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2013 MAR 29 PM 4:26

US EPA - REGION IX  
HEARING CLERK

1 NANCY J. MARVEL  
Regional Counsel

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3 EDGAR P. CORAL  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3898

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7 UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
8 REGION IX

9

10 In the matter of:

) Docket No. FIFRA-09-2012-0007

11 Hydrofarm, Inc.,

)  
) CONSENT AGREEMENT  
) AND FINAL ORDER

12  
13 Respondent.

14  
15 I. CONSENT AGREEMENT

16 Complainant, the Director of the Enforcement Division, United States Environmental  
17 Protection Agency ("EPA"), Region IX, and Respondent, Hydrofarm, Inc., agree to settle this  
18 civil administrative action brought under the Federal Insecticide, Fungicide, and Rodenticide Act  
19 ("FIFRA"), as amended, 7 U.S.C. §§ 136 *et seq.*, and consent to the entry of this Consent  
20 Agreement and Final Order (the "CAFO").

21 A. AUTHORITY

22 1. Complainant was the Director of the Communities and Ecosystems Division who  
23 initiated this civil administrative proceeding for the assessment of a civil penalty against  
24 Respondent under FIFRA pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the  
25 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40  
26 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for Hearing ("the Complaint")  
27 against Respondent on September 24, 2012.  
28



1 SWIFT address = FRNYUS33  
2 33 Liberty Street  
3 New York, NY 10045  
4 Field Tag 4200 of the Fedwire message should read "D 68010727  
5 Environmental Protection Agency"

6 Overnight Mail:  
7 U.S. Bank  
8 1005 Convention Plaza  
9 Mail Station SL-MO-C2GL  
10 ATTN Box 979077  
11 St. Louis, MO 63101

12 ACH (also known as REX or remittance express):  
13 Automated Clearinghouse (ACH) for receiving U.S. currency  
14 PNC Bank  
15 808 17<sup>th</sup> Street, NW  
16 Washington, DC 20074  
17 ABA = 051036706  
18 Transaction Code 22 - checking  
19 Environmental Protection Agency  
20 Account 31006  
21 CTX Format

22 On Line Payment:  
23 This payment option can be accessed from the information below:  
24 [www.pay.gov](http://www.pay.gov)  
25 Enter "sfo1.1" in the search field  
26 Open form and complete required fields

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

18 A copy of each check, or notification that the payment has been made by one of the other  
19 methods listed above, including proof of the date payment was made, shall be sent with a  
20 transmittal letter, indicating Respondent's name, the case title, and docket number, to the  
21 following addresses:

22  
23 Regional Hearing Clerk  
24 Office of Regional Counsel (ORC-1)  
25 U.S. Environmental Protection Agency, Region IX  
26 75 Hawthorne Street  
27 San Francisco, CA 94105

28  
29 Bill Lee  
30 Enforcement Division (ENF-3-3)  
31 U.S. Environmental Protection Agency, Region IX  
32 75 Hawthorne Street  
33 San Francisco, CA 94105

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

6 7. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
7 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
8 use such payment as a tax deduction.

9 8. If Respondent fails to pay the assessed civil administrative penalty of THREE  
10 HUNDRED AND SIXTEEN THOUSAND DOLLARS (\$316,000), as identified in Paragraph 5,  
11 by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to  
12 EPA upon EPA's written request. The amount of the stipulated penalty will be THIRTY-ONE  
13 THOUSAND, SIX HUNDRED DOLLARS (\$31,600), and will be immediately due and payable  
14 upon EPA's written request on the day following the deadline specified in Paragraph 5, together  
15 with the initially assessed civil administrative penalty of THREE HUNDRED AND SIXTEEN  
16 THOUSAND DOLLARS (\$316,000), resulting in a total penalty due of THREE HUNDRED  
17 AND FORTY-SEVEN THOUSAND, SIX HUNDRED DOLLARS (\$347,600). Failure to pay  
18 the civil administrative penalty specified in Paragraph 5 by the deadline specified in that  
19 Paragraph may also lead to any or all of the following actions:

20 (1) EPA may refer the debt to a credit reporting agency, a collection  
21 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
22 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
23 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
24 collection proceeding.

25 (2) The U.S. Government may collect the debt by administrative offset  
26 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a  
27 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
28 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
C.F.R. §§ 13(C) and 13(H).

