



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

MAY 24 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7667 8049

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

Consent Agreement and Final Order
Nufarm Americas Inc. Docket No. FIFRA-05-2012-0010

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 May 24, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$22,500 is to be paid in the manner described in paragraphs 48 and 49. Please be certain that the number **BD 2751245P009** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 22, 2012 (within 30 calendar days of the filing date)

Thank you for your cooperation in resolving this matter.

Sincerely,

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-05-2012-0010
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
MAY 24 2012

Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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(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.

15. 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).

16. 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.

17. 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.

18. 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

19. 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).

20. On or about April 3, 2012, World Commerce Services, Inc., located at 2551 Allan Drive, Elk Grove Village, Illinois 60007 was the broker/agent for Respondent for

import shipments under entry numbers BEA-9503402-7, BEA-9503465-4 and BEA-9503858-0.

21. On or about April 3, 2012 and April 10, 2012, Respondent submitted two NOAs to EPA for import shipments of the product “Bromoxynil Mixed Ester,” EPA Registration Number (EPA Reg. No.) 264-533, from the United Kingdom under entry numbers BEA-9503402-7 and BEA-9503465-4.

22. On or about April 13, 2012, Respondent submitted a NOA to EPA for an import shipment of the product “Bromoxynil Octanoate,” EPA Reg. No. 264-442, from the United Kingdom under entry number BEA-9503858-0.

23. The importer of record listed on the three NOAs for the shipments under entry numbers BEA-9503402-7, BEA-9503465-4 and BEA-9503858-0 was Nufarm Americas Inc.

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

25. “Bromoxynil Mixed Ester,” and “Bromoxynil Octanoate” are registered pesticides, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Bromoxynil Mixed Ester – EPA Reg. No. 264-533

26. On or about April 12, 2012 and April 20, 2012, shipments of “Bromoxynil Mixed Ester” entered into the United States at the Chicago, Illinois port of entry.

27. On or about April 12, 2012 and April 20, 2012, Respondent distributed or sold the pesticide product “Bromoxynil Mixed Ester,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

28. The labels on the shipments of “Bromoxynil Mixed Ester” that entered into the

United States on or about April 12, 2012 and April 20, 2012 were false or misleading because some information contained on the affixed labels conflicted with the EPA accepted label dated August 10, 2010.

29. In particular, each drum of “Bromoxynil Mixed Ester” had an international label affixed to it that included the signal word “danger.”

30. The EPA accepted label dated August 10, 2010, requires the product label to include the signal word “warning.”

31. The international label also included the following language: “Toxic if swallowed.”

32. The August 10, 2010, accepted label requires the product label to include the following language: “May be fatal if swallowed.”

Bromoxynil Octanoate – EPA Reg. No. 264-442

33. On or about April 28, 2012, a shipment of “Bromoxynil Octanoate” entered into the United States at the Chicago, Illinois port of entry.

34. On or about April 28, 2012, Respondent distributed or sold the pesticide product “Bromoxynil Octanoate,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

35. Each drum of “Bromoxynil Octanoate” had an international label affixed to it that included the signal word “danger.”

36. The labels on the shipments of “Bromoxynil Octanoate” that entered into the United States on or about April 28, 2012 were false or misleading because some information contained on the affixed label conflicted with the EPA accepted label dated October 6, 2010.

37. In particular, the EPA accepted label dated October 6, 2010, requires the product label to include the signal word “warning.”

38. The international label also included the following language: “Toxic if swallowed.”

39. The October 6, 2010, accepted label requires the product label to include the following language: “May be fatal if swallowed.”

Specific Allegations

Counts 1 and 2

40. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

41. On or about April 12, 2012 and April 20, 2012, Respondent distributed or sold the misbranded pesticide product “Bromoxynil Mixed Ester.”

42. Respondent’s distribution or sale of the misbranded pesticide “Bromoxynil Mixed Ester.” as described in paragraph 41, constitutes two unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and 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).

Count 3

43. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

44. On or about April 28, 2012, Respondent distributed or sold the misbranded pesticide product “Bromoxynil Octanoate.”

45. Respondent’s distribution or sale of “Bromoxynil Octanoate,” as described in paragraph 44, constitutes one unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and 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

46. 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.

47. 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 \$22,500.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$22,500 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.," the docket number of this CAFO and the billing document (BD) number.

49. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD 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

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

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

51. 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. § 136l(a)(5).

52. 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.

53. 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

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

55. 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.

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

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

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

59. 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.


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

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

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

Nufarm Americas Inc., Respondent

5/4/12
Date




Tom Lyons
Executive Vice President
Nufarm Americas Inc.

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

United States Environmental Protection Agency, Complainant

5/17/12
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Nufarm Americas Inc.
Docket No. FIFRA-05-2012-0010

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.

5-23-12
Date



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

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in the resolution of the civil administrative action involving Nufarm Americas Inc., was filed on May 24, 2012, 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 7667 8049, 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:

John Breslin, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, 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

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