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HEARINGS CLERK
EPA - REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2019-0091
)	
TRIDENT AGRICULTURAL)	CONSENT AGREEMENT
PRODUCTS, INC.,)	
)	
Buena, 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 Trident Agricultural Products, 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 Enforcement and Compliance Assurance Division, 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. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.2. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.3. 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.”

3.4. 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.”

3.5. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.” The regulation at 40 C.F.R. § 167.3 further defines “producer” as “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling).”

3.6. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “produce” as “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.” The regulation at 40 C.F.R. § 167.3 further defines “produce” as “[T]o package, repackage, label, relabel, or otherwise change the container of any pesticide or device.”

3.7. In accordance with 40 C.F.R. § 165.67(c), “Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in [40 C.F.R. § 165.67(b)] is a violation of Section 12 of FIFRA.”

3.8. In accordance with 40 C.F.R. § 165.67(b), a refiller may repackage a registered pesticide product only if the registrant and refiller have entered into a written contract to repackage the pesticide product and to use the registrant’s label.

3.9. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg) defines “to distribute or sell” as “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.”

3.10. 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.”

3.11. According to Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H), a pesticide is misbranded if, “In the case of a pesticide not registered in accordance with [Section 3 of FIFRA] and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: ‘Not Registered for Use in the United States.’”

3.12. In accordance with 40 C.F.R. § 168.65(b)(1)(iii) the label of any exported pesticide not registered for use in the United States under Section 3 of FIFRA must prominently display the following statement: “Not Registered for Use in the United States of America.”

3.13. In accordance with Section 17(a)(2) of FIFRA, 7 U.S.C. § 136o(a)(2), and 40 C.F.R. § 168.75(c), an exporter of an unregistered pesticide product must submit a purchaser acknowledgment statement to EPA containing the information stated in 40 C.F.R. § 168.75(c)(1), and a statement signed by the exporter certifying that the exportation did not occur until the signed acknowledgment statement had been obtained from the purchaser.

3.14. In accordance with Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), “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 3 of FIFRA].”

3.15. In accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(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.”

3.16. In accordance with Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), “it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this subchapter for restricted use without giving the classification of the product assigned to it under [Section 3 of FIFRA, 7 U.S.C. § 136a].”

3.17. In accordance with Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), “it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.”

3.18. Respondent is a corporation located and incorporated in the State of Washington. Therefore, Respondent is a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.19. Respondent owns and operates a pesticide producing establishment located at 1120 Buena Road, Buena, Washington with establishment number 53766-WA-002 (“Facility”).

3.20. The product Meth-O-Gas 100 (EPA Registration No. 5785-11) with the active ingredient methyl bromide is a pesticide as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.21. The product Strike 60CP (EPA Registration No. 11220-15-53766) with active ingredients chloropicrin and 1,3-dichloropropene is a pesticide as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). At all times relevant to this Consent Agreement, the pesticide product Strike 60CP was assigned the use classification of Restricted Use Pesticide (“RUP”) under Section 3 of FIFRA, 7 U.S.C. § 136a.

3.22. The product Strike 80CP (EPA Registration No. 11220-36-53766) is a pesticide as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). At all times relevant to this

Consent Agreement, the pesticide product Strike 80CP was assigned the use classification of RUP under Section 3 of FIFRA, 7 U.S.C. § 136a.

Counts 1 through 7: Distribution of Unregistered, Repackaged Meth-O-Gas

3.23. Great Lakes Chemical Corporation is the registrant for Meth-O-Gas 100.

3.24. At all times relevant to this Consent Agreement Respondent acquired bulk Meth-O-Gas 100 from the wholesaler TriEst Ag Group, Inc. (“TriEst”) in 175-pound cylinders.

3.25. At no time relevant to this Consent Agreement did Respondent have a written agreement with Great Lakes Chemical Corporation pursuant to 40 C.F.R. § 167.67 to repackage bulk Meth-O-Gas 100.

