



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
November 18, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL

Receipt No.7011 1150 0000 2643 8050

Mr. Delmar Ehrich
Faegre Baker and Daniels LLP
2200 Wells Fargo center
90 S. Seventh St.
Minneapolis, Minnesota 55402

Consent Agreement and Final Order In the Matter of
Medivators, Inc. Docket No. FIFRA-05-2015-0010

Dear Mr. Ehrich:

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 November 18, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$273,600 is to be paid in the manner described in paragraphs 27 and 28. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by December 18, 2014, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2015-0010
)	
Medivators Inc.)	Proceeding to Assess a Civil Penalty
Minneapolis, Minnesota,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	



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. § 136l(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 Medivators Inc., a corporation doing business in the State of Minnesota.
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 in this CAFO.

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.

9. Respondent certifies that, to the best of its knowledge and belief, it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. 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.

11. 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).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is 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. 7 U.S.C. § 136(t).

14. 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.

40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violation

Factual Allegations

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

17. Respondent owned or operated a place of business located at 14605 28th Avenue, Minneapolis, Minnesota during the calendar year 2013.

18. On July 19 and 23, 2013, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Minneapolis, Minnesota.

19. During the July 19 and 23, 2013 inspection, the inspector collected labels, advertising literature, and distribution records for the product “Intercept Next Generation Detergent” which Respondent was offering for distribution or sale. At the request of the inspector, Respondent made available sales records for the period from January 1, 2013 to July 31, 2013.

20. Respondent’s label for “Intercept Next Generation Detergent,” collected on July 19 and 23, 2013 states: “low foaming, neutral pH, bactericidal detergent...” Respondent’s advertising literature for Intercept collected on July 19 and 23, 2013 states: “low foaming,

neutral pH, bactericidal detergent....” and “Effectively penetrates bacterial biofilms found on and in endoscopes.”

21. A bacterial detergent is a substance intended to destroy or mitigate bacteria.

22. Intercept is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Specific Allegation

23. Complainant incorporates by reference the allegations contained in paragraphs 10-23, above.

24. Respondent distributed or sold the unregistered pesticide “Intercept Next Generation Detergent” product on 308 occasions, between July 1, 2013 and July 31, 2013.

25. The “Intercept Next Generation Detergent” product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, between July 1, 2013 to July 31, 2013.

26. Respondent’s distribution or sale of the unregistered pesticide “Intercept Next Generation Detergent” product constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

27. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$273,600. 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 violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

Within 30 days after the effective date of this CAFO, Respondent must pay a \$273,600 civil penalty for the FIFRA violation by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

[In the comment or description field of the electronic funds transfer, indicate “Medivators Inc.” and identify the docket number of this CAFO.]

28. 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

Terence Bonace (LC-8J)
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]

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

30. If Respondent does not pay timely the civil penalty, 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. § 136l(a)(5). The validity, amount and

appropriateness of the civil penalty are not reviewable in a collection action.

31. 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

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO (i.e., for the period from January 1, 2013 to July 31, 2013).

33. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

34. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

35. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

36. The terms of this CAFO bind Respondent, its successors and assigns.

37. 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.

38. Each party agrees to bear its own costs and attorneys' fees, in this action.

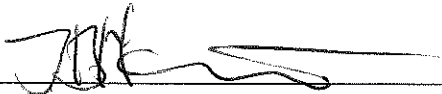
39. This CAFO constitutes the entire agreement between the parties.

40. Respondent's obligations under the CAFO shall end when Respondent has paid in

full the scheduled civil penalty and submitted the note required by paragraph 28 of this CAFO.

Medivators Inc., Respondent

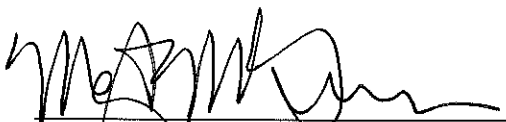
10-8-2014
Date



Jorgen Hansen
President

United States Environmental Protection Agency, Complainant

11/6/2014
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Medivators Inc.
Docket No. FIFRA-05-2015-0010

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.

11-12-14
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Medivators, Inc., was filed on November 18, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7011 1150 0000 2643 8050 , a copy of the original to the Respondent:

Mr. Delmar Ehrich
Faegre Baker and Daniels LLP
2200 Wells Fargo center
90 S. Seventh St.
Minneapolis, Minnesota 55402

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, Assistant Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. **FIFRA-05-2015-0010**