



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
NOV 15 2017

REPLY TO THE ATTENTION OF:
LC-17J

VIA EMAIL

Dr. N. R. Gandhi
c/o
Victoria Skebba
Manager – Regulatory/Technology Commercialization
Jeneil Biosurfactant Company, LLC
400 North Dekora Boulevard
Saukville, Wisconsin 53080

v.skebba@jeneilbiotech.com

Re: Consent Agreement and Final Order In the Matter of Jeneil Biosurfactant Company,
LLC Docket Number FIFRA-05-2018-0008

Mr. Rardin:

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 17, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500.00 is to be paid in the manner described in paragraphs 29-30. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

cc: Robert Guenther (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



IN THE MATTER OF:)
)
JENEIL BIOSURFACTANT CO., LLC,)
SAUKVILLE, WISCONSIN,)
)
RESPONDENT.)
_____)

Docket No.: FIFRA-05-2018-0008
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

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. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Jeneil Biosurfactant Company, LLC, a corporation doing business in the State of Wisconsin.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
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.

Statutory and Regulatory Background

9. According to section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person who is a producer to violate any provision of section 7 of FIFRA, 7 U.S.C. § 136e.

10. According to section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

11. According to section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person may produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA unless the establishment in which it is produced is registered with the U.S. EPA.

12. According to section 7(c)(1)(C) of FIFRA, 7 U.S.C. § 136e(c)(1)(C), and 40 C.F.R. § 167.85, a pesticide producer must submit annual reports regarding the nature and quantities of pesticides produced at each of a producer's pesticide production facilities.

13. According to section 2(u) of FIFRA, 7 U.S.C. § 136(u), a "pesticide" is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

14. According to section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 U.S. EPA declares to be a pest under section 25(c)(1) of FIFRA.

15. According to 40 C.F.R. § 152.15(a)(1), 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.

16. According to section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is misbranded if, among other things, its label does not bear the pesticide producer establishment registration number assigned under section 7 of FIFRA, 7 U.S.C. § 136e.

17. According to section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), an “establishment” is any place where a pesticide or active ingredient used in producing a pesticide is produced for distribution or sale.

18. According to section 2(w) of FIFRA, 7 U.S.C. § 136(w), “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or active ingredient used in producing a pesticide.

19. According to section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a penalty by U.S. EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. part 19, promulgated at 81 Fed. Reg. 43091 (July 1, 2016,

increased the amount that can be assessed to \$18,750 for each offense occurring after November 2, 2015.

Count I – Pesticide Production in and Unregistered Establishment

20. Respondent owned or operated, and continues to own and operate, a place of business (the “facility”) located at 400 North Dekora Woods Boulevard, Saukville, Wisconsin, through calendar year 2016 to the present.

21. On or about February 28, 2017, and pursuant to section 7(c)(1)(C) of FIFRA, 7 U.S.C. § 136e(c)(1)(C), and 40 C.F.R. § 167.85, Respondent submitted to U.S. EPA a Pesticide Report for Pesticide-Producing and Device-Producing Establishments, EPA form 3540-16, reflecting pesticide production and distribution from its Saukville facility.

22. During the calendar year 2016, Respondent’s Saukville facility was not registered with U.S. EPA as a pesticide producing establishment under section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

23. Respondent’s production of a pesticide at an establishment which was not registered with the Administrator is a violation of sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a), 136j(a)(2)(L).

Count II - Sale or Distribution of a Misbranded Product

24. On or about February 28, 2017, and pursuant to section 7(c)(1)(C) of FIFRA, 7 U.S.C. § 136e(c)(1)(C), and 40 C.F.R. § 167.85, Respondent submitted to U.S. EPA a Pesticide Report for Pesticide-Producing and Device-Producing Establishments, EPA form 3540-16, reflecting pesticide production and distribution from its Saukville facility.

25. On or about February 28, 2017, Respondent reported to U.S. EPA that during calendar year 2016 it distributed or sold from its Saukville facility a product identified as “Zonix

Biofungicide,” which was labeled with an incorrect U.S. EPA Establishment Registration Number.

26. Respondent’s distribution or sale of “Zonix Biofungicide” in 2016 without a correct U.S. EPA pesticide producer establishment number is sale of a misbranded pesticide.

27. Respondent’s sale or distribution of a misbranded pesticide is a violation of sections 7(a) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136e(a), 136j(a)(1)(E).

Civil Penalty

28. 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 \$7,500. 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 U.S. EPA’s FIFRA Enforcement Response Policy, dated December 2009.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations by sending a cashier’s or certified check, payable to “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 Respondent’s name and the docket number of this CAFO.

30. Respondent must send a notice of payment that states Respondent’s name and the case docket number to U.S. 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

Abigail Wesley (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

32. If Respondent does not pay timely the civil penalty, U.S. 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). Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. 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

34. Consistent with the Consolidated Rules, 40 C.F.R. §22.5(b)(2), the parties consent to service of this filed CAFO by e-mail at the following valid e-mail addresses:

guenther.robert@epa.gov (for Complainant) and v.skebba@jeneilbiotech.com (for Respondent).

The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

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

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

38. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

39. This CAFO is a final order for purposes of U.S. EPA's FIFRA Enforcement Response Policy.

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

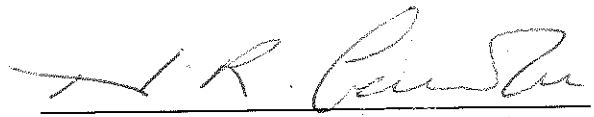
41. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Jeneil Biosurfactant Company, LLC, Respondent

October 31, 2017
Date


Dr. N. R. Gandhi
President
Jeneil Biosurfactant Company, LLC

United States Environmental Protection Agency, Complainant

11/14/17
Date

Mandi Klev
~~Brigid Lowery~~ Michael Harris
Acting Director
Land and Chemicals Division


**In the Matter of:
Jeneil Biosurfactant Company, Inc., Saukville, Wisconsin
Docket No.**

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.

November 13, 2017

Date



Anne L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Jeneil Biosurfactant Company, LLC
Docket Number: **FIFRA-05-2018-0008**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on, November 17, 2017 this day in the following manner to the addressees:

Copy by Email to
Respondent:

Victoria Skebba
Manager – Regulatory/Technology Commercialization
Jeneil Biosurfactant Company, LLC
400 North Dekora Boulevard
Saukville, Wisconsin 53080
v.skebba@jeneilbiotech.com

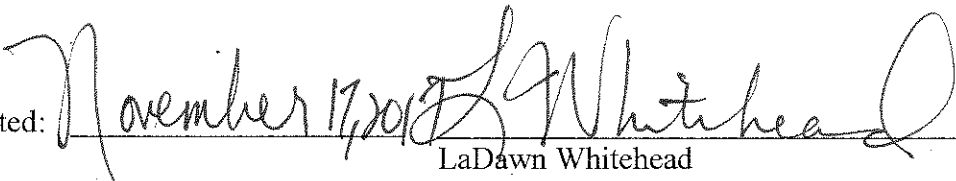
Copy by e-mail to
Attorney for Complainant:

Robert Guenther
guenther.robert@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

November 17, 2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5