

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**



In the Matter of: :
: **GROWMARK FS, LLC** : **U.S. EPA Docket No. RCRA-FIFRA-03-2023-**
308 NE FRONT STREET : **0143**
MILFORD, DE 19963 :
Respondent. :
: **Proceeding under Section 3008(a) and (g) of the**
GROWMARK FS, LLC : **Resource Conservation and Recovery Act, 42**
3150 STONEY POINT ROAD : **U.S.C. § 6928(a), and Section 14(a) of the**
EAST BERLIN, PA 17316 : **Federal Insecticide, Fungicide and Rodenticide**
Facility. : **Act, 7 U.S.C. § 136l(a)**
:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Growmark FS, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereafter as “RCRA”); Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. RCRA and FIFRA authorize the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under RCRA and FIFRA for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(1) and (4).
5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), by letter dated June 3, 2022, EPA notified the Pennsylvania Department of Environmental Protection (“PADEP”) of EPA’s intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Respondent is a subsidiary of GROWMARK, Inc., an agricultural wholesaler. Respondent is an agricultural retailer that provides retail sales in the Mid-Atlantic region including New York, Pennsylvania, New Jersey, Delaware, Maryland and Virginia. Respondent blends and packages fertilizer, enhanced lime, and ice melt products for distribution into markets such as golf courses, lawn care, landscaping, sports turf, agriculture, municipalities, and homeowners.

14. Respondent is a “person” as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to the assessment of civil penalties for the violations alleged herein.
15. Respondent is and, at all times relevant to the violations alleged herein, was the owner and operator of a facility located at 3150 Stoney Point Road, East Berlin, PA 17316 (hereinafter “the Facility”). The Facility's RCRA ID number is PAR000032342.
16. Respondent is a limited liability company incorporated in Delaware and has a principal place of business at 308 NE Front Street, Milford DE 19963

Resource Conservation and Recovery Act

17. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to take enforcement action whenever it determines that a person is in violation of any requirement of Subtitle C of RCRA, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by the EPA.
18. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, EPA has granted the Commonwealth of Pennsylvania authorization to administer the hazardous waste management program in lieu of the federal hazardous waste management program established under RCRA, Subtitle C, 42 U.S.C. §§ 6921-6939g. EPA originally granted Pennsylvania authorization on November 21, 1984 and program revisions on September 26, 2000, January 20, 2004 and April 29, 2009. The provisions of the currently authorized Commonwealth of Pennsylvania Hazardous Waste Regulations, codified at 25 Pa. Code Chapters 260a-266a, 266b, 268a and 270a, have thereby become requirements of RCRA, Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
19. When EPA last authorized the Pennsylvania hazardous waste regulations on June 29, 2009, EPA approved Pennsylvania’s incorporation by reference of the federal regulations which were in effect as of October 12, 2005, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). As a result, 40 C.F.R. § 262.34 (2005) is the currently federally enforceable version of that RCRA regulation in Pennsylvania. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17. The Code of Federal Regulation citations used herein are to the 2005 Federal regulations.
20. 25 Pa. Code § 260a.10 incorporates by reference 40 C.F.R. § 260.10 (relating to definitions), except where expressly defined otherwise. 25 Pa. Code § 262a.10 incorporates by reference, except as expressly provided in Chapter 262.a, 40 C.F.R Part 262 and its appendices (relating to standards applicable to generators of hazardous waste).

21. 25 Pa. Code § 264a.1 incorporates by reference the requirements of 40 C.F.R. Part 264 and its appendices (relating to standards for owners and operators of hazardous waste treatment, storage, and disposal facilities).
22. 25 Pa. Code § 270a.1(a) incorporates by reference, except as expressly provided in Chapter 270a, 40 C.F.R. Part 270 (relating to EPA administered permit programs: the hazardous waste permit program) and its appendices (relating to hazardous waste permit program).
23. 40 C.F.R. § 260.10 defines a “generator” as “any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.”
24. “Hazardous waste” is defined at 40 C.F.R. § 261.3. *See* 40 C.F.R. § 260.10.
25. 40 C.F.R. § 260.10 defines “large quantity generator” as a “generator who generates any of the following amounts in a calendar month: **(1)** Greater than or equal to 1,000 kilograms (2200 lbs) of non-acute hazardous waste; or **(2)** Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; or **(3)** Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.”
26. 40 C.F.R. § 260.10 defines a “small quantity generator” (“SQG”) as a “generator who generates the following amounts in a calendar month: **(1)** Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2200 lbs) of non-acute hazardous waste; and **(2)** Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; and **(3)** Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.”
27. Pursuant to 40 C.F.R. § 262.10(c), “[a] generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this part with respect to that waste: Section 262.11 for determining whether or not he has a hazardous waste, § 262.12 for obtaining an EPA identification number, § 262.34 for accumulation of hazardous waste, § 262.40 (c) and (d) for recordkeeping, § 262.43 for additional reporting, and if applicable, § 262.70 for farmers.”
28. Pursuant to 40 C.F.R. § 262.34(d)(1), a SQG “who accumulates hazardous waste in quantities exceeding 6,000 kilograms (13,200 lbs) is an operator of a storage facility and

is subject to the requirements of 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 . . .¹”

29. Pursuant to 40 C.F.R. § 262.34(f), a SQG who accumulates hazardous waste for more than 180 days . . . is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 . . .”

