

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 AUG 29 A 8:10  
REGIONAL HEARING  
CLERK

In the Matter of

Caribbean Corp.

Respondent.

Proceeding Under the Federal  
Insecticide, Fungicide and  
Rodenticide Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2013-5108

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (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 (hereinafter "CROP"). On March 26, 2012, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing ("the Complaint"), FIFRA-02-2013-5108, to Respondent. The Complaint alleged that Respondent committed three violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), involving the sale or distribution in 2012 of the following unregistered pesticides: "Fabuloso Liquid Cleaner" and "Clorox Liquid Bleach" antibacterial products. Additionally, the Complaint

alleged that the Respondent committed three violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E), involving the sale or distribution of each of the above products as misbranded pesticides. Finally, the Complaint alleged four violations of importation of pesticide products in 2012 without filing of a Notice of Arrival Form with EPA.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement/Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.18(b)(2) and (3) of the CROP, is an appropriate means of resolving this matter without litigation.

#### **EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Caribbean Corp., a for-profit corporation operating in the State of New Jersey.
2. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
4. Respondent is a “wholesaler,” “dealer,” “retailer,” or “other distributor” within the meaning of Section 14 (a)(1) of FIFRA, 7 U.S.C. Section 136l(a)(1).

5. Respondent owned and/or operated an “establishment” as defined in Section 2 (dd) of FIFRA, 7 U.S.C. Section 136(dd), located at 209 Redneck Avenue, Little Ferry, New Jersey (“the Facility”).
6. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
7. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
8. Pursuant to Section 3 of FIFRA, 7 U.S.C. Section 136a, all pesticides intended for distribution or sale must be registered with EPA.
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered with EPA.
10. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. Section 136(q)(1)(E), states that a pesticide is misbranded if any word, statement, or other information required to appear on the label is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

11. 40 C.F.R. Section 156.10(a)(1) (Contents of the label) states that all pesticide products shall bear a label containing the following information: the name of the product, name and address of producer or registrant or person for whom the product was produced, net weight or measure of contents, product registration number, producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classifications.
12. 40 C.F.R. Section 156.10(a)(3) (Language to be used) states that all pesticide products shall bear required labeling text in the English language.
13. Pesticide products are misbranded if the labeling requirements specified in 40 C.F.R. Sections 156.10(a)(1) & (a)(3) are not met.
14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.
15. 19 C.F.R. Section 12.112 requires an importer desiring to import pesticides into the United States to submit EPA Form 3540-1, Notice of Arrival of Pesticides and Devices, to the United States Environmental Protection Agency prior to the arrival of the shipment in the United States (hereinafter "Notice of Arrival").
16. On or about May 2, 2012, EPA conducted an inspection at Respondent's Facility.

17. On April 26, 2012 and May 9, 2012, EPA conducted inspections at the Respondent's customers' facilities --Jor Dar, of North Bergen, New Jersey, and Quality Wholesale Distributors, of Paterson, New Jersey.
18. During one or more of the inspections mentioned above, EPA's inspectors obtained evidence of the distribution and sale of the following products:  
"Fabuloso Liquid Cleaner" and "Clorox Liquid Beach."
19. The products identified in the paragraph above had claims on their labels that the products were intended for preventing, destroying, repelling or mitigating bacteria, and/or microorganisms, which may be "pests."
20. The products identified in paragraph 18, above, were required to be registered with EPA.
21. The products identified in paragraph 18, above, did not have an EPA registration number on their labels.
22. Respondent's sale or distribution of the unregistered pesticides identified in paragraph 18 above constitute unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

23. Each of the products identified in paragraph 18, above, were misbranded because it did not bear all the required labeling text in the English language, as required by 40 C.F.R. Section 156.10(a)(3), and the information on the label was not likely to be read and understood by the ordinary individual under customary conditions of purchase and use, as required by Section 2(q)(1)(E) of FIFRA, 7 U.S.C. Section 136(q)(1)(E).
24. Respondent's sales or distributions of the misbranded pesticides identified in paragraph 18 above constitute unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E).
25. The "Fabuloso Liquid Cleaner" and "Clorox Liquid Bleach" products were brought into the United States in 2012 without the filing of a Notice of Arrival with EPA.
26. Importation of the pesticide products identified in paragraph 25 above without filing a Notice of Arrival prior to their arrival into the United States is a violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N) and 19 C.F.R. Section 12.112.
27. Based on EPA's inspections and EPA's review of the labels for the above-mentioned pesticide products, EPA issued a Complaint against the Respondent,

alleging that: (1) in 2012 the Respondent distributed or sold unregistered and misbranded pesticides, in violation of Sections 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. Sections 136j(a)(1)(A) and 136j(a)(1)(E); and (2) that in 2012 the Respondent imported pesticide products without filing a required Notice of Arrival form with EPA prior to the pesticide products' arrival in the United States, in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N), and 19 C.F.R. Section 12.112.

