



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 03 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Nat Calhoun
President
La Tortilleria, Inc.
2900 Lowery Street
Winston Salem, North Carolina 27101

Re: La Tortilleria, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3007(b)

Dear Mr. Calhoun:

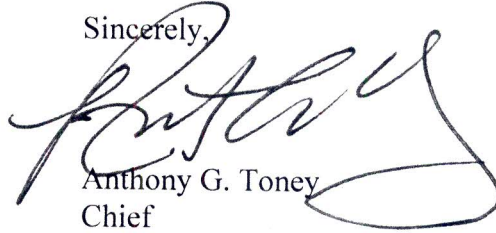
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Phillip Beard of the EPA Region 4 staff at (404) 562-9012.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony G. Toney', written in a cursive style.

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: NCDACS

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2013 SEP -3 AM 8:42
HEARING CLERK

In the Matter of:

La Tortilleria, Inc.

Respondent.

)
)
) Docket No.: FIFRA-04-2013-3007(b)
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)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136/(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is La Tortilleria, Inc. (La Tortilleria).
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an



enforcement action as the Complainant in this matter, and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Phillip Beard
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. Respondent is incorporated in the State of North Carolina.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about March 24, 2011, an authorized representative of the EPA conducted an inspection at Respondent's retail facility located at 2900 Lowery Street, Winston Salem, North Carolina.
8. During the inspection, the product Fabuloso Multi-Purpose Liquid Cleaner (Fabuloso) was identified as being sold and/or distributed by the Respondent.



9. The Fabuloso product label bore pesticidal claims in English and Spanish including “*Antibacterial*” and “*Elimina el 99.99% de P. Aeruginosa, S. choleraesuis and Staphylococcus Aureus,*” and when translated, this generally means the product “eliminates 99.99 percent of certain strains of bacteria: “*Pseudomonas aeruginosa: salmonella choleraesuis and staphylococcus aureus,*”
10. Because the label for the Fabuloso product bore pesticidal claims, this product is a pesticide.
11. The term pesticide is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance (or mixture of substances) intended for a pesticide purpose, *i.e.*, use for the preventing, destroying, repelling, or mitigating any pest.
12. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 microorganisms 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. § 136w(c)(1).
13. Respondent “distributes or sells” pesticides. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
14. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
15. At the time of the inspection, the Fabuloso product was not registered as a pesticide with the EPA.



16. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
17. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least seven (7) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
18. At the time of the inspection, the Fabuloso product failed to bear the directions for use in English and an ingredient statement.
19. According to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is misbranded if its labeling fails to contain directions for use or fails to bear an ingredient statement or other information required by FIFRA to appear on the label. Pursuant to 40 C.F.R. § 156.10(a)(3), all required label or labeling text shall appear in the English language.
20. Under 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 to any person any pesticide that is misbranded.
21. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least seven (7) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
22. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
23. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **FOURTEEN THOUSAND ONE HUNDRED SEVENTY FIVE DOLLARS (\$14,175)** against the



Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order. In addition, the Respondent will spend a minimum of **FORTY NINE THOUSAND THREE HUNDRED AND EIGHTY TWO DOLLARS (\$49,382)** to perform a Supplemental Environmental Project (SEP) discussed below in Section V.

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
25. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
26. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent agrees to complete the SEP set forth in this CAFO.
28. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
29. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

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30. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

31. Respondent is assessed a civil penalty of **FOURTEEN THOUSAND ONE HUNDRED SEVENTY FIVE DOLLARS** (\$14,175), which shall be paid within thirty (30) days from the effective date of this CAFO.
32. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

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

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 418-1028.

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

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33. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

Phillip Beard
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

34. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
35. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within ninety (90) days of the due date.



36. Respondent shall complete the following environmental compliance promotion SEP within twelve (12) months of the effective date of this CAFO, which the parties agree is intended to promote awareness of the FIFRA requirements within the Hispanic business community.
37. The SEP will involve a one year national campaign to promote awareness of the FIFRA requirements relating to pesticides. The campaign will utilize print and digital media in the *Abasto* magazine, a national Hispanic business publication and its associated vehicles including web, social media, training video on-line in Spanish and email to educate importers, distributors, manufacturers, and retailers. The SEP is more specifically described in the attachment to this CAFO, Appendix A, which is incorporated herein by reference.
38. The total expenditure for the SEP shall not be less than **Forty Nine Thousand Three Hundred Eighty Two Dollars (\$49,382)**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report set forth herein in paragraph 40(b).
39. Respondent shall submit all promotional material for the SEP including articles, advertisement, training video and all information posted on-line to EPA for review and approval no later than 30 days prior to the publication of any of the information. Respondent shall submit this information by first class mail or overnight delivery service to the EPA contact identified below in paragraph 40(d).
40. The Respondent shall submit the following Reports to the EPA regarding the progress and completion of the SEP:

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- a. Respondent shall submit a Periodic Report to the EPA, the first of which is due within ninety (90) calendar days from the effective date of the CAFO, and each subsequent report shall be due on the first of each month thereafter until the SEP is completed and the SEP Completion Report, noted below, is submitted to the EPA. The Periodic Report shall contain the following information:
 - (i). a detailed description of the status of the SEP; and
 - (ii). a timeline indicating the completion date or the expected completion date.
- b. Respondent shall submit a SEP Completion Report to the EPA within thirty (30) days after the completion of the SEP. The SEP Completion Report shall contain the following information:
 - (i). a detailed description of the SEP as implemented;
 - (ii). an affidavit from an authorized company official, attesting that the SEP has been completed in accordance to the terms agreed upon or explaining in detail any failure to complete the SEP; and
 - (iii). copies of appropriate cost documentation, including invoices, receipts, etc., and copies of the publication, articles, advertisement and all distributed material.
- c. Respondent agrees that the failure to submit the SEP Completion Report or any Periodic Report required as set herein above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 42 below.
- d. Respondent shall submit all reports required by this CAFO by first class mail or overnight delivery service to the following:

A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by a flourish.

