007.

45. There was no written agreement between Respondent and Central Elevator to produce Steadfast for the dates the product was produced and distributed. Therefore, this product was considered unregistered and misbranded.

46. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

47. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a pesticide that was misbranded.

48. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts above, Respondent is assessed a civil penalty for its failure to comply with Section 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E).

Count 5

49. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

50. Documentation collected during the May 2009 inspection reveals that Respondent distributed or sold several ounces of repackaged product bearing the Steadfast label on June 17, 2007.

51. There was no written agreement between Respondent and Central Elevator to produce Steadfast for the dates the product was produced and distributed. Therefore, this product was considered unregistered and misbranded.

52. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

53. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a pesticide that was misbranded.

54. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts above, Respondent is assessed a civil penalty for its failure to comply with Section 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E).

Count 6

55. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 23 above, as if fully set forth herein.

56. Documentation collected during the May 2009 inspection reveals that Respondent distributed or sold several ounces of repackaged product bearing the Steadfast label on June 18, 2007.

57. There was no written agreement between Respondent and Central Elevator to produce Steadfast for the dates the product was produced and distributed. Therefore, this product was considered unregistered and misbranded.

58. Respondent violated Section 12(a)(1)(A) of FIFRA by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

59. Respondent violated Section 12(a)(1)(E) of FIFRA by distributing or selling a pesticide that was misbranded.

60. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts above, Respondent is assessed a civil penalty for its failure to comply with Section 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E).

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

61. For purposes of this proceeding, Respondent admits the statutory and regulatory information set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

62. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

63. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

64. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

65. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

66. This CAFO addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

67. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

68. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et seq. and all regulations promulgated thereunder.

69. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Fifteen Thousand Six Hundred Dollars (\$15,600.00) as set forth in Paragraph 1 of the Final Order.

70. The effect of settlement described in Paragraph 66 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 68 above.

71. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the EPA. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

72. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. Department of Justice (DOJ) for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Section VI

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136~~l~~, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

Payment of Civil Penalty

1. Respondent shall pay a mitigated civil penalty of Fifteen Thousand Six Hundred

Dollars (\$15,600.00). The payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order.

2. Payment of the penalty shall be by cashier or certified check and shall reference EPA Docket Number FIFRA-07-2010-0013, and made payable to "Treasurer, United States of America" and remitted to:

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

3. Copies of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Demetra O. Salisbury
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

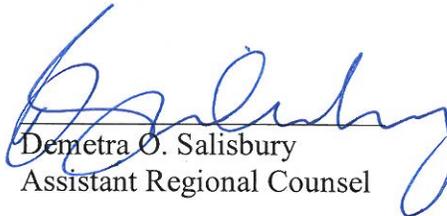
COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11-15-10

By: 
William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date: 11-30-10

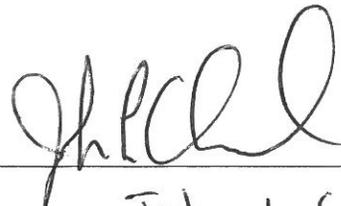
By: 
Demetra O. Salisbury
Assistant Regional Counsel

In the Matter of E.I. DuPont de Nemours and Co., Inc.
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RESPONDENT:

E.I. DuPont de Nemours and Co., Inc.

Date: 10/18/10

By: 
Printed Name: John L Chrosniak
Title: Regional Business Director

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IT IS SO ORDERED. This Order shall become effective immediately.

Date: Dec. 17, 2010



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF E.I. DuPont de Nemours and Co., Inc., Respondent
Docket No. FIFRA-07-2010-0013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Demetra O. Salisbury
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Karl Sherman
Corporate Counsel
DuPont Legal
Barley Mill Plaza 25/1366
4417 Lancaster Pike
Wilmington, Delaware 19805

Dated: 12/17/10


Kathy Robinson
Hearing Clerk, Region 7