



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 23 2016

REPLY TO THE ATTENTION OF
LC-8J

VIA EMAIL

Ms. Jennifer Richardt
President
Earth Laboratories, Inc.
1101 East Diamond Avenue
Evansville, Indiana 47711

jrichardt@earthlaboratories.com

Consent Agreement and Final Order In the Matter of Earth Laboratories, Inc.
Docket Number FIFRA-05-2017-0004

Ms. Richardt:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on December 23, 2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,792 is to be paid in the manner described in paragraphs 44-45. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section

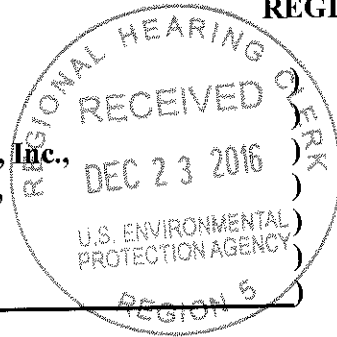
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Earth Laboratories, Inc.,
Evansville, Indiana,

Respondent.



Docket No. FIFRA-05-2017-0004

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, Region 5, U. S. Environmental Protection Agency.
3. Respondent is Earth Laboratories, Inc., 1101 East Diamond Avenue, Evansville, Indiana, a corporation doing business in the State of Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

11. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

12. The term “State” as defined in Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa), means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

13. The term “to distribute or sell” means 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. 7 U.S.C. § 136(gg).

14. The terms “pesticide” and “pesticidal product” mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 167.3.

15. The term “pest” means (1) any insect, rodent, nematode, fungus, weed, or (2) any

other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

16. Section 2(q)(1)(A), 7 U.S.C. § 136(q)(1)(A), states that a pesticide is “misbranded” if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading.

17. Section 12(q)(1)(F), 7 U.S.C. § 136(q)(1)(F), states that a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are 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, are adequate to protect health and the environment.

18. Section 12(q)(1)(G), 7 U.S.C. § 136(q)(1)(G), states that 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.

19. The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. 7 U.S.C. § 136(p)(1).

20. The term “labeling” means generally all labels and all other written, printed, or graphic matter 1) accompanying the pesticide at any time; or 2) to which reference is made on the label or in literature accompanying the pesticide. 7 U.S.C. § 136(p)(2).

21. The term “establishment” means any site where a pesticide or pesticidal product is produced, or held, for distribution or sale, as defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

22. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide, or to package, repackage, label, relabel or otherwise change the container of any pesticide, as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

23. The term “producer” means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide, as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

24. Section 14(a)(1), 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

25. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and 40 C.F.R. Part 19, the Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009.

Factual Allegations and Alleged Violation

26. On September 10, 2014, Respondent was a corporation located at 1101 East Diamond Avenue, Evansville, Indiana 47711.

27. Therefore, Respondent was “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

28. On September 10, 2014, the state of Indiana was a State.

29. Therefore, Indiana was a “State” as defined at Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa).

30. Respondent has been a “producer” and a “registrant” as those terms are defined at

Section 2(w) and (y) of FIFRA, 7 U.S.C. § 136(w) and (y), at all times relevant to this CAFO.

31. Respondent's place of business located at 1101 Diamond Avenue, Evansville, Indiana 47711 has been an "establishment" as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3 at all times relevant to this CAFO.

32. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, Respondent registered its establishment with EPA in April 2007 and was assigned EPA Establishment Number 084198-IN-001.

33. On September 10, 2014, an inspector employed by the Office of Indiana State Chemist and Seed Commissioner and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's place of business in Evansville, Indiana.

34. During the September 10, 2014 inspection, the inspector collected a physical sample for "Peroxy HDOX," EPA Registration Number (EPA Reg. No.) 84198-1. The label states "Peroxy HDOX is a multi-purpose, germicidal, virucidal, and fungicidal cleaner and deodorizer that disinfects or sanitizers (non-food contact surfaces), cleans, and removes malodors for hard, non-porous, inanimate surfaces.

35. Therefore, "Peroxy HDOX," EPA Reg. No. 84198-1 was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

36. Respondent's pesticide product registration included a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and directions for use.

37. The EPA accepted label for "Peroxy HDOX," EPA Reg. No. 84198-1, dated February 11, 2011, states, among other things, the following.

- a. "Peroxy HDOX is a multi-purpose, germicidal, virucidal, and fungicidal cleaner and deodorizer that disinfects or sanitizers (non-food contact surfaces), cleans, and removes malodors for hard, non-porous, inanimate surfaces."

