



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202

Certified Mail Return Receipt Requested #70151520000339902331

Mr. I. Randall Chudnow
Vice President, Finance & Operations
Multi Snacks n Food
4310 West Avenue
San Antonio, Texas 78213

RE: In the Matter of Multi Snacks n Food, EPA Docket No: FIFRA-06-2016-0303

Dear Mr. Chudnow:

Enclosed is a copy of the fully executed Complaint and Consent Agreement and Final Order (Complaint and CAFO) for the above referenced distributor that has been filed with the U.S. Environmental Protection Agency Region 6 (EPA) Regional Hearing Clerk. As set forth in the Complaint and CAFO, and agreed upon by both parties Multi Snacks n Food has thirty (30) days from the filing date to submit its monetary payment of \$10,000.00 to EPA.

Your monetary payment to EPA should be made payable to the Treasurer, United States of America, EPA – Region 6. To ensure proper credit is applied to your case, please specify the docket number, listed above, on your method of payment. In addition, please forward a photocopy of your payment and transmittal letter to the EPA personnel listed in the Complaint and CAFO. Once our Cincinnati Finance Office acknowledges receipt of your payment we shall consider this case closed.

If you have any questions regarding this matter, please contact Kenneth R. McPherson, of my staff, at (214) 665-6754. Your cooperation in the settlement of this case is most appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wren Stenger", is written over a faint, larger version of the same signature.

Wren Stenger
Director
Multimedia Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 MAR 29 AM 9:40
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Multi Snacks n Food
5100 Commerce Parkway, Suite 5100
San Antonio, Texas 78218

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DOCKET NO. FIFRA 06-2016-0303

COMPLAINT
CONSENT AGREEMENT AND
FINAL ORDER

RESPONDENT


**COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER**

The Director, Multimedia Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and Multi Snacks n Food located in San Antonio, Texas (Respondent) in the above referenced action, have consented to the terms of this Complaint and Consent Agreement and Final Order (Complaint and CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Complaint and CAFO.

**I.
PRELIMINARY STATEMENT**

1. This enforcement proceeding is instituted by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a) (FIFRA), which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$7,500¹ for each violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. §


¹The Civil Penalty Inflation Adjustment Rule (62 Fed Reg. 13514, March 20, 1997 and 69 Fed Reg. 7121, February 13, 2004) provides for increases in the statutory penalty provisions for violations which occur after the date the increases take effect. For violations after March 14, 2004, the potential maximum penalty for such violations changed from \$5,500 to \$6,500. The Agency is required to review its penalties once every four years and adjust them for inflation. The Final Rule published at 73 Fed Reg. 75340 raised the FIFRA penalty to \$7,500 for violations occurring after December 11, 2008.

136j(a)(1)(B). This proceeding was instituted by the issuance of the Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to the FIFRA.
3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.
4. Respondent consents to the issuance of this Complaint and CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint and CAFO.
5. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.
6. Respondent represents that it is duly authorized to execute this Complaint and CAFO and that the party signing this Complaint and CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this Complaint and CAFO.
7. Respondent agrees that the provisions of this Complaint and CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including but not limited to, subsequent purchasers.

II.
STATUTORY AND REGULATORY BACKGROUND

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.



9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as meaning “(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer.”

10. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as meaning “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.”

11. 40 C.F.R. § 152.10 provides that bleaches “are not considered to be pesticides unless a pesticidal claim is made on their labeling...”

12. Bacteria is a “pest”, as that term is defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

13. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

14. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under [Section 3 of FIFRA, 7 U.S.C. § 136a].

15. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), 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 \$7,500² for each offense.

²See footnote 1.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. The Respondent is Multi Snacks n Food, located at 5100 Commerce Parkway, Suite 5100, San Antonio, Texas 78218
17. Respondent is a “person” as that term is defined in Section 2(s) of FIFRA.
18. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
19. At all times relevant to this Complaint, the Respondent distributed or sold the following unregistered pesticide: Clorox Mexican Bleach Concentrado, 500 ml; and Clorox Mexican Bleach Concentrado, 930 ml.
20. On or about July 15, 2014, EPA representatives conducted an inspection at Texas Jasmine, Inc., a wholesale and retail establishment in Houston, Texas (Inspection).
21. The Inspection was a “For-Cause Inspection” based on a citizen filed complaint reporting the sale and distribution of an unregistered pesticide by Texas Jasmine, Inc. (Texas Jasmine).
22. At the time of the inspection 572 cases of Clorox Mexican Bleach Concentrado 500 ml bottles; and 360 cases Clorox Mexican Bleach Concentrado 930 ml bottles were found displayed for sale or ready for sale at Texas Jasmine.
23. During the Inspection, EPA representatives observed and documented the following pesticidal claims written on the labels on the products in paragraph 22 in Spanish: “...elimina el 99,9% de Bacterias”; “...Desinfecta”, and; “desinfeccion de agua...”
24. The terms in Spanish found on the products translate into English as follows:
- a. “...elimina el 99,9% de Bacterias” means “eliminates 99.9% of bacteria.”

