



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 8043

Mr. Juan Mendez
La Bodega, LTD.
3225 S. Western Ave.
Chicago, Illinois 60608

Consent Agreement and Final Order In the Matter of
La Bodega, LTD. Docket No. FIFRA-05-2015-0009

Dear Mr. Mendez:

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 \$3,500 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the docket number is written on both the transmittal letter 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:)
)
La Bodega, Ltd., Chicago, Illinois,)
)
Respondent.)
_____)

Docket No. FIFRA-05-2015-0009 REGION 5
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

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 La Bodega, Ltd., a company doing business in the State of Illinois.

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 it is complying with FIFRA, 7 U.S.C. §§ 136 to 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 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 Violations

16. On February 22, 2012, Respondent was a limited liability corporation.

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

18. On February 22, 2012, Respondent owned or operated a place of business located at 559 Main Street, West Chicago, Illinois.

19. On or about February 22, 2012, Respondent sold to Carniceria Jimenez, Inc., the product “Axion Antibacterial.”

20. The label of “Axion Antibacterial” stated, “Ademas, Axion Antibacterial elimina el 99.99% de P.aeruginos, E. coli, S. typhymurion, S. aureus.”

21. The label of “Axion Antibacterial” stated it eliminated bacteria.

22. Bacteria is a “pest” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

23. Therefore, “Axion Antibacterial” was a pesticide.

24. However, “Axion Antibacterial” was not registered with EPA as a pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

25. On February 22, 2012, Respondent distributed or sold the unregistered pesticide “Axion Antibacterial.”

26. Respondent’s distribution or sale of the unregistered pesticide “Axion Antibacterial” constituted an unlawful act 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 was \$3,500.00. 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. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,500.00 civil penalty for the alleged violation of FIFRA 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
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The check must note the case title, the docket number of this CAFO, and the billing document number.

29. The payment must include a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number.

Respondent must also send a copy of the check and transmittal letter to:

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

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

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

31. If Respondent does not pay the civil penalty timely 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.

32. 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

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

35. This CAFO does not affect Respondent's responsibility to comply with FIFRA and

other applicable federal, state, and local laws.

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

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


38. 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.

39. Each party agrees to bear its own costs and attorney's fees, in this action.

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

La Bodega, Ltd., Chicago, Illinois

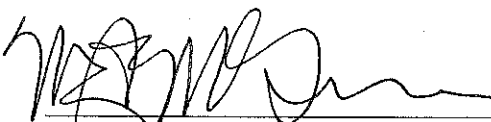
9-30-14
Date



Adolfo Vega
President

United States Environmental Protection Agency, Complainant

11/6/2014
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of: La Bodega, Ltd., Chicago, Illinois
Docket No. FIFRA-05-2015-0009

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 La Bodega, LTD., 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 8043, a copy of the original to the Respondent:

Mr. Juan Mendez
La Bodega, LTD.
3225 S. Western Ave.
Chicago, Illinois 60608

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jeffery M. Trevino, Assistance 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

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