

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Boal 5/18/18
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2018-0006

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Acadian Seaplants Limited
30 Brown Avenue
Dartmouth, Nova Scotia, Canada
B3B 1X8

Total Dollar Amount of Receivable \$ 50,600 Due Date: 6/17/18

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1ST \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

May 18, 2018

BY HAND-DELIVERY

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Mailcode ORC 04-6
Boston, MA 02109-3912

Re: *In the Matter of Acadian Seaplants Limited*
Docket No. FIFRA-01-2018-0006

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Lynn Bergeson, Esq., for Respondent

RECEIVED

MAY 18 2018

EPA ORC WS
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)
)
Acadian Seaplants Limited)
30 Brown Avenue)
Dartmouth, Nova Scotia, Canada)
B3B 1X8)
)
Respondent.)
)
Proceeding under Section 14(a) of the)
Federal, Insecticide, Fungicide, and)
Rodenticide Act, as amended,)
7 U.S.C. Section 136l(a).)
)

Docket No. FIFRA-01-2018-0006

CONSENT AGREEMENT
AND
FINAL ORDER



INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”) and Acadian Seaplants Limited (“Respondent”), enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent pursuant to 40 C.F.R § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination, or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). This CAFO resolves Respondent’s liabilities for violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Parts 150 – 180 and at 19 C.F.R. §§ 12.110 – 12.117 (collectively, “FIFRA Regulations”).

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Acadian Seaplants Limited
Docket No. FIFRA-01-2018-0006

US EPA, REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). EPA and Respondent (collectively “the Parties”) agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b) and 22.18(b). EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

I. STATUTORY AND REGULATORY BASIS

4. A “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as “(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,” with certain exceptions.

5. A “plant regulator” is defined in Section 2(v) of FIFRA, 7 U.S.C. § 136(v), as any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

6. Forty C.F.R. § 152.6 defines the substances excluded from regulation by FIFRA, including plant nutrients and vitamin hormone products that are excluded from FIFRA's definition of plant regulators. Biostimulants composed of plant hormones, such as cytokinins, gibberellins, ethylene, abscisic acid and auxins, are not excluded and therefore are categorized as plant regulators for the purposes of FIFRA.

7. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations prescribed thereunder.

8. FIFRA Section 17(c), 7 U.S.C. § 136o(c) requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides in the United States.

9. FIFRA Section 17(e), 7 U.S.C. 136o(e) requires the Secretary of the Treasury, in consultation with the Administrator, to prescribe regulations for the enforcement of FIFRA Section 17(c).

10. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, through the United States Customs Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 12.110 – 12.117.

11. 19 C.F.R. § 12.112(a) requires an importer desiring to import pesticides or devices into the United States to submit to the EPA Administrator a Notice of Arrivals of Pesticides and Devices (EPA Form 3540-1) (hereinafter "Notice of Arrival"), prior to the arrival of the shipment in the United States.

12. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file

reports required by FIFRA. Such reports include, but are not limited to, Notice of Arrivals submitted to EPA for each shipment of pesticides or devices that are imported into the United States under Section 17 of FIFRA and 19 C.F.R. § 12.112(a).

13. The FIFRA requirement to submit Notice of Arrivals prior to importing a pesticide or device into the United States protects against unreasonable risks to human health or the environment by providing EPA with vital information about pesticides and devices before their arrival into the United States for distribution or sale. Notice of Arrivals provide information — including active ingredients, quantities, countries of origin, identity of producing establishments, carriers, and ports of entry— that enables EPA to make informed decisions about whether importation will pose unreasonable adverse risks to public health or the environment and, also, provide critical contact information in the event of an emergency related to the movement of potentially harmful pesticides or devices.

14. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of civil penalties of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA Regulations. Under the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”) at 40 C.F.R. Part 19, this amount was increased to \$7,500 for violations occurring after January 12, 2009. *See* 78 Fed. Reg. 66643-48 (Nov. 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 (“2015 Penalty Inflation Act”), the \$7,500 maximum penalty was raised

to \$19,446, effective January 15, 2018. *See* 28 U.S.C. § 2461 note; Pub. L.114-74, Section 701 (Nov. 2, 2015); 81 Fed. Reg. 43091-96 (July 1, 2016); 83 Fed. Reg. 1190 (January 10, 2018).

III. GENERAL ALLEGATIONS

15. Respondent Acadian Seaplants Limited is a Canadian company that produces, distributes, and sells various marine plant products, including the plant regulator product Stimplex Crop Biostimulant.

16. Stimplex Crop Biostimulant includes active ingredient Cytokinin (as Kinetin). Respondent registered Stimplex Crop Biostimulant as a pesticide with EPA under the registration number: EPA Reg. No. 75287-3.

