

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND)

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EPA ORC  
Office of Regional Hearing Clerk

In The Matter Of: )  
)  
BioDefense Corp. )  
12 Channel Street )  
Boston, MA 02210 )  
)  
Respondent )  
)

EPA Docket No. FIFRA-01-2009-0061

CONSENT AGREEMENT and  
FINAL ORDER

**I. INTRODUCTION**

The United States Environmental Protection Agency - Region 1 ("EPA"), as Complainant, and BioDefense Corp. ("BioDefense"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondent of EPA's intention to assess a penalty against BioDefense for alleged violations of Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136j, and 40 C.F.R. Part 167, Subpart E. The CAFO also informs Respondent of its right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

**II. PRELIMINARY STATEMENT**

1. Respondent is a corporation organized under the laws of Massachusetts, has its principal place of business at 12 Channel Street in Boston, Massachusetts ("the Facility"), and is a "person" as

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defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

2. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, on or about May 11, 2005, Respondent registered the Facility as a pesticide-producing establishment. EPA's national office in Washington, D.C. ("EPA Headquarters") subsequently assigned the EPA Establishment Number 082129-MA-001 to the Facility.

3. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations codified at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, which it produced during the past year, and which it sold or distributed during the past year.

4. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing, and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. This information must be submitted to EPA, on a form supplied by EPA Headquarters, on or before March 1 of the year following the calendar year which is the subject of the report.

5. Section 14(a) of FIFRA authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and regulations promulgated at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring between March 15, 2004 and January 12, 2009. Violations that occur after January 12, 2009 are subject to penalties of up to \$7,500. *See* 69 Fed. Reg. 7121-7127 (Feb. 13, 2004) and 73 Fed. Reg. 75340-46

(Dec. 11, 2008).

6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violations herein, Respondent consents to the terms of this CAFO.

7. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

8. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 7(c) of FIFRA.

### **III. EPA FINDINGS**

9. EPA finds, based on its investigation of facts and circumstances underlying BioDefense's participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described herein.

10. During calendar year 2005, the Facility was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA and 40 C.F.R. Part 167.

11. On or about November 29, 2005, EPA Headquarters mailed to Respondent at the Facility EPA Form No. 3540-16 (rev. 04-96), entitled the "Pesticide Report for Pesticide-Producing Establishments," and described at 40 C.F.R. § 167.85(c).

12. Notwithstanding the March 1, 2006 report due date and the notice from EPA Headquarters mailed to Respondent as described in paragraph 11, Respondent submitted its pesticide production report for the 2005 calendar year on April 21, 2006.

13. Respondent's failure to submit the required information to EPA for the calendar year 2005 on or before March 1, 2006, constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R., Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and is a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

14. During calendar year 2007, the Facility was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA and 40 C.F.R. Part 167.

15. On or about December 14, 2007, EPA Headquarters mailed to Respondent at the Facility EPA Form No. 3540-16 (rev. 04-96), entitled the "Pesticide Report for Pesticide-Producing Establishments," as described at 40 C.F.R. § 167.85(c).

16. Notwithstanding the March 1, 2008 report due date and the notice from EPA Headquarters mailed to Respondent as described in paragraph 15, Respondent did not submit its pesticide production report for calendar year 2007.

17. Respondent's failure to submit the required information to EPA for calendar year 2007 on or before March 1, 2008, constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and is a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

#### **IV. TERMS OF SETTLEMENT**

18. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA's June 2007 "Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement" (the "Penalty Policy"), the DCIA and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of one thousand, three hundred and fifty dollars (\$1,350) in settlement of the violations alleged herein. EPA proposes to assess no civil penalty for Respondent's first violation (failure to submit a pesticide production report for the calendar year 2005 on or before March 1, 2006) and to assess a civil penalty of \$1,350 for the second violation (failure to submit a pesticide production report for calendar year 2007 on or before March 1, 2008).

19. Respondent shall pay the penalty of \$1,350 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

20. Respondent shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$1,350, to:

U.S. EPA, Region 1  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

and shall provide copies of the check to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (Mail Code RAA)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

and

Kan Tham, FIFRA Enforcement Coordinator  
U.S. Environmental Protection Agency  
Region 1 (Mail Code SEP)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Respondent shall include the case name and docket number (*In re: BioDefense Corp.*, FIFRA-01-2009-0061) on the face of the check.

