

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

** FILED **
29SEP2015 - 04:10PM
U.S.EPA - Region 09

In the matter of:) Docket No. FIFRA-09-2015- 0014
)
Bird-B-Gone, Inc.,)
)
Respondent.) CONSENT AGREEMENT AND
) FINAL ORDER PURSUANT TO
_____) 40 C.F.R. §§ 22.13(b) AND 22.18(b)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region IX and Bird-B-Gone, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a), against Respondent for failure to complete and submit an annual pesticide production report for the 2014 reporting year by March 1, 2015 for its pesticide production establishment, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulation, 40 C.F.R. § 167.85

2. Complainant is the Assistant Director for the Water and Pesticides Branch, Enforcement Division, who has been duly delegated to commence and settle an enforcement action in this matter.

3. Respondent is a California corporation that owns, operates, controls and/or is otherwise responsible for a facility located at 23918 Skyline, Mission Viejo, CA 92692.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

5. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” is the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 provide that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to complete and submit an annual pesticide production report to EPA on or before March 1 of each year that includes the amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

7. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

C. ALLEGED VIOLATION

8. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

9. Respondent owns, operates, controls and/or is otherwise responsible for a facility located at 23918 Skyline, Mission Viejo, CA 92692 (hereinafter "Facility").

10. Respondent has registered the Facility as a pesticide producing establishment in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The Establishment Number is 071050-CA-001.

11. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and, as a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.

12. Respondent failed to complete and submit an annual pesticide production report for the 2014 production year by March 1, 2015 for the Facility, as required by Section 7(c)(1) of

FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, which constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

13. Respondent previously failed to complete and submit an annual pesticide production report for the 2012 production year by March 1, 2013 and an annual pesticide production report for the 2013 production year by March 1, 2014 for the Facility, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, which both constituted violations of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for which Respondent was issued Notice of Warning letters on September 17, 2013 and June 6, 2014, respectively.

14. Consequently, Respondent's failure to complete and submit an annual pesticide production report for the 2014 production year by March 1, 2015 for the Facility constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), that is subject to a penalty under EPA's Enforcement Response Policy for FIFRA Section 7(c) dated May 2010.

D. RESPONDENT'S ADMISSIONS

15. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

16. In settlement of the violation specifically alleged in Section I.C. of this CAFO, Respondent shall pay a civil administrative penalty of ONE THOUSAND, THREE HUNDRED AND SIXTY DOLLARS (\$1,360). Respondent shall pay the full amount of this penalty within thirty (30) calendar days after the effective date of this CAFO.

17. Payment shall be made by cashier's or certified check, including the name and docket number of this case, for the amount, payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

Regular Mail:

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

Certified Mail:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63197

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
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 — checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sf01.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091.

18. In addition, 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 with a transmittal letter indicating Respondent's name, the case title, and the docket number to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Scott McWhorter
Enforcement Division (ENF 3-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

19. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

20. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 16 by the date specified in Paragraph 16, then (i) the entire balance of the unpaid

penalty amount shall become due immediately and (ii) Respondent shall, upon demand from EPA Region IX, pay (in addition to the unpaid balance of the civil administrative penalty) a stipulated penalty of \$340. In addition, failure to pay in full the civil administrative penalty by its due date may lead to any or all of the following actions:

a.. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.14 and 13.17.

21. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by its due date. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins, 40 C.F.R. § 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.12(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs, 40 C.F.R. § 13.12(b). In addition, if this matter is

referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. CERTIFICATION OF COMPLIANCE

22. In executing this CAFO, Respondent certifies that it has submitted the annual pesticide production report for the 2014 production year for the Facility to the U.S. EPA Region IX Pesticides Office.

G. RETENTION OF RIGHTS

23. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violation and facts specifically alleged in Section I.C. of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violation of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C. of this CAFO.

24. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

25. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

26. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

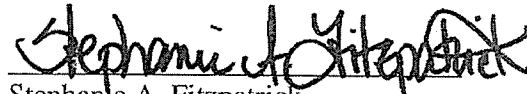
J. BINDING EFFECT

27. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

28. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.


FOR RESPONDENT, BIRD-B-GONE, INC.:

09/28/2015
DATE


Stephanie A. Fitzpatrick
Director
Bird-B-Gone, Inc.

FOR COMPLAINANT, EPA REGION IX:

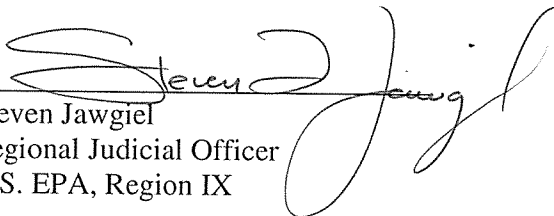
9/28/2015
DATE


Claire Trombadore
Assistant Director
Water and Pesticides Branch, Enforcement Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA Region IX and Respondent, having entered into the forgoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2015-0014) be
entered, and Respondent shall pay a civil administrative penalty in the amount ONE
THOUSAND, THREE HUNDRED AND SIXTY DOLLARS (\$1,360) in accordance with the
terms set forth in the Consent Agreement.

09/29/15
DATE


Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2015-0014) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Stephanie A. Fitzpatrick
Director
Bird-B-Gone, Inc.
23918 Skyline
Mission Viejo, CA 92692

CERTIFIED MAIL NUMBER: 7001-320-0002-0253-7785

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Carol Bussey, Esq
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Sept 29, 2015
Date

Steven Ramsey
Regional Hearing Clerk
U.S. EPA, Region IX