

FILED

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

2011 MAR -9 PM 2:40
U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the Matter of:) Docket No. FIFRA-09-2011-0006
)
BNJ Ultra Services Inc. dba) CONSENT AGREEMENT
UltraMax Chemical Company,) AND FINAL ORDER
)
Respondent.)
_____)

I. CONSENT AGREEMENT

Complainant, the Associate Director for Agriculture of the Communities and Ecosystems Division, EPA Region IX ("EPA" or Complainant), and BNJ Ultra Services Inc. dba UltraMax Chemical Company ("Respondent") agree to settle this matter initiated against Respondent under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136, and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY

1. EPA initiated this administrative proceeding for the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), by issuing a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent on November 29, 2010, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22.

2. The Complaint alleges that Respondent violated Section

12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to complete and submit an annual pesticide production report for the 2009 production year to EPA by March 1, 2010, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. §136e(c)(1), and implementing regulations at 40 C.F.R. § 167.85.

3. EPA and Respondent have agreed to resolve this civil administrative proceeding by executing this CAFO in accordance with 40 C.F.R. Part 22.

B. RESPONDENT'S ADMISSIONS

4. 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 the Complaint and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

C. CIVIL ADMINISTRATIVE PENALTY

5. Respondent agrees to the assessment of a penalty in the amount of **TWO THOUSAND, SIX HUNDRED AND FORTY DOLLARS** (\$2,640) as final settlement of the civil claims against Respondent arising under FIFRA, as alleged in Complaint.

6. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from 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, or be paid by one of the other methods listed below and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must 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"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

Consent Agreement and Final Order
In re: UltraMax Chemical Company 3

This payment option can be accessed from the information below:

www.pay.gov

Enter "sf01.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

In addition, a copy of each check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter indicating Respondent's name, the case title, and the docket number to:

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

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

7. 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.

8. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 5 by the date specified in Paragraph 6, then Respondent shall pay to EPA a stipulated penalty of \$150 per day for each day that payment is late, in addition to the assessed penalty. Stipulated penalties

are due and payable upon EPA's written request. 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.

d. 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 the deadline specified in Paragraph 6. 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.

D. CERTIFICATION OF COMPLIANCE

9. In executing this CAFO, Respondent certifies that it has submitted its annual pesticide production report for the 2009 production year to the U.S. EPA Region IX Pesticides Office.

E. RETENTION OF RIGHTS

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

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 the Complaint; 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 the Complaint.

11. 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.

F. ATTORNEYS' FEES AND COSTS

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

G. EFFECTIVE DATE

13. 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.

H. BINDING EFFECT


14. 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.

15. 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, BNJ ULTRA SERVICES INC dba ULTRAMAX CHEMICAL COMPANY:

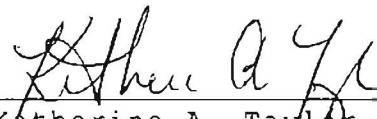
1-28-11
DATE



Bruce Johnson
President
UltraMax Chemical Company

FOR COMPLAINANT, EPA REGION IX:

3/8/11
DATE



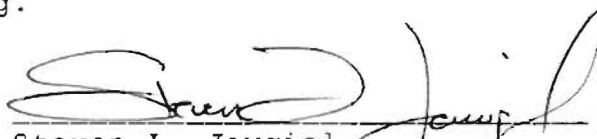
Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX

II. FINAL ORDER

Complainant and Respondent, having entered into the forgoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-0006) be entered, and that Respondent shall pay a civil administrative penalty in the amount of TWO THOUSAND, SIX HUNDRED AND FORTY DOLLARS (\$2,640) in accordance with the terms and conditions set forth in the Consent Agreement. This CAFO shall become effective upon filing.

03/09/11
DATE

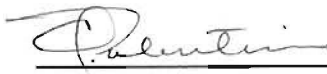

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATION/CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No. FIFRA-09-2011-0006 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7010 1060 0000 5106 8191), return receipt requested, to:

Mr. Bruce Johnson, President
UltraMax Chemical Company
42400 Winchester Road
Temecula, CA 92590

03/09/11
Date


for: Steven Armsey
Regional Hearing Clerk
US EPA, Region 9



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7010 1060 0000 5106 8191

Date: MAR 09 2011

Mr. Bruce Johnson, President
UltraMax Chemical Company
42400 Winchester Road
Temecula, CA 92590

Re: Consent Agreement and Final Order – BNJ Ultra Services Inc. dba UltraMax Chemical Company
Docket No.: FIFRA-09-2011-0006

Dear Mr. Johnson:

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 BNJ Ultra Services Inc. dba UltraMax Chemical Company. The terms of the CAFO require the payment of \$2,640 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 William Lee of my staff at 415-947-4185.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor".

Katherine A. Taylor, Associate Director
Communities and Ecosystems Division

Enclosure