

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 JUN 14 AM 11:36

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
Advant Development, LLC)
f/k/a SD Labs, LLC)
Denton, Texas)
)
RESPONDENT)
_____)

DOCKET NO. FIFRA-06-2016-0300

CONSENT AGREEMENT
AND FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Division, United States Environmental Protection Agency, Region 6 (EPA or Complainant herein), and Advant Development, LCC, f/k/a SD Labs, LLC, Sterile Doctor or Infinite Coatings (Respondent) in the above referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). The Complaint alleges Respondent violated regulations promulgated pursuant to the FIFRA.

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised

or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. Respondent is Advant Development, LCC, a corporation incorporated under the laws of the State of Texas.

9. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

10. At all times relevant to this CAFO, respondent owned and operated a business located at 3923 Morse Street, Suite 101, Denton, Texas 76208, where goods are produced, mixed and sold wholesale.

11. The term "pesticide" is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as meaning "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer."

12. The term "pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as meaning

“(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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).”

13. The term “fungus” is defined in Section 2(k) of FIFRA, 7 U.S.C. § 136(k), as meaning “...for example, rust, smut, mildew, mold, yeast, and bacteria...”

14. The term “antimicrobial pesticide” is defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), as meaning a pesticide that is intended to “disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.”

15. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as meaning “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.”

16. The term “bacteria” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) as meaning a “pest.”

17. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

18. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), defines a pesticide as “misbranded” if the product does not, among other things, “its labeling: bears any false or misleading statement; does not bear the establishment or product registration number; or does not prominently display any required word, statement, or other information”.

19. Section 2 (w) of FIFRA, 7 U.S.C. § 136(w), defines a “producer” as a person who

manufacturers, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

20. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) provides that is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C § 136e.

21. At all times relevant to this CAFO, the Respondent produced, distributed or sold the unregistered pesticides Sterile Doctor and Sterile Doctor ST.

22. The Respondent is a registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

B. VIOLATION

Count I – Producing a Pesticide in an Unregistered Establishment

23. Complainant hereby restates and incorporates by reference Paragraphs 1 through 22 above.

24. Section 7(a) of FIFRA, 7 U.S.C § 136e(a) provides no person shall produce any pesticide or active ingredient used in producing a pesticide in any State unless the establishment in which it is produced is registered with the Administrator.

25. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) provides that is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C § 136e.

26. On or about September 8, 2014, Texas Department of Agriculture (TDA) representatives conducted an inspection at Respondent’s establishment (Inspection).

27. The inspection was a “For-Cause Inspection” based on a citizen filed complaint reporting the production, sale and distribution of an unregistered pesticide by the Respondent.

28. During the Inspection on or about September 8, 2014, a written statement as to the reason for the inspection was given to a representative of the Respondent, as required by Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g.

29. During the Inspection, TDA representatives observed and documented the following pesticidal claims that were written on the labels on the products in paragraph 21 in English:

a. "...a biostatic treatment that is effective against surface damaging Bacteria, Fungi, Mold, and Algae..." and "...increased efficiency-through proper applications, durable bacteriostatic, fungistatic and algistatic, surface can be obtained with a minimum amount of Sterile Doctor..."

b. "...Active Ingredient: 3-(trimethoxysilyl) propyl dimethyl octadecyl ammonium chloride...EPA # DTN 100 EPA 88423-01...Note: Sterile Doctor is not a registered disinfectant but is made with an EPA registered antimicrobial..."

30. Brochures for Sterile Doctor provided to TDA during the inspection made the additional claims: "...made with an EPA registered antimicrobial active that is a biostatic Nano coating and is effective against Bacteria, Viruses, Fungi, Mold, and Algae...Sterile Doctor creates a nanoscopic magnetic field of swords...the bacteria is then drawn on the sword and disemboweled..."

31. The claims found on the labeling of the products in paragraph 21, and supporting documents in paragraph 29, state or imply that the pesticides in paragraph 21 can or should be used as a pesticide.

32. At the time of the inspection 20 bottles of Sterile Doctor, 5 US Gallons; and 32 bottles of Sterile Doctor ST, 5 US Gallons were found mixed and ready for sale at SD Labs.

33. During the inspection, Mr. Dutton informed TDA that "Sterile Doctor, LCC" diluted and repackaged DTN-1000 Antimicrobial (EPA Reg. No. 88423-2) under the names Sterile

Doctor and Sterile Doctor ST.

34. At the time of the inspection, TDA representatives observed facilities for mixing and repackaging the pesticides in paragraph 21.

35. Therefore, the Respondent has violated Section 7(a) of FIFRA, 7 U.S.C § 136e(a) and Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing an unregistered pesticide in an establishment not registered with the Administrator.

Count II – Distribution or Sale of an Unregistered Pesticide

36. Complainant hereby restates and incorporates by reference Paragraphs 1 through 35 above.

37. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that it shall be 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].

38. At the time of the inspection, TDA requested copies of distribution records for Sterile Doctor from Mr. Doug Dutton at the time of the inspection. Mr. Dutton indicated to TDA that the documents were available at his office because his accountant had them. Mr. Dutton indicated that he would provide them the following week.

39. On or about March 20, 2015, Mr. Michael Boucher, Attorney representing SD Labs provided TDA representatives with distribution invoices documenting 50 individual sales and distributions of Sterile Doctor and Sterile Doctor ST products between January 1, 2014, and January 19, 2015.

40. Therefore, the Respondent has violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

41. For the reasons set forth above, Respondent has agreed to pay a civil penalty that has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a), which authorizes EPA to assess a civil penalty of up to Seven Thousand Five Hundred Dollars (\$7,500.00) for each offense¹. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and EPA's "FIFRA Enforcement Response Policy" dated December 2009 which requires Complainant to consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue business, and gravity of the violation, it is it is **ORDERED** that Respondent be assessed a civil penalty of **Three Thousand Five Hundred Dollars (\$3,500.00)**.

42. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

- U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

¹ The amount of penalty that can be assessed under Section 14(a) of FIFRA was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$5,500 for violations occurring between January 30, 1997 and March 15, 2004, to \$6,500 for violations which occurred between March 15, 2004 and January 12, 2009, and to \$7,500 for violations which occurred after January 12, 2009.

PO Box 979077
St. Louis, MO 63197-9000

- For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
(314)418-4087

- For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:

“D 68010727 Environmental Protection Agency”

- For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact – Jesse White (301) 887-6548

- For On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: Docket number FIFRA-06-2016-0300 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Kenneth R McPherson
Pesticides and Toxics Section (6MM-XP)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

43. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. 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). Moreover, the costs of the Agency's

administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

45. EPA will also 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) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. RETENTION OF ENFORCEMENT RIGHTS

46. The EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

47. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

48. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR RESPONDENT:

Date: 25 May 16



Doug Dutton
Advant Development, LCC
3923 Morse Street, Suite 101
Denton, Texas 76208

FOR THE COMPLAINANT:

Date: 06/01/16



Craig G. Carroll
Chief
Pesticides and Toxics Section
Multimedia Division

IV. FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

10/3/16

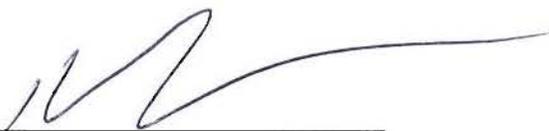
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of June, 2016, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7015152000339902362

Advant Development, LCC
Attn: Laurie Dutton
3923 Morse Street, Suite 101
Denton, Texas 76208



Paralegal