

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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BEFORE THE ADMINISTRATOR

In the Matter of:

NuFarm Americas, Inc.,

Respondent.

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Docket No. FIFRA-07-2017-0361

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and NuFarm Americas, Inc. (Respondent) have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

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 serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region 7.

4. Respondent is a corporation in good standing under the laws of the state of Illinois located at 11901 S. Austin Avenue, Alsip, Illinois 60803.

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 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell to any person any pesticide which is misbranded.
7. 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, bacteria, 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).
8. 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 and any substance or mixture of substances intended for use as a plant regulator, defoliant, or dessicant.
9. 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.
10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” 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.
11. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), defines the term “misbranded.” Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.
12. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
13. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states, in pertinent part, 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 requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.

14. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, adjusted the statutory maximum so that penalties of up to \$19,057 are authorized for violations that occur after November 2, 2015.

General Factual Allegations

15. Respondent is, and at all times referred to herein, was a corporation doing business in the state of Missouri.

16. Respondent is, and at all times referred to herein, was a “person” within the meaning of FIFRA.

17. On or about January 14, 2016, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection for bulk products at a facility owned and operated by Pilot Grove Cooperative Elevator, Inc. (Pilot Grove) located at 12302 Highway 135, Pilot Grove, Missouri 65276 (the Facility). The inspection was conducted under the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate Pilot Grove’s, and Pilot Grove’s affiliated registrant’s, compliance with the requirements of FIFRA and the federal regulations promulgated thereunder. The MDA inspection was subsequently forwarded to the EPA for review.

18. At the time of the MDA inspection, and at all times relevant to the allegations herein, the Facility maintained stationary bulk pesticide storage containers that contained Respondent’s registered pesticides. At the time of the inspection, the MDA inspector collected a representative bin label and took photographs of the labels appearing on the stationary bulk pesticide storage containers at the Facility.

19. At all times relevant to the allegations herein, Respondent allowed Pilot Grove to repackage certain pesticide products registered to Respondent, including Abundit Extra Herbicide, EPA Registration Number (EPA Reg. No.) 71368-20, into refillable containers and to distribute and/or sell such repackaged products under Respondent’s registration.

20. As a result of the MDA inspection and documentation obtained by the EPA, Complainant has determined that a violation of FIFRA and the federal regulations promulgated thereunder has occurred.

Allegations of Violations

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

Count 1

22. The facts stated in Paragraphs 15 through 20 above are herein incorporated.

23. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell to any person any pesticide which is misbranded. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), states, in relevant part, that a label is misbranded if: it bears any statement which is false or misleading in any particular; if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon; or if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended.

24. The MDA inspection and documentation obtained by the EPA revealed that the label for the pesticide Abundit Extra, EPA Reg. No. 71368-20, found to be representative of the label on product held for sale on the day of the MDA inspection, contained multiple instances of misbranding. These misbrandings included omissions of multiple “directions for use” sections entirely or in part, incorrect application rates, and misleading warnings and other directions.

25. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which was misbranded.

CONSENT AGREEMENT

26. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

27. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

28. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

29. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Nine Thousand Nine Hundred and Two Dollars (\$9,902) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

30. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Katherine Reitz, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

31. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

32. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty.

Effect of Settlement and Reservation of Rights

33. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

34. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

35. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

36. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

37. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

38. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

39. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order 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.

40. The penalty specified herein shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of Federal, State, and local taxes.

41. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:

NUFARM AMERICAS, INC.

Date: 9/15/17

By: 
Signature

Tom Lyons
Printed Name

VP, Operations
Title

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date:

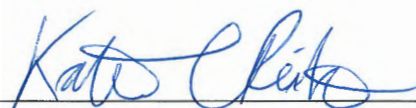
9/25/17



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

Date:

9/25/17



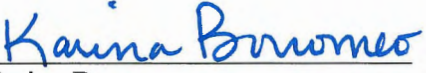
Katherine Reitz
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 72 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.


Karina Borromeo
Karina Borromeo
Regional Judicial Officer


Sept. 28, 2017
Date

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy via Email to Attorney for Respondent:

bill.robison@us.nufarm.com

Copy via Certified Mail, Return Receipt Requested to Respondent:

Bill Robison
NuFarm Americas, Inc.
11901 S. Austin Avenue
Alsip, Illinois 60803

Copy via Email to Attorney for Complainant:

reitz.katherine@epa.gov

Dated this 28 day of September, 2017.

Lisa Haugen
Signed

LISA Haugen
Name

Regional Hearing Clerk
Title