

NANCY MARVEL  
Regional Counsel

Carol Bussey  
Assistant Regional Counsel  
Ellen Blake  
Law Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3950

Attorneys for Plaintiff

FILED  
2008 SEP 30 AM 10:53  
U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

\_\_\_\_\_  
In the Matter of:

Filo America,

Respondent.  
\_\_\_\_\_

)  
)  
)  
)  
)  
)

Docket No. FIFRA-09-2008- 0026  
CONSENT AGREEMENT AND  
FINAL ORDER PURSUANT TO  
40 C.F.R. §§ 22.13 AND 22.18

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA Region IX"), and  
Filo America ("Respondent") agree to settle this matter and consent to the entry of this Consent  
Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty  
pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act

("FIFRA" or the "Act"), 7 U.S.C. § 136l(a), against Respondent for violating the Act.

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division of EPA Region IX. The Administrator of EPA has delegated to the Regional Administrator of EPA Region IX the authority to issue complaints, and the Regional Administrator, in turn, has re-delegated that authority to the Complainant.

#### B. STATUTORY AND REGULATORY BASIS

3. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide which is not registered with EPA.
4. The term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s).
5. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . ." 7 U.S.C. § 136(u).
6. The term "pest" means "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism . . . which the Administrator declares to be a pest under section 25(c)(1)." 7 U.S.C. § 136(t).
7. The term "distribute or sell" means to "distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and . . . deliver or offer to deliver." 7 U.S.C. § 136(gg).

#### C. ALLEGED VIOLATIONS

8. At all times relevant to this action, Respondent is a "person" as that term is defined in Section 2(s) of the Act, 7 U.S.C. § 136(s), in that it is a corporation.
9. Respondent owns and operates a facility (the "Facility") at 2701 South Santa Fe, Unit B,

Vernon, California.

10. The Facility imports and sells and/or distributes various goods including cotton swabs, soaps, shampoos, hand sanitizers, and other household products.
11. On four separate occasions, on or about December 11, 2007, January 21, 2008, and February 4, 2008, Respondent sold "Pacific Bathroom Disinfecting Cleaner" to Variety Wholesalers, Inc. located in Henderson, North Carolina.
12. "Pacific Bathroom Disinfecting Cleaner" is labeled that it is "intended to prevent, destroy, repel, or mitigate bacteria and other micro-organisms."
13. Bacteria and other micro-organisms are "pests" as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
14. "Pacific Bathroom Disinfecting Cleaner" is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
15. At all times relevant to this action, "Pacific Bathroom Disinfecting Cleaner" was not registered with EPA.
16. On four separate occasions, with two separate shipments on or about December 11, 2007, one shipment on or about January 21, 2008, and one shipment on or about February 4, 2008, Respondent sold or distributed an unregistered pesticide, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### D. RESPONDENT'S ADMISSIONS

17. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in



Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

18. In settlement of the violations specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of \$20,800 within 30 days of the effective date of this CAFO. Respondent shall pay this penalty according to the terms of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

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

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

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

Bill Lee  
Pesticides Office (CED-5)  
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street  
San Francisco, CA 94105

19. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
20. If Respondent fails to pay the civil administrative penalty within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA the stipulated penalty of \$26,000 instead of the agreed upon penalty sum specified in paragraph 18 upon EPA's written demand. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:
  - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
  - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
  - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,

penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in paragraph 18. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. CERTIFICATION OF COMPLIANCE

21. In executing this CAFO, Respondent certifies that (1) it is no longer distributing or selling unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and (2) it is currently in compliance with all other FIFRA requirements for all its ongoing operations.

#### G. RETENTION OF RIGHTS

22. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of



this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

#### H. ATTORNEYS' FEES AND COSTS

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

#### I. EFFECTIVE DATE

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

#### J. BINDING EFFECT

26. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
27. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT FILO AMERICA:

*[Signature]*  
DATE 9-17-08

FRED POUNGABA  
By:  
Title: PRESIDENT  
Address: 2701 SANJA FE AVE  
VERNON CA 90058

FOR COMPLAINANT EPA REGION IX:

9-23-08  
DATE

*[Signature]*  
KATHERINE A. TAYLOR

Associate Director for Agriculture  
Communities and Ecosystems Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105



II. FINAL ORDER

EPA Region IX and Filo America, having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-9-2008-0026) be entered,  
and Respondent shall pay a civil administrative penalty in the amount of \$20,800 in accordance with  
the terms set forth in the Consent Agreement.

09/30/08

DATE



STEVEN JAWGIEL  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to:

The Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Fred Pourbaba  
Filo America  
2701 South Santa Fe, Suite B  
Vernon, CA 90058

Dated: SEP 30 2008

By: 

Danielle Carr  
U.S. Environmental Protection Agency, Region IX