

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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EPA REGION III PHILA. PA

IN THE MATTER OF:

Allied International Corporation of Virginia
22570 Markey Court, Suite 108
Dulles, VA 20166-6915

Respondent

Allied International Distribution Center
101 Dover Road
Glen Burnie, MD 21060

Facility

Consent Agreement And Final Order

Docket No.: FIFRA-03-2011-0036

Proceeding under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, 7 U.S.C. § 136l(a)

CONSENT AGREEMENT

1. This Consent Agreement and Final Order settle claims brought by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") against Allied International Corporation of Virginia ("Allied" or "Respondent") under Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a). This Agreement begins and simultaneously ends EPA's lawsuit as allowed by Sections 22.13(b) and 22.18(b) of 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. §§ 22.13(b) and 22.18(b).
2. For this proceeding, Respondent admits the jurisdictional allegations in this Agreement. Respondent neither admits nor denies any other facts or conclusions.
3. Respondent agrees not to contest EPA's jurisdiction for executing this Agreement or for issuing and enforcing the attached Final Order.
4. For this proceeding, Respondent waives any right to contest any issue of law or fact in this Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to EPA issuing the Final Order and agrees to comply with its terms.
6. Respondent must bear its own costs and attorney's fees.

Facts and Conclusions

7. Allied is a Virginia corporation headquartered at 22570 Markey Court, Suite 108 in Dulles, Virginia.

8. Allied distributes products to retail stores from a facility on 101 Dover Road in Glen Burnie, Maryland.
9. EPA received a report from the Maryland Department of Agriculture (“MDA”) in 2009. According to the report:
 - A. On October 16, 2008, the MDA inspected Gene’s Supermarket at 921 E. Patapsco Ave. in Baltimore, Maryland for compliance with pesticide regulations.
 - B. The inspector saw a product labeled Smith & Johnson Antibacterial Wipes for sale on store shelves.
 - C. The inspector determined that the wipes came from Allied International Distribution Center in Glen Burnie, Maryland.
10. EPA sent Allied a Request for Information on April 30, 2009, and Allied responded on May 18, 2009. According to Allied’s response:
 - A. Allied had distributed Smith & Johnson Antibacterial Wipes with a label saying “Antibacterial” once and “Kill most of germs and mold” twice.
 - B. Allied received a shipment of the wipes from an importer in July 2007.
 - C. Allied distributed the wipes to retail stores until April 2009.
 - D. Allied had not registered the wipes under FIFRA.

Count 1 - Receipt and Delivery of an Unregistered Pesticide

11. It is illegal for a “person” to “distribute” an unregistered “pesticide” under FIFRA §§ 3(a) & 12(a)(1)(A), 7 U.S.C. §§ 136a(a) & 136(j)(a)(1)(A), and 40 C.F.R. § 152.15.
12. A “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not” under FIFRA § 2(s), 7 U.S.C. § 136(s).
13. Allied is a “person” because it is a Virginia corporation.
14. To “distribute” means to “receive and (having so received) deliver or offer to deliver” under FIFRA § 2(gg), 7 U.S.C. § 136(gg).
15. Allied “distributed” Smith & Johnson Antibacterial Wipes because it received a shipment of the wipes at its Glen Burnie, Maryland facility in July 2007 and delivered them to customers until April 2009.
16. A “pesticide” is any substance “intended for destroying” any “pest” under FIFRA § 2(u), 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

17. A substance is “intended for destroying” a “pest” if 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” to destroy pests under 40 C.F.R. §§ 152.3 & 152.15(c).
18. Bacteria and mold, a fungus, are “pests” under FIFRA § 2(t), 7 U.S.C. § 136(t).
19. Allied knew the wipes would be used to destroy pests because their labels say “Antibacterial” once and “Kill most of germs and mold” twice.
20. Because Allied distributed the wipes knowing they would be used to destroy pests, the wipes are pesticides.
21. So, by receiving and distributing the wipes, Allied distributed unregistered pesticides, violating FIFRA §§ 3(a) & 12(a)(1)(A), 7 U.S.C. §§ 136a(a) & 136(j)(a)(1)(A), and 40 C.F.R. § 152.15.

Civil Penalty

22. To resolve its liability for this FIFRA violation and settle EPA’s civil penalty claims under FIFRA § 14(a), Allied agrees to pay a \$7,500 civil penalty plus \$24.64 interest, in nine installments. The first installment of \$833.36 is due thirty calendar days after Allied receives a copy of this Agreement signed by the parties and the Final Order signed by the Regional Judicial Officer and filed with the Regional Hearing Clerk. The next eight payments are due every thirty days thereafter.
23. Allied must pay this civil penalty plus any interest, administrative fees, and late fees EPA assesses on any overdue balance, in the way described in Appendix A.
24. EPA considered many factors when calculating this penalty, including those required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), such as the size of Allied’s business, the effect of the penalty on Allied’s ability to continue in business, and the gravity of the violations. EPA applied these factors to the particular facts and circumstances of this case guided by the *FIFRA Enforcement Response Policy* (December 2009), 40 C.F.R. Part 19, and *Penalty Policy Supplements Under the 2004 Civil Monetary Penalty Inflation Adjustment Rule*, Stephanie P. Brown (June 5, 2006), p. 19-B.

