

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 23 AM 8:13

Docket No. ~~FIFRA-08-2014-0005~~ REGION VIII
HEARING OFFICE

In the Matter of)
)
Midstate Agronomy)
43204 Highway 14)
Box 10)
De Smet, South Dakota 57231)
)
Est. No. 072147-SD-001,)
)
Respondent.)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Complainant, the U.S. Environmental Protection Agency, Region 8, and Respondent, Midstate Agronomy, by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement (Consent Agreement) is issued to Midstate Agronomy (Respondent) for a violation of section 12(a)(2)(L) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(2)(L).
2. The undersigned EPA officials issue this Consent Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA to bring an action for civil administrative penalties against Respondent, who has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. part 22. This Consent Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

B. ALLEGED VIOLATION

1. Respondent is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. § 136(s), and therefore subject to regulation.
2. Respondent is a "producer" as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
3. FIFRA section 7(c)(1), 7 U.S.C. § 136e(c)(1), requires all registered pesticide producers to file an annual report "of the types and amounts of pesticides and, if applicable, active ingredients used in

producing pesticides" Further, regulations promulgated pursuant to FIFRA section 7 require such annual report to be filed on or before March 1 for the preceding calendar year. 40 C.F.R. § 167.85(d).

4. The EPA reviewed its records and determined that Respondent did not submit the Pesticide Report for Pesticide-Producing and Device-Producing Establishments pursuant to section 7 of FIFRA, 7 U.S.C. § 136(e), for calendar year 2013, by March 1, 2014. Respondent is therefore in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
5. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, the EPA offers this Consent Agreement under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **\$800**.

C. CIVIL PENALTY

1. The Respondent signing below admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement, neither admits nor denies the specific factual allegations contained in this Consent Agreement, and consents to the assessment of the penalty as stated in section B.5., above.
2. Respondent consents and agrees to pay a civil penalty in the amount of eight hundred dollars (**\$800.00**) in the manner described below:
 - a. Payment shall be in a single payment of \$800, due no later than 10 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Daylight Time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in part "a," above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
Box 979077
St. Louis, Missouri 63197-9000

If sent by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Automated Clearinghouse (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
866-234-5681

On-line debit and credit card payment: There is now an on-line payment option available through the Department of Treasury. This payment option can be accessed from the information below:

www.pay.gov
Enter sfo 1.1 in the search field.
Open form and complete required fields.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to the following:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

- c. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the first late day, 10 days of interest will have accrued).
- d. A handling charge of \$15 shall be assessed on the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.

D. TERMS AND CONDITIONS

1. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the complaint or this Consent Agreement.
2. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
3. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
4. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.
5. Each party shall bear its own costs and attorneys fees in connection with this matter.
6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Consent Agreement pursuant to 40 C.F.R. section 22.15. By signing and returning this Consent Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

7. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall resolve Respondent's liability for Federal civil penalties for the specific violations alleged in this Consent Agreement.
8. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

In the Matter of Midstate Agronomy (De Smet, SD)
Docket No:
(Continued)

United States Environmental Protection Agency
Region 8
Office of Enforcement, Compliance
and Environmental Justice,

Complainant

Date: 9/22/14

By: *Cynthia J. Reynolds*
for Cynthia J. Reynolds, Acting Director
Technical Enforcement Program
UIC-FIFRA-OPA
Office of Enforcement, Compliance
and Environmental Justice

SEP 22 2014

Date: _____

By: *James H. Eppers*
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

In the Matter of Midstate Agronomy (De Smet, SD)
Docket No:
(Continued)

Midstate Agronomy,
Respondent

Date: 9-17-14

By: Winfred Voem

Name, Title: Winfred Voem Manager.