

FILED

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION IX
4 75 HAWTHORNE STREET
5 SAN FRANCISCO, CA 94105

2011 JAN -4 PM 2: 28
U.S. EPA. REGION IX
REGIONAL HEARING CLERK

6 In the Matter of:) Docket No. FIFRA-09-2011- 0008
7 Ladybugs. Inc. Pest Control,)
8 Respondent.)
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I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX and Ladybugs, Inc. Pest Control ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 1361(a), against Respondent for the use of a registered pesticide in a manner inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, EPA Region IX, who has been duly delegated the authority to initiate administrative proceedings under Section 14 of FIFRA and to sign consent agreements settling such proceedings.

3. Respondent is a New Mexico corporation located at 1 Road 5025 #1 in Bloomfield, New Mexico.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a "person" means any

1 individual, partnership, association, corporation, or any organized group of persons whether
2 incorporated or not.

3 5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) provides, in part, that a “pesticide” means
4 any substance or mixture of substances intended for preventing, destroying, repelling, or
5 mitigating any pest.

6 6. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee) provides that the term “to use any
7 registered pesticide in a manner inconsistent with its labeling” means to use any registered
8 pesticide in a manner not permitted by the labeling.

9 7. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2) provides that the term “labeling” means
10 “all labels and all other written, printed, or graphic matter accompanying the pesticide at the time;
11 or to which reference is made on the label or in literature accompanying the pesticide.

12 8. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), makes it unlawful for any
13 person in any State to use any registered pesticide in a manner inconsistent with its labeling.

14 C. ALLEGED VIOLATIONS

15 9. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

16 10. On August 31, 2009, Respondent, through applicator, Wendy Schmitz, applied the
17 product, Talstar, at the Subway Restaurant and the Rez Rock Café located on the Navajo
18 Reservation in Shiprock, New Mexico.

19 11. Talstar is a “pesticide,” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. §
20 136(u), that is registered with EPA pursuant to Section 3 of FIFRA (EPA Reg. No. 279-3206).

21 12. The labeling for the pesticide, Talstar, states that all pesticide handlers (mixers, loaders
22 and applicators) must wear chemical-resistant gloves but, after the product is diluted in accordance
23 with label directions for use, waterproof gloves are sufficient.

24 13. On August 31, 2009, Respondent, through applicator, Wendy Schmitz, applied the
25 registered pesticide, Talstar, at the Subway Restaurant and the Rez Rock Café without wearing
26 gloves.

1 14. Respondent's application of the registered pesticide, Talstar, at the Subway
2 Restaurant and Rez Rock Café, through applicator, Wendy Schmitz, without wearing gloves on
3 August 31, 2009 constitutes a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
4 136j(a)(2)(G).

5 15. The Enforcement Response Policy for FIFRA dated December 2009 provides for a
6 penalty of \$500 for this violation.

7 D. RESPONDENT'S ADMISSIONS

8 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
9 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
10 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C.
11 of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment
12 of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any right to contest
13 the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order
14 contained in this CAFO.

15 E. CIVIL ADMINISTRATIVE PENALTY

16 17. Respondent agrees to the assessment of a penalty in the amount of **FOUR**
17 **HUNDRED DOLLARS** (\$400) as final settlement of the civil claims against Respondent arising
18 under FIFRA, as alleged in Section I.C. of this CAFO.

19 18. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from
20 the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to
21 the "Treasurer, United States of America," and shall be sent by certified mail, return receipt
22 requested (or be paid by one of the other methods listed below) and sent as follows:

23 Regular Mail:

24 U.S. Environmental Protection Agency
25 Fines and Penalties
26 Cincinnati Finance Center
27 PO Box 979077
28 St. Louis, MO 63197-9000

1 Wire Transfers:

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

4 Federal Reserve Bank of New York
5 ABA = 021030004
6 Account = 68010727
7 SWIFT address = FRNYUS33
8 33 Liberty Street
9 New York, NY 10045
10 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection
11 Agency"

12 Overnight Mail:

13 U.S. Bank
14 1005 Convention Plaza
15 Mail Station SL-MO-C2GL
16 ATTN Box 979077
17 St. Louis, MO 63101

18 ACH (also known as REX or remittance express):

19 Automated Clearinghouse (ACH) for receiving US currency
20 PNC Bank
21 808 17th Street, NW
22 Washington, DC 20074
23 ABA = 051036706
24 Transaction Code 22 - checking
25 Environmental Protection Agency
26 Account 31006
27 CTX Format

28 On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sf01.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA
Cincinnati Finance Center at 513-487-2091.

In addition, a copy of each 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, shall be sent with a
transmittal letter indicating Respondent's name, the case title, and the docket number to:

Consent Agreement and Final Order
In re: Ladybugs, Inc. Pest Control

1 Regional Hearing Clerk
2 Office of Regional Counsel (ORC-1)
3 U.S. Environmental Protection Agency, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 Nancy Yoshikawa
7 Pesticides Office
8 Communities and Ecosystems Division (CED-5)
9 U.S. Environmental Protection Agency, Region IX
10 75 Hawthorne Street
11 San Francisco, CA 94105

12 19. Payment of the above civil administrative penalty shall not be used by Respondent or
13 any other person as a tax deduction from Respondent's federal, state, or local taxes.