- b. "Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet. Remove and wash contaminated clothing before reuse. Causes moderate eye irritation. Avoid contact with eyes or clothing."
- c. "Personal Protection: Disposable latex or vinyl gloves, gowns, face masks, and eye coverings as appropriate, must be worn during all cleaning of body fluids, blood, and decontamination procedures."
- d. "STORAGE AND DISPOSAL Do not contaminate water, food or feed by storage and disposal. Store in original container in areas inaccessible to small children. Store between 35° and 85° in dry, well ventilated area away from chemicals, direct light, heat, or open flame. Do not mix with other cleaning or disinfecting products. Keep securely closed. Offer for recycling, if available. Non-refillable container, Do not reuse or refill this container. Dispose of container according to Federal, State, and Local laws and regulations."

38. On September 10, 2014, Respondent did hold for distribution, or hold for sale, or hold for shipment, to a person, 1 gallon containers of "Peroxy HDOX," EPA Reg. No. 84198-1.

39. However, on September 10, 2014, the label affixed to Respondent's 1 gallon containers of "Peroxy HDOX," EPA Reg. No. 84198-1 stated, among other things.

- a. "Peroxy HDOX is a multi-purpose, germicidal, virucidal, and fungicidal cleaner and deodorizer that disinfects or sanitizers (non-food contact surfaces), cleans, and removes malodors for hard, non-porous surfaces."
- b. "Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco. Remove and wash contaminated clothing before reuse. Causes moderate eye irritation."
- c. "This product is not for use on medical device surfaces."
- d. "Personal Protection: Disposable latex or vinyl gloves, gowns, face masks, or eye coverings as appropriate, must be worn during all cleaning of body fluids, blood, and decontamination procedures."
- e. "STORAGE AND DISPOSAL Do not contaminate water, food or feed by storage and disposal. PESTICIDE STORAGE: Store between 35° and 85° in dry, well ventilated area away from chemicals, direct light, heat, or open flame. Do not mix with other cleaning or disinfecting products. PESTICIDE DISPOSAL: Wastes resulting from the use of this product may be disposed of on site or at an approved wasted disposal facility. For more information on the disposal of unused, unwanted product and the clean up of spills, contact the EPA Regional Office or

the Manufacturer for guidance. CONTAINER DISPOSAL: Rinse, then offer for recycling, or puncture and dispose of in a sanitary landfill.”

40. Therefore, on September 10, 2014, Respondent was a person, in a state, who did distribute or sell, to another person, a pesticide, that 1) bore statements, design, or graphic representations relative thereto or to its ingredients which was false or misleading; 2) did not contain directions for use which were necessary for effecting the purpose for which the product was intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA were adequate to protect health and the environment; and 3) did not contain a warning or caution statement with may be necessary and if complied with , together with any requirements imposed under section 3(d) of FIFRA was adequate to protect health and the environment.

41. Accordingly, Respondent was a distributor subject to civil penalties for violations of FIFRA under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

42. On or about September 10, 2014, Respondent did distribute or sell misbranded “Peroxy HDOX,” EPA Reg. No. 84198-1, which constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

43. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action was \$5,792.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the alleged violation. Complainant also considered EPA’s *FIFRA Enforcement Response Policy*, dated December 2009.

44. Within 30 days after the effective date of this CAFO, Respondent must pay a

\$5,792.00 civil penalty for the alleged violation of FIFRA by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The check must note the case title and the docket number of this CAFO.

45. The payment must include a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, and the case docket number. Respondent must also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

46. This civil penalty is not deductible for federal tax purposes.

47. If Respondent does not pay the civil penalty timely EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

48. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount

overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

49. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: trevino.jeffrey@epa.gov (for Complainant), and jrichardt@earthlaboratories.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. ‘ 22.6.

50. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

51. This CAFO does not 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.

52. This CAFO does not affect Respondent’s responsibility to comply with FIFRA and other applicable federal, state, and local laws.

53. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

54. The terms of this CAFO bind Respondent, its successors, and assigns.


55. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

56. Each party agrees to bear its own costs and attorney's fees, in this action.

57. This CAFO constitutes the entire agreement between the parties.

Earth Laboratories, Inc., Evansville, Indiana


10/31/16
Date



Jennifer Richardt
President

United States Environmental Protection Agency, Complainant

12/16/2016
Date



Margaret M. Guerriero
Director
Land and Chemicals Division


In the Matter of: Earth Laboratories, Inc., Evansville, Indiana.

Docket No. FIFRA-05-2017-0004

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

December 23, 2016
Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Earth Laboratories, Inc., Evansville, Indiana.
Docket No. FIFRA-05-2017-0004

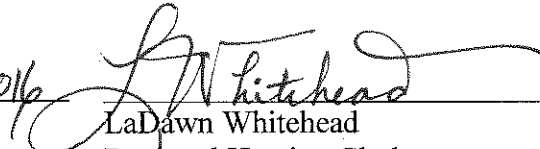
CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2017-0004, which was filed on December 23, 2016, in the following manner to the following addressees:

Copy by E-mail to Respondent: Jennifer Richardt
jrichardt@earthlaboratories.com

Copy by E-mail to Attorney for Complainant: Jeffrey M. Trevino
trevino.jeffrey@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: December 23, 2016 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5