(3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke

1 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
2 business with EPA or engaging in programs EPA sponsors or funds.

3 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
4 Government may assess interest, administrative handling charges, and nonpayment penalties  
5 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
6 civil administrative penalty specified in Paragraph 5 by the deadline specified in that Paragraph.

7 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §  
8 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
9 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
10 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
11 (30) days of the effective date of this CAFO.

12 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §  
13 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on  
14 either actual or average cost incurred (including both direct and indirect costs), for every month  
15 in which any portion of the assessed penalty is more than thirty (30) days past due.

16 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
17 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
18 may be assessed on all debts more than ninety (90) days delinquent.

#### 19 D. CERTIFICATION OF COMPLIANCE

20 9. In executing this CAFO, Respondent certifies that: (1) it is no longer selling or  
21 distributing unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §  
22 136j(a)(1)(A); and (2) it has complied with all other FIFRA requirements at all facilities under its  
23 control.

#### 24 E. RETENTION OF RIGHTS

25 10. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
26 liabilities for federal civil penalties for the violations and facts specifically alleged in the  
27 Complaint. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
28 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,

1 ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA  
2 specifically reserves any and all authorities, rights, and remedies available to it (including, but  
3 not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation  
4 of this CAFO or any violation not specifically alleged in the Complaint.

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

8 F. ATTORNEYS' FEES AND COSTS

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

11 G. EFFECTIVE DATE

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

15 H. BINDING EFFECT

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

19 15. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
20 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
21 and assigns.

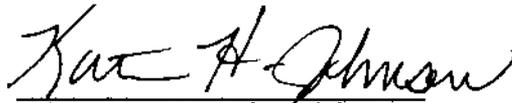
1 FOR RESPONDENT HYDROFARM, INC.:

2  
3 2/27/13  
4 DATE

  
5 PETER WARDENBURG  
6 President  
7 Hydrofarm, Inc.

8 FOR COMPLAINANT EPA:

9 3/28/13  
10 DATE

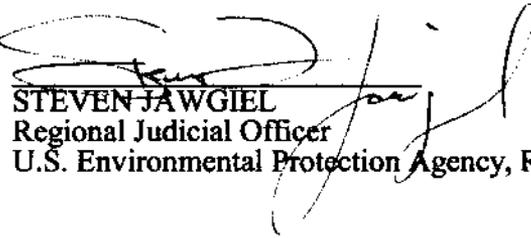
  
11 KATHLEEN H. JOHNSON  
12 Director  
13 Enforcement Division  
14 U.S. Environmental Protection Agency, Region IX  
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II. FINAL ORDER

EPA and Hydrofarm, Inc. having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2012-0007) be  
entered, and Respondent shall pay a civil administrative penalty in the amount of THREE  
HUNDRED AND SIXTEEN THOUSAND DOLLARS (\$316,000), and comply with the terms  
and conditions set forth in the Consent Agreement.

03/29/13  
DATE

  
STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2012-0007) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

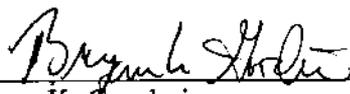
A copy was mailed via CERTIFIED MAIL to:

Mr. Peter Wardenburg, President  
Hydrofarm, Inc.  
2249 S. McDowell Blvd.  
Petaluma, CA 94954

**CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 6835**

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral, Esq  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
\_\_\_\_\_  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

4/1/13  
\_\_\_\_\_  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT NO: 7010 2780 0000 8388 6835

Date: APR 08 2013

Mr. Peter Wardenburg, President  
Hydrofarm, Inc.  
2249 S. McDowell Blvd  
Petaluma, CA 94954

Re: Federal Insecticide, Fungicide and Rodenticide Act  
Consent Agreement and Final Order – Hydrofarm, Inc.  
Docket No. FIFRA-09-2012-007

Dear Mr. Wardenburg:

Enclosed is a Consent Agreement and Final Order (CAFO) concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 et seq., by Hydrofarm, Inc. The terms of the CAFO require the payment of \$316,000 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 William Lee of my staff at 415-947-4185.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson".

Kathleen H. Johnson  
Director, Enforcement Division

Enclosures

cc: Patrick Thalcken, California Department of Pesticide Regulation