28. Following EPA's inspections, Respondent informed EPA that it has ceased selling or distributing the above-mentioned unregistered and misbranded pesticides identified in paragraph 18, above. Additionally, Respondent has informed EPA that it does not import any pesticide products identified in paragraph 25 above.
29. Respondent has submitted financial information and documentation to EPA demonstrating financial difficulty and supporting the imposition of a civil penalty of Twenty Thousand Dollars (\$20,000.000), as specified in paragraph 2 of the Consent Agreement. EPA has relied on the accuracy of the financial information submitted by Respondent in negotiating this settlement.

## CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations, including the requirements which prohibit the sale of unregistered and misbranded pesticides and prohibit the importation of pesticide products without filing a Notice of Arrival with EPA prior to the pesticide products' arrival in the United States.
  
2. Respondent shall pay, by certified check, a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00) payable in three separate installments, as indicated in subparagraph a, below, to the "Treasurer of the United States of America" and shall mail each check with the notation of the name and docket number of this case as follows: In the Matter of Caribbean Corp., Docket No. FIFRA-02-2013-5108.

Each check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center



P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall also send a copy of the payment to both:

Bruce Aber, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866; and

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

Each payment must be received at the above address on or before the due date specified above (the date by which each payment must be received shall hereafter be referred to as its “due date”).

- a) The first installment amount of Ten Thousand dollars (\$10,000.00) must be received at the above address on or before forty-five (45) calendar days after the date of the Regional Administrator’s signature of the Final Order at the end of this document (first due date). The second installment amount of Five Thousand dollars (\$5,000.00) must be received at the above address on or before March 1, 2014 (second due date). The third installment amount of Five Thousand dollars (\$5,000.00) must be received at the above address on or before the one year anniversary of the date of the Regional Judicial Officer’s signature of the Final Order.

- b) If Respondent fails to pay any of the installments required above, by its due date, Respondent shall also be liable to EPA for an additional stipulated penalty of Five Thousand dollars (\$5,000.00) per month for each month in which full payment has not been made. All stipulated penalties for failure to pay a penalty installment on time are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of penalties. All stipulated penalty payments shall be made in accordance with the payment instructions above. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid upon demand.
- c) Failure to pay the full amount of the penalty, or any stipulated penalty demanded by EPA, according to the above provisions, will result in the referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.
- d) If timely payment is not received on or before the due dates, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$25.00 will be assessed for

each thirty (30) calendar day period, or any portion thereof, following the due date in which the balance remains unpaid.

e) A 6% per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due dates.

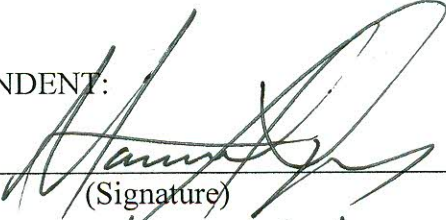
3. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies both the specific factual allegations in the Complaint and EPA's Findings of Fact and Conclusions of Law herein.
4. The civil penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal law.
5. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty and any applicable stipulated penalties herein, and the accuracy of the Respondent's representations and financial information provided concerning its ability to pay the proposed penalty in this proceeding) the civil and administrative claims alleged in the Complaint issued in this case. Nothing herein shall be read to preclude EPA or the

United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

6. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
7. Respondent explicitly and knowingly consents to the assessment of the civil penalties as set forth in this Consent Agreement and agrees to pay the civil penalties and any stipulated penalties that become due in accordance with the terms of this Consent Agreement.
8. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint, this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
9. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO.
10. Respondent waives any right it might have to appeal this Consent Agreement and the accompanying Final Order.

11. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
12. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
13. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.
14. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

15. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement and Final Order.
16. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.
17. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.
18. Each party hereto agrees to bear its own costs and fees in this matter.
19. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:  
BY:   
(Signature)  
NAME: Manuel Lopez  
TITLE: President  
DATE: 8/19/13

COMPLAINANT:

DLA

Dore LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2

DATE: 8/20/13

**In the Matter of Caribbean Corp., FIFRA-02-2013-5108**

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

Helen Ferrara

HELEN FERRARA  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, New York 10007

DATE: August 27, 2013



**In the Matter of Caribbean Corp. FIFRA-02-2013-5108**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:


Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

Copy by Certified Mail/  
Return Receipt Requested:

Stanley R. Goodman, Esq.  
Goodman & Saperstein  
Attorneys at Law  
100 Garden City Plaza, Suite 412 B  
Garden City, New York 11530

Dated: Aug. 28, 2013  
New York, New York

  
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Bruce Aber