b. "Desinfecta" means "disinfects."

c. "...desinfeccion de agua" means "disinfection of water."

25. During the Inspection, EPA representatives obtained copies of two invoices and shipping documentation with the dates and amounts of unregistered Clorox Mexican Bleach Concentrado that Texas Jasmine received from Respondent.

26. According to Invoice #0000075669, dated June 4, 2014, Respondent sold to Texas Jasmine, Inc. 550 cases of Clorox Mexican Bleach Concentrado 500 ml bottles; and 70 cases of Clorox Mexican Bleach Concentrado 930 ml bottles.

27. According to Invoice #0000077173, dated July 1, 2014, Respondent sold to Texas Jasmine, Inc. 150 cases of Clorox Mexican Bleach Concentrado 930 ml bottles.

28. The claims found on the labeling of the products in paragraph 19, state or imply that the pesticides in paragraph 19 can or should be used as a pesticide.

29. Based on the Inspection findings EPA issued a Stop Sale, Use and Removal Order (SSURO) to Respondent with the Docket No. FIFRA-06-2014-0325.

IV. **VIOLATIONS**

30. Paragraphs 1-29 are realleged and incorporated by reference.

31. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Respondent's sale and distribution of the unregistered pesticides, identified in paragraphs 16-29, constituted an unlawful act in violation of Section 12(a)(1)(A) of FIFRA.

V.
CIVIL PENALTY AND
TERMS OF SETTLEMENT

33. For the reasons set forth above, Respondent has agreed to pay a civil penalty, which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Penalty Inflation Adjustment Rule³ which authorizes EPA to assess a civil penalty of up to SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) for each violation of FIFRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" dated December 3, 2009, located at:

<http://www.epa.gov/sites/production/files/documents/fifra-erp1209.pdf>.

34. It is ORDERED that Respondent be assessed a civil penalty of **TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00)**.

35. Within thirty (30) days of Respondent's receipt of this fully executed Complaint and CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6."

Payment shall be remitted in one of the alternatives provided in the collection information section below:

³ See footnote 1.

COLLECTION INFORMATION

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "sfo 1.1" in the search field; Open form and complete required fields following directions for EPA Miscellaneous payments.

EPA Miscellaneous Payments - Cincinnati Finance Center

Form Number: **SFO Form Number 1.1**

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments

PLEASE NOTE: Docket Number FIFRA-06-2016-0303 shall be clearly typed on the check to ensure proper credit. Respondent shall send a simultaneous notice of such payment, including a copy of the money order or check to the following:

Kenneth R. McPherson
Pesticides and Toxics Section (6MM-XP)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.



36. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11 unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this Complaint and CAFO will begin to accrue thirty (30) days after the effective date of the Complaint and CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

38. The EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11 (c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

VI.
COSTS

39. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

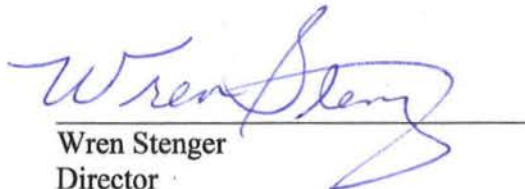
Date: 3/2/16



I. Randall Chudnow
Vice President, Finance & Operations
Multi Snacks n Food
4310 West Avenue
San Antonio, Texas 78213

FOR THE COMPLAINANT:

Date: 3/17/16



Wren Stenger
Director
Multimedia Division



FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 3/28/14




Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of MARCH, 2016, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Multi Snacks n Food
Attn: I. Randall Chudnow
Vice President, Finance & Operations
4310 West Avenue
San Antonio, Texas 78213 8



Kenneth R. McPherson
Enforcement Officer
Pesticides and Toxics Section

