



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2017 SEP - 7 PM 1: 52

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2017-0008

IN THE MATTER OF:

Bioxy USA LLC.

RESPONDENT

)
)
)
)
)
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 7th DAY OF September, 2017.



Katherin E. Hall
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2017 SEP -7 PM 1:52

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Bioxy USA, LLC)
626 Treven Place)
Draper, Utah 84020)
Respondent)
)
)
)
)
)
)
)
)

Docket No.: FIFRA-08-2017-0008

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

I. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
3. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Agreement.
4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual allegations in this Agreement.

II. ALLEGATIONS

6. Respondent, Bioxy USA, LLC, is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
7. Respondent's place of business is located at 1840 North Technology Drive, Springville, Utah 84663 (Facility).

8. At all times relevant to the alleged violations, the Respondent was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a “pesticide” defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
9. By statute, “[t]he term ‘to 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” FIFRA section 2(gg), 7 U.S.C. § 136 (gg).
10. Under FIFRA section 3(a), it is “unlawful for any person in any State to distribute or sell to any person-(A) any pesticide that is not registered under 136a ... or whose registration has been canceled ...”
11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states "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 136a of this title or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter."
12. By statute, "[t]he term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers." FIFRA section 2(p)(1), 7 U.S.C. § 136 (p)(1).
13. By statute, "[t]he term 'labeling' means all labels and all other written, printed, or graphic matter- (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device..." FIFRA section 2(p)(2), 7 U.S.C. § 136 (p)(2).
14. By statute, a pesticide is “misbranded if. . .its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading. . .” FIFRA section 2(q)(1)(A), 7 U.S.C. 136 (q)(1)(A).
15. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”

III. VIOLATIONS

Count 1

16. On June 22, 2016, an EPA credentialed inspector with the Utah Department of Agriculture and Food conducted an inspection at the Facility.
17. The inspector requested copies of distribution records that support that Bioxy had been distributing the Bioxy Plus product since September 22, 2015.
18. The distribution records received show that Bioxy has been distributing two additional unregistered pesticide products called Bioxy H and Bioxy +, both of which are from a Canadian company called Bioxy AFD Inc. Neither of these pesticide products is registered in the United States.

19. Respondent produced, distributed, or selling unregistered pesticides in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 2

20. An EPA inspector conducted a review of the Bioxy website, at bioxyusa.com. The Bioxy Plus label contains a link to the company website, which makes the website a part of the Bioxy Plus labeling. False and misleading statements constitute misbranding. Several false and misleading statements were identified as part of the website review, including the statements below:

- a. multiple claims as to the safety of the pesticide or its ingredients:
 - i. “non-corrosive”
 - ii. “non-toxic”
 - iii. “are safe”
 - iv. “safe to handle”
 - v. In reference to healthcare associated infections (HAI) . . . “Will stop this!”
 - vi. “Environmentally friendly”
 - vii. “non-hazardous”
- b. inappropriate comparisons with other active ingredients of other products:
 - i. “advantages over conventional quaternary ammonium and chlorine based products”

21. Respondent produced, distributed, or sold a misbranded pesticide in a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

III. PAYMENT OF CIVIL PENALTY

22. Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.

23. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.

24. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$6,300 against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by Administrative Order.

25. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$6,300 within thirty days of the effective date of the Final Order as follows:

- a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent accordingly as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

US Bank

Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen
513-487-2091

Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 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 (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility

5700 Rivertech Court

Riverdale, MD 20737

On-line Payment:

There is now an On-Line Payment Option, available through the Department of Treasury. This payment option can be accessed from www.pay.gov.

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

26. At the same time that payment is made, notice that the payment has been made shall be provided to:

Daniel Webster (8ENF-AT-TP)
Technical Enforcement Program
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

and Melissa Haniewicz (8RC)
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

27. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

28. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).

29. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

IV. TERMS AND CONDITIONS

30. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.

31. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

32. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.

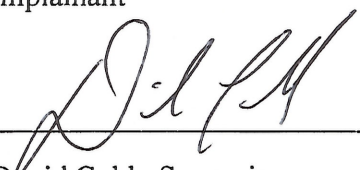
33. Each party shall bear its own costs and attorney fees in connection with this matter.
34. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
35. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
36. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
37. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
38. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Office of Enforcement, Compliance
and Environmental Justice

Complainant

Date: 9/6/17

By: 

David Cobb, Supervisor
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: SEP 5 2017

By: 

James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

BIOXY USA, LLC.,
Respondent

Date: 28 Aug 2017

By: 

Printed Name: Ben Card

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **BIOXY USA, LLC.**; **DOCKET NO.: FIFRA-08-2017-0008** was filed with the Regional Hearing Clerk on September 7, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Erin Agee, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 7, 2017, to:

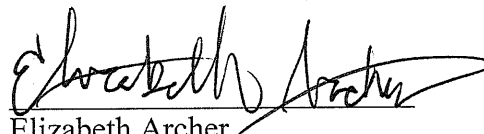
Respondent

Bioxy USA, LLC
626 Treven Place
Draper, Utah 84020

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 7, 2017


Elizabeth Archer
Acting Regional Hearing Clerk