



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2009 MAR 13 10 50 AM
-013-1500

DOCKET NO.: FIFRA-08-2008-0029

IN THE MATTER OF:

DIATECT INTERNATIONAL CORP.,

875 S. Industrial Parkway

Heber City, UT

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 13th DAY OF March, 2009.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. FIFRA-08-2008-0029

In the Matter of:)
)
Diatect International Corp.,) **CONSENT AGREEMENT**
875 S. Industrial Parkway)
Heber City, UT)
)
Respondent.)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Diatect International Corp., by their undersigned representatives, hereby consent and agree as follows:

1. On September 30, 2008, Complainant issued a Complaint alleging certain violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). 7 U.S.C. § 136. The Complaint proposed a civil penalty for the violation alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.
4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
5. Respondent consents, for the purpose of settlement, to the issuance of a final consent order in this matter and agrees to pay the civil penalty of **FOUR THOUSAND SIX HUNDRED AND EIGHTY DOLLARS (\$4,680)**. Respondent further consents, for the purpose of settlement, to pay the civil penalty as follows:
 - a. Payment is due within 30 calendar days from the date written on a Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal

Federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22-checking

Environmental Protection Agency
Account 310006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter sfo1.1 in the search field
Open form and complete required fields

A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to:

Ms. Tina Artemis, 8RC
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final consent order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the final consent order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.

7. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

9. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.

10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

11. Each party shall bear its own costs and attorney fees in connection with this matter.

12. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

In the Matter of: Diatect International Corp.
Docket No.: FIFRA-08-2008-0029

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Date: 3/10/09

By: David Rochlin

Michael T. Risner, Director
David Rochlin, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 3/12/2009

By: Mark A.R. Chalfant

Mark A.R. Chalfant, Director
Technical Enforcement Program

Date: 3/9/2009

By: Eduardo Quintana

Eduardo Quintana
Senior Enforcement Attorney
Legal Enforcement Program

In the Matter of: Diatect International Corp.
Docket No.: FIFRA-08-2008-0029

Diatect International Corp.,
Respondent.

Date: 2/13/09

By:

A handwritten signature in black ink, appearing to read "F. Patrick Care", written over a horizontal line.

Name, Title:

F. Patrick Care

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **DIATECT INTERNATIONAL CORP., INC.; DOCKET NO.: FIFRA-08-2008-0029** was filed with the Regional Hearing Clerk on March 13, 2009.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Eduardo Quintana, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on March 13, 2009, to:

Randy B. Birch, Esq.
Bostwick & Price, P. C.
One Thirty Nine East South Temple, Ste. 320
Salt Lake City, UT 84111

E-mailed to:

Honorable Barbara Gunning
Office of Administrative Law Judges (1900L)
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center

March 13, 2009



Tina Artemis
Paralegal/Regional Hearing Clerk

