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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
AG Specialties, LLC) Docket No. FIFRA 10-2012-0169
)
Tigard, Oregon) CONSENT AGREEMENT
) AND FINAL ORDER
) Respondent.)
)
)
_____)

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondent is AG Specialties, LLC (“Respondent”).

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

2.3. A concise statement of the factual basis for alleging violations of FIFRA, together with specific references to the provisions of FIFRA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Section 12(a)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person to distribute or sell any pesticide which is misbranded.

3.2. Section 2(q)(1)(E) of FIFRA states that a pesticide is misbranded if, “any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”

3.3. 40 C.F.R. § 156.10(4)(i) *Placement of Label* states, “The label shall appear on or be securely attached to the immediate container of the pesticide product. For purposes of this section, and the misbranding provisions of the Act, ‘securely attached’ shall mean that a label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. If the immediate container is enclosed within a wrapper or outside container through which the label cannot be clearly read, the label must also be securely attached to such outside wrapper or container, if it is a part of the package as customarily distributed or sold.”

3.4. AG Specialties, LLC (AG Specialties) owns and operates a business facility in Tigard, Oregon, that distributes AG Chemicals and other products. AG Specialties is a “person” under FIFRA Section 2(s), 7 U.S.C. § 136(s), that distributes or sells pesticides under FIFRA Section 2(gg), 7 U.S.C. §136(gg).

3.5. StrikeOut Extra is an EPA registered pesticide, EPA. Reg. No. 81142-3. The required label for StrikeOut Extra includes a booklet which contains the entire Directions for Use sections of the label.

3.6. On at least two occasions in November 2011 and February 2012, AG Specialties imported the pesticide StrikeOut Extra into the United States in pesticide containers that were enclosed in a tote. The booklet portion of StrikeOut Extra’s label was not securely attached to the containers or the tote. Some booklets slipped behind a large metal placard on the tote and were inaccessible. These pesticides constituted “misbranded” pesticides under FIFRA Section 2(q)(1)(E), 7 U.S.C. §136(q)(1)(E).

3.7. AG Specialties sold and distributed the StrikeOut Extra referenced in paragraph 3.6 above without reattaching the booklets to the container or the tote. This sale and distribution occurred on at least two occasions between November 2011 and February 2012.

3.8 The sale or distribution of the containers of StrikeOut Extra without the required booklets, referenced in paragraph 3.7, constitutes the sale or distribution of a misbranded pesticide in violation of FIFRA Section 12(a)(1)(E), 7 U.S.C. §136j(a)(1)(E). Under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any distributor who violates any provision of this Act may be assessed a civil penalty.

IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.
- 4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.
- 4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.
- 4.5. Except as provided in Paragraph 4.11, below, each party shall bear its own costs in bringing or defending this action.
- 4.6. Pursuant to Section 136l of FIFRA, taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, Respondent's cooperation with EPA, the duration of the violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is \$6,320.
- 4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.9. Respondent shall serve a photocopy of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addressees:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Chad Schulze
Pesticides and Toxics Unit
U.S. Environmental Protection Agency, Region 10
Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

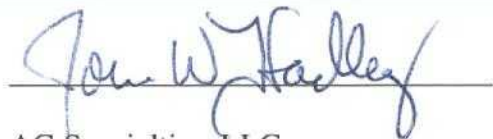
4.12. Except as provided in Paragraph 4.15, below, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statute and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.14. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original.

STIPULATED AND AGREED:

FOR AG SPECIALTIES, LLC



AG Specialties, LLC

Dated: 8-21-12

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10



Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 8/28/2012

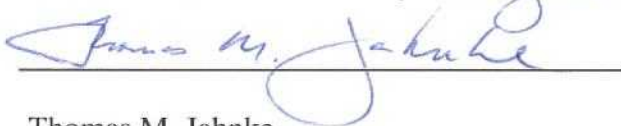
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 28th day of August, 2012



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: AG Specialties, LLC, Docket No. FIFRA 10-2012-0169**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

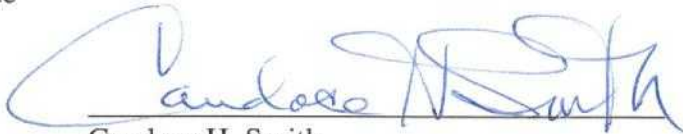
Mary Mercer St. Peter
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Larry Matthews
Chemical Division Manager
AG Specialties, LLC
12220 Southwest Grant Avenue
Tigard, Oregon 97223

Dated

29th Aug 2012



Candace H. Smith
Regional Hearing Clerk
EPA Region 10

