

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

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In the Matter of	:	
	:	
Everyday Group, LLC,	:	<u>CONSENT AGREEMENT and</u>
	:	<u>FINAL ORDER</u>
Respondent.	:	
	:	Docket No.
Proceeding under the Federal	:	<u>FIFRA-02-2012-5201</u>
Insecticide, Fungicide and	:	
Rodenticide Act, as amended.	:	
-----X	:	

This administrative proceeding for the assessment of a civil penalty was commenced pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended 7 U.S.C. § 136l(a) ("FIFRA" or the "Act"). On September 26, 2012, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA" or "Agency"), Region 2, issued a Complaint and Notice of Opportunity for Hearing, bearing docket number FIFRA-02-2012-5201, to Respondent, Everyday Group, LLC. The Complaint alleges three separate counts of multiple instances of sales or distributions for sale of pesticides during the period between November 2009 and April 2011, with none of the pesticides having previously been registered with EPA. The answer, although admitting a few background allegations, denies liability; the answer raises a number of objections to the proposed penalty and it requests a hearing. It also seeks dismissal with prejudice of the claims made in the complaint. The parties thereafter engaged in a prehearing exchange of documents.

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II
 2013 NOV 28 A 11:57
 REGIONAL HEARINGS

In July 2013 Complainant moved for an accelerated decision on liability, and the Court, the Honorable Susan L. Biro presiding, granted the motion with regard to each of the 31 acts alleged to be violations. Complainant and Respondent now agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims against Respondent without further litigation after consideration of the claims raised by Respondent and EPA's discussion with its consultant, Industrial Economics, Inc. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court's decision of August 21, 2013, "ORDER GRANTING COMPLAINANT'S MOTION FOR ACCELERATED DECISION ON LIABILITY" (henceforth, the "August 21st ruling") ruled that "Complainant has shown that no genuine issue of material fact exists as to the

critical elements of statutory liability,” and it further held “that the undisputed facts establish that”:

- (1) Respondent is a ‘person,’ as that term is defined by 7 U.S.C. § 136(s);
- (2) Respondent “distributed or sold” within the meaning of 7 U.S.C. § 136(gg) and 40 C.F.R. 152.15:
 - (a) Dettol Laundry Sanitiser on eight separate dates;
 - (b) Fuji Lavender Moth Tablets on 10 separate dates; and
 - (c) Dettol Disinfectant Multi Action Cleaner on 13 separate dates;
- (3) the three aforementioned products had not been registered as pesticides pursuant to 7 U.S.C. § 136(a) prior to those dates; and
- (4) the three aforementioned products each constituted a ‘pesticide’ within the meaning of 7 U.S.C. § 136(u)(1) and 40 C.F.R. §§ 152.3, 152.15.

In granting Complainant’s Motion for Accelerated Decision, the Court stated, “Respondent is hereby found liable for 31 violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and 40 C.F.R. § 152.15.”

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 14(a) FIFRA, as amended, 7 U.S.C. § 136j(a), and 40 C.F.R. § 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22,” it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the penalty issue, Respondent: (a) consents to the assessment of the civil penalty as set forth below; (b) consents to the issuance of the Final Order accompanying this Consent Agreement; and (c) waives its right to seek judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when filed with the Regional Hearing Clerk of EPA, Region 2 (such date henceforth referred to as the “effective date”).

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty in the amount of **SIXTY THOUSAND (\$60,000.00) DOLLARS**, to be paid in four installments as follows:

- a) The first installment of FIFTEEN THOUSAND (\$15,000.00) DOLLARS is to be received within forty-five (45) days¹ of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (such date when this first installment payment is due henceforth referred to as the “due date”);
- b) The second installment of FIFTEEN THOUSAND (\$15,000.00) DOLLARS is to be received within one hundred eighty (180) days after the due date;
- c) The third installment of FIFTEEN THOUSAND (\$15,000.00) DOLLARS is to be received within three hundred sixty (360) days after the due date; and
- d) The fourth installment of FIFTEEN THOUSAND (\$15,000.00) DOLLARS is to be received within five hundred forty (540) days after the due date.

Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier’s check, certified check or by electronic fund transfer (EFT). If payment is made by cashier’s check or by certified check, each such check shall be made payable to the “**Treasurer, United States of America,**” and shall be identified with a notation thereon listing the following: ***In re Everyday Group, LLC, Docket Number FIFRA-02-2012-5201***. If payment is made by either form of check, each such payment shall be mailed to the following address:

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

Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank each time payment in accordance with subparagraphs “a,” “b,” “c” and “d” of this paragraph, above, is made:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment:

¹ For purposes of this CA/FO, days shall mean calendar days.

