

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

2011 JUL 21 AM 11:03

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the matter of:)
)
 MCV Manufacturing Inc.,)
)
 Respondent.)

Docket No. FIFRA-09-2011- 0014
CONSENT AGREEMENT
and
FINAL ORDER PURSUANT TO
40 C.F.R. §§ 22.13(b) AND 22.18(b)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region IX and MCV Manufacturing Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 1361(a), against Respondent for failure to complete and submit an annual pesticide production report for the 2010 reporting year by March 1, 2011, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulation, 40 C.F.R. § 167.85

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division of EPA Region IX. By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By Regional Order Number 1255.08 CHG1, dated June 9, 2005, the Regional Administrator of EPA Region IX re delegated this authority to the Associate Director for Agriculture, Communities and Ecosystems Division.

3. Respondent is a Nevada corporation that owns, operates, controls and/or is otherwise responsible for a facility located at 1455 Kleppe Lane, Sparks, Nevada 89431.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

5. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” is the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 provide that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to complete and submit an annual report to EPA on or before March 1 of each year that includes the amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

7. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

C. ALLEGED VIOLATION

8. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

9. Respondent owns, operates, controls and/or is otherwise responsible for a facility located at 1455 Kleppe Lane, Sparks, Nevada 89431 (hereinafter "Facility").

10. Respondent has registered the Facility as a pesticide producing establishment in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The Establishment Number is 074473-NV -001.

11. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and, as a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.

12. Respondent failed to complete and submit an annual pesticide report for the 2009 production year by March 1, 2010, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 and was issued a Notice of Warning for this violation on August 3, 2010.

13. Consequently, Respondent's failure to complete and submit an annual pesticide production report for the 2010 reporting year by March 1, 2011 constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), which makes it unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

D. RESPONDENT'S ADMISSIONS

14. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

15. In settlement of the violation specifically alleged in Section I.C. of this CAFO, Respondent shall pay a civil administrative penalty of **ONE THOUSAND THREE HUNDRED AND SIXTY DOLLARS (\$1,360)**. Respondent shall pay the full amount of this penalty within thirty (30) calendar days after the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Lawrence Torres
Pesticides Office
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

16. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

17. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 15 by the date specified in Paragraph 15, then (i) the entire balance of the unpaid penalty amount shall become due immediately and (ii) Respondent shall, upon demand from EPA Region IX, pay (in addition to the unpaid balance of the civil administrative penalty) a stipulated penalty of **ONE HUNDRED DOLLARS (\$100)** per day for each day that payment is late. In addition, failure to pay in full the civil administrative penalty by its due date may lead to any or all of the following actions:

a.. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the

Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.14 and 13.17.

18. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by its due date. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins, 40 C.F.R. § 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.12(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs, 40 C.F.R. § 13.12(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. CERTIFICATION OF COMPLIANCE

19. In executing this CAFO, Respondent certifies that it has submitted its annual pesticide production report for the 2010 production year to the U.S. EPA Region IX Pesticides Office.

G. RETENTION OF RIGHTS

20. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C.

of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C. of this CAFO.

21. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

22. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

23. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

24. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

25. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

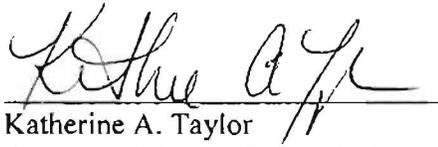
FOR RESPONDENT, MCV Manufacturing Inc.:

6/9/2011
DATE


Jim Kubinec
Chief Executive Officer

FOR COMPLAINANT, EPA REGION IX:

7/18/2011
DATE


Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA Region IX and Aerosprays Inc., having entered into the forgoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-0014) be entered, and Respondent shall pay a civil administrative penalty in the amount of **ONE THOUSAND THREE HUNDRED AND SIXTY DOLLARS (\$1,360)** in accordance with the terms set forth in the Consent Agreement.

07/20/11
DATE


Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, (Docket Number FIFRA-09-2011-), has been filed with the Regional Hearing Clerk and a copy was sent, certified mail (7008 1140 0004 5421 2726) to:

Mr. Jim Kubinec
MCV Manufacturing Inc.
1455 Kleppe Lane
Sparks, Nevada 89431

7/21/11
DATE


Bryan Goodwin
U.S. Environmental Protection Agency, Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7008 1140 0004 5421 2726

Date: JUL 21 2011

Mr. Jim Kubinec
Vice President
MCV Manufacturing Inc.
1455 Kleppe Lane
Sparks, NV 89431

Re: Consent Agreement and Final Order – MCV Manufacturing Inc.
Docket No.: FIFRA-09-2011- 0014

Dear Mr. Kubinec:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning an alleged violation of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by MCV Manufacturing Inc. The terms of the CAFO require the payment of \$1,360 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact Lawrence Torres of my staff at (415) 947-4211.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katherine A. Taylor".

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

cc: Chuck Moses, Nevada Department of Agriculture