Phillip Beard
Pesticides Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

41. Upon request, Respondent shall send the EPA any additional documentation requested by the EPA relating to the SEP.
42. Respondent agrees that the failure to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 38 above and Appendix A, Respondent shall be liable for stipulated penalties according to the provisions set forth below.
 - a. Except as provided in subparagraph (b) immediately below, in the event that Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of **Forty Nine Thousand Three Hundred Eighty Two Dollars (\$49,382)** for the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between **Forty Nine Thousand Three Hundred Eighty Two Dollars (\$49,382)** and the amount actually spent.
 - b. If this SEP is not fully and timely completed, but the Complainant determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documentation, that at least 90 percent of the minimum amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
 - c. If the SEP is fully and timely completed, and Respondent expended at least 90



percent of the minimum amount of money required to be spent for the SEP,
Respondent shall not be liable for any stipulated penalty.

- d. For failure to timely submit any Periodic Report required by paragraph 40(a) above, Respondent shall pay a stipulated penalty in the amount of **One Hundred Dollars (\$100)** for each day the Report is late.
 - e. For failure to timely submit a SEP Completion Report required by paragraph (b) above, Respondent shall pay a stipulated penalty in the amount of **One Hundred Dollars (\$100)** for each day the Report is late.
 - f. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA.
 - g. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraphs 32 and 33 above.
43. Respondent certifies that, as of the date this CAFO is signed, Respondent is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.
44. Respondent agrees to the following language concerning the SEP:

Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction



proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

45. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
46. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 12 of FIFRA, 7 U.S.C. § 136j.”

47. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
48. This CAFO shall be binding upon the Respondent, its successors and assigns.
49. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

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VI. Effective Date

50. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: La Tortilleria, Inc.
Docket No.: FIFRA 04-2013-3007(b)

By:  (Signature) Date: 8-8-13

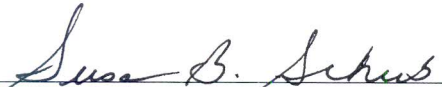
Name: DANIEL CALHOUN (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 8-16-13
Carol L. Kemker, Acting Director
Air, Pesticides and Toxic
Management Division

APPROVED AND SO ORDERED this 29 day of August 2013.


Susan B. Schub
Regional Judicial Officer



Supplemental Environmental Project (SEP)

The proposed SEP involves promoting awareness of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements within the Hispanic business community. La Tortilleria, Inc., (La Tortilleria) will implement the SEP in conjunction with environmental regulators (EPA will review materials to ensure their accuracy with regards to the FIFRA requirements). The extent of the EPA's involvement will be limited to reviewing the materials. The EPA will not assist in the development.

The project will be in the form of a one year national campaign that includes training, print and digital media in the *Abasto* magazine and its associated vehicles including web, social media, training video on-line in Spanish and email to educate importers, distributors, manufacturers, retailers and consumers.

The scope of the campaign will cover the following topics:

- Proper labeling guidelines;
- How to obtain compliance assistance;
- Overview of the differences between the FIFRA Statute and Environmental laws in Mexico and other Latin American countries;
- Cost and impact to the community when unregistered products are placed in the stream of commerce; and
- How the community benefits from compliance with FIFRA.

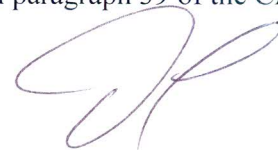
The Print Media Campaign will consist of:

- Six consecutive educational awareness articles in the Hispanic national publication (*Abasto*); and
- Six full page, advertisement in each issue of the magazine in full color.

The Digital Media will consist of:

- On-line availability of all printed issues;
- Training video available on-line within three months of the executed Consent Agreement and Final Order; and
- The EPA link to FIFRA information for a period of 52 weeks.

The EPA will require La Tortilleria to submit all the promotional material for the SEP including articles, advertisement, training video and all information posted on-line to EPA for review and approval no later than 30 days prior to the publication of any of the information, as set forth in paragraph 39 of the CAFO.

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La Tortilleria, Inc.
Docket No.: FIFRA 04-2013-3007(b)

The EPA will require La Tortilleria to submit a SEP completion report no later than 30 days after the completion of the project. The SEP completion report will include an affidavit from an authorized company official attesting that the SEP was completed in accordance to the terms agreed upon, documentation of the cost (invoices, receipts, etc.), and copies of the publications, articles, advertisement and all distributed material, in accordance with paragraph 40(b) of the CAFO. In the interim before the SEP Completion Report is due; La Tortilleria will be required to submit Periodic Reports as specified in paragraph 40(a) of the CAFO.

A handwritten signature in blue ink, consisting of a large, stylized initial 'L' followed by a cursive 'T' and a trailing flourish.

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter of La Tortilleria, Inc., Docket Number: FIFRA-04-2013-3007(b), to the addressees listed below:

Mr. Nat Calhoun (via Certified Mail, Return Receipt Requested)
President
La Tortilleria, Inc.
2900 Lowery Street
Winston Salem, North Carolina 27101

Phillip Beard (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 9-3-13



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511