Federal Insecticide, Fungicide and Rodenticide Act

30. 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.”
31. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under [Section 25(c)(1)].”
32. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines an “antimicrobial pesticide” as “(i) a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or (ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.”
33. 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.” *See also* 40 C.F.R. § 152.3.
34. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers;” and defines “labeling” as “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 . . .”

EPA Investigation

35. On August 23, 2021, EPA sent Respondent an Information Request Letter (“IRL”) to determine Respondent’s compliance with Subtitle C of RCRA, 42 U.S.C. § 6901 *et seq.*, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized Commonwealth of Pennsylvania Hazardous Waste

¹ On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17.

- Regulations, as well as FIFRA, 7 U.S.C. § 136, *et seq.*, and the regulations thereunder.
36. On October 20, 2021, EPA received a response to the IRL from Respondent.
 37. On March 1 and April 4, 2022, EPA requested additional information from Respondent via email.
 38. Respondent responded to the additional requests for information on March 11 and April 4, 2022, respectively.
 39. On February 17, 2023, EPA issued Respondent a Notice of Potential Violation and Opportunity to Confer (“NOPVOC”).
 40. On March 20, 2023, EPA and Respondent had a NOPVOC meeting to discuss the alleged violations.

RCRA ALLEGATIONS

Count I

Failure to Obtain a Permit to Treat, Store, and/or Dispose of Hazardous Waste

41. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
42. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b) and (c), require, with certain exceptions not relevant herein, that no person who owns or operates a facility for the treatment, storage or disposal of hazardous waste may do so without first obtaining a permit or qualifying for interim status for the facility.
43. At the time of the IRL, Respondent reported as a SQG. Respondent accumulated hazardous waste in quantities exceeding 6,000 kilograms (13,200 lbs) in the months of December 2018 through October 2019; January 2020; April through May 2020; January through February 2021, July through August 2021; January through April 2022 and was, therefore, an operator of a storage facility and was subject to the requirements of 40 C.F.R. Part 264 and 265 and the permit requirements of 40 C.F.R. Part 270 during the times identified in this paragraph. *See* 40 C.F.R. § 262.34(d)(1).
44. At the time of the IRL, Respondent reported as a SQG. Respondent accumulated hazardous waste at the Facility for more than 180 days during the time period of December 28, 2018 through August 31, 2021 and was, therefore, an operator of a storage facility and was subject to the requirements of 40 C.F.R. Part 264 and 265 and the permit requirements of 40 C.F.R. Part 270 during the times identified in this paragraph. *See* 40 C.F.R. § 262.34(f).

45. Based on the information provided in its response to EPA’s IRL and additional information requests, from at least December 2018 to April 2022, Respondent operated as a hazardous waste storage facility without a permit to treat, store, and/or dispose of hazardous waste.
46. From at least December 2018 to April 2022, Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(c) by operating as a hazardous waste storage facility without a permit to treat, store, and/or dispose of hazardous waste.
47. In failing to comply with 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(c), and Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count II
Failure to Submit 2019 and 2021 Biennial Reports

48. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
49. 25 Pa. Code § 262a.10 incorporates by reference 40 C.F.R. § 262.41(a), which requires that “[a] generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700–13A, [and] must cover generator activities during the previous year.”
50. Based on the information provided in its response to EPA’s IRL and additional information requests, Respondent is a generator of the hazardous wastes dichlorophenoxyacetic acid and acetic acid, (2,4-dichlorophenoxy), salts & esters and accumulated more than 6,000 kilograms (13,200 lbs) of hazardous waste at the Facility during the following months: December 2018 through October 2019; January 2020; April through May 2020; January through February 2021, July through August 2021; January through April 2022.
51. Based on the information provided in its response to EPA’s IRL and additional information requests, Respondent accumulated hazardous waste at the Facility for more than 180 days during the time period of December 28, 2018 through August 31, 2021.
52. Based on the information provided in its response to EPA’s IRL and additional information requests, Respondent did not qualify for the exemptions from the permit, interim status, and operating requirements in 25 Pa. Code §§ 262.11, 262.12, 262.34, 262.40(c) and (d), 262.43, and 262.70(c).

