



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 24 2011

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Mr. Mitchell Clark
President
Yellow Magic
9215 43rd Terrace West
Bradenton, Florida 34209

Re: Docket No. FIFRA-04-2011-3038(b); Yellow Magic

Dear Mr. Clark:

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.

As stated in Section IV of the CAFO, the assessed penalty of \$880 is to be paid in four installments. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case. Penalty payment questions should be directed to Mr. Bryson Lehman either by telephone at (513) 487-2125 or by written correspondence to his attention at the U.S. Environmental Protection Agency's Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Mary Summers at (404) 562-8997.

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 EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA**

11 AUG 04 4:10 PM '05
OFFICE OF ENVIRONMENTAL
APPEALS AND COMPLAINTS
Hecimus Clerk (H)

IN THE MATTER OF:)
)
Yellow Magic)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2011-3038(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "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 (EPA). Respondent is Yellow Magic.

2. 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

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to the Regional Administrators and the Director of the Air, Pesticides and Toxics Management Division by EPA Delegation 5-14, dated May 11, 1994.

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

Mary Summers
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.
(404) 562-8997.

5. Respondent is Yellow Magic, a Florida corporation, located at 9215 43rd Terrace West, Bradenton, Florida 34209.

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.

7. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. §136(w), and 40 C.F.R. § 167.3.

8. Respondent's establishment located at 9215 43rd Terrace West, Bradenton, Florida 34209, is registered with EPA as a pesticide-producing establishment.

9. Respondent's EPA Establishment Number is 84955-FL-001.

III. EPA's Statement of Factual and Legal Basis of Allegations of Violation

10. Producers operating an establishment registered with EPA are required to submit to the Administrator of EPA an annual report which indicates the types and amounts of pesticides or active ingredients which they are currently producing, which they produced during the past year, and which they sold or distributed during the past year, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations promulgated at 40 C.F.R. § 167.85.
11. Submittal of the annual report of pesticide-production for calendar year 2010 was due on or before March 1, 2011.
12. Respondent failed to submit the annual report on or before March 1, 2011.
13. Therefore, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
14. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
15. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a), requires 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.
16. EPA proposes to assess a total civil penalty of **EIGHT HUNDRED, EIGHTY DOLLARS (\$880)** against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

17. 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.
18. 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.
19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
21. Respondent agrees to submit to EPA all future annual pesticide-production reports required under Section 7 of FIFRA, 7 U.S.C. § 136(e), on or before the March 1st due date. Respondent shall send the reports by means of certified mail, return receipt requested, to the following address:

U.S. EPA – Region 4
Atlanta Federal Center
Chemical Products & Asbestos Section
61 Forsyth Street
Atlanta, Georgia 30303-8960.
22. Compliance with this CAFO shall resolve the allegation of the violation contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither 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.

23. 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

24. Respondent shall pay a civil penalty of **EIGHT HUNDRED, EIGHTY DOLLARS (\$880)**. Four payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days of the effective date of this CAFO. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **EIGHT HUNDRED EIGHTY ONE DOLLARS AND 10 CENTS (\$881.10)**. Respondent shall make payments in accordance with the following schedule for the violations alleged in Section III of this CAFO.

| <u>Payment Number</u> | <u>Payment Due Date</u> | <u>Payment Due</u> |
|------------------------------|----------------------------------|---------------------------|
| 1 | within 30 days of filing of CAFO | \$220.27 |
| 2 | 30 days later | \$220.27 |
| 3 | 30 days later | \$220.27 |
| 4 | 30 days later | \$220.29 |

25. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

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

The check shall reference on its face Docket No. FIFRA-04-2011-3038(b).

26. 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;

Mary Summers
Chemical Product and Asbestos 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.

28. 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.
29. Pursuant to 31 U.S.C. § 3717, 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 date of entry 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 principle amount not paid within 90 days of the due date.

30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.
32. 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 this CAFO.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

VI. Effective Date

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

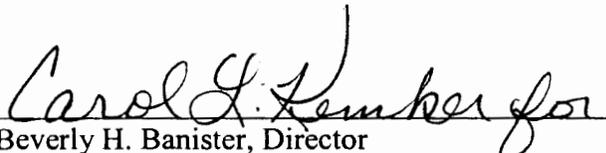
AGREED AND CONSENTED TO:

Respondent: Yellow Magic
Docket No: FIFRA-04-2011-3038(b)

By: 
Name: Mitchell Clark
Title: President

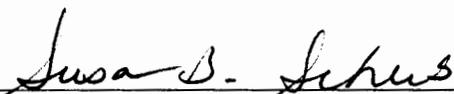
Date: 8/8/2011

Complainant: U.S. Environmental Protection Agency

By: 
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

Date: 8/16/11

APPROVED AND SO ORDERED this 23rd of August, 2011.


Susan B. Schub
Regional Judicial Officer

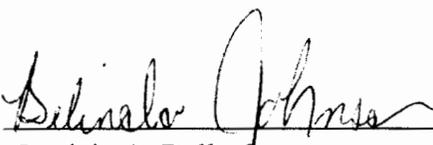
CERTIFICATE OF SERVICE

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 Respondent's Yellow Magic, Docket Number: FIFRA-04-2011-3038(b), to the addressees listed below.

Mr. Mitchell Clark (via Certified Mail, Return Receipt Requested)
President
Yellow Magic
9215 43rd Terrace West
Bradenton, Florida 34209

Mary Summers (via EPA's internal mail)
Chemical Products and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

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

By: 
for Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street
Atlanta, GA 30303
(404) 562-9511

Date: 8/24/11

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/19/11
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Yellow Magic
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 8807 + interest 1.1%
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIETA 04 2011 3038(6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |