



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JAN 14 2016

CERTIFIED MAIL SERVICE

Mr. Jeffrey Luckey
Owner
6250 NW 27th Way
Fort Lauderdale, Florida 33309

Re: BioRelief, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2015-3011(b)

Dear Mr. Luckey:

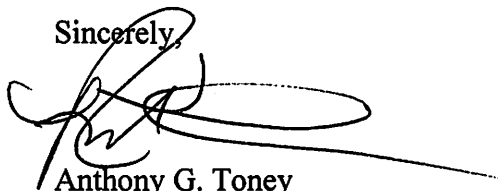
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

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 U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Dr. Karen Hill of the EPA Region 4 staff at (404) 562-8972.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Toney', with a long horizontal flourish extending to the right.

Anthony G. Toney

Chief

Chemical Safety and Enforcement Branch

Enclosure

cc: Sarah Oglesby, FDACS

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

In the Matter of:)
)
 BioRelief, Inc.)
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 Respondent.)
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Docket No.: FIFRA-04-2015-301

**RECEIVED
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HEARING CLERK**

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (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. Respondent is BioRelief, Inc. (BioRelief).

2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondent.

3. 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

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

Karen M. Hill
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960
(404) 562-8972.

5. Respondent BioRelief is licensed to do business in the State of Florida.
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.

III. Specific Allegations

7. On or about November 18, 2014, EPA reviewed the Respondent's website (www.BioRelief.com), and observed that the Respondent was offering "OxiTitan" for sale under the trade name "Bio Defender OxiTitan Anti-Microbial Treatment," as stated on the product's affixed label. The product was offered for direct sale in two (2) ounce spray containers at the price of fifty dollars and fifty cents (\$50.50) per unit.

8. Further, the EPA observed that Respondent's website contained promotional marketing information that involved the use of "pesticide" and "anti-microbial" claims, attributed to the product, including statements that "OxiTitan anti-microbial spray is an innovative solution designed to eliminate harmful bacteria and viruses from the fabric and surfaces of all types," and "The spray is designed to adhere to the treated surface and will protect the user from illness-causing bacteria and viruses with a coating of light-activated anti-bacterial nano crystals."
9. On December 16, 2014, inspectors, duly appointed by the EPA Administrator, inspected the Respondent's current facility located at 6250 NW 27th Way, Fort Lauderdale, Florida 33309. During the inspection, the inspector gathered information including written statements from the Respondent acknowledging that they offered "OxiTitan" for sale on their website and a sales invoice documenting that the Respondent purchased the unregistered pesticide, "OxiTitan," from the establishment, EcoActive Surfaces, Inc., formerly located at 551-D NE 27th Street, Pompano Beach, Florida 33064.
10. On April 17, 2015, the EPA held a show cause meeting with the Respondent by virtue of a conference call. On April 21, 2015, the EPA held a follow-up call with Respondent to continue the show cause meeting.
11. Based on the "pesticide claims" found on the Respondent's website above-referenced in paragraph 8, the product "OxiTitan" was determined to be a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
12. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as 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 (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

13. Based on all the information gathered during the EPA's investigation including, but not limited to, the information described above in paragraphs 8 and 9, the EPA determined that "OxiTitan" was being distributed and/or sold by the Respondent as defined in Section 2(gg) of FIFRA.
14. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes, to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
15. Based on the "pesticide claims" made on the Respondent's website regarding OxiTitan, as described above in paragraph 8, the product is a pesticide. At the time the EPA viewed the Respondent's website and on the date of the inspection, the product "OxiTitan" was not registered as a pesticide with the EPA, as required by Section 3 of FIFRA, 7 U.S.C. § 136a.
16. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
17. 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.
18. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the 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(s).
19. After consideration of the factors set forth in Section 14(a)(4) of FIFRA,

7 U.S.C. § 136l(a)(4), the EPA assessed a total civil penalty of **THREE THOUSAND, FOUR HUNDRED AND TWENTY DOLLARS (\$3,420)** 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

20. 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.
21. 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.
22. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
23. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to the product, “OxiTitan,” or any other pesticide products it produces, sells or distributes with the same formulation as “OxiTitan.”
24. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the 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.
25. 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

26. Respondent is assessed a civil penalty of **THREE THOUSAND, FOUR HUNDRED AND TWENTY DOLLARS (\$3,420)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
27. Respondent shall remit payment of the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check. **The check shall reference on its face the name of the Respondent and Docket number of this CAFO.**

Payment of the penalty shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

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

Address for payment by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1818.

28. 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 S.W.
Atlanta, Georgia 30303-8960;

Karen M. Hill
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960.

29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, the 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). 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 principal amount not paid within 90 days of the due date.
30. 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.

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

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VI. Effective Date

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

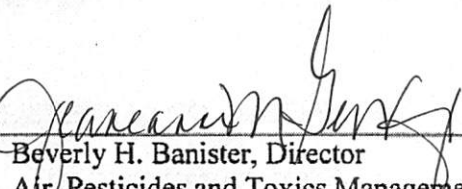
AGREED AND CONSENTED TO:

Respondent: BioRelief, Inc.

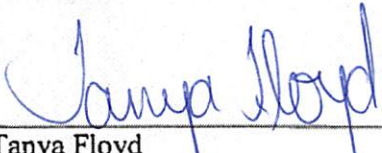
Docket No.: FIFRA-04-2015-3011(b)

By:  (Signature) Date: 12-16-15
Name: JEFFREY A. LUKERT (Typed or Printed)
Title: OWNER (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By:  (Signature) Date: 1-11-16
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 13th day of January 2016.


Tanya Floyd
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 BioRelief, LLC, Docket Number: FIFRA-04-2015-3011(b), to the addressees listed below.

Mr. Jeffrey Luckey (via United Parcel Service)
BioRelief, Inc.
6250 NW 27th Way
Fort Lauderdale, Florida 33309

Ms. Marlene Tucker (via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

1-14-16
DATE



Patricia Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9511