



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

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JUL - 3 2012

July 3, 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 8100

Mr. Nick Dadant
Dadant & Sons, Inc.
51 South 2nd Street
Hamilton, Illinois 62341

Consent Agreement and Final Order, In the Matter of
Dadant & Sons, Inc., Docket No. FIFRA-05-2012-0016

Dear Mr. Dadant:

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 July 3, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 45 thru 47. Please be certain that the number **BD 2751245P015** and the docket numbers are written on both the transmittal letter and on the check. Payment is due by August 2, 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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

| | | | |
|--------------------------------|---|--|---------------------------|
| In the Matter of: |) | Docket No. | FIFRA-05-2012-0016 |
| |) | | |
| Dadant & Sons, Inc. |) | Proceeding to Assess a Civil Penalty | |
| Hamilton, Illinois |) | Under Section 14(a) of the Federal | |
| |) | Insecticide, Fungicide, and Rodenticide | |
| |) | Act, 7 U.S.C. § 136l(a) | |
| Respondent. |) | | |
| _____ |) | | |

Consent Agreement and Final Order

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 Dadant & Sons, Inc., a corporation doing business in 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 Consent Agreement and Final Order (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 rights 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 rights to appeal this CAFO.

9. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136-136y.

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. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 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 (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).)

13. 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.

14. 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.

15. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment.

16. 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.

17. 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. § 136 w(c)(1).

18. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in pertinent part, defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

19. 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.

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

Factual Allegations and Alleged Violation

21. Respondent is, and was at all times relevant to this CAFO, a Corporation and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. On or about March 28, 2012, BDG International Inc. (BDG), located at 840 Tollgate Road, Elgin, Illinois 60123, was a broker/agent for Respondent.

23. On or about March 28, 2012, BDG submitted two Notices of Arrivals to EPA for import shipments of the pesticide “Apiguard,” EPA Registration Number (EPA Reg. No.) 79671-1 from the United Kingdom under entry number WFB-0022247-0.

24. Each Notice of Arrival identified Dadant & Sons Inc., located at 51 South 2nd Street, Hamilton, Illinois 62341, as the importer of record for the shipments of “Apiguard.”

25. Respondent, as the importer of record of “Apiguard,” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

26. “Apiguard” is a “pesticide,” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. 40 C.F.R. § 156.10(a)(1) states in part, that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in Part 156. The contents of the label must show clearly and prominently the following: (i) The name, brand or trademark under which the product is sold; (ii) The name and address of the producer, registrant, or person for whom produced; (iii) The net contents; (iv) The product registration number; (v) The producing establishment number; (vi) An ingredient statement; (vii) Hazard and precautionary

statements and environmental hazards; (viii) The directions for use; and (ix) The use classification.

28. 40 C.F.R. § 156.10(a)(4)(i) states in part, that 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 FIFRA, “securely attached” shall mean that a label can reasonably be expected to remain affixed during the foreseeable conditions and period of use.

29. 40 C.F.R. § 156.10(a)(6)(d)(3) states in part, that if the pesticide is solid or semi-solid, viscous or pressurized, or is a mixture of liquid and solid, the net content statement shall be in terms of weight expressed as avoirdupois pounds and ounces.

30. 40 C.F.R. § 156.10(a)(6)(c) states in part, that if the registrant’s name appears on the label and the registrant is not the producer, or if the name of the person for whom the pesticide was produced appears on the label, it must be qualified by appropriate wording.

31. Labels securely attached to tubs and boxes of “Apiguard” that entered into the United States on or about March 30, 2012 did not contain certain precautionary statements, environmental hazard statements, physical or chemical hazard statements, and did not have the net contents expressed in avoirdupois pounds and/or ounces.

32. On February 14, 2011, the Office of Chemical Safety and Pollution Prevention, Biochemical Pesticides Branch Biopesticides and Pollution Prevention Division accepted a label amendment containing the following statements which were then required to be found on labels securely attached to tubs and boxes of “Apiguard:”

1) “USER SAFETY RECOMMENDATIONS

Users Should:

- Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet.
- Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves

before removing. As soon as possible, wash thoroughly and change into clean clothing. Follow the manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry."