Certification of Compliance

25. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 to 136y.

Other Applicable Laws

26. Nothing in this Agreement relieves Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

27. This Agreement resolves only EPA's civil claims for penalties for the specific violations of FIFRA set forth in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is also 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 FIFRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement.

Full and Final Satisfaction

28. This settlement fully and finally satisfies EPA's claims for federal civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations set forth in this Agreement. Compliance with this Agreement is not a defense to any action at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

29. This Agreement binds EPA, Respondent, and the officers, directors, employees, agents, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement for Respondent is acknowledging that he or she is fully authorized by Respondent to bind Respondent to this Agreement.

Effective Date

30. The effective date of this Agreement is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

Interest and Late Fees

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Agreement shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
32. Interest on any installment of the civil penalty assessed in this Agreement will begin to accrue from the first day payment is delinquent. Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).
33. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Chapter 9, *Receivables and Billings*, of EPA's *Resources Management Directives System*

(No. 2540-09), EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty-day period after the payment is due and an additional \$15.00 for each subsequent thirty days the penalty remains unpaid.

34. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
35. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this Agreement.

Entire Agreement

36. This Agreement and its attachments is the entire understanding between the Parties regarding EPA's assessment of civil penalties for the specific violations described in this Agreement.

APPENDIX A

Payment Schedule

Payments	Principal	Interest	Total Payment	No. days post receipt of signed Agreement
Pay 1	\$ 833.36	\$ -	\$ 833.36	30
Pay 2	\$ 833.33	\$ 5.48	\$ 838.81	60
Pay 3	\$ 833.33	\$ 4.79	\$ 838.12	90
Pay 4	\$ 833.33	\$ 4.11	\$ 837.44	120
Pay 5	\$ 833.33	\$ 3.42	\$ 836.75	150
Pay 6	\$ 833.33	\$ 2.74	\$ 836.07	180
Pay 7	\$ 833.33	\$ 2.05	\$ 835.38	210
Pay 8	\$ 833.33	\$ 1.37	\$ 834.70	240
Pay 9	\$ 833.33	\$ 0.68	\$ 834.01	270
Totals	\$ 7,500.00	\$ 24.64	\$ 7,524.64	

Payment Methods

All payments must include Respondent's name and the Docket No.: FIFRA-03-2011-0036.

Send copies of checks and electronic payment receipts to both:

Magda Rodriguez-Hunt
Land and Chemicals Division (3LC62)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

Type of Payment	Payment Information	
Online Payment by Debit and Credit Card	Access https://www.pay.gov/paygov/ Find the form by entering sfo 1.1 in the search field. Open the form, complete the required fields, and submit to make payments. The type of payment is "civil penalty," the Court Order # or Bill # is FIFRA-03-2011-0036, and the Region # is 3.	
Checks from U.S. Banks Finance Center payable to "United States Treasury"	U.S. Postal Service	UPS, Federal Express, or Overnight Mail
	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028
Contacts: Craig Steffen (513-487-2091) Eric Volck (513-487-2105)		
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati OH 45268-0001	
Wire Transfers (any currency) For details on the format and content of wire transfers: http://www.epa.gov/ocfo/finser_vices/required_info.htm	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"	

ACH - Automated Clearinghouse for US Treasury REX / Cashlink ACH Receiver
receiving US currency Finance ABA: 051036706
Center Contacts: Account Number: 310006, Environmental Protection
Agency
John Schmid CTX Format Transaction Code 22 – checking
(202-874-7026)
Physical location of US Treasury facility:
REX (Remittance Express), 5700 Rivertech Court
1-866-234-5681 Riverdale MD 20737

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1-866-234-5681 Riverdale MD 20737

For Respondent:

7/8/11
Date


Chad Akhavan, President
Allied International Corporation of Virginia

For Complainant:

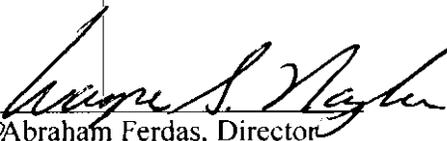
7/5/2011
Date



Wojciech Jankowski
Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

9/9/11
Date



Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

Allied International Corporation of Virginia
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Respondent

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FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Allied International Corporation of Virginia, 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, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). The terms of the foregoing Consent Agreement are incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a) ("FIFRA"), and the Consolidated Rules of Practice, and having determined, based on the parties' representation in the Consent Agreement, that the penalty agreed to in the Consent Agreement is based on 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 penalty of Seven Thousand Five Hundred Dollars (\$7,500) plus interest and fees, and comply with the terms of the Consent Agreement.

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

9/26/11
Date

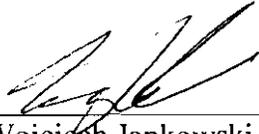

Renee Sarajian

Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re Allied Int'l Corp. of Virginia*. Docket No. FIFRA-03-2011-0036 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by UPS Overnight with delivery confirmation–signature required, to Chad Akhavan, President, 22570 Markey Court, Suite 108, Dulles, VA 20166-6915.

Dated: 9/26/11



Wojciech Jankowski
Assistant Regional Counsel
U.S. EPA Region 3