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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bi-O-Kleen Industries, Inc.;

Respondent.

Docket No. FIFRA-10-2007-0128

CONSENT AGREEMENT

1. This administrative proceeding is simultaneously being commenced and concluded by issuance of this Consent Agreement along with the accompanying Final Order. The authority for this procedure is set forth at 40 C.F.R. § 22.13(b). This Consent Agreement contains terms for the settlement of claims between the United States Environmental Protection Agency (EPA) and Bi-O-Kleen Industries, Inc. (Respondent). The pursuit of these claims by EPA is authorized by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein, but neither admits nor denies the specific factual allegations set forth in Paragraph 3 below. Nevertheless, Respondent waives the right to contest those allegations as well as the right to appeal the accompanying Final Order. Respondent also consents to the payment of a penalty in accordance with the conditions of Paragraphs 7 and 8 below.

3. Respondent has a business facility located at 5408 NE 88<sup>th</sup> Avenue, Building D1, Suite 401 in Vancouver, Washington. This facility has been registered with EPA as a pesticide-producing establishment since April 10, 2003, and was assigned a registration number of 075745-WA-001.

Consent Agreement

Bi-O-Kleen Industries, Inc.  
FIFRA-10-2007-0128

1           4. Respondent is required by 40 C.F.R. § 167.85(d) to provide EPA, on an annual basis, a  
2 written report which documents the type(s) and amount(s) of pesticides produced and distributed  
3 during the past calendar year, along with the type(s) and amount(s) of pesticides currently produced  
4 at the establishment. Respondent is further required to submit the written annual report, covering the  
5 prior calendar year, by no later than March 1<sup>st</sup>. Respondent submitted the annual written report for  
6 calendar year 2003 on July 22, 2004, almost five months after the reporting deadline. EPA sent a  
7 letter notifying Respondent of this failure to file a timely report, and warning Respondent that  
8 another such failure within the following 3-year period would likely subject Respondent to sanctions.  
9 Despite this warning, Respondent did not file the calendar year 2005 written report. This failure to  
10 file a written report constitutes a violation of 40 C.F.R. § 167.85(d), and Section 12(a)(2)(L) of  
11 FIFRA, 7 U.S.C. § 136j(a)(2)(L). Furthermore, Respondent filed the calendar year 2006 written  
12 report on March 22, 2007, three weeks after the reporting deadline. This failure to file a timely  
13 written report constitutes a second violation of 40 C.F.R. § 167.85(d), and Section 12(a)(2)(L) of  
14 FIFRA, 7 U.S.C. § 136j(a)(2)(L).

15           5. Subsequent to receiving notification of the above-referenced violations, Respondent  
16 provided EPA with a written request to terminate its status as a pesticide-producing establishment.  
17 Based upon this request, the establishment registration for Respondent has been terminated by EPA,  
18 and Respondent is no longer authorized to produce pesticides. Should Respondent choose to once  
19 again produce pesticides, Respondent must first have its establishment registered with EPA.

20           6. Respondent may not include pesticide claims on any labeling or advertising associated  
21 with its products, because Respondent currently has no product which is registered with EPA as a  
22 pesticide. For each such non-registered product, Respondent may include statements to the effect  
23 that the product "cleans" or "removes" an unwanted item. However, Respondent may not include  
24 claims to the effect that the product "fights," "prevents," "inhibits" or "is excellent for" the unwanted  
25 item. Before Respondent includes a pesticide claim on the labeling or advertising of any product,  
26 Respondent must first register this product with EPA.

27

28           Consent Agreement

1           7. The written annual reports for calendar years 2005 and 2006 indicate that there was “zero  
2 production” of pesticides by Respondent during those years. In accordance with the “Enforcement  
3 Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting  
4 Requirement,” EPA has chosen to forego the collection of a penalty for the violations noted above,  
5 because Respondent produced no pesticides during the relevant calendar years and also requested  
6 termination of its establishment registration.

7           8. Beginning on the effective date of the accompanying Final Order, and continuing for one  
8 (1) year thereafter, if Respondent should fail to comply with any aspect of paragraph 5 or 6 above,  
9 Respondent shall pay a civil penalty in the amount of four thousand one hundred sixty dollars  
10 (\$4,160). The payment of this penalty shall be made by Respondent within thirty (30) days of receipt  
11 of written notice from EPA that such payment is due.<sup>5</sup> This payment shall be by cashier’s or certified  
12 check made payable to the order of “Treasurer, United States of America.” The check shall be  
13 submitted to: United States Environmental Protection Agency, Region 10, P.O. Box 371099M,  
14 Pittsburgh, Pennsylvania 15251. Along with payment, Respondent shall provide a transmittal letter  
15 which sets forth the information contained in the caption of this case, including the case title and  
16 docket number, together with a description of the obligation being satisfied by Respondent. At the  
17 time of payment, Respondent shall also provide a copy of the check and transmittal letter to Richard  
18 Mednick, Associate Regional Counsel, and Carol Kennedy, Regional Hearing Clerk. The mailing  
19 address for Mr. Mednick and Ms. Kennedy is: United States Environmental Protection Agency,  
20 1200 Sixth Avenue, ORC-158, Seattle, Washington 98101.

