

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

JUN 24 PM 4: 35
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

DalMex, Ltd.
823 Nafta Boulevard
Laredo, TX 78045-6408

RESPONDENT

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DOCKET NO. FIFRA 06-2010-0305

COMPLAINT AND
CONSENT AGREEMENT AND
FINAL ORDER

**COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER**

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and DalMex, Ltd., located in Laredo, Texas (Respondent) in the above referenced action, have consented to the terms of this Complaint and Consent Agreement and Final Order (Complaint and CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Complaint and CAFO.

**I.
PRELIMINARY STATEMENT**

1. This enforcement proceeding is instituted by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a) (FIFRA) which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$7,500¹ for each violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. §

¹The Civil Penalty Inflation Adjustment Rule (62 Fed Reg. 13514, March 20, 1997 and 69 Fed Reg. 7121, February 13, 2004) provides for increases in the statutory penalty provisions for violations

136j(a)(1)(B). This proceeding was instituted by the issuance of the Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to the FIFRA.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this Complaint and CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint and CAFO.

5. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this Complaint and CAFO and that the party signing this Complaint and CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this Complaint and CAFO.

7. Respondent agrees that the provisions of this Complaint and CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including but not limited to, subsequent purchasers.

which occur after the date the increases take effect. For violations after March 14, 2004, the potential maximum penalty for such violations changed from \$5,500 to \$6,500. The Agency is required to review its penalties once every four years and adjust them for inflation. The Final Rule published at 73 Fed Reg. 75340 raised the FIFRA penalty to \$7,500 for violations occurring after December 11, 2008.

II.

STATUTORY AND REGULATORY BACKGROUND

8. Section 2(s) of FIFRA defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" (1) as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer".

10. The term "distribute or sell" is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as meaning "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.

11. The term misbranded is defined in Section 2(q)(2)(C) of FIFRA, a pesticide is misbranded if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, i) the name and address of the producer, registrant or person whom produced (iv) when required by regulation, the registration number assigned to the pesticide.

12. Section 2(p) of FIFRA defines "label" as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

13. The term "establishment" means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

14. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$7,500² for each offense.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. The Respondent is DalMex, Ltd. located at 823 Nafta Boulevard, Laredo, TX 78045-6408.

16. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA.

17. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

18. At all times relevant to this Complaint, the Respondent distributed or sold, the following misbranded pesticides: Clorox Bleach

19. On October 31, 2006 EPA inspected Senor Express in Sioux City, Iowa.

20. The inspection was a For-Cause Inspection based on the discovery of 7 cases of misbranded containers of Clorox Bleach by the Nebraska Department of Agriculture at La Mexicana Market in Omaha, Nebraska. La Mexicana Market received the cases of Clorox Bleach from Senor Express.

21. At the time of EPA's inspection, 17 cases of misbranded Clorox Bleach were discovered at Senor Express warehouse.

22. During the inspection the owner of Senor Express, provided copies of two invoices and shipping documentation with the dates and amounts of misbranded Clorox

²See footnote 1.

Bleach that Senor Express ordered from DalMex.

23. According to Invoice #2159, on January 16, 2006, Senor Express received 21 cases of regular Clorox Bleach (10 cases containing fifteen 930ml bottles and 11 cases containing twenty 460ml bottles each) from DalMex.

24. According to Invoice #2362, on June 27, 2006, Senor Express received 60 cases of Clorox Bleach (each case contained fifteen 930 ml bottles) from DalMex.

25. The misbranded Clorox bleach product labels were written in Spanish and made claims of sanitizing, cleaning and disinfecting.

26. On August 30, 2006 EPA inspected Promex, Ltd. (Promex) in Omaha, NE.

27. The inspection was a For-Cause Inspection based on three unannounced random marketplace inspections conducted by Nebraska Department of Agriculture where four misbranded Clorox Bleach products were discovered.

28. At the time of the inspection 331 cases of Clorox Bleach were found at Promex.

29. The general manager of Promex, provided copies of the invoice and shipping document with the misbranded Clorox bleach Promex ordered from DalMex.

30. According to invoice #2429, on August 27, 2006, Promex received 180 cases of Clorox Bleach each containing fifteen scented 930 ml bottles and 154 cases of regular Clorox bleach each containing twenty 500 ml bottles from DalMex.

IV. VIOLATIONS

31. Paragraphs 1-30 are realleged and incorporated by reference.

32. Section 12(a)(1)(E) provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

33. Respondent's sale and distribution of the misbranded pesticide products, identified in paragraphs 20-30, constituted an unlawful act in violation of Section 12(a)(1)(E) of FIFRA.

V.
CIVIL PENALTY AND
TERMS OF SETTLEMENT

34. For the reasons set forth above, Respondent has agreed to pay a civil penalty, which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and the Civil Penalty Inflation Adjustment Rule³ which authorizes EPA to assess a civil penalty of up to SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) for each violation of FIFRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" dated July 2, 1990 – (<http://www.epa.gov/Compliance/resources/policies/civil/erp/index.html>).

35. It is ORDERED that Respondent be assessed a civil penalty of **FOUR THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS (\$4,800.00)**.

³ See footnote 1.

36. Within thirty (30) days of Respondent's receipt of this fully executed Complaint and CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6."

Payment shall be remitted in one of the alternatives provided in the collection information section below:

COLLECTION INFORMATION

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank

808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "sfo 1.1" in the search field;

Open form and complete required fields following directions for EPA Miscellaneous payments.

EPA Miscellaneous Payments - Cincinnati Finance Center

Form Number: **SFO Form Number 1.1**

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments

PLEASE NOTE: Docket Number FIFRA-06-2010-0305 shall be clearly typed on the check to ensure proper credit. Respondent shall send a simultaneous notice of such payment, including a copy of the money order or check to the following:

Lee McMillan
Pesticides Section (6PD-P)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

37. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11 unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

39. The EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the

payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11 (c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

VI.
COSTS

40. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

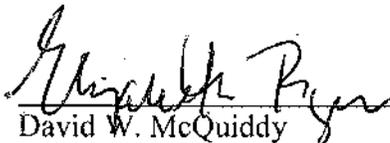
Date: June 18, 2010.



Ana L. Gonzalez Mireles
DalMex, Ltd.
823 Nafta Boulevard
Dareto, TX 78045-6408

FOR THE COMPLAINANT:

Date: June 24, 2010



for David W. McQuiddy
Chief
Pesticides Section

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated June 24, 2010



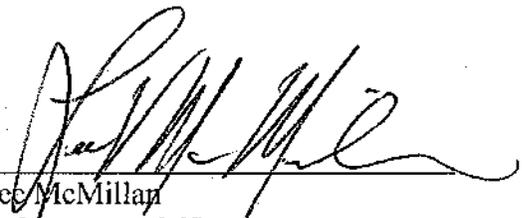
Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2010, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ana L. Gonzalez Mireles
DalMex, Ltd.
823 Nafta Boulevard
Laredo, TX 78045-6408


Lee McMillan
Enforcement Officer
Pesticides Section