



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

MAY 22 2017

REPLY TO THE ATTENTION OF:
LC-17J

VIA EMAIL

Mr. Keith Page
CEO
Yorba Organics, LLC
525 North Lemon Ave
Sarasota, Florida 34236

keith@yorba.com

Re: Consent Agreement and Final Order In the Matter of Yorba Organics, LLC
Docket Number FIFRA-05-2017-0036

Mr. Page:

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 May 22, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$100 is to be paid in the manner described in paragraphs 34-35. 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 black ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

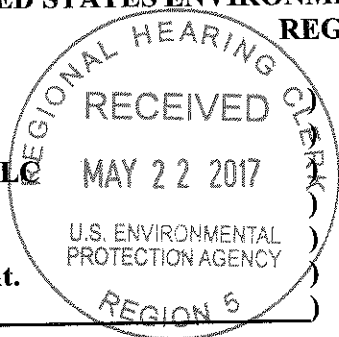
Cc: Susan Perdomo, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Yorba Organic, LLC
Sarasota, Florida,

Respondent.



Docket No. FIFRA-05-2017-0036

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136I(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. § 136I(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, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Yorba Organics, LLC (Yorba Organics), a corporation doing business in the State of Florida.

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 of the Complaint.

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.

Statutory and Regulatory Background

9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is 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.

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

11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as “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.” Also see 40 C.F.R. §152.3.

12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. §152.3.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “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 which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. §152.5.

14. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2) defines “labeling” as all labels and other written, printed or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide.

15. 40 C.F.R. § 152.15(a) states, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA. It further states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

16. Section 14(a)(1) of FIFRA, 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 EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$18,750 for each offense occurring after November 2, 2015. See 81 Fed. Reg. 43091 (July 1, 2016)..

Factual Allegations and Alleged Violations

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

18. At all times relevant to this Complaint, Yorba Organics operated an online store on their website located at www.yorba.com (hereafter referred to as website).

19. On or about November 2, 2016, the following products, along with their descriptions, were offered for distribution or sale on Respondent’s website:

a. Insect Repellent

“Bugs be gone! Our hard working insect repellent uses nature against nature. It is a lotion that’s applied onto the skin to provide great

protection against a host of bugs. Like all of our products, we took it one step further to make our insect repellent easily absorbed into the skin with moisturizing Mafura Butter and other super fruits rich in antioxidants. We believe that you can have both protection and hydration in one product!

MAFURA

Mafura has incredible healing properties, while improving elasticity with its nourishing and moisturizing abilities. It is rich in essential fatty acids (palmitic, stearic, oleic and linoleic) and has been shown to have anti-inflammatory and antimicrobial properties due to the presence of limonoids. Mafura hunts down damaging free radicals more effectively than other oils.

INGREDIENTS:

Helianthus Annuus (Sunflower) Seed Oil, Trichilia Emetica (Mafura) Seed Butter, Eucalyptus Citriodora (Lemon Eucalyptus) Oil, Hydrogenated Vegetable Oil, Cymbopogon Nardus (Citronella) Oil, Azadirachta Indica (Neem) Seed Oil, Rosmarinus Officinalis (Rosemary) Leaf Oil, Ascorbyl Palmitate, Tocopherol.”

b. Surface Sanitizer

“Yorba Surface Sanitizer is both gentle and powerful! As it turns out, you can have both in a natural surface sanitizer. It’s great at removing germs and disinfecting without all the harmful chemicals. Sold in a medium size bottle (3 floz), it can be used at home, in the car or even for air travel.

INGREDIENTS:

Alcohol (Ethanol), Aqua (Water), Aloe Barbadensis (Aloe Vera) Leaf Extract, Citric Acid, Parfum, Hexenol.”

20. The following ingredients, identified on Respondent’s website for **Insect Repellent**, are not listed as exempt from FIFRA regulation under 40 C.F.R. § 152.25(f):

- a. Helianthus Annuus (Sunflower) Seed Oil;
- b. Trichilia Emetica (Mafura) Seed Butter;
- c. Eucalyptus Citriodora (Lemon Eucalyptus) Oil;
- d. Azadirachta Indica (Neem) Seed Oil; and
- e. Tocopherol.

