

FILED

2012 SEP 26 AM 9: 59

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
2 Regional Counsel
3
4 Margaret Alkon
5 Assistant Regional Counsel
6 U.S. Environmental Protection Agency
7 Region IX
8 75 Hawthorne Street
9 San Francisco, CA 94105
10 (415) 972-3890
11

12 UNITED STATES
13 ENVIRONMENTAL PROTECTION AGENCY
14 REGION IX
15 75 HAWTHORNE STREET
16 SAN FRANCISCO, CA 94105
17

18 In the matter of:) Docket No. FIFRA-09-2012- 0004
19) CONSENT AGREEMENT
20 Omni Research Corporation) and
21 d/b/a Bio-Dex Laboratories) FINAL ORDER PURSUANT TO
22 Respondent.) SECTIONS 22.13 AND 22.18
23)
24)
25)
26)

27 **I. CONSENT AGREEMENT**

28 Complainant, the Director of the Communities and Ecosystems Division, United States
29 Environmental Protection Agency, Region 9, ("EPA") and Respondent Omni Research
30 Corporation doing business as Bio-Dex Laboratories (hereafter "Respondent") seek to settle this
31 case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

32 **A. APPLICABLE STATUTES AND REGULATIONS**

33 1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal
34 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, et seq. (hereinafter referred to as
35 "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative
Assessment of Civil Penalties, 40 C.F.R. Part 22.

1 Wire Transfers:

2 Wire transfers must be sent directly to the Federal Reserve Bank in New
3 York City with the following information:

4 Federal Reserve Bank of New York

5 ABA = 021030004

6 Account = 68010727

7 SWIFT address = FRNYUS33

8 33 Liberty Street

9 New York, NY 10045

10 Field Tag 4200 of the Fedwire message should read "D 68010727

11 Environmental Protection Agency"

12
13 Overnight Mail:

14 U.S. Bank

15 1005 Convention Plaza

16 Mail Station SL-MO-C2GL

17 ATTN Box 979077

18 St. Louis, MO 63101

19
20 ACH (also known as REX or remittance express):

21 Automated Clearinghouse (ACH) for receiving U.S. currency

22 PNC Bank

23 808 17th Street, NW

24 Washington, DC 20074

25 ABA = 051036706

26 Transaction Code 22 – checking

27 Environmental Protection Agency

28 Account 31006

29 CTX Format

30
31 On Line Payment:

32 This payment option can be accessed from the information below:

33 www.pay.gov

34 Enter "sfo1.1" in the search field

35 Open form and complete required fields

36
37 If clarification regarding a particular method of payment remittance is
38 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

39
40
41 A copy of each check, or notification that the payment has been made by one of the other
42 methods listed above, including proof of the date payment was made, shall be sent with a
43 transmittal letter, indicating Respondent's name, the case title, and docket number, to the

1 following addresses:

2
3 Regional Hearing Clerk
4 Office of Regional Counsel (ORC-1)
5 U.S. Environmental Protection Agency, Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8
9 Julie Jordan
10 Communities and Ecosystems Division (CED-5)
11 U.S. Environmental Protection Agency, Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105

14
15 Margaret Alkon
16 Office of Regional Counsel (ORC-2)
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
19 San Francisco, CA 94105
20

21 11. In the event that Respondent fails to pay the civil administrative penalty assessed
22 above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in
23 the amount of **FIVE HUNDRED DOLLARS (\$500)** for each day that payment is late. Upon
24 Complainant's written demand, payable shall immediately become due and payable.

25 12. Respondent's failure to pay in full the civil administrative penalty by its due date also
26 may lead to any or all of the following actions:

27 a. The debt being referred to a credit reporting agency, a collection agency, or to
28 the Department of Justice for filing of a collection action in the appropriate United States District
29 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
30 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

31 b. The debt being collected by administrative offset (i.e., the withholding of
32 money payable by the United States to, or held by the United States for, a person to satisfy the

1 debt the person owes the Government), which includes, but is not limited to, referral to the
2 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C
3 and H.

4 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
5 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
6 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
7 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-
8 of-credit. 40 C.F.R. §§ 13.17.