17. Respondent's principal place of business is located at 30 Brown Avenue, Dartmouth, Nova Scotia, Canada, B3B 1X8.

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

19. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

20. At all times relevant to the violations alleged herein, Respondent maintained an "establishment," as defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), which was registered by EPA as a pesticide-producing establishment under Section 7 of FIFRA, 7 U.S.C. § 136e:

a. From approximately 1999 to February 23, 2015, Respondent maintained an establishment located at 698 Conestoga Street, Cornwallis Park, Nova Scotia, B0S 1E0, Canada (EPA Est. Registration 67016-CAN-002), and

b. From approximately February 23, 2015 to the present, Respondent maintained an establishment located at 4 Bren Street, Cornwallis Park, Nova Scotia, BOS 1H8, Canada (EPA Est. Registration 67016-CAN-002).

21. At all times relevant to the violations alleged herein, Respondent produced Stimplex Crop Biostimulant (EPA Reg. No. 75287-3) at Respondent's Establishments intended for use as a plant growth regulator.

22. On November 3, 2015, the U.S. Customs and Border Protection ("CPB") notified EPA that Respondent attempted to import a shipment of the EPA-registered pesticide, Stimplex Crop Biostimulant (EPA Reg. No. 75287-3) from Canada into the United States at the Houlton, Maine Port of Entry without submitting a Notice of Arrivals form to EPA.

23. In response to EPA's requests for information, Respondent provided EPA with records documenting Respondent's importing of Stimplex Crop Biostimulant (EPA Reg. No. 75287-3) from Respondent's Establishments in Canada into the United States from 2012 to 2016.

24. As documented in Respondent's records provided to EPA, Respondent imported Stimplex Crop Biostimulant (EPA Reg. No. 75287-3) to ports in Maine on at least twenty-one occasions between 2013 and 2016 without filing the required Notice of Arrivals form with EPA.

IV. VIOLATIONS

Count 1: Failure to File Reports of Plant Regulator Imports.

25. Complainant realleges and incorporates by reference Paragraphs 1 through 24.

26. As described in Paragraph 24, Respondent imported the EPA-registered pesticide Stimplex Crop Biostimulant (EPA Reg. No. 75287-3) from Canada to the United States on at

least twenty-one occasions from 2013 to 2016 without filing Notice of Arrival forms with EPA as required by Section 17 of FIFRA and 19 C.F.R. § 12.112(a).

27. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA, including Notice of Arrivals submitted to EPA for each shipment of pesticides or devices that are imported into the United States under Section 17 of FIFRA and 19 C.F.R. § 12.112(a).

28. Accordingly, on at least twenty-one occasions from 2013 to 2016, Respondent violated Section 12(a)(2)(N) of FIFRA and the regulations at 19 C.F.R. §§ 12.110 – 12.117, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

V. TERMS of SETTLEMENT

29. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual and legal allegations contained herein, consents to the terms of this CAFO.

30. Respondent acknowledges that it has been informed of its right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

31. By signing this CAFO, Respondent certifies that it is presently operating in compliance with FIFRA and the FIFRA Regulations promulgated thereunder, that it has fully addressed the violations alleged by EPA herein, and that the information it has provided to EPA during the course of the EPA investigation of this matter and up to the present is true and complete, to the best of its knowledge and belief.

32. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 FIFRA Enforcement Response Policy issued by the Waste and Chemical Enforcement Division of the EPA Headquarters Office of Enforcement and Compliance Assurance in Washington, D.C., the DCIA, the 2015 Penalty Inflation Act, the Penalty Inflation Rule, and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount fifty-thousand six hundred dollars (\$50,600).

33. Respondent shall pay the penalty of \$50,600 due under this CAFO within thirty (30) calendar days of the effective date of this CAFO.

34. Respondent shall make the payment due under this CAFO by submitting a company, bank, cashier's or certified check to the order of the "Treasurer, United States of America," in the appropriate amount to:

If remitted by regular U.S. mail:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:
U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Alternatively, Respondent may make payment by electronic funds transfer via

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

Respondent shall simultaneously submit a copy of the penalty payment check or confirmation of electronic wire transfer to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code: ORC 04-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Maximilian Boal, Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES 04-2)
Boston, MA 02109-3912

Respondent shall include the case name and docket number ("*In the Matter of Acadian Seaplants Limited*, Docket No. FIFRA-01-2018-0006") on the face of each check or wire transfer confirmation.

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Acadian Seaplants Limited
Docket No. FIFRA-01-2018-0006

US EPA, REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

35. If Respondent fails to pay the civil penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

36. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

37. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the violations alleged in Section IV of this CAFO.

38. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

39. Each of the Parties shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C § 504.

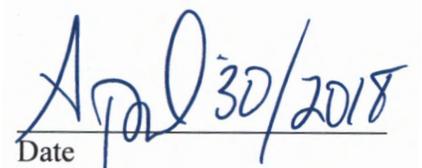
40. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

41. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

42. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

For Respondent, Acadian Seaplants Limited:


Name, Title
Acadian Seaplants Limited


Date

For U.S. EPA—Region 1:



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA—Region 1

5/11/18
Date



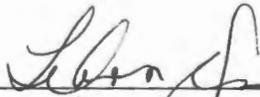
Maximilian Boal, Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
U.S. EPA—Region 1

5-11-2018
Date

VI. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date is filed with the Regional Hearing Clerk.

Date: May 16, 2018



LeAnn Jensen
~~Acting~~ Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

