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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2017-0097
SUTERRA LLC,)	
)	CONSENT AGREEMENT
)	
Bend, Oregon,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. 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 issues, and Suterra LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

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

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. 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.”

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

3.3. The term “active ingredient” is defined at Section 2(a) of FIFRA, 7 U.S.C. § 136(a), to mean “an ingredient which will prevent, destroy, repel, or mitigate any pest.”

3.4. The regulation at 40 C.F.R. § 152.15 states that “a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide; . . . (b) the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose (by itself or in combination with any other substances), [or] use for manufacture of a pesticide; . . . or (c) 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.”

3.5. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” This section also defines “labeling” as “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device”

3.6. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines “to distribute or sell” as “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.”

3.7. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.8. According to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if “its label does not bear the registration number assigned under [Section 7 of FIFRA] to each establishment in which it was produced.

3.9. In accordance with Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), “a pesticide is misbranded if the “labeling accompanying it does not contain: directions for use and use classifications which are all necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under [Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)], are adequate to protect health and the environment.”

3.10. In accordance with Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), 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], is adequate to protect health and the environment.”

3.11. In accordance with Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), a pesticide is misbranded if “the label does not bear an ingredient statement on that part of the immediate container . . . which is presented or displayed under customary conditions of purchase”

3.12. In accordance with Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii), a pesticide is misbranded if “there is not affixed to its container . . . a label bearing . . . the net weight or measure of the content”

3.13. In accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”

3.14. Respondent is a corporation located and incorporated in the State of Oregon. Therefore, Respondent is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.15. The product Z-9-hexadecenal pheromone (“Z-9”) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.16. The product Z-11-hexadecenal pheromone (“Z-11”) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.17. The product Z-13-octadecenal pheromone (“Z-13”) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.18. On at least November 30, 2016, the labeling accompanying the packages of Z-9, Z-11, and Z-13, respectively, failed to (1) bear the registration number assigned under [Section 7 of FIFRA] to each establishment in which it was produced; (2) contain directions for use and use classifications which are all necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under [Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)], are adequate to protect health and the environment; (3) 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], is adequate to protect health and the environment; (4) bear an ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase; or (5) bear the net weight or measure of the content.

3.19. Therefore, on at least November 30, 2016 the pesticide products Z-9, Z-11, and Z-13, respectively, were misbranded as that term is defined by Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

3.20. On or around November 30, 2016, Respondent distributed or sold to a person the misbranded Z-9 at least once, in violation of FIFRA.

3.21. On or around November 30, 2016, Respondent distributed or sold to a person the misbranded Z-11 at least once, in violation of FIFRA.

3.22. On or around November 30, 2016, Respondent distributed or sold to a person the misbranded Z-13 at least once, in violation of FIFRA.

3.23. Subsequent to the November 30, 2016, distributions, Respondent received the pesticide products Z-9, Z-11, and Z-13 into its establishment in Bend, Oregon and relabeled the products in accordance with the requirements of 40 C.F.R. Part 156.

3.24. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$19,057 for each offense.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violations. After

considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$9,900 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.teresa@epa.gov

Gianpaolo Boccato
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Boccato.gianpaolo@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil

action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, 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 contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

7/14/17

FOR RESPONDENT:

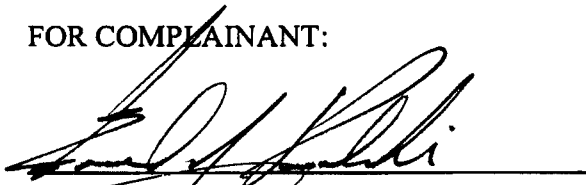


DEAN KOHNSBY, DIRECTOR OF FINANCE
Print Name Position
Suterra LLC

DATED:

7/20/2017

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2017-0097
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SUTERRA LLC,)	FINAL ORDER
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Bend, Oregon,)	
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Respondent.)	

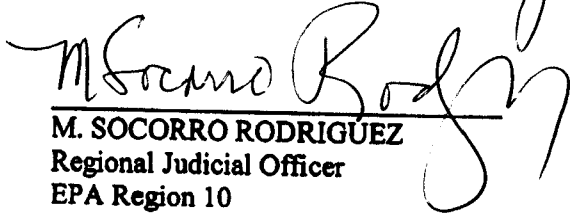
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 25th day of July, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Suterra LLC, Docket No.: FIFRA-10-2017-0097**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

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

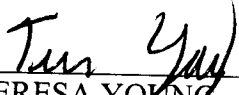
Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

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

Dean Hornsby
Suterra LLC
20950 NE Talus Place
Bend, Oregon 97701

Ruth Trager
Suterra LLC
20950 NE Talus Place
Bend, Oregon 97701

DATED this 27 day of July, 2017.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10