68010727

d. Federal Reserve Bank of New York ABA routing number: **021030004**

e. Field Tag 4200 of the Fedwire message should read: **D 68010727
Environmental Protection Agency**

f. Name of Respondent: **Everyday Group, LLC**

g. Case docket number: **FIFRA-02-2012-5201**

2. Payment instructions:

a. Payment shall be in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes payment by cashier's check or certified check, then each such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then each EFT shall be *received* on or before the date specified.

b. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that each required payment has been made, and each such proof shall be furnished to both:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

c. Failure to pay the specified amounts in full within the time periods set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

d. Furthermore, if each required payment is not received on or before the date when it is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date payment was to have been made through the date payment has been received. In addition, a late

payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date (each) payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which (each) payment was required hereto to have been made.

3. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

4. Respondent shall comply with the applicable provisions of FIFRA and its implementing regulations with respect to any pesticide that it offers for sale or distributes for sale, and shall maintain such compliance.

5. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

Clarence J. Erickson, Esq.
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036

6. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and schedule set forth above.

7. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

8. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the administrative claims alleged in the Complaint bearing docket number FIFRA-02-2012-5201 upon payment of the full amount of the penalty, as set forth above. Notwithstanding the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law.

9. Respondent hereby waives its right to seek or to obtain any hearing on the allegations made in the Complaint, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

10. In an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions, the findings of the August 21st ruling shall be binding on the parties and shall be accorded preclusive effect in accordance with the applicable rules governing issue preclusion.


11. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

12. Each party shall bear its own costs and fees in connection with this proceeding.

13. The undersigned signatories hereto certify that: a) they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement.

In re Everyday Group, LLC,
Docket Number FIFRA-02-2012-5201

RESPONDENT:

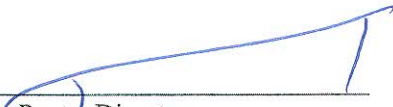
BY: 

NAME: Xiu Qing Su
[PRINT]

TITLE: CEO

DATE: 11-22-2013

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency -
Region 2

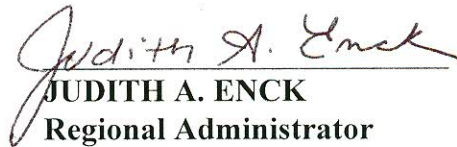
DATE: NOVEMBER 22, 2013

In re Everyday Group, LLC,
Docket Number FIFRA-02-2012-5201

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Everyday Group, LLC*, bearing Docket Number FIFRA-02-2012-5201. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3).

DATED: November 22, 2013
New York, New York


JUDITH A. ENCK

**Regional Administrator
United States Environmental Protection Agency –
Region 2**

In re Everyday Group, LLC.
Docket No. FIFRA-02-2012-5201

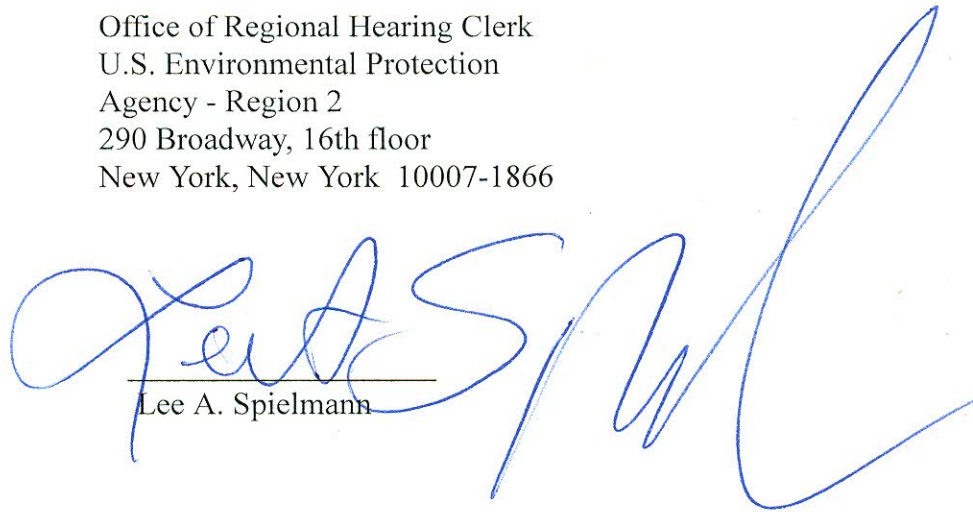
CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "CONSENT AGREEMENT AND FINAL ORDER," said Final Order having been executed by the Region Administrator of the United States Environmental Protection Agency, Region 2, on November 22, 2013, in the above-referenced proceeding in the following manner to the addressee listed below:

Original and One Copy
By Inter-Office Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Dated: November 26, 2013
New York, New York



Lee A. Spielmann