

FILED

2007 JUL 20 AM 7:14

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the matter of:

Reed Inc.
d/b/a Perfect Expressions
Respondent.

) Docket No. **FIFRA-09-2007-0015**
) **CONSENT AGREEMENT**
) and
) **FINAL ORDER PURSUANT TO**
) **SECTIONS 22.13 AND 22.18**

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent Reed Inc. doing business as Perfect Expressions (hereafter "Respondent") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

B. AUTHORITY AND PARTIES

2. Respondent is a Nevada corporation. Respondent owns, operates, or otherwise controls a store located at 1500 Great Basin Blvd, Ely, Nevada (the "Great Basin store").

3. Respondent is a retailer, and a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

4. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136 l(a), is vested in the Administrator of EPA ("Administrator"). By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region

IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number 1255.08 dated June 9, 2005, the Regional Administrator of EPA Region IX re delegated this authority to the Director of the Communities and Ecosystems Division. The Director of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

5. Section 2(gg), of FIFRA, 7 U.S.C. § 136(gg), states that "to distribute or sell" means 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.

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell to any person any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.

C. COMPLAINANT'S ALLEGATIONS

7. Each of the following is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u): Green Light Dursban Granules (EPA Reg. # 869-158), with the active ingredient of 0.05% chlorpyrifos; Ortho Dursban Lawn Insect Spray (EPA Reg. # 239-2633), with the active ingredient of 4.38% chlorpyrifos; and Ortho Dursban (EPA Reg. # 239-2570) with the active ingredient of 1% chlorpyrifos. Effective January 25, 2001, EPA issued a Cancellation Order that cancelled the registration of Green Light Dursban Granules (EPA Reg. # 869-158). The retail sale of Green Light Dursban Granules (EPA Reg. # 869-158) was prohibited after December 31, 2001. See 66 Fed. Reg. 7753. Effective January 25, 2002, EPA issued a Cancellation Order that

cancelled the registration of Ortho Dursban Lawn Insect Spray (EPA Reg. # 239-2633) and Ortho Dursban (EPA Reg. # 239-2570). The retail sale of Ortho Dursban Lawn Insect Spray (EPA Reg. # 239-2633) and Ortho Dursban (EPA Reg. # 239-2570) were prohibited after January 25, 2002. See 67 Fed. Reg. 3698.

8. Chlorpyrifos can cause cholinesterase inhibition in humans; that is, it can overstimulate the nervous system causing nausea, dizziness, confusion, and at very high exposures (e.g., accidents or major spills), respiratory paralysis and death. See 66 Fed. Reg. 7753 (January 25, 2001). Cancellation of chlorpyrifos products used in residential settings was designed to remove exposure risk, especially to children. Id.

9. On or about November 2, 2006, Respondent distributed or sold Green Light Dursban Granules (EPA Reg. # 869-158), Ortho Dursban Lawn Insect Spray (EPA Reg. # 239-2633) and Ortho Dursban (EPA Reg. # 239-2570) at the Great Basin store, as the term "to distribute or sell" is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg). Specifically, Respondent offered for sale three bags of Green Light Dursban Granules (EPA Reg. # 869-158) and three containers of Ortho Dursban Lawn Insect Spray (EPA Reg. # 239-2633) and was holding for sale 51 bags of Ortho Dursban and one bag of Green Light Dursban.

10. Respondent violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling pesticides whose registrations had been canceled.

D. RESPONDENT'S ADMISSIONS

11. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this

CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

12. Respondent consents to the assessment of a penalty in the amount of **FOURTEEN THOUSAND DOLLARS (\$ 14,000)** as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO.

13. The civil penalty shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," and sent by certified mail, return receipt requested, to:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The check should note the case title and docket number, and a transmittal letter, indicating Respondent's name, and this case docket number, must accompany the payment. When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
- b) Julie Jordan
Pesticides Program
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

14. In the event that Respondent fails to pay the civil administrative penalty assessed

above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of **ONE HUNDRED DOLLARS (\$100)** for each day that payment is late. Upon Complainant's written demand, payable shall immediately become due and payable.

15. Respondent's failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

F. CERTIFICATION OF COMPLIANCE

16. In executing this CAFO, Respondent certifies that (1) it is no longer distributing or selling Green Light Dursban Granules (EPA Reg. # 869-158), Ortho Dursban (EPA Reg. # 239-2570), or Ortho Dursban Lawn Insect Spray (EPA Reg. # 239-2633), or any other cancelled pesticide for which retail sale or distribution is prohibited, and (2) it has complied with all other FIFRA requirements at all facilities under its control.

17. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act and other Federal, state or local laws or statutes.

18. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

19. Except as set forth in Paragraph 15 above, each party shall bear its own costs, fees, and disbursements in this action.

20. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

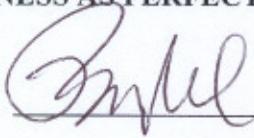
21. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

22. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

23. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind

that party to it.

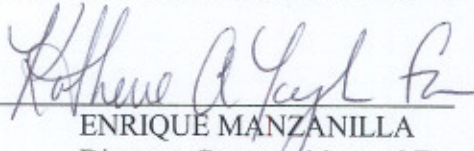
REED INC. DOING BUSINESS AS PERFECT EXPRESSIONS:

Date: 6/2/07 By: 

Name: Bryan Reel

Title: President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

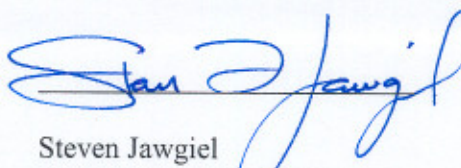
Date: July 19, 2007 By: 

ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **FOURTEEN THOUSAND DOLLARS (\$ 14,000)**, in accordance with the terms set forth in the Consent Agreement.

Date: 07/19/07



Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2007-0015, was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Mr. Bryan Reed
Reed, Inc. (dba Perfect Expressions)
802 Avenue E
Ely, NV 89301-2504

Certified Return Receipt No. 7000 1670 0009 3120 9397

Date: 7/20/2007

By: *Danielle E. Carr*

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143