



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 07 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Chris Klingenberg
Director of R&D
EnviroServe, Inc.
603 S. Wilson Avenue
Dunn, North Carolina 28334

Re: EnviroServe, Inc.; Establishment No. 73149-NC-001
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3137(b)

Dear Mr. Klingenberg:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the assessed penalty of \$1,300 is to be paid within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the Docket Number of this case.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the EPA.

Should you have any questions about this matter or your compliance status in the future, please call Ms. Mary Summers at (404) 562-8997.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:) Docket No. FIFRA-04-2013-3137(b)
)
EnviroServe, Inc.)
)
Respondent.)
_____)

RECEIVED
EPA REGION IV
2013 AUG -7 AM 11:35
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is EnviroServe, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the Regional Administrators by the EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 C.F.R. §22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Mary Summers
Case Development Officer
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960.

5. Respondent is EnviroServe, Inc., a North Carolina corporation, located at 603 S. Wilson Avenue, Dunn, North Carolina 28334.
6. Respondent is 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.
7. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 67.3.
8. Respondent’s establishment, located at 603 S. Wilson Avenue, Dunn, North Carolina, is registered with the Agency as a pesticide-producing establishment.
9. Respondent’s EPA Establishment Number is 73149-NC-001.

III. EPA’s Statement of Facts and Allegations of Violation

10. Producers operating an establishment registered with the EPA are required to submit to the Administrator of the EPA an annual report which indicates the types and amounts of

pesticides or active ingredients which they are currently producing, which they produced during the past year, and which they sold or distributed during the past year, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. §136e(c)(1), and the regulations promulgated at 40 C.F.R. § 167.85.

11. Submittal of the annual reports of pesticide-production for calendar years 2010, 2011 and 2012, were due on or before March 1, 2011, March 1, 2012, and March 1, 2013, respectively.
12. Respondent failed to submit the annual reports by their due dates.
13. Therefore, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
14. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
15. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
16. The EPA proposes to assess a total civil penalty of **THIRTEEN HUNDRED DOLLARS (\$1300)** against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, but neither admits nor denies the EPA's allegations of violations, set forth above.

18. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
21. Respondent agrees to submit to the EPA all future annual pesticide-production reports required under Section 7 of FIFRA, 7 U.S.C. § 136(e), on or before the March 1st due date. Respondent shall send the reports by means of certified mail, return receipt requested, to the following address:

U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
Chemical Products & Asbestos Section
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

22. Compliance with this CAFO shall resolve the allegation of the violation contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
23. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

24. Respondent shall pay a civil penalty of **THIRTEEN HUNDRED DOLLARS (\$1,300)** for the violations alleged in Section III of this CAFO.
25. The payment is due within thirty (30) days of the effective date of this CAFO.
26. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

Address for payment submittal using the United States Postal Service:

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

Overnight delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.) using the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
Contact Number: 314-418-1028

The check shall reference on its face "Docket No. FIFRA-04-2013-3137(b)."

27. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Mary Summers
Case Development Officer
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960.

28. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
29. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.

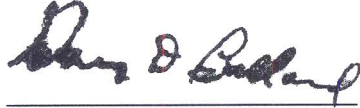
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VI. Effective Date

33. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

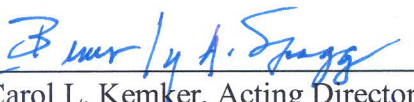
AGREED AND CONSENTED TO:

Respondent: EnviroServe, Inc.

By: 
Name: Gary Ballard
Title: President

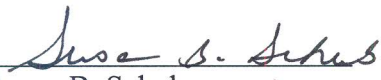
Date: 7/8/13

Complainant: U.S. Environmental Protection Agency

By: 
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division

Date: 7/19/13

APPROVED AND SO ORDERED this 5 day of Aug, 2013.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of EnviroServe, Inc., FIFRA Docket Number: FIFRA-04-2013-3137(b), to the addressees listed below.

Mr. Chris Klingenberg
Director of R&D
EnviroServe, Inc.
603 S. Wilson Avenue
Dunn, NC 28334

(Via Certified Mail, Return Receipt Requested)

Mary Summers
CPAS
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

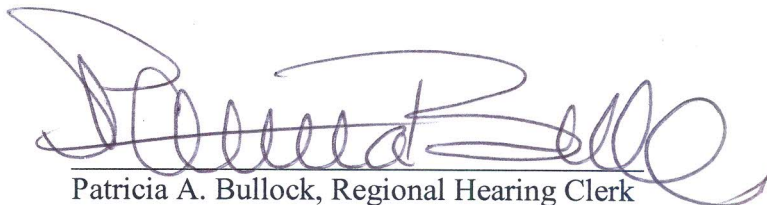
(Via EPA's internal mail)

Robert Caplan
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(Via EPA's internal mail)

Date:

8-7-13



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511