



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

May 27, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8500

RETURN RECEIPT REQUESTED

Mr. Dave Neisler
Sun Ag, Inc.
P.O. Box 227
El Paso, Illinois 61738

Consent Agreement and Final Order In the Matter of
Sun Ag, Inc., Docket No. FIFRA-05-2015-0038

Mr. Neisler:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on May 27, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,004 is to be paid in the manner described in paragraphs 25 through 27. Please be certain that the docket number is written on both the transmittal letter and on the check.

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:

Sun Ag, Inc.
El Paso, Illinois,

Respondent.



Docket No. FIFRA-05-2015-0038

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 Sun Ag, Inc., 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. No person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator of EPA. 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a).

11. “Person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. 7 U.S.C. § 136(s).

12. “Produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. 7 U.S.C. § 136(w).

13. “Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and any nitrogen stabilizer. 7 U.S.C. § 136(u).

14. “Establishment” means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

15. It shall be unlawful for any person who is a producer to violate any of the

provisions of Section 136e. 7 U.S.C. § 136(a)(2)(L).

16. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, 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)(l) of FIFRA, 7 U.S.C. § 136l(a)(l), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

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

19. Respondent owned or operated an “establishment” at 4476 Illinois Highway 89, McNabb, Illinois, as that term is defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, at all times relevant to this CAFO.

20. On January 16, 2014, Respondent submitted a Pesticide Report for Pesticide-Producing and Device-Producing Establishments (Report).

21. Respondent reported producing Atrazine, Round Up Power Max and Volley ATZ at its McNabb establishment during 2013.

22. Atrazine, Round Up Power Max and Volley ATZ are “pesticides” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. In its Report, Respondent provided the inactive establishment registration number of a company that Respondent acquired in 2007.

24. Respondent's production of a pesticide without having registered the McNabb establishment is a violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a).

Civil Penalty

25. 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 \$4,004. 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.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,004 civil penalty for the FIFRA violations by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state "Sun Ag, Inc." and the docket number of this CAFO.

27. 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 Boulevard
Chicago, Illinois 60604

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

Mark Koller (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

29. If Respondent does not pay timely the civil penalty, 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.

30. 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.

General Provisions

31. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: koller.mark@epa.gov (for Complainant), and sunag2@fairpoint.net (for Respondent). The parties waive their right to service by the methods

specified in 40 C.F.R. § 22.6.

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

33. 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.

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

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

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

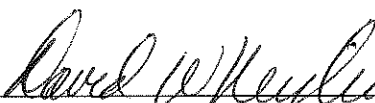
37. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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


Sun Ag, Inc., Respondent

April 29, 2015
Date


Dave Neisler
President
Sun Ag, Inc.

United States Environmental Protection Agency, Complainant

5/21/2015
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

Sun Ag, Inc.

Docket No.

FIFRA-05-2015-0038

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.

26 May 2015

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Sun Ag, Inc.
Docket Number: FIFRA-05-2015-0038

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on May 27, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Dave Neisler
Sun Ag, Inc.
P.O. Box 227
El Paso, Illinois 61738

Copy by E-mail to
Attorney for Complainant:

Mark Koller
koller.mark@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: May 27, 2015


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8500