



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
November 26, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL

Receipt No. 7011 1150 0000 2643 8098

Ms. Guadalupe Jimenez
West Chicago, Inc.
4204 West North Avenue
Chicago, Illinois 60639

Consent Agreement and Final Order In the Matter of
West Chicago, Inc. Docket No. FIFRA-05-2015-0014

Dear Ms. Jimenez:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on November 26, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,200 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by December 26, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Pamela Grace

for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. FIFRA-05-2015-0014
)
West Chicago, Inc., Chicago, Illinois,) Proceeding to Assess a Civil Penalty
) Under Section 14(a) of the Federal
Respondent.) Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.

3. Respondent is West Chicago, Inc., 4204 West North Avenue, Chicago, Illinois 60639, a corporation incorporated in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. It is 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. 7 U.S.C. § 136j(a)(1)(A).

11. The term “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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. On August 14, 2012, Respondent was a corporation.

17. Therefore, on August 14, 2012, Respondent was a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. On August 14, 2012, Respondent owned or operated a place of business located at 559 Main Street, West Chicago, Illinois.

19. On August 14, 2012, Respondent offered for sale on store shelves, the products “Axion Vinagre Citrico,” “Axion Antibacterial,” and “Axion Tri-Cloro Antibacterial.”

20. The label of “Axion Vinagre Citrico” stated, “antibacterial,” “Ademas su accion antibacterial, le da la seguridad de una limpieza efectiva,” “Elimina 99.999% de bacterias,” and “Para una acción antibacterial use el producto sin diluir y deje actuar por 5 minutos.”¹

21. The label of “Axion Antibacterial” stated, “Ademas, Axion Antibacterial elimina el 99.99% de P.aeruginosa, E. coli, S. typhymiriom, S. aureus.”²

22. The label of “Axion Tri-Cloro” stated, “Antibacterial,” “Elimina 99% de bacterias,” “Elimina el 99.99% E. coli, S. typhymuriom y S. aureus,” and “Recomendación: Para una accion antibacterial applique directamente el producto y deje que actue por 5 minutos.”³

23. Bacteria are a “pest” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

¹ “In addition to its antibacterial action, it gives you the safety of an effective cleaning,” “Eliminates 99.999% of bacteria,” and “For antibacterial action, use this product without diluting it and leave it working for 5 minutes.”

² “In addition, Axion Antibacterial eliminates 99.99% of P. aeruginosa, E. coli, and S. typhymiriom.”

24. Therefore, “Axion Vinagre Citrico,” “Axion Antibacterial,” and “Axion Tri-Cloro Antibacterial” are pesticides.

25. However, “Axion Vinagre Citrico,” “Axion Antibacterial,” and “Axion Tri-Cloro Antibacterial” were not registered with EPA as pesticides under Section 3 of FIFRA, 7 U.S.C. § 136a.

26. Respondent’s distribution or sale of the unregistered pesticides “Axion Vinagre Citrico,” “Axion Antibacterial,” and “Axion Tri-Cloro Antibacterial.” “Axion Antibacterial” constituted unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

27. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action was \$9,200.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the alleged violation. Complainant also considered EPA’s *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,200.00 civil penalty for the alleged violation of FIFRA by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The check must note the case title and the docket number of this CAFO.

³ Eliminates 99% of bacteria,” “Eliminates 99.99% of E. coli, S. typhymuriom, and S. aureus.” and

29. The payment must include a transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number. Respondent must also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not pay the civil penalty timely EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

"Recommendation: For antibacterial action, apply directly to the product and leave working for 5 minutes."

General Provisions

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

34. This CAFO does not 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.

35. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

36. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

37. The terms of this CAFO bind Respondent, its successors, and assigns.

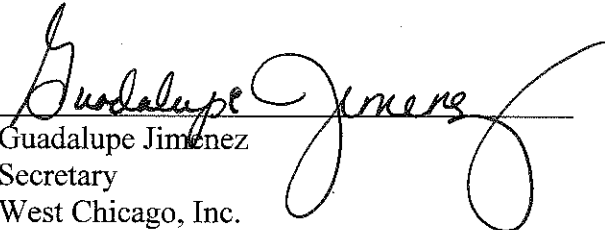
38. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorney's fees, in this action.

40. This CAFO constitutes the entire agreement between the parties.

West Chicago, Inc., Chicago, Illinois

10/21/2014
Date



Guadalupe Jimenez
Secretary
West Chicago, Inc.

United States Environmental Protection Agency, Complainant

61107-0000

11/12/2014

Date



Margaret M. Guerriero
Director
Land and Chemicals Division


In the Matter of: West Chicago, Inc., Chicago, Illinois
Docket No. FIFRA-05-2015-0014



Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11/24/2014
Date

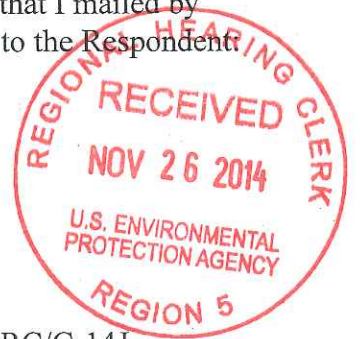


Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving West Chicago, Inc., was filed on December 26, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7011 1150 0000 2643 8098, a copy of the original to the Respondent:

Ms. Guadalupe Jimenez
West Chicago, Inc.
4204 West North Avenue
Chicago, Illinois 60639



and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jeffery M. Trevino, Assistant Regional Counsel, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD

A handwritten signature in blue ink that reads "Frederick Brown".

Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2015-0014