- 53. Respondent failed to submit its 2019 and 2021 Biennial Reports by March 1, 2020 and March 1, 2022, respectively.
- 54. Respondent violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.41(a), by failing to submit its 2019 and 2021 Biennial Reports by March 1, 2020 and March 1, 2022, respectively.
- 55. In failing to comply with 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.41(a), Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count III
Failure to Provide Initial and Annual Training to Facility Personnel

- 56. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 57. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16(a)-(c), which requires facility personnel to successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of Part 264 within “six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later” and to “take part in an annual review of the initial training required in [Section 264.16(a)].”
- 58. Based on the information provided in its response to EPA’s IRL and additional information requests, from at least January 2018 through December 2021, Respondent failed to provide initial and annual training to all of its employees.
- 59. From at least January 2018 through December 2021, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(b) and (c), by failing to provide initial and annual training to all of its employees.
- 60. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(b) and (c), Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count IV
Failure to Maintain Written Documentation of Job Titles and Descriptions

- 61. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

62. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2), which requires that “the owner or operator [of a facility which treats, stores, or disposes of hazardous waste] must maintain the following documents and records at the facility: (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;” and “(2) A written job description for each position listed under paragraph (d)(1) of this section.”
63. Based on the information provided in its response to EPA’s IRL and additional information requests, from at least January 2018 to December 2022, Respondent failed to maintain written documentation of job titles and job descriptions for each position at the Facility related to hazardous waste management.
64. From at least 2018 to 2022, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2) by failing to maintain written documentation of job titles and job descriptions for each position at the Facility related to hazardous waste management.
65. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.16(d)(1) and (2), Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count V

Failure to Describe Arrangements with Local Authorities in Contingency Plan

66. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
67. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.52(c), which requires an owner or operator of a facility which treats, stores, or disposes of hazardous waste to have a contingency plan that “describe[s] arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 264.37.”
68. Based on the information provided in its response to EPA’s IRL and additional information requests, from at least January 2018 to December 2022, Respondent failed to include arrangements with local authorities to coordinate emergency services within its contingency plan.
69. From at least 2018 to 2022, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52(c) by failing to include arrangements with local authorities to coordinate emergency services within its contingency plan.
70. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52(c), Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count VI
Failure to Include Evacuation Plan and Route within Contingency Plan

71. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
72. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.52(f), which requires an owner or operator of a facility which treats, stores, or disposes of hazardous waste to have a contingency plan that “include[s] an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).”
73. Based on the information provided in its response to EPA’s IRL and additional information requests, from at least January 2018 to December 2022, Respondent failed to include an evacuation route within its contingency plan.
74. From at least 2018 to 2022, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52(f) by failing to include an evacuation route within its contingency plan.
75. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.52(f), Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

Count VII
Failure to Conduct Weekly Inspections

76. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
77. 25 Pa. Code § 264a.1 incorporates by reference 40 C.F.R. § 264.174, which requires the owner or operator of a facility which treats, stores, or disposes of hazardous waste to, at least weekly, “inspect areas where containers are stored and look for leaking containers and for deterioration of containers and the containment system cause by corrosion or other factors.”
78. Based on the information provided in its response to EPA’s IRL and additional information requests, from at least January 2018 to December 2022, Respondent failed to conduct weekly inspections of their hazardous waste accumulation area which is located at the Facility’s Turf Plant Warehouse.

79. From at least 2018 to 2022, Respondent violated 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174 by failing to conduct weekly inspections of their hazardous waste accumulation area which is located at the Facility's Turf Plant Warehouse.
80. In failing to comply with 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174, Respondent is subject to the assessment of penalties under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

FIFRA ALLEGATIONS

Count VIII

Distribution and/or Sale of Misbranded Pesticides

81. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
82. 7 U.S.C. § 136j(a)(1)(E) prohibits any person from selling or distributing a pesticide that is adulterated or misbranded, as those terms are defined in Sections 2(c) and (q) of FIFRA, 7 U.S.C. § 136(c) and (q).
83. Pursuant to Section 2(gg) of FIFRA, 7, U.S.C §136(gg), to “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.
84. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is “misbranded” if the labeling accompanying the pesticide “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 under [Section 3(d) of FIFRA], are adequate to protect health and the environment.”
85. Pursuant to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), a pesticide is “misbranded” if its “label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section [3(d) of FIFRA], is adequate to protect health and the environment.”
86. At the time of the Inspection, the Acuron Herbicide (EPA Reg. No. 100-1466) collected label did not match the EPA-accepted label, including, but not limited to, portions of the Agricultural Use Requirements, Use Restrictions, Herbicide Weed Resistance, Mixing Procedures and Crop Use Directions sections.
87. From at least February 26, 2020 to March 19, 2021, Respondent distributed and/or sold the misbranded pesticide Acuron Herbicide (EPA Reg. No. 100-1466) at least four (4) times.

