

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF)

Precision Assembly, Inc.)
2301 Computer Avenue)
Willow Grove, PA 19090)

Respondent.)

DOCKET NO: FIFRA-03-2010-0390

CONSENT AGREEMENT

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Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and by Precision Assembly, Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under FIFRA arising from the violations of FIFRA alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.

4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

EPA's Findings of Fact and Conclusions of Law

8. In accordance with the Consolidated Rules of Practice at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
10. Respondent is a Pennsylvania corporation with a principle place of business located at 2301 Computer Avenue in Willow Grove, Pennsylvania.
11. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
12. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500 define "device" to mean any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.
13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define "pesticide", in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
14. 40 C.F.R. § 152.3 defines "pesticide product", in pertinent part, to mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.
15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines "pest" to mean 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 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. § 136w(c)(1).

16. In 2005, Respondent began manufacturing *Sterilox 2100 Generator* systems that were sold and distributed for the purpose sanitizing and disinfecting food.
17. Respondent's *Sterilox 2100 Generator* system is a "device" as this term is defined by Section 2(h) of FIFRA, 7 U.S.C. § 136(h) and 40 C.F.R. § 152.500.
18. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3 define "produce", in pertinent part, to mean to manufacture, prepare, propagate, compound, or process any pesticide or device.
19. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define "producer", in pertinent part, to mean any person who produces any pesticide or device.
20. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. §167.3 defines "establishment", in pertinent part, to mean any site where a pesticide product or device is produced.
21. Respondent manufactured the *Sterilox 2100 Generator* systems at its facility located at 2301 Computer Avenue in Willow Grove, Pennsylvania.
22. By manufacturing *Sterilox 2100 Generator* systems, Respondent "produced", and is a "producer" of, a device, as those terms are defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3.
23. With respect to the manufacture of the *Sterilox 2100 Generator* systems, Respondent's facility located at 2301 Computer Avenue in Willow Grove, Pennsylvania is an "establishment" as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. 167.3.
24. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L), it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C § 136e.
25. Pursuant to Section 7(a) of FIFRA, 7 U.S.C § 136e(a), "[n]o person shall produce any pesticide. . . in any State unless the establishment in which it is produced is registered with [EPA]."
26. Prior to August 2010, Respondent's facility located at 2301 Computer Avenue in Willow Grove, Pennsylvania was not registered with EPA as a pesticide producing establishment.

27. By producing a pesticide at an establishment not registered pursuant to Section 7(a) of FIFRA, 7 U.S.C § 136e(a), Respondent violated that section, constituting an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L).

28. Respondent is a "distributor" or "retailer" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

Civil Penalty

29. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of FIVE THOUSAND ONE HUNDRED DOLLARS (\$5100), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

30. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy* and 40 C.F.R. Part 19.

31. Payment of the civil penalty amount required under the terms of Paragraph 29, above, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

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

Contact: Craig Steffen 513-487-2091
Eric Volck 513-487-2105

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

314-418-1028

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: John Schmid
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

All payments shall also reference the above case caption and docket number, FIFRA-03-2010-0390. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Kyla Townsend-McIntyre (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

Certifications

33. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 et seq.

Other Applicable Laws

34. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

35. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated there under, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

36. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

37. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent. By his signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

Effective Date

38. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

39. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

9/9/2010
Date

Thomas D. Tyler
Thomas D. Tyler, Vice President
Precision Assembly, Inc.

For Complainant:

09/17/2010
Date

Kyla L. Townsend-McIntyre
Kyla L. Townsend-McIntyre

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

9/27/10
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division

THOUSAND ONE HUNDRED DOLLARS (\$5100), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date:

9/29/10



Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

