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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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09 U.S. EPA. REGION IX
REGIONAL HEARING CLERK
2007-0014

In the matter of:)
)
Dos Amigos Distributors Inc.)
)
Respondent.)
)
_____)

Docket No. FIFRA-2007-0014
CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA" or "Complainant") and Dos Amigos Distributors 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 Section 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. § 22.13(b).

A. AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for the sale and distribution of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May

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11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Director of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), since it is a corporation. Respondent owns, operates and is wholly responsible for a place of business with an address at 8595 Avenida Costa Sur, San Diego, California ("Facility").

B. APPLICABLE STATUTES AND REGULATIONS

1. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . ." 7 U.S.C. § 136(u).
2. The term "pest" means "any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro organism. . . ." 7 U.S.C. § 136(t).
3. The term "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).
4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it 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.

C. GENERAL ALLEGATIONS

5. On June 6 and July 14, 2006, authorized representatives of the EPA from the California Department of Pesticide Regulation ("DPR") conducted inspections at the Facility. Respondent provided additional documentation to DPR on July 19, 2006.

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6. On July 6, 2006, an authorized representative of the EPA from DPR conducted an inspection at one of Respondent's customers, Shims Bargain Inc. d/b/a JC Sales ("Shims"), located at 2840 East 26th Street, Los Angeles, California.
7. During the July 14, 2006, inspection at the Facility, the unregistered pesticide product, El Rendidor Cloralex, was observed for sale.
8. At the time of the July 14, 2006, inspection at the Facility, the El Rendidor Cloralex product label contained the following pesticidal claims in Spanish: "Desinfeccion," which translates to "disinfection" in English, meaning to kill or destroy bacteria.
9. "Bacteria" are "pests" as defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
10. El Rendidor Cloralex is a "pesticide" as defined by Section 2(u), 7 U.S.C. § 136(u), in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating "pests."
11. The pesticide product, El Rendidor Cloralex, was not registered as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

D. ALLEGED VIOLATIONS

Count 1

12. Paragraphs 1 through 11 above are hereby incorporated in this Count 1 by reference as if the same were set forth herein in full.
13. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

14. On or about May 30, 2006, Respondent distributed or sold the pesticide product El Rendidor Cloralex to Shims Bargain Inc. d/b/a JC Sales.
15. At the time Respondent distributed or sold El Rendidor Cloralex, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
16. Respondents violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling the unregistered pesticide product El Rendidor Cloralex on or about May 30, 2006.

Count 2

17. Paragraphs 1 through 11 above are hereby incorporated in this Count 2 by reference as if the same were set forth herein in full.
18. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
19. On or about June 22, 2006, Respondent distributed or sold the pesticide product El Rendidor Cloralex to Shims Bargain Inc. d/b/a JC Sales.
20. At the time Respondent distributed or sold El Rendidor Cloralex, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
21. Respondents violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling the unregistered pesticide product El Rendidor Cloralex on or about June 22, 2006.

E. RESPONDENT'S ADMISSIONS

22. 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 factual allegations contained in this CAFO; (iii) consents to the terms of penalty under Section F of this CAFO; (iv) waives any rights to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

F. CIVIL ADMINISTRATIVE PENALTY

23. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, provide that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil administrative penalty by the EPA Administrator in an amount not to exceed \$6,500 for each offense. After consideration of (1) the size of Respondent's business, (2) Respondent's ability to continue in business, and (3) the gravity of Respondent's violations, EPA proposed the assessment of \$10,400 in civil penalties for the alleged violations described in Section D.
24. In settlement of the violations alleged in Section D of this CAFO, Respondent agrees to pay a civil administrative penalty of TEN THOUSAND FOUR HUNDRED (\$10,400). Respondent shall pay the full amount of this penalty within 30 days of the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested to the following address:

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Mellon Bank
U.S. EPA Region IX Hearing Clerk
P.O. Box 371099M
Pittsburgh, PA 15251

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter 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

AND

Julie Jordan
Pesticides Office (CED-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

25. 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.
26. If Respondent fails to pay in full the civil administrative penalty by its due date, then Respondent agrees to pay immediately a total penalty of \$13,000, increased to assess a stipulated penalty for the late payment. 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. § 13.17.
27. 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. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.11(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. § 13.11(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.

G. CERTIFICATION AND COMPLIANCE

28. In executing this CAFO, Respondent certifies that (1) it is no longer selling or distributing any pesticide that is unregistered in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and (2) it has complied with all other FIFRA requirements at all facilities that it owns or operates.

H. RETENTION OF RIGHTS

29. In accordance with 40 C.F.R. § 22.18(c) and as provided below, this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Sections I.C and I.D of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Sections I.C and I.D of this CAFO; or (ii) any criminal liability. In addition to any other authority, right, or remedy available to EPA, 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 Sections I.C and I.D of this CAFO.

30. 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.

I. ATTORNEYS' FEES AND COSTS

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

J. EFFECTIVE DATE

32. 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.

K. BINDING EFFECT

33. 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.
34. 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 DOS AMIGOS DISTRIBUTORS INC.

4/20/2007
DATE:

BY: Pablo Paoli
TITLE: Presidente.


Dos Amigos Distributors Inc.

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FOR COMPLAINANT EPA REGION IX:

6/27/07
DATE

BY:

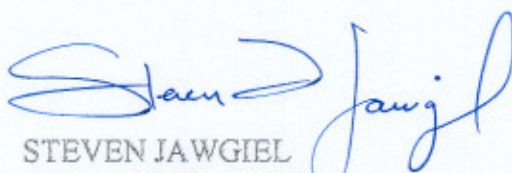

ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

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II. FINAL ORDER

EPA and Dos Amigos Distributors Inc. having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA 09-2007- 0014) be entered, and Respondent shall pay a civil administrative penalty in the amount of TEN THOUSAND FOUR HUNDRED (\$10,400), and comply with the terms and conditions set forth in the Consent Agreement.

07/06/07
DATE



STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX


CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2007-0014 was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Mr. Pablo Paoli
Dos Amigos Distributors, Inc.
8595 Avenida Costa Sur
San Diego, CA 92154

Certified Return Receipt No. 7000 1670 0009 3120 9984

Date: 7 / 6 /2007

By: 

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143