21           9. Should Respondent fail to pay the penalty assessed herein in full by its due date, the entire  
22 unpaid balance of penalty and accrued interest shall become immediately due and owing. Should  
23 such a failure to pay occur, Respondent may be subject to a civil action under Section 14(a)(5) of  
24 FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling  
25 charges, and nonpayment penalties, as set forth below.

26           10. Should Respondent fail to pay any portion of the penalty assessed herein in full by its  
27 due date, Respondent shall also be responsible for payment of the following amounts:

28 Consent Agreement

1 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate  
2 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective  
3 date of the accompanying Final Order, provided, however, that no interest shall be payable on any  
4 portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

5 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15  
6 shall be paid if any portion of the assessed penalty is more than 30 days past due.

7 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6%  
8 per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due,  
9 which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes  
10 past due.

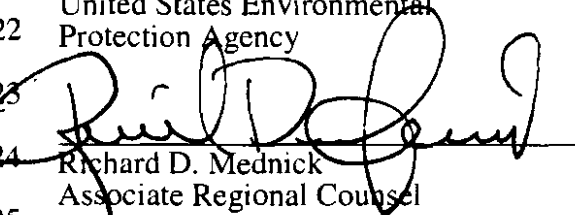
11 11. This Consent Agreement is binding upon Respondent, including all officers, directors,  
12 servants, employees, agents, successors, and assigns of Respondent.

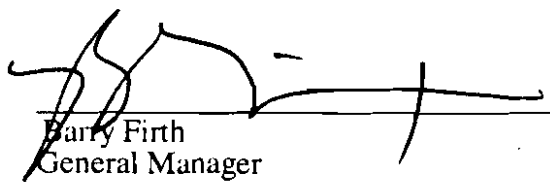
13 12. Respondent shall bear its own costs and attorneys fees in connection with this matter.

14 13. So long as Respondent is in compliance with all terms and conditions contained herein,  
15 this Consent Agreement shall terminate one (1) year from the date of the accompanying Final Order.

16 14. The requirement to pay any penalty due under the terms of this Consent Agreement shall  
17 be in addition to, not in lieu of, any other penalty or sanction which may be assessed or levied against  
18 Respondent for violation of FIFRA.

19 15. EPA and Respondent agree to the accompanying Final Order as presented to the  
20 Regional Judicial Officer.

21  
22 United States Environmental  
23 Protection Agency  
24   
25 Richard D. Mednick  
Associate Regional Counsel

Bi-O-Kleen Industries, Inc.  
  
Barry Firth  
General Manager

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


\_\_\_\_\_  
In the Matter of: )  
Bi-O-Kleen Industries, Inc.; )  
Respondent. )  
\_\_\_\_\_

Docket No. FIFRA-10-2007-0128

FINAL ORDER

It is hereby ordered that Bi-O-Kleen Industries, Inc. ("Respondent") comply with all terms of the Consent Agreement executed by Region 10 of the United States Environmental Protection Agency (EPA) and Respondent in this matter. This compliance obligation is effective upon the date of filing of the Consent Agreement along with this Final Order.

This Final Order resolves only those causes of action that have been specifically alleged by EPA in the Consent Agreement, and which are individually identified therein. This Final Order does not waive, extinguish, or otherwise affect the obligation of Respondent to comply with all applicable provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations promulgated thereunder.

  
\_\_\_\_\_  
Richard G. McAllister  
Regional Judicial Officer  
EPA Region 10

7/23/07  
Date

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Bi-O-Kleen Industries, Inc., DOCKET NO.: FIFRA-10-2007-0128** was filed with the Regional Hearing Clerk on July 24, 2007.

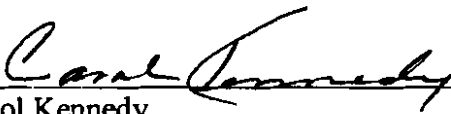
On July 24, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Richard Mednick, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on July 24, 2007, to:

Barry Firth, General Manager  
Bi-O-Kleen Industries, Inc.  
P.O. Box 820689  
Vancouver, WA 98682

DATED this 24<sup>th</sup> day of July 2007.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10