

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of)
)
RIDGWAY INDUSTRIES, INC.)
6250 Baltimore Ave. #22)
Yeadon, Pennsylvania 19050) Docket No.: FIFRA-03-2008-0085
)
Respondent)
)

CONSENT AGREEMENT

PRELIMINARY STATEMENT

This Consent Agreement ("CA") is entered into by the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Ridgway Industries, Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. §136I, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. This CA and the attached Final Order (collectively "CAFO"), resolve Complainant's civil penalty claims against the Respondent for violations of FIFRA, as alleged herein.

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA.
 2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA.
 3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("FO"), or the enforcement of the CAFO.
 4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
 5. Respondent consents to the issuance of this CAFO, and agrees to comply with its terms and conditions.
 6. Respondent shall bear its own costs and attorney's fees.
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FINDINGS OF FACTS AND CONCLUSIONS OF LAW

7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Respondent is a Pennsylvania corporation that owns and operates a business located at 6250 Baltimore Avenue, #22, Yeadon, Pennsylvania that sells cleaning solutions.
9. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3(s) provide that the term “pesticide” means, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
11. Pursuant to 40 C.F.R. §152.15, “[a] pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use[d] for the purpose of preventing, destroying, repelling, or mitigating any pest A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance . . . can or should be used as a pesticide; or * * * (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”
12. During the 2006 calendar year, Ridgway sold and/or distributed a product labeled as *ELIMINATE Disinfectant/Cleaner* (hereinafter, “Ridgway Product”) in 1 gallon containers in groups of four.
13. The labeling for the “Ridgway Product” contained claims, statements and/or implications that the product could or should be used as a pesticide. Specific claims, statements and/or implications on the label for the “Ridgway Product” included, but were not limited to, the following:
 - a. The product was identified on the label as a “cleaner,” “disinfectant,” “detergent,” “fungicide,” “deodorizer,” “virucide,” and “mildewstat.”
 - b. The label contained instructions for the use of the product for “disinfection,” “bactericidal activity,” “mildewstat,” “fungicide activity,” and “virucidal activity.”
 - c. The label contained an EPA pesticide-producing establishment number

and a purported EPA pesticide registration number, implying that the product was and could be used as a pesticide.

14. At the time of the applicable violations alleged herein, the Ridgway Product was a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. §136(u), and 40 C.F.R. §§ 152.3(s) and 152.15.
15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3(j), provide, in pertinent part, that the term “to 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, with exceptions not relevant here.
16. On April 12, 2006, Respondent offered for sale, held for distribution, held for sale, held for shipment, and/or received and (having so received) offered to deliver at least 2 sets of the Ridgway Product which was packaged in 4 units of 1 gallon containers to individuals, partnerships, associations, corporations, or organized groups of persons.
17. On June 20, 2006, Respondent offered for sale, held for distribution, held for sale, held for shipment, and/or received and (having so received) offered to deliver at least 4 sets of the Ridgway Product which was packaged in 4 units of 1 gallon containers to individuals, partnerships, associations, corporations, or organized groups of persons.
18. On June 29, 2006, Respondent offered for sale, held for distribution, held for sale, held for shipment, and/or received and (having so received) offered to deliver at least 5 sets of the Ridgway Product which was packaged in 4 units of 1 gallon containers to individuals, partnerships, associations, corporations, or organized groups of persons.
19. Each occasion on which the Respondent offered for sale, or held for distribution, held for sale, held for shipment and/or received and (having so received) offered to deliver containers of the Ridgway Product, as described in paragraphs 16 through 18 above, constitutes a “distribution or sale” of a pesticide to a “person” as defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3.
20. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is adulterated or misbranded.
21. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is “misbranded” if *inter alia* its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

22. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides, in pertinent part, that no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.
23. Since at least August 7, 1980, the Stephan Company has been the EPA registrant for the following two pesticide products: [a] *NP 4.5 (D&F) Detergent/Disinfectant*, EPA Registration Number 1839-95 (“95 Product”), and [b] *NP 3.2 (D&F)*, EPA Registration Number 1839-94 (“94 Product”), pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
24. Section 3(e) of FIFRA, 7 U.S.C. § 136a(e), provides, in pertinent part, that products which have the same formulation, same manufacturer, same claims and bear a label identifying the product as the same pesticide may be registered as a single pesticide and additional names and labels may be added to the registration using supplemental statements.
25. 40 C.F.R. § 152.132, provides, in pertinent part, that a registrant may sell or distribute his registered product under another person’s name and address as a “supplemental distribution” and the product being sold/distributed shall be referred to as a “distributor product.”
26. The Stephan Company has never authorized the Respondent to sell and/or distribute the “95 Product” pursuant to Section 3(e) of FIFRA, 7 U.S.C. § 136a(e), or 40 C.F.R. § 152.132. However, the Stephan Company has authorized the Respondent, pursuant to Section 3(e) of FIFRA, 7 U.S.C. § 136a(e), and 40 C.F.R. § 152.132, to sell and/or distribute the “94 Product”.
27. Respondent was authorized to package and label the Ridgway Product as a “distributor product” with respect to the “94 Product” since the Ridgway Product was subject to a “supplemental distribution” arrangement with the Stephan Company under 40 C.F.R. § 152.132.
28. At the time of the sales and/or distributions referred to in Paragraphs 16 - 18 of this CA, the label on the Ridgway Product included the following statement:

EPA Reg. Number 1839-95-64143
29. The statement described in Paragraph 28, above, implied that the Ridgway Product is and was registered with EPA as a “distributor product” with respect to the “95 Product,” rather than the “94 Product,” and therefore is and was false or misleading as to the actual registration status of the product. Thus the Ridgway Product was misbranded as defined by Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1).
30. By selling and/or distributing the misbranded Ridgway Product, Respondent violated

Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

CIVIL PENALTY

31. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of thirty-four thousand three hundred twenty dollars (\$34,320.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent.

32. The Respondent has asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CA/FO is mailed or hand-delivered to Respondent. As a result, it is the understanding of the parties that Respondent will pay the civil penalty in 12 monthly installments and will pay interest at the rate of 5 percent per annum on the outstanding principal balance according to the following schedule:

1st payment is due within 30 days of the date on which the CA/FO is mailed to the Respondent = \$2,860.00;

2nd payment is due within 60 days of the date on which the CA/FO is mailed to the Respondent = \$3,118.58;

3rd payment is due within 90 days of the date on which the CA/FO is mailed to the Respondent = \$2,977.53;

4th payment is due within 120 days of the date on which the CA/FO is mailed to the Respondent = \$2,965.78;

5th payment is due within 150 days of the date on which the CA/FO is mailed to the Respondent = \$2,954.03;

6th payment is due within 180 days of the date on which the CA/FO is mailed to the Respondent = \$2,942.27;

7th payment is due within 210 days of the date on which the CA/FO is mailed to the Respondent = \$2,930.52;

8th payment is due within 240 days of the date on which the CA/FO is mailed to the Respondent = \$2,918.77;

9th payment is due within 270 days of the date on which the CA/FO is mailed to the Respondent = \$2,907.01;

10th payment is due within 300 days of the date on which the CA/FO is mailed to the Respondent = \$2,895.26;

11th payment is due within 330 days of the date on which the CA/FO is mailed to the Respondent = \$2,883.51; and

12th payment is due within 360 days of the date on which the CA/FO is mailed to the Respondent = \$2,871.75.

33. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 42 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on the Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated July 2, 1990 ("ERP"), as supplemented by the *Gravity Based Penalty Matrix for FIFRA Violations Which Occur After January 30, 1997*, effective January 30, 1997, the *Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19*, and *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, effective October 1, 2004)*, September 21, 2004.
34. Respondent shall pay the amount described in Paragraphs 31 or 32, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

By Regular US Postal Service Mail:

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

By Private Commercial Overnight Delivery:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Payment of the penalty as required by this CAFO may also be made by electronic transfer to:

Wire Transfers

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfers

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074

Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number for this CAFO (FIFRA-03-2008-0085). A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street

Philadelphia, Pennsylvania 19103 - 2029, and

Donzetta Thomas (3RC30)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
36. 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, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (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).
37. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
38. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
39. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

CERTIFICATION

40. The officer signing this CA, on behalf of the Respondent, certifies to EPA by his signature herein that Respondent, as of the date of this CA, is in compliance with the requirements of FIFRA, 7 U.S.C. § 136 et seq., alleged herein to have been violated.

OTHER APPLICABLE LAWS

41. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

RESERVATION OF RIGHTS

42. This CAFO resolves only EPA's civil claims for penalties for the specific violations alleged in this CA. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

FULL AND FINAL SATISFACTION

43. Payment of the penalty as specified in this CA shall constitute full and final satisfaction of all civil claims for penalties for which Complainant may have under Sections 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CA. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

PARTIES BOUND

44. This CA and the attached FO shall apply to and be binding upon the EPA, the Respondent, and the officers, directors, successors, and assigns of Respondent. By his signature below, the person signing this CA on behalf of Respondent is acknowledging that he is fully authorized by the Respondent to execute this CA and to legally bind the Respondent to the terms and conditions of this CA and the attached FO.

EFFECTIVE DATE

45. The effective date of this CA is the date on which the FO, signed by the Regional Administrator or his designee, along with the fully executed CA, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

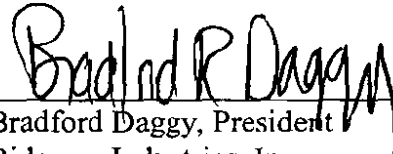
ENTIRE AGREEMENT

46. This CA and the attached FO constitute the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

1-8-07

Date

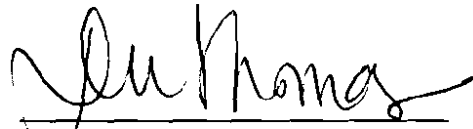


Bradford Daggy, President
Ridgway Industries, Inc.

For Complainant:

1/14/08

Date




Donzetta Thomas, Attorney
U.S. Environmental Protection Agency,
Region III

After reviewing the foregoing CA and other pertinent information, the Waste and Chemicals Management Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the FO attached hereto.

1/23/08

Date

By: 

Abraham Ferdas, Director
Waste and Chemicals Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of)
)
RIDGWAY INDUSTRIES, INC.)
6250 Baltimore Ave. #22)
Yeadon, Pennsylvania 19050) Docket No.: FIFRA-03-2008-0085
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Respondent)
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FINAL ORDER

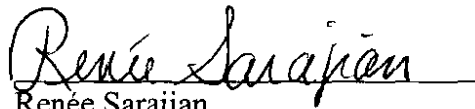
Complainant, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Ridgway Industries, Inc., have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. §136l, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty either: (1) in the lump sum of

thirty-four thousand three hundred twenty dollars (\$34,320.00) or (2) in 12 monthly installments, with interest, totaling thirty five thousand two hundred twenty-five dollars and one cent (\$35,225.01) in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with any additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the CAFO is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

1/28/08
Date

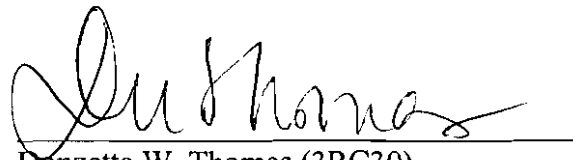

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. FIFRA-03-2008-0085, and associated enclosures, have been filed with the EPA Region III Regional Hearing Clerk, and that copies of the same were sent FedEx Overnight to the following:

Bradford Daggy, President
Ridgway Industries, Inc.
6250 Baltimore Ave. #22
Yeadon, PA 19050

1/23/08
Date



Donzetta W. Thomas (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2474