



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
June 4, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

**CERTIFIED MAIL: No.7009 1680 0000 7649 6612**  
**RETURN RECEIPT REQUESTED**

Mr. Wes Thoren  
President  
Best Veterinary Solutions, Inc.  
325 Lakeland Drive NE  
Willmar, Minnesota 56201

Consent Agreement and Final Order In the Matter of  
Best Veterinary Solutions, Inc. Docket No. FIFRA-05-2014-0019

Mr. Thoren:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on June 4, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$61,425 is to be paid in the manner described in paragraphs 82 and 83. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by July 4, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

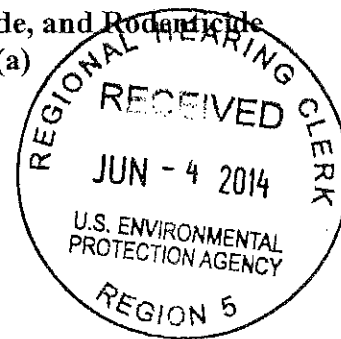
Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess  
Pesticides and Toxics Compliance Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. FIFRA-05-2014-0019  
)  
Best Veterinary Solutions, Inc. ) Proceeding to Assess a Civil Penalty  
325 Lakeland Drive, NE ) Under Section 14(a) of the Federal  
Willmar, Minnesota 56201, ) Insecticide, Fungicide, and Rodenticide  
) Act, 7 U.S.C. § 136l(a)  
Respondent. )  
\_\_\_\_\_ )



Consent Agreement and Final Order

Commencing and Concluding a Proceeding

1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Best Veterinary Solutions, Inc., a corporation doing business in the State of Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits

nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

### **Statutory and Regulatory Background**

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. 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 (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A “label” is the written, printed, or graphic matter on, or attached to, the pesticide or any of its containers or wrappers. 7 U.S.C. § 136(p)(1).

15. “Labeling” is all labels and other written, printed, or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide. 7 U.S.C. § 136(p)(2).

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if “the person who distributes or sells the substance claims,

states, or implies (by labeling or otherwise) . . . that the substance . . . can or should be used as a pesticide.” 40 C.F.R. § 152.15(a)(1).

17. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

### General Allegations

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

19. Respondent is a wholesaler, dealer, retailer, or other distributor.

20. Respondent owned and operated a place of business located at 325 Lakeland Dr. NE, Willmar, Minnesota, during the calendar years 2010, 2011, and 2012.

21. On July 17, 2012 an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Willmar, Minnesota.

22. At the time of the July 17, 2012 inspection, Respondent was holding for distribution and sale the product CID 2000.

23. During the July 17, 2012 inspection, the inspector collected: a printed copy of a label and a printed copy of documents posted on Respondent’s website which include a label, claims and statements regarding the product CID 2000; and documentation and sales information for the product CID 2000 which Respondent was holding for distribution and sale.

24. A printed copy of Respondent’s label for CID 2000 collected on July 17, 2012 contained the following claims:

- a. "CID 2000 is an ideal product for the prevention and removal of organic deposits, heavy soils and scale/mineral build up from the drinking water system"
- b. "water line cleaner."

25. A printed copy of the label, claims and statements for CID 2000 collected on July 17, 2012 from Respondent's website contained the following claims:

- a. "Increase your benefits by protecting your livestock."
- b. "Waterline cleaner"
- c. "Removes biofilm"
- d. "the greatest reduction in microbial presence"
- e. "Biofilm inside water lines is known as a polysaccharide layer (organic matter)...The biofilm can 'harbor' a lot of micro organisms."
- f. "Removes scale. Scale is a layer of inorganic matter.... Scale can also harbor micro organisms."

26. Among other things, "biofilm," "microbial presence" and "micro organisms" are each pests within the meaning of Section 2 (t) of FIFRA, 7 U.S.C. § 136(t).