88. From at least February 26, 2020 to March 19, 2021, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing and/or selling Acuron Herbicide.
89. In failing to comply with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), Respondent is subject to the assessment of penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

CIVIL PENALTY

90. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **SEVENTY-NINE THOUSAND TWO HUNDRED AND TWENTY-FOUR DOLLARS (\$79,224)**, which includes **SIXTY-SEVEN THOUSAND AND SIXTY-FOUR DOLLARS (\$67,064)** for alleged violations of RCRA ("RCRA civil penalty"), and **TWELVE THOUSAND ONE HUNDRED AND SIXTY DOLLARS (\$12,160)** for alleged violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), ("FIFRA Civil penalty"), which Respondent shall be liable to pay in accordance with the terms set forth below.
91. The RCRA civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including, the following: the seriousness of the violation and any good faith efforts to comply with applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *RCRA Civil Penalty Policy* (May 1, 2020), which reflects the statutory penalty criteria and factors set forth at Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
92. The FIFRA civil penalty is based upon EPA's consideration of a number of factors, including the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), including, the following: the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *FIFRA Enforcement Response Policy* (December 2009) which reflects the statutory penalty criteria and factors set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which reflects the statutory penalty criteria and factors set forth at in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

93. Payment of the RCRA civil penalty and FIFRA civil penalty, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-FIFRA-03-2023-0143;
- b. All checks shall be made payable to the "United States Treasury"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Dennis M. Abraham
Senior Assistant Regional Counsel
abraham.dennis@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

94. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

95. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final

Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

96. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
97. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
98. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
99. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
100. The parties consent to service of the Final Order by e-mail at the following valid email addresses: abraham.dennis@epa.gov (for Complainant), and jrichman@growmarkfs.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

101. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

102. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
103. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

104. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA and FIFRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

105. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA and FIFRA the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

106. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and

assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

107. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

108. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: GROWMARK FS, LLC

Date: 9/24/23

By: 

John Richman,
General Manager

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Dennis M. Abraham
Senior Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103



In the Matter of: :
: :
GROWMARK FS, LLC : U.S. EPA Docket No. RCRA-FIFRA-03-2023-
308 NE FRONT STREET : 0143
MILFORD, DE 19963 : :
Respondent. : Proceeding under Section 3008(a) and (g) of
: the Resource Conservation and Recovery Act,
: 42 U.S.C. § 6928(a) and (g), and Section 14(a)
: of the Federal Insecticide, Fungicide and
GROWMARK FS, LLC : Rodenticide Act, 7 U.S.C. § 136l(a)
3150 STONEY POINT ROAD : :
EAST BERLIN, PA 17316 : :
Facility. : :
: :

FINAL ORDER

Complainant, the Director of the Enforcement Compliance and Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Growmark FS, LLC have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *RCRA Civil Penalty Policy* (May 1, 2020), which reflects the statutory penalty criteria and factors set forth at Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) and EPA’s *FIFRA enforcement Response Policy* (December 2009), and the statutory factors set forth in Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) and (g), Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **SEVENTY-NINE THOUSAND TWO HUNDRED AND TWENTY-FOUR DOLLARS (\$79,224)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order 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 the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of RCRA and FIFRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

Philadelphia, Pennsylvania 19103

In the Matter of:

GROWMARK FS, LLC
308 NE FRONT STREET
MILFORD, DE 19963
Respondent.

GROWMARK FS, LLC
3150 STONEY POINT ROAD
EAST BERLIN, PA 17316
Facility.

:
:
: U.S. EPA Docket No. RCRA-FIFRA-03-2023-
: 0143
:
: Proceeding under Section 3008(a) and (g) of the
: Resource Conservation and Recovery Act, 42
: U.S.C. § 6928(a) and (g), and Section 14(a) of
: the Federal Insecticide, Fungicide and
: Rodenticide Act, 7 U.S.C. § 136l(a)
:
:
:

CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

John Richman, General Manager
GROWMARK FS, LLC
jrichman@growmarkfs.com
308 NE Front Street
Milford, DE 19963

Dennis M. Abraham
Senior Assistant Regional Counsel
U.S. EPA, Region III
abraham.dennis@epa.gov

Christine Convery
Compliance & Enforcement Officer
U.S. EPA, Region III
convery.christine@epa.gov

Rebecca Serfass
Life Scientist
U.S. EPA, Region III
serfass.rebecca@epa.gov

In Re: Growmark FS, LLC

EPA Docket No. RCRA-FIFRA-03-2023-0143

[Digital Signature and Date]

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region III