3.26. On at least seven occasions between June 1, 2014, and July 15, 2015, Respondent repackaged Meth-O-Gas 100 acquired from TriEst in 175-pound cylinders into 50, 58, 154, 159, 166, or 170 pound cylinders. In accordance with Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §§ 167.3 and 40 C.F.R. § 167.67(c), Respondents’ repackaging of the registered Meth-O-Gas 100 into smaller containers constituted production of an unregistered pesticide.

3.27. On at least seven occasions between June 1, 2014, and July 15, 2015, Respondent distributed and sold the repackaged and unregistered Meth-O-Gas products Respondent produced in the manner described in Paragraph 3.26, above, in violation Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 8: Distribution of Misbranded Meth-O-Gas Pesticide Product

3.28. On at least one occasion between June 1, 2014, and July 15, 2015, Respondent exported the repackaged and unregistered Meth-O-Gas products discussed in paragraph 3.26, above, to a purchaser in Canada.

3.29. The Meth-O-Gas pesticide product distributed and sold as discussed in Paragraph 3.28, above, did not contain the statement: “Not Registered for Use in the United States of America,” as required by 40 C.F.R. § 168.65(b)(1)(iii). Therefore, the Meth-O-Gas pesticide product was misbranded in accordance with Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(E). Therefore, on at least one occasion between June 1, 2014, and July 15, 2015, Respondent distributed and sold a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 9: Failure to Submit to EPA a Foreign Purchaser Acknowledgment Statement

3.30. At no time prior to July 15, 2015, did Respondent submit to EPA a purchaser acknowledgment statement containing the information required by 40 C.F.R. § 168.75(c)(1) regarding the unregistered pesticides distributed and sold to a purchaser in Canada, as described in Paragraph 3.28, above, in violation of 40 C.F.R. § 168.75(c). Therefore, on at least one occasion prior to July 15, 2015, Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136(a)(2)(N).

Count 10: Advertising an RUP Without Providing the Use Classification

3.31. On at least one occasion between at least June 1, 2014, and July 15, 2015, Respondent advertised the pesticide product Strike 60CP in a brochure.

3.32. Respondent did not specify the use classification of the Strike 60CP pesticide product in the brochure, in violation of Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136(a)(2)(E).

3.33. On at least one occasion between at least June 1, 2014, and July 15, 2015, Respondent advertised the pesticide product Strike 80CP in a brochure.

3.34. Respondent did not specify the use classification of the Strike 80CP pesticide product in the brochure, in violation of Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136(a)(2)(E).

Enforcement Authority

3.35. 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. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$49,125 (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: <http://www2.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 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Nicholas Hurwit
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Hurwit.nicholas@epa.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:

a. 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.

b. 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.

c. 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. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. 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.

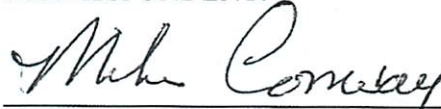
4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by

Respondent and EPA Region 10.

DATED:

5/28/2019

FOR RESPONDENT:

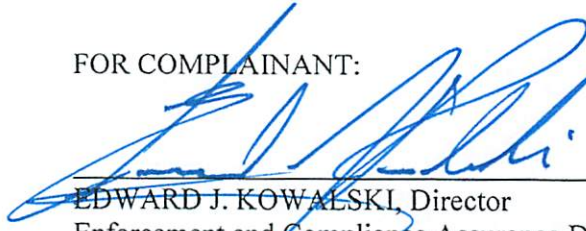


MIKE CONWAY, President
Trident Agricultural Products, Inc.

DATED:

5/28/2019

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2019-0091
)	
TRIDENT AGRICULTURAL)	FINAL ORDER
PRODUCTS, INC.)	
)	
Buena, 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 29th day of May, 2019.


RICHARD MEDNICK
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: Trident Agricultural Products, Inc., Docket No.: FIFRA-10-2019-0091**, 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 11-C07
1200 Sixth Avenue, Suite 155
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:

Mike Conway
President
Trident Agricultural Products, Inc.
P.O. Box 1909
Woodland, Washington 98674

DATED this 30 day of May, 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10