



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

February 14, 2014

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL 7001 0320 0000 7647 6157
RETURN RECEIPT REQUESTED

Mr. Tom Lyons
Executive Vice President
Nufarm Americas
11901 South Austin Avenue
Alsip, Illinois 60803

Consent Agreement and Final Order In the Matter of Nufarm Americas, Inc.
Docket Number **FIFRA-05-2014-0007**

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 February 14, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 42 and 43. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by March 16, 2014 (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 "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Nufarm Americas, Inc.
Alsip, Illinois

Respondent.



Docket No. FIFRA-05-2014-0007

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

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, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Nufarm Americas, Inc. (Nufarm), a corporation doing business in the State of Illinois.

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. §§ 136-136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 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 EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment in the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136q(a)(1)(B), states, in pertinent part, that the Administrator may require under Section 3 that the labeling of a pesticide contain

requirements and procedures for the transportation, storage, and disposal of any container of the pesticide.

14. Labeling requirements for pesticides and devices are found at 40 C.F.R. Part 156.

15. 40 C.F.R. § 156.140 states, in pertinent part, that other than for plant-incorporated protectants, the following statements, as applicable, must be placed on the label or container of a pesticide as directed under the regulation:

(a) *Nonrefillable container.* For non-refillable containers, the statements in paragraphs

(a)(1) through (a)(4) of 40 C.F.R. § 156.140 are required.

(1) *Statement identifying a nonrefillable container.* The following phrase is required: “Nonrefillable container.”

(2) *Reuse statement.* One of the following statements is required.

(i) “Do not use or refill this container.”

(ii) “Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state.”

(iii) The following statement may be used if a product is “ready to use” and its directions for use allow a different product (that is a similar, but concentrated formulation) to be poured into the container and diluted by the end user: “Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container.”

(3) *Recycling or reconditioning statement.* One of the following statements is required:

(i) “Offer for recycling if available.”

(ii) “Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site].”

(iii) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.

(iv) An alternative recycling statement that has been reviewed and approved by EPA.

(v) “Offer for reconditioning if appropriate.”

(4) *Batch Code.* A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.

16. 40 C.F.R. § 156.159 provides that any pesticide product released for shipment by a registrant after August 16, 2011 must bear a label that complies with, among other things, 40 C.F.R. § 156.140.

17. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states, in part, that it is unlawful for any person to violate any regulation issued under Section 19 of FIFRA.

18. 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.

19. 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 living micro-organisms 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. § 136 w(c)(1).

20. 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.

21. 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.

22. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

23. The Administrator may assess a civil penalty against any registrant 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. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

24. At all times relevant to this CAFO, Respondent was a corporation or any organized group of persons and therefore was a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

25. At all times relevant to this CAFO, Respondent was a “registrant” as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

26. On or about December 3, 2013, Respondent submitted to EPA an NOA under entry number 231-6193442-1 for an import shipment of “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-100.

27. On or about December 4, 2013, Respondent submitted to EPA an NOA under entry number 231-6192682-3 for an import shipment of “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-100.

28. The NOAs stated that Respondent was the importer of record.

29. Respondent, as the importer of “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-100, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

30. The import shipment associated with entry number 231-6193442-1 entered the United States on or about November 29, 2013.

31. The import shipment associated with entry number 231-6192682-3 entered the United States on or about December 23, 2013.

32. “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-100, is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

33. The imported quantities of “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-100, associated with entry numbers 231-6193442-1 and 231-6192682-3, failed to bear a label on the immediate containers of the pesticide product that identified the containers as being “refillable” or “non-refillable,” as required by 40 C.F.R. § 156.140.

34. On or about November 29, 2013, Respondent “distributed or sold” the pesticide “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-11, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

35. On or about December 23, 2013, Respondent “distributed or sold” the pesticide “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-11, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

36. Complainant incorporates by reference paragraphs 1 through 34 of this CAFO.

37. On or about November 29, 2013, in an import shipment associated with entry number 231-6193442-1, Respondent distributed or sold the pesticide “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-100, in violation of the labeling requirements at 40 C.F.R. § 156.140.

38. Respondent’s violation of the labeling requirements at 40 C.F.R. § 156.140 constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), and subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

39. Complainant incorporates by reference paragraphs 1 through 35 of this CAFO.

40. On or about December 23, 2013, in an import shipment associated with entry number 231-6192682-3, Respondent distributed or sold the pesticide “Glufosinate-Ammonium Technical,” EPA Reg. No. 35935-100, in violation of the labeling requirements at 40 C.F.R. § 156.140.

41. Respondent’s violation of the labeling requirements at 40 C.F.R. § 156.140 constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S),

and subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

42. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$15,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

43. Within 30 days of the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violations 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.

44. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

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

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

46. If Respondent does not pay the civil penalty timely, 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 40 C.F.R. § 13.11 and 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.

General Provisions

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

49. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

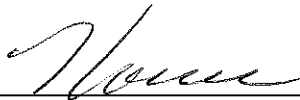
53. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorneys fees, in this action.

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

Nufarm Americas, Inc., Respondent

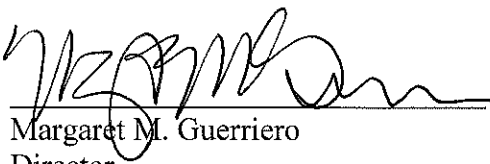
1/13/14
Date



Tom Lyons
Executive Vice President
Nufarm Americas, Inc.

United States Environmental Protection Agency, Complainant

2/6/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of:
Nufarm Americas, Inc.
Docket No. FIFRA-05-2014-0007

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.

2/10/14

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



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 February 14, 2014 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. 7001 0320 0000 7647 6157, a copy of the original to the Respondent:

Mr. Tom Lyons
Executive Vice President
Nufarm Americas
11901 South Austin Avenue
Alsip, Illinois 60803

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Joanna Glowacki, Associate Regional Counsel, ORC/C-14J
Eric Volk, Cincinnati Finance/MWD



Claudia Niess
Pesticides and Toxics Compliance Section
U.S. EPA – Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2014-0007