27. Claims identified in paragraphs 24 and 25, above, including claims that CID 2000 is "a waterline cleaner," "removes biofilm," provides the "greatest reduction in microbial presence," and "removes scale [which] can harbor micro organisms," are claims intended for preventing, destroying, repelling, or mitigating a pest within the meaning of Section 2(u) of FIFRA, 7 U.S.C. §136(u).

28. CID 2000 is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

### Count 1

29. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

30. Respondent distributed or sold CID 2000 to Willmar Poultry on or about July 15, 2010.

31. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 15, 2010.

32. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### Count 2

33. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

34. Respondent distributed or sold CID 2000 to Gorans Brothers Inc., on August 5, 2010.

35. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on August 5, 2010.

36. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### Count 3

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

38. Respondent distributed or sold CID 2000 to Gold N' Plump on August 17, 2010.

39. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on August 17, 2010.

40. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 4**

41. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

42. Respondent distributed or sold CID 2000 to Red Bridge Turkey Farms on March 7, 2011.

43. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on March 7, 2011.

44. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 5**

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

46. Respondent distributed or sold CID 2000 to Willmar Poultry on March 14, 2011.

47. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on March 14, 2011.

48. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 6**

49. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

50. Respondent distributed or sold CID 2000 to Willmar Poultry on April 4, 2011.

51. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on April 4, 2011.

52. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 7**

53. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

54. Respondent distributed or sold CID 2000 to Willmar Poultry on April 29, 2011.

55. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on April 29, 2011.

56. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 8**

57. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

58. Respondent distributed or sold CID 2000 to Klaphake Feed Mill on April 29, 2011.

59. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on April 29, 2011.



60. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 9**

61. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

62. Respondent distributed or sold CID 2000 to E.B. Olson Farms, Inc., on May 16, 2011.

63. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on May 16, 2011.

64. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 10**

65. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

66. Respondent distributed or sold CID 2000 to Winter Creek Farms, Inc. on June 7, 2011.

67. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on June 7, 2011.

68. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count 11**

69. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

70. Respondent distributed or sold CID 2000 to Klaphake Feed Mill on February 6, 2012.

71. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on February 6, 2012.

72. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### **Count 12**

73. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

74. Respondent distributed or sold CID 2000 to Adrian Farms on February 17, 2012.

75. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on February 17, 2012.

76. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### **Count 13**

77. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

78. Respondent distributed or sold CID 2000 to Gorans Brothers Inc., on March 28, 2012.

79. CID 2000 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on March 28, 2012.

80. Respondent's distribution or sale of the unregistered pesticide CID 2000 constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

81. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$61,425. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act*, dated December 2009.

82. Within 30 days after the effective date of this CAFO, Respondent must pay a \$61,425 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note "In the Matter of Best Veterinary Solutions, Inc." and the docket number of this CAFO.

83. A transmittal letter stating Respondent's name, complete address, the case title, and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter to the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Stuart P. Hersh (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

84. This civil penalty is not deductible for federal tax purposes.

85. If Respondent does not pay timely the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

86. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

87. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

88. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

89. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

90. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

91. The terms of this CAFO bind Respondent, its successors and assigns.

92. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

93. Each party agrees to bear its own costs and attorneys fees, in this action.

94. This CAFO constitutes the entire agreement between the parties.

**Best Veterinary Solutions, Inc., Respondent**

5/2/14  
Date

Wes Thoreson  
Wes Thoreson  
President

**United States Environmental Protection Agency, Complainant**

5/27/2014  
Date

Margaret M. Guerriero  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Best Veterinary Solutions, Inc.**  
**Docket No. FIFRA-05-2014-0019**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-30-14

Date



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Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Best Veterinary Solutions, Inc., was filed on June 4, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7649 6612, a copy of the original to the Respondent:

Mr. Wes Thoren  
President  
Best Veterinary Solutions  
325 Lakeland Drive NE  
Willmar, Minnesota 56201

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Stuart P. Hersh, Regional Judicial Officer, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2014-0019