21. The following ingredients, identified on Respondent's website for **Surface Sanitizer**, are not listed as exempt from FIFRA regulation under 40 C.F.R. § 152.25(f):

- a. Alcohol (Ethanol);
- b. Aloe Barbadensis (Aloe Vera) Leaf Extract;
- c. Parfum; and
- d. Hexenol.

22. **Insect Repellent** and **Surface Sanitizer** are "pesticides," as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as they are intended to prevent, destroy, repel, or mitigate a pest.

23. **Insect Repellent** and **Surface Sanitizer** are not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count 1

24. The preceding paragraphs 9-23 incorporated by reference.

25. On or about November 2, 2016, an EPA enforcement officer placed into a virtual shopping cart, for purchase, **Insect Repellent**, at Respondent's website.

26. Respondent's distribution or sale of unregistered pesticide, **Insect Repellent**, constitutes an unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

27. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 2

28. The preceding paragraphs 9-23 above are incorporated by reference.

29. On or about November 2, 2016, an EPA enforcement officer placed into a virtual shopping cart, for purchase, **Surface Sanitizer**, at Respondent's online website.

30. Respondent's distribution or sale of unregistered pesticide, **Surface Sanitizer**, constitutes an unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

31. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty

32. Pursuant to Section 14(a)(4) of FIFRA, Complainant determined that an appropriate civil penalty to settle this action is \$100. 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. Specifically, with respect to Respondent's ability to pay, Respondent adequately demonstrated to Complainant that the proposed penalty of \$15,732 is not feasible for the company to pay in light of Respondent's substantial lack of profitability, coupled with the \$26,581 compliance related costs incurred to ship the violative product back to South Africa, thus warranting a reduced \$100 civil penalty.

33. Within 30 days after the effective date of this CAFO, Respondent must pay the \$100 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America."

34. Respondent must pay the civil penalty 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
P.O. Box 979077
St. Louis, MO 63197-9000

The check must reference the case title ("In the Matter of Yorba Organics, LLC) and the docket number of this CAFO.

35. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

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

Abigail Wesley(LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

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

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

37. If Respondent does not pay the civil penalty in a timely manner, 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. § 136/(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. 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.

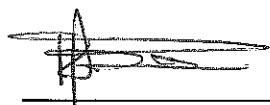
General Provisions

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint.
40. This CAFO does not affect the rights of EPA or the United States to pursue criminal sanctions or any violations of law which occur after the effective date of this CAFO.
41. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.
42. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.
43. The terms of this CAFO bind Respondent, its successors and assigns.
44. 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.
45. Consistent with the Standing Order Authorizing E-Mail Service of Orders 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: perdomo.susan@epa.gov (for Complainant), and Keith@yorba.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.
46. Each party agrees to bear its own costs and attorney fees, in this action.
47. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Yorba Organics, LLC
Sarasota, Florida
Docket No. FIFRA-05-2017-0036

Yorba Organics, LLC

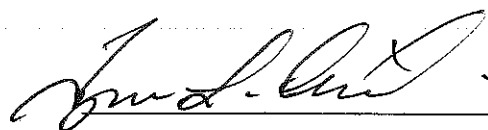
5/10/2017
Date



Keith Page
President

United States Environmental Protection Agency, Complainant

05/18/2017
Date



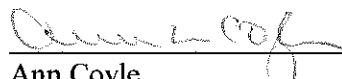
Ignacio L. Arrázola
Acting Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of: Yorba Organics, LLC
Sarasota, Florida
Docket No. FIFRA-05-2017-0036

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.

May 19, 2017
Date



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

In the matter of: Yorba Organics, LLC
Docket Number: FIFRA-05-2017-0036

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on May 22, 2017, in the following manner to the addressees:

Copy by Email to
Respondent:

Keith Page
keith@yorba.com

Copy by E-mail to
Attorney for Complainant:

Susan Perdomo
perdomo.susan@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

May 22, 2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5