9 **F. CERTIFICATION OF COMPLIANCE**

10 13. In executing this CAFO, Respondent certifies (1) that it is not distributing or selling
11 unregistered Knock Out with pesticide claims; and 2) that it is complying with all other FIFRA
12 requirements at all facilities under its control.

13 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

14 14. This Consent Agreement constitutes the entire agreement between the Respondent
15 and EPA. This CAFO is for the purpose of fully and finally settling the civil claims against
16 Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil
17 penalty and any applicable interest charges or late fees or penalties as set forth in this CAFO shall
18 constitute full settlement and satisfaction of civil penalty liability against Respondent for the
19 violations alleged in Section I.C. of this CAFO.

20 15. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
21 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
22 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
23 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,

1 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
2 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
3 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
4 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.
5 This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to
6 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
7 permits.

8 16. The provisions of this CAFO shall be binding on Respondent and on Respondent's
9 officers, directors, employees, agents, servants, authorized representatives, successors, and
10 assigns.

11 17. Except as set forth in Paragraph 12 above, each party shall bear its own fees, costs,
12 and disbursements in this action.

13 18. For the purposes of state and federal income taxation, Respondent shall not claim a
14 deduction for any civil penalty payment made pursuant to this CAFO.

15 19. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this
16 CAFO shall be the date on which the accompanying Final Order, having been signed by the
17 Regional Judicial Officer, is filed.

18 20. The undersigned representatives of each party to this Consent Agreement certify that
19 each is duly authorized by the party whom he or she represents to enter into the terms and
20

1 conditions of this Consent Agreement and Final Order and bind that party to it.
2
3

4 **OMNI RESEARCH CORPORATION:**
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6
7 Date: 8/20/2012 By: Lori Brumagin
8

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10 Name: Lori Brumagin
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12
13 Title: Vice President
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17 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**
18

19
20
21 Date: 9/14/2012 By: Katherine Taylor
22

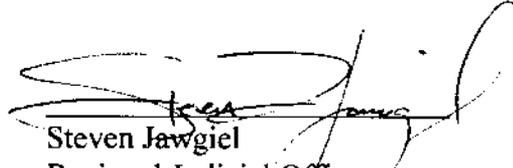
23 KATHERINE TAYLOR
24 Associate Director for Agriculture
25 Communities and Ecosystems Division
26 U.S. Environmental Protection Agency,
27 Region IX
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II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **SIXTY EIGHT THOUSAND SIX HUNDRED FORTY DOLLARS (\$68,640)** in accordance with the terms set forth in the Consent Agreement.

Date: 09/25/12


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

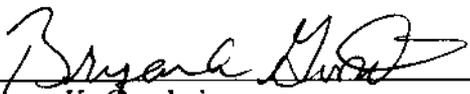
CERTIFICATION / CERTIFICATE OF SERVICE

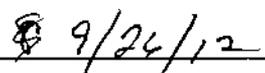
I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2012-00 , was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7010 2780 0000 8388 6682), return receipt requested, addressed to the following address:

Ms. Lori Brumagin
Vice President
Omni Research Corporation dba Bio-Dex Laboratories
4212 W. Innovative Dr.
Phoenix, AZ 85086

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Margaret Alkon, Esq
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX


Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED 7010 2780 0000 8388 6682

Date: SEP 26 2012

Ms. Lori Brumagin
Vice President
Omni Research Corporation, dba Bio-Dex Laboratories
4212 W. Innovative Dr.
Phoenix, AZ 85086

Subject: Omni Research Corporation, dba Bio-Dex Laboratories.
Consent Agreement and Final Order
Docket No. FIFRA-09-2012-0004

Dear Ms. Brumagin:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 et seq. for the above referenced case. The terms of the CAFO require the payment to be received by EPA within 30 days of the effective date of the CAFO.

If you have any questions, please have your attorney contact Margaret Alkon, Assistant Regional Counsel, telephone number (415) 972-3890.

Sincerely,

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

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Enclosure

cc: Jack Peterson, AZ Department of Ag
Chuck Moses, NV Department of Ag
Shelly Letcher, AZ Department of Ag
Luke Conyac, Esq., Conyac & Associates, LLC