14 20. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph
15 17 by the date specified in Paragraph 18, then Respondent shall pay to EPA a stipulated penalty
16 of \$100 per day for each day that payment is late, in addition to the assessed penalty. Stipulated
17 penalties are due and payable upon EPA's written request. In addition, failure to pay in full the
18 civil administrative penalty by its due date may lead to any or all of the following actions:

19 a.. The debt being referred to a credit reporting agency, a collection agency, or to
20 the Department of Justice for filing of a collection action in the appropriate United States District
21 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
22 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

23 b. The debt being collected by administrative offset (i.e., the withholding of money
24 payable by the United States to, or held by the United States for, a person to satisfy the debt the
25 person owes the Government), which includes, but is not limited to, referral to the Internal
26 Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

27 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
28 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced
payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40

1 C.F.R. §§ 13.14 and 13.17.

2 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
3 interest, penalty charges, and administrative costs will be assessed against the outstanding amount
4 that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative
5 penalty by the deadline specified in Paragraph 18. Interest will be assessed at an annual rate that
6 is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax
7 and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal
8 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.12(a)(1).
9 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.12(c).
10 Administrative costs for handling and collecting Respondent's overdue debt will be based on either
11 actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. §
12 13.12(b). In addition, if this matter is referred to another department or agency (e.g., the
13 Department of Justice, the Internal Revenue Service), that department or agency may assess its
14 own administrative costs, in addition to EPA's administrative costs, for handling and collecting
15 Respondent's overdue debt.

16 **F. CERTIFICATION OF COMPLIANCE**

17 21. In executing this CAFO, Respondent certifies that it is no longer using any
18 registered pesticides in a manner inconsistent with its labeling.

19 **G. RETENTION OF RIGHTS**

20 22. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
21 liability for federal civil penalties for the violation and facts specifically alleged in Section I.C. of
22 this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil
23 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
24 ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any criminal
25 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
26 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
27

1 any violation of this CAFO or any violation not specifically alleged in Section I.C. of this CAFO.

2 23. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty
3 to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
4 permits.

5 H. ATTORNEYS' FEES AND COSTS

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

8 I. EFFECTIVE DATE

9 25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
10 effective on the date that the final order contained in this CAFO, having been approved and issued
11 by either the Regional Judicial Officer or Regional Administrator, is filed.

12 J. BINDING EFFECT

13 26. The undersigned representative of Complainant and the undersigned representative of
14 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of
15 this CAFO and to bind the party he or she represents to this CAFO.

16 27. The provisions of this CAFO shall apply to and be binding upon Respondent and its
17 officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and
18 assigns.

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1 **FOR RESPONDENT, LADYBUGS, INC. PEST CONTROL:**

2
3 10/6/10
4 DATE

Wendy Schmitz
5 Wendy Schmitz
6 Secretary-Treasurer
7 Ladybugs, Inc. Pest Control

8 **FOR COMPLAINANT, EPA REGION IX:**

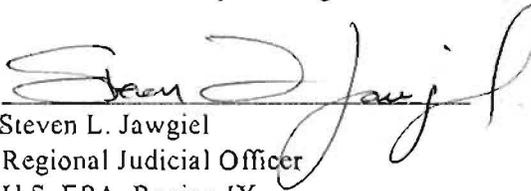
9
10 12/31/10
11 DATE

Katherine A. Taylor
12 Katherine A. Taylor
13 Associate Director for Agriculture
14 Communities and Ecosystems Division
15 U.S. Environmental Protection Agency, Region IX

1
2 II. FINAL ORDER

3 Complainant and Respondent, having entered into the forgoing Consent Agreement,
4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA- ⁰⁹⁻²⁰¹¹⁻⁰⁰⁰⁸ ^) be entered,
5 and that Respondent shall pay a civil administrative penalty in the amount of ⁵⁰⁰
6 FOUR HUNDRED DOLLARS (\$400) in accordance with the terms and conditions set forth in
7 the Consent Agreement. This CAFO shall become effective upon filing.

8
9 01/04/11
DATE

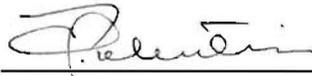

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-09-2011- 0008 has been filed with the Region 9 Hearing Clerk and that a copy was sent, certified mail to:

Wendy Schmitz
Secretary-Treasurer
Ladybugs, Inc. Pest Control
1 Road 5025 #1
Bloomfield, NM 87413

1/4/2011



DATE

FOR: Steven Armsey
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7008 1140 0004 5421 2900

Date: **JAN 04 2011**

Wendy Schmitz
Secretary-Treasurer
Ladybugs, Inc. Pest Control
1 Road 5025 #1
Bloomfield, NM 87413

Re: Consent Agreement and Final Order
Docket No.: FIFRA-9-2011- 0008

Dear Ms Schmitz:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by Ladybugs, Inc. Pest Control. The terms of the CAFO require the payment of \$400 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact Nancy Yoshikawa at 415-972-3535.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor".

Katherine A. Taylor, Associate Director of Agriculture
Communities and Ecosystems Division

cc: Glenna Lee, Navajo Nation Environmental Protection Agency