21. If Respondent fails to pay the civil penalty it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

22. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this

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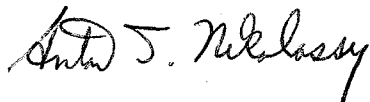
CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

23. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA, for the specific violations alleged in this CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

24. The Parties each shall bear its own costs and attorneys fees in the action resolved by this CAFO and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

25. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:



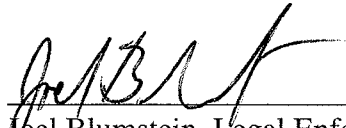
ANTON J. NIKOLASSY  
(Name)

DIRECTOR OF ENGINEERING  
(Title)

JULY 7, 2009  
(Date)

BioDefense Corp.  
12 Channel Street  
Boston, MA 02210

For EPA Region 1:



Joel Blumstein, Legal Enforcement Manager  
Office of Environmental Stewardship  
EPA Region 1

8/12/09

Date

and:



Kan Tham, FIFRA Enforcement Coordinator  
Toxics and Pesticides Unit  
Office of Environmental Stewardship  
EPA Region 1

Aug 06, 2009

Date

Of Counsel:

Hugh W. Martinez, Senior Enforcement Counsel  
Regulatory Legal Office  
Office of Environmental Stewardship  
EPA Region 1



**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, BioDefense Corp., is ordered to comply with the terms of the above Consent Agreement, effective upon filing.

*August 25, 2009*  
Date

*Jill T. Metcalf*  
\_\_\_\_\_  
Jill T. Metcalf, Acting Regional Judicial Officer  
EPA Region 1

*In re: BioDefense Corp.*

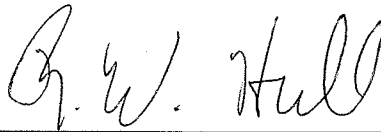
EPA Docket No. FIFRA-01-2009-0061

**CERTIFICATE OF SERVICE**

I, Skip Hull, hereby certify that, on September 3, 2009, the date the Consent Agreement and Final Order and cover letter to the Regional Hearing Clerk were filed with the EPA Region 1 Regional Hearing Clerk, by hand, in the above-referenced administrative enforcement action, a copy of each also was served on the Respondent at the following address, in the manner indicated:

**One Copy by First Class Mail, Return Receipt Requested, to:**

Michael Lu, Chairman  
12 Channel Street, 9<sup>th</sup> Floor  
Boston, MA 02210

A handwritten signature in cursive script that reads "S. W. Hull".

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Skip Hull, Acting Senior Enforcement Coordinator  
Toxics and Pesticides Enforcement Unit  
Office of Environmental Stewardship  
EPA Region 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA REGION 1  
1 Congress Street, Suite 1100 (SEL)  
Boston, MA 02114-2023

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Kan S. Tham  
direct: (617) 918-1872

OFFICE OF  
ENVIRONMENTAL STEWARDSHIP  
OFFICE OF  
REGIONAL HEARING CLERK

BY HAND

September 3, 2009

Judy Lao-Ruiz, Acting Regional Hearing Clerk  
EPA Region I  
One Congress St.  
Suite 1100 (RAA)  
Boston, MA 02114-2023

Re: In the Matter of BioDefense Corp., Docket No. FIFRA-01-2009-0061;  
Consent Agreement and Final Order

Dear Ms. Ruiz:

Please find enclosed for filing in the above-mentioned case the original and one copy of the Consent Agreement and Final Order (CAFO). This CAFO effectively concludes the above-referenced enforcement matter. I hereby certify that, on this date, I served a copy of the CAFO on the Respondent, by certified mail.

Thank you for your assistance.

Sincerely,

Kan S. Tham  
FIFRA Enforcement Coordinator  
U. S. EPA Region 1

Enclosures

cc: Michael Lu, Chairman, BioDefense Corp  
Hugh W. Martinez, Senior Enforcement Counsel (email)

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Judy Lao for Kan S. Tham  
Name of Case Attorney

9/9/09  
Date

in the ORC (RAA) at 918-1454  
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2009-0061

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

BioDefense Corp.  
12 Channel Street  
Boston, MA 02210

Total Dollar Amount of Receivable \$ 1,350.00 Due Date: Sept. 25, 2009

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>ST</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>ND</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>RD</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>TH</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>TH</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number