

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

Subject: Federal Insecticide, Fungicide, and Rodenticide Act  
Evolving Solutions, Inc.  
Docket No. FIFRA-03-2010-0365  
Consent Agreement and Final Order

From: Marcia Mulkey  
Regional Counsel (3RC00)

Abraham Ferdas, Director *Done for AF*  
Land and Chemicals Division (3LC00)

To: Renée Sarajian  
Regional Judicial Officer (3RC00)

The attached Consent Agreement has been negotiated pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, with specific reference to 40 C.F.R. § 22.18(b)(2), in settlement of an alleged violation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 et seq., by Evolving Solutions, Inc.

The terms of the settlement include a civil penalty of zero dollars (\$0), calculated in accordance with the statutory factors of FIFRA Section 14(a), EPA's *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements* ("ERP"), updated May 2010, and 40 C.F.R. Part 19.

We concur with the terms of the attached Consent Agreement and we recommend that you sign the Final Order, in accordance with the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).

cc: Evolving Solutions, Inc.

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

IN RE:	)	DOCKET NO. FIFRA-03-2010-0365
	)	
Evolving Solutions, Inc.	)	CONSENT AGREEMENT
103 Greenfield Drive	)	
Middlebury, IN 46540	)	NOTABLY LATE OR NON REPORTING
	)	
Respondent	)	

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 Evolving Solutions, Inc. ("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 the Respondent under FIFRA arising from the violation 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 its own costs and attorney's fees.

EPA's Findings of Fact and Conclusions of Law

7. In accordance with the Consolidated Rules at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
- a. Respondent is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to civil penalties pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1).
  - b. At all times relevant to the violation alleged herein, Respondent operated a registered pesticide producing "establishment" as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), located at 2416 Lomara Drive, Pottstown, Pennsylvania. This establishment is registered with EPA under Establishment Number 083825-PA-001.
  - c. At all times relevant to the violation alleged herein, Respondent was a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.
  - d. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), provides, *inter alia*, that a producer operating a registered establishment is required to submit annually a pesticide production report to EPA stating the types and amounts of pesticides: (A) which the producer is currently producing; (B) which the producer has produced during the past year; and (C) which the producer has sold or distributed during the past year.
  - e. 40 C.F.R. § 167.85(d) requires that a producer operating a registered establishment submit its pesticide production report (EPA Form 3540-16) annually for the preceding calendar year on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.
  - f. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any person who is a producer to violate any provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
  - g. Respondent was required to submit to EPA by March 1, 2010, a pesticide production report (EPA Form 3540-16) concerning its production, sales, and distribution of pesticides during calendar year 2009.
  - h. Respondent failed to submit its pesticide production report for calendar year 2009 on or before March 1, 2010.
  - i. Respondent's failure to timely submit its pesticide production report for calendar year 2009 on or before March 1, 2010 constitutes a violation of Section 7 of

FIFRA, 7 U.S.C. § 136e, and therefore, an unlawful act under Section 12 (a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

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

k. Under EPA’s *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, updated May 2010, EPA may reduce a civil penalty to zero when a producer who has failed to submit a timely production report under Section 7(c)(1) of FIFRA reports no pesticide production and requests termination of the establishment’s registration number within 20 days after receiving written notification of the violation by EPA.

l. In correspondence provided within 20 days of receiving EPA’s notice of the violation alleged herein, Respondent reported that it produced no pesticides at the establishment located at 2416 Lomara Drive, Pottstown, Pennsylvania in calendar year 2009, and requested that the establishment registration number EPA Est. No.: 083825-PA-001 be terminated.

Settlement

8. In settlement of the above-captioned action, the parties hereto have agreed to the assessment of a civil penalty of zero dollars (\$0.00).
9. 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. § 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 violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, updated May 2010, and 40 C.F.R. Part 19.

Certification

- 10 Respondent certifies by its signature herein that it is currently in compliance with all applicable requirements of FIFRA § 7, 7 U.S.C. § 136e.

Other Applicable Laws

- 11 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

12. This CAFO resolves only EPA’s civil claims for penalties for the specific violation 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 thereunder, 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

16. 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. § 136/(a), for the specific violation 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

17. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, 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

18. 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.

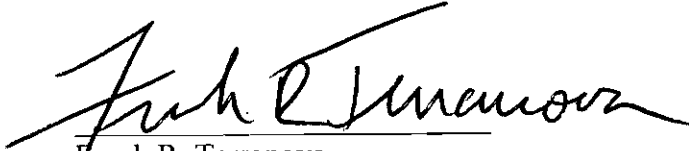
Entire Agreement

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

For Respondent:

9/13/2010

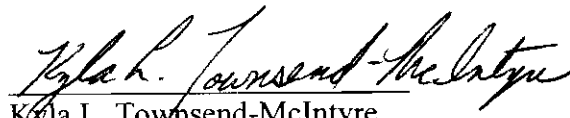
Date

  
Frank R. Terranova  
President

For Complainant:

09/17/2010


Date

  
Kyla L. Townsend-McIntyre  
Pesticides and Asbestos Programs Branch

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

9/22/2010

Date

  
Abraham Ferdas, Director  
Land and Chemicals Division

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1650 Arch Street  
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IN RE:	)	DOCKET NO. FIFRA-03-2010-0365
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Evolving Solutions, Inc.	)	FINAL ORDER
103 Greenfield Drive	)	
Middlebury, IN 46540	)	
	)	
Respondent	)	

FINAL ORDER

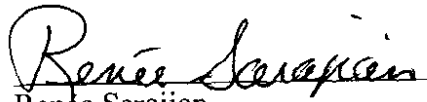
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Evolving Solutions, Inc. have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice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

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, *as amended*, 7 U.S.C. § 136l(a) ("FIFRA"), and the Consolidated Rules of Practice, and having determined based on the parties' representation 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), IT IS

HEREBY ORDERED that a \$0.00 penalty be assessed against Respondent.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

9/28/10  
Date



Renee Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III



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1650 Arch Street  
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IN RE:

Evolving Solutions, Inc.  
103 Greenfield Drive  
Middlebury, IN 46540

DOCKET NO. FIFRA-03-2010-0365

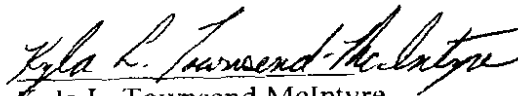
**Respondent**

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail to the following person(s):

Frank R. Terranova, President  
Evolving Solutions, Inc.  
103 Greenfield Drive  
Middlebury, IN 46540

09-28-2010  
Date



Kyla L. Townsend-McIntyre  
Enforcement Officer  
U.S. Environmental Protection Agency, Region III