2) "ENVIRONMENTAL HAZARDS

For terrestrial uses. This product is toxic to aquatic invertebrates. Do not apply directly to water, areas where surface water is present or to intertidal areas below the mean high water mark. Drift or runoff from treated areas may be hazardous to aquatic organisms in neighboring areas. Do not contaminate water when disposing of equipment washwaters or rinsate."

3) "PHYSICAL OR CHEMICAL HAZARDS

Do not use, pour, spill or store near heat or open flame. Do not store above 86°F."

33. On February 14, 2011, the Office of Chemical Safety and Pollution Prevention, Biochemical Pesticides Branch Biopesticides and Pollution Prevention Division accepted a label amendment containing the following statements which were then required to be found on labels securely attached to boxes of "Apiguard:"

1) "PERSONAL PROTECTIVE EQUIPMENT (PPE)

Applicators and handlers must wear:
long-sleeved shirt and long pants
socks and shoes
chemical resistant gloves
protective eyewear (goggles, face shield, or safety glasses)"

2) "Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI) of 48 hours."

34. Labels securely attached to tubs and boxes of "Apiguard" identified the manufacturer as "Vita (Europe) Limited c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603-5126."

35. "Vita (Europe) Limited c/o Landis International" did not manufacture the tubs or boxes of "Apiguard."

36. On or about March 30, 2012, Respondent "distributed or sold" the pesticide product "Apiguard," as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 36 of this CAFO.

38. On or about March 30, 2012, Respondent distributed or sold the misbranded pesticide "Apiguard," EPA Reg. No. 79671-1 in tubs under entry number WFB-0022247-0 with a label bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading and that did not contain a warning or caution statement which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), was adequate to protect health and the environment.

39. Respondent's distribution or sale of the misbranded pesticide identified in paragraph 38, above, constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 2

40. Complainant incorporates by reference the allegations contained in paragraphs 1 through 36 of this CAFO.

41. On or about March 30, 2012, Respondent distributed or sold the misbranded pesticide "Apiguard," EPA Reg. No. 79671-1 in boxes (containing 10 aluminum trays) under entry number WFB-0022247-0 with a label bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading and that did not contain a warning or caution statement which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), was adequate to protect health and the environment.

42. Respondent's distribution or sale of the misbranded pesticide identified in paragraph 41, above, constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

43. Section 14(a)(4) of FIFRA, 7 U.S.C. §136i(4), requires the Administrator to consider the appropriateness of a penalty to 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 determining the amount of the penalty for violations of FIFRA.

44. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated a civil penalty against Respondent in the amount of \$15,000. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

45. Within 30 days of the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending by first class mail 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

46. The check must note "In the Matter of Dadant & Sons, Inc.," the docket number of this CAFO, and the billing document (BD) number.

47. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the 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

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

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

49. 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.

50. 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.

51. Respondent will re-label all violative pesticide products identified above, as required by FIFRA before the product can be further distributed or sold.

52. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the

Compliance Plan is to prevent or eliminate all future violations of Sections 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

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

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

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

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

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

58. 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.


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

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

**In the Matter of:
Dadant & Sons, Inc.**

Dadant & Sons, Inc., Respondent

6/12/2012
Date




Nick Dadant
Vice-President
Dadant & Sons, Inc.

**In the Matter of:
Dadant & Sons, Inc.**

United States Environmental Protection Agency, Complainant

6/29/2012
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

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**In the Matter of:
Dadant & Sons, Inc.
Docket No.**

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.

6-29-12

Date

S. Hedman

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY

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 Dadant & Sons, Inc., was filed on July 3, 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 8100, a copy of the original to the Respondent:

Mr. Nick Dadant
Dadant & Sons, Inc.
51 South 2nd Street
Hamilton, Illinois 62341

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mony Chabria, 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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Docket No. WFIFRA-05-2012-0016