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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)
Atticus, LLC) Docket No. FIFRA-09-2019-0042
Respondent.) CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO
40 C.F.R. §§ 22.13 AND 22.18

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Atticus, LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C §§ 136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Manager of the Toxics Section of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is Atticus, LLC, a corporation whose principal offices are located at 5000 Centre Green Way, Suite 100, Cary, NC 27513.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. § 12.111 provides that “[c]ertain imported pesticides are required to be registered under the provisions of section 3 of the Act . . . before being permitted entry into the United States. . . .”
6. 19 C.F.R. § 12.112 provides that “[a]n importer or the importer’s agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . .”
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “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 (except viruses, bacteria, or other living micro-

- organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).
9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
 10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean 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.
 11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(a)(1)(A), provides that it shall be unlawful for any person to distribute or sell to any person any pesticide that is not registered under section 3 of FIFRA or whose registration has been canceled or suspended.
 12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.
 13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if “its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.”
 14. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$19,936 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 84 Fed. Reg. 2056 (February 6, 2019).

C. ALLEGATIONS

15. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Count 1

16. On or about January 15, 2019, Respondent submitted to the U.S. Department of Homeland Security, Bureau of Customs and Border Protection ("CBP"), an alternative to the Notice of Arrival through CBP's Automated Commercial Environment ("ACE") under entry number 97G-00855485 for an import shipment of 972 containers of "Xiphosin," EPA Reg. No. 92647-1-92488.
17. The ACE filing stated that Respondent was the importer of record.
18. Respondent, as the importer of "Xiphosin," and by doing business in the United States is subject to the requirements of FIFRA and the regulations promulgated thereunder.
19. The import shipment associated with entry number 97G-00855485 entered the United States at the Port of San Luis, Arizona, on or about January 15, 2019.
20. "Xiphosin" is intended to prevent and/or destroy fungus.
21. "Xiphosin," is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
22. The 972 containers of "Xiphosin" Respondent imported to the Port of San Luis, Arizona, on or about January 15, 2019 contained propiconazole manufactured in India as an active ingredient.
23. The EPA registration for "Xiphosin" does not approve any pesticide producing establishments in India as a source for propiconazole to be used in formulating "Xiphosin" to be sold and/or distributed in the United States.

24. Therefore, the 972 containers of “Xiphosin” Respondent imported to the Port of San Luis, Arizona, on or about January 15, 2019 are “unregistered” within the meaning of FIFRA and their shipment constitutes a single violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 2

25. The labeling on 972 containers of “Xiphosin” Respondent imported to the Port of San Luis, Arizona, on or about January 15, 2019 stated that “Xiphosin” can be applied to protect various types of dry and succulent beans from fungus.
26. The EPA registration for “Xiphosin” does not identify dry and succulent beans as a crop category for which “Xiphosin” can be used to protect against fungus.
27. Therefore, the 972 containers of “Xiphosin” that Respondent imported to the Port of San Luis, Arizona, on or about January 15, 2019 are “misbranded” pesticides pursuant to FIFRA Section 2(q)(1)(A) and their shipment constitutes a single violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

D. RESPONDENT’S ADMISSIONS

28. 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 specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

29. Respondent agrees to the assessment of a penalty in the amount of NINETEEN THOUSAND AND SIXTEEN DOLLARS (\$19,016) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.
30. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

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

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727

Environmental Protection Agency."

c. Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101

d. ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 — checking
Environmental Protection Agency
Account 310006
CTX Format

e. On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo1.1" in the search field
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, Please contact the EPA Cincinnati Finance Center at 513-487-2091. 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 or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, 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

Scott McWhorter
Toxics Section (ECAD-3-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

31. 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.
32. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 29, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 30 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; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
 - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the

outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 30. 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.

F. CERTIFICATION OF COMPLIANCE

33. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any FIFRA requirements that may apply to its ongoing operations.

G. RETENTION OF RIGHTS

34. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the 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 Section I.C of the CAFO;

or (ii) any criminal liability. 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 Section I.C of the CAFO.

35. 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.

H. ATTORNEY'S FEES AND COSTS

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

I. EFFECTIVE DATE

37. 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.

J. BINDING EFFECT

38. 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.
39. 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, ATTICUS, LLC


5/8/19
DATE

A handwritten signature in black ink, reading "Randall V Canady", written over a horizontal line.

NAME: Randall V Canady
TITLE: Chief Executive Officer

FOR COMPLAINANT, EPA REGION IX:

5/20/19
DATE


Douglas K. McDaniel
Manager
Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, Atticus, LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2019-0042) be entered, and that Respondent shall pay a civil administrative penalty in the amount of NINETEEN THOUSAND AND SIXTEEN DOLLARS (\$19,016) and comply with the terms and conditions set forth in the Consent Agreement.

05/22/19

DATE



Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2019-0042) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

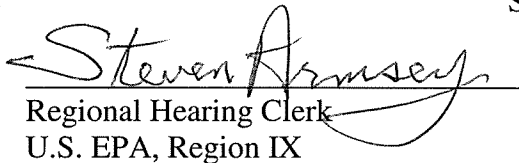
A copy was mailed via CERTIFIED MAIL to:

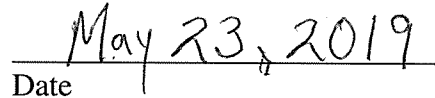
Randy Canady
Founder & Chief Executive Officer
Atticus, LLC
5000 CentreGreen Way, Suite 100
Cary, NC 27513

CERTIFIED MAIL NUMBER: 7015 0640 0001 1122 2301

An additional copy was hand-delivered to the following U.S. EPA case attorney:

David H. Kim
Assistant Regional Counsel (ORC-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX


Date