

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: Jennifer Abramson 6/21/11
Name of Contact person *Date*

in the Office of Regional Counsel at 2158142066
Office *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Company making payment: ALLACIS HDL LLC

The Total Dollar Amount of Receivable: \$21,450
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number FFCA-CB-2011-0201

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact *Date*

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- | | |
|--|------------------------------|
| 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005 | 2. Originating Office (ORC) |
| | 3. Designated Program Office |

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | |

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF

Alcavis HDC, LLC
 8322 Helgerman Court
 Gaithersburg, MD 20877

Respondent

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DOCKET NO: FIFRA-03-2011-0201

CONSENT AGREEMENT

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III (“EPA” or “Complainant”) and by Alcavis HDC, LLC (“Respondent”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under FIFRA arising from the violations of FIFRA alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.

4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear his own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

EPA's Findings of Fact and Conclusions of Law

8. In accordance with the Consolidated Rules of Practice at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State 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 unless otherwise authorized by EPA under FIFRA.
10. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.
11. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
12. Respondent is a Maryland company with a principle place of business located at 8322 Helgerman Court in Gaithersburg, Maryland.
13. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
14. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide", includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
15. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria and "other microorganisms."
16. The regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who

distributes or sells the substance “claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide.” 40 C.F.R. § 152.15(a)(1). In addition, a substance is considered to be a pesticide requiring registration if the person who distributes or sells the substance “has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.” 40 C.F.R. § 152.15(c).

17. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), 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.

18. Sections 2(gg) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136(gg) and 136j(a)(1)(A), make it unlawful for any person to “offer for sale” any pesticide if it is unregistered. EPA’s regulations at 40 C.F.R. § 168.22 clarify that such prohibition extends to advertisements in any advertising medium to which pesticide users or the general public have access.

19. During the time period relevant to the violations alleged herein, Respondent’s website included language which claimed, stated or implied that its Bleach Wipe 1:100 dilution product can or should be used as a disinfectant.

20. During the time period relevant to the violations alleged herein, Respondent’s Bleach Wipe 1:100 dilution product was a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

21. Respondent’s Bleach Wipe 1:100 dilution product is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, nor has ever been so registered.

22. During the time period from April 30, 2009 through September 21, 2010, Respondent offered its Bleach Wipe 1:100 dilution product for sale on its website on at least six (6) separate occasions to various individuals, partnerships, associations, corporations and/or organized groups of persons.

23. By distributing or selling the unregistered Bleach Wipe 1:100 dilution product, Respondent violated Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

24. Each occasion that Respondent distributed or sold its unregistered Bleach Wipe 1:100 dilution product during the time period between April 30, 2009 and September 21, 2010 constitutes a separate unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

25. Respondent is a “wholesaler, dealer, retailer or other distributor” subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

Civil Penalty

26. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of TWENTY ONE THOUSAND FOUR HUNDRED AND FIFTY DOLLARS (\$21,450), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

27. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act* and 40 C.F.R. Part 19.

28. Payment of the civil penalty amount required under the terms of Paragraph 26, above, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

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

Contact: Craig Steffen 513-487-2091
Eric Volck 513-487-2105

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL

St. Louis, MO 63101
314-418-1028

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: John Schmid
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2011-0201. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Christine Convery (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

Certifications

30. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 et seq.

Other Applicable Laws

31. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

32. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated there under, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

33. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

34. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

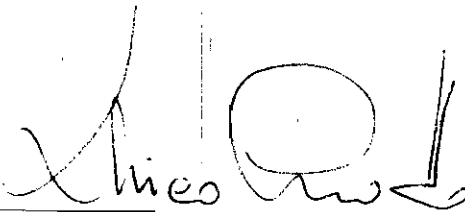
35. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

36. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.


For Respondent:

6/10/2011
Date


Ludovico Giavotto, President
Alcavis HDC, LLC

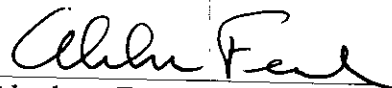
For Complainant:

6/23/11
Date


Christine Convery
U.S. EPA, Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

6/30/11
Date


Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF

Alcavis HDC, LLC
8322 Helgerman Court
Gaithersburg, MD 20877

Respondent

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DOCKET NO: FIFRA-03-2011-0201

FINAL ORDER

FINAL ORDER

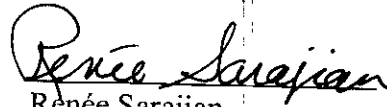
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Alcavis HDC, LLC ("Respondent") have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136l(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Respondent is hereby ordered to pay a civil penalty of TWENTY ONE

THOUSAND FOUR HUNDRED AND FIFTY DOLLARS (\$21,450), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 6/30/11



Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF:

Alcavis HDC, LLC
8322 Helgerman Court
Gaithersburg, MD 20877

Respondent.

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) DOCKET NO: FIFRA-03-2011-0201
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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

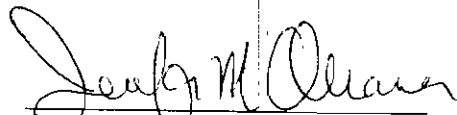
Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

Stanley H. Abramson, Esq.
Arent Fox LLP/Attorneys at Law
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

JUN 30 2011

Date



Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Docket No.: FIFRA-03-2011-0201

FROM: Marcia E. Mulkey
Regional Counsel (3RC00)

Abraham Ferdas, Director
Land and Chemicals Division (3LC00)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") have been negotiated with Alcavis HDC, LLC ("Respondent") in settlement of actionable Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") violations. The compliance issues addressed in the CAFO involve distributing or selling unregistered pesticides, which constitute unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

The litigation team calculated a civil penalty of twenty one thousand four hundred and fifty dollars (\$21,450) in accordance with the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), i.e., the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violations. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *Enforcement Response Policy for Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA)*.

We recommend that you sign the attached Final Order assessing twenty one thousand four hundred and fifty dollars (\$21,450) in civil penalties against Respondent. After you execute the Final Order, please return the documents to Jennifer M. Abramson of the Land and Chemicals Division for further processing.

Attachments

cc: Stanley H. Abramson