



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
March 18, 2013

REPLY TO THE ATTENTION OF:  
LC-8J

**CERTIFIED MAIL**

**Receipt No.7009 1680 0000 7641 3688**

Nufarm Americas Inc.  
ATTN: Tom Lyons  
150 Harvester Drive, Suite 200  
Burr Ridge, Illinois 60527

Consent Agreement and Final Order in the Matter of  
Nufarm Americas, Inc. Docket No. **FIFRA-05-2013-0005**

Dear Mr. Lyons:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on March 18, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 37 and 38. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by April 18, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Calvo".

Estrella Calvo  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Nufarm Americas Inc. )  
Burr Ridge, Illinois )  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2013-0005  
Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

RECEIVED  
MAR 18 2013

Consent Agreement and Final Order

REGIONAL HEARING CLERK  
USEPA  
REGION 5

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Nufarm Americas Inc., a corporation doing business at 150 Harvester Drive, Suite 200, Burr Ridge, Illinois 60527.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as “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 any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

16. 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 microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

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

18. 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.

19. The Administrator of EPA may assess a civil penalty against any registrant or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

### Factual Allegations and Alleged Violations

20. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. On or about January 22, 2013, Expeditors International, located at 849 Thomas Drive, Bensenville, Illinois 60106 was the broker/agent for Respondent for the import shipment under entry number 231-6115113-3.

22. On or about January 22, 2013, Respondent submitted a NOA to EPA for the import shipment of the product "Cuproxat Flowable Copper Fungicide," EPA Registration Number (EPA Reg. No.) 35935-3, from Austria under entry number 231-6115113-3.

23. The importer of record listed on the NOA for the shipment under entry number 231-6115113-3 was Nufarm Americas Inc.

24. Respondent, as the importer of record of the pesticide product, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

25. "Cuproxat Flowable Copper Fungicide" is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about January 28, 2013, a shipment of "Cuproxat Flowable Copper Fungicide" entered into the United States at the Chicago, Illinois port of entry.

27. On or about January 28, 2013, Respondent distributed or sold the pesticide product "Cuproxat Flowable Copper Fungicide," as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

28. The label on the shipment of "Cuproxat Flowable Copper Fungicide" that entered into the United States on or about January 28, 2013 did 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 imposed under section 3(d) of FIFRA, are adequate to protect health and the environment.

29. In particular, each Intermediate Bulk Container (IBC) of "Cuproxat Flowable Copper Fungicide" had a label that stated "Not Intended for Resale. For formulation / Repackaging Use Only" and contained no further directions for use, other than the following statements: "It is a violation of Federal Law to use this product in a manner inconsistent with its labeling. For any requirement specific to your State or Tribe, consult the agency responsible for pesticide regulation."

30. "Cuproxat Flowable Copper Fungicide" is registered with EPA only as an "end use product." 40 C.F.R. 152.3 defines "end use product" as a pesticide whose labeling, among other things, does not state that the product may be used to manufacture or formulate other pesticide products.

31. Labels found on the IBC's of "Cuproxat Flowable Copper Fungicide" were false or misleading as that term is defined at Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

#### **Specific Allegations**

32. Complainant incorporates by reference the allegations contained in paragraphs 1 through 31 of this Complaint.

33. On or about January 28, 2013, Respondent distributed or sold the misbranded pesticide product "Cuproxat Flowable Copper Fungicide," which constitutes an unlawful act, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

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

under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty And Other Relief**

35. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider 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, when assessing an administrative penalty under FIFRA.

36. Based on an evaluation of the facts alleged in this complaint, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$7,500.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note "In the Matter of Nufarm Americas Inc.," and the docket number of this CAFO.

38. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Estrella Calvo (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Nidhi O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

40. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136f(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

42. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of 12(a)(1)(E) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.



### General Provisions

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

44. This CAFO does not 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.

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

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

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

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


49. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**In the Matter of:  
Nufarm Americas Inc.**

**Nufarm Americas Inc., Respondent**

2/18/13  
Date

  
\_\_\_\_\_  
Tom Lyons  
Executive Vice President  
Nufarm Americas Inc.

**In the Matter of:  
Nufarm Americas Inc.**

**United States Environmental Protection Agency, Complainant**

*3/6/2013*

Date



Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
Nufarm Americas Inc.  
Docket No. FIFRA-05-2013-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-8-13

Date



Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Nufarm Americas Inc., was filed on March 18, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7641 3688, a copy of the original to the Respondent:

Nufarm Americas Inc.  
ATTN: Tom Lyons  
150 Harvester Drive, Suite 200  
Burr Ridge, Illinois 60527

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Nidhi O'Meara, Regional Judicial Officer, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2013-0005

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