

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

2011 DEC 29 PM 2:52

LEGAL COUNSEL
EPA REGION III PHILA. PA

IN THE MATTER OF:

Consent Agreement

PAMEX Foods, Inc.
7900 Parston Drive
Forestville, MD 20747

Docket No.: FIFRA-03-2012-0047

RESPONDENT.

Proceeding Under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, 7 U.S.C. § 136l(a)

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and by PAMEX Foods, Inc ("PAMEX" or "Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), and 40 C.F.R. §§ 22.13(b) and 22.18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent for the violations of FIFRA set forth herein.

General Provisions

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
3. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
4. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
5. Respondent consents to the assessment of a civil penalty and the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own legal costs and attorney's fees.

Findings of Fact and Conclusions of Law

7. PAMEX is a Maryland corporation headquartered at 7900 Parston Drive in Forestville Maryland, that owns and operates a distribution facility at the same address ("PAMEX Facility").

8. Two times in 2007, the Maryland Department of Agriculture (“MDA”) inspected the PAMEX Facility.
 - A. During the first inspection on September 17, 2007, the MDA inspector observed and photographed nine cases of a product labeled “Fabuloso Aroma de Bebe Antibacterial.” The inspector spoke to the PAMEX facility manager, who stated that PAMEX distributes Fabuloso Antibacterial Cleaner in the United States and purchases the product from a company that imports it into the United States from Mexico.
 - B. The photographs showed that the product label stated “Antibacterial” on the front and back.
 - C. During the second inspection on September 24, 2007 the MDA inspector took sales records relating to the “Fabuloso Aroma de Bebe Antibacterial” product. The PAMEX facility manager stated that the records identified the Fabuloso Aroma De Bebe product by the scent name “bebe.”
 - D. The sales records showed that PAMEX had sold this product to various customers 161 times between January and September of 2007.
9. In October 2009, EPA’s Antimicrobial Division investigated the “Fabuloso Aroma de Bebe” product and determined that:
 - A. The product is intended to have a pesticidal effect based on the “Antibacterial” claim on its label and must be registered with EPA as a pesticide under FIFRA.
 - B. There was no record of a registration and no pending registration for a product named “Fabuloso Aroma de Bebe.”
10. On February 19, 2009, MDA inspected Latina Supermarket, located at 4315 Saint Barnabas Road, in Temple Hills, Maryland.
 - A. During this inspection, MDA took photographs and sales records relating to a “Clorox Magia Floral” product, and observed 11 bottles of this product for sale on store shelves.
 - B. The photographs showed that the product label stated “Desinfecta,” which the MDA inspector identified as a Spanish word.
 - C. The supermarket’s sales records showed that PAMEX sold them this product in February 2009.
11. In April 2011, EPA’s Antimicrobial Division investigated the “Clorox Magia Floral” product and determined that:
 - A. The term “Desinfecta” on the label translates into English as “Disinfects” and constitutes a pesticidal claim under 40 C.F.R. § 152.15 since disinfection refers

directly to the killing/destruction of microorganisms. Therefore, Clorox Magia Floral must be registered with EPA as a pesticide under FIFRA.

B. There was no record of a registration and no pending registration for a product named "Clorox Magia Floral."

12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define "pesticide," in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant or desiccant, with exceptions not relevant to this matter.

13. 40 C.F.R. § 152.3 defines "pesticide product," in pertinent part, to mean "a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold."

14. 40 C.F.R. § 152.15 provides, in relevant part:

A pesticide is any substance ... intended for a pesticidal purpose. ... A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance ... can or should be used as a pesticide, or

(b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance)... or

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines "pest" to mean any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

16. Respondent is a Maryland corporation and is therefore a person under FIFRA § 2(s), 7 U.S.C. § 136s, subject to FIFRA § 12(a)(1)(A), 7 U.S.C. § 136(j)(a)(1)(A).

17. Respondent distributes products from its facility and is therefore a "distributor" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. 136l(a)(1).

Counts 1 to 161 – Fabuloso Aroma de Bebe

18. It is illegal for a person to sell an unregistered pesticide under FIFRA § 12(a)(1)(A), 7 U.S.C. § 136(j)(a)(1)(A), and 40 C.F.R. § 152.15.
19. A “pesticide” is any substance intended for destroying any pests, as implied by its labeling, under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 & 152.15.
20. Viruses, bacteria, and other microorganisms are pests under Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and 40 C.F.R. § 152.5.
21. PAMEX sold a product named Fabuloso Aroma de Bebe 161 times between January and September of 2007.
22. The labels on the front and back of the Fabuloso Aroma de Bebe product say “Antibacterial.”
23. The claim “Antibacterial” on the label implies that this product is intended to destroy microorganisms, and is therefore a pesticide under Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. §§ 152.3 & 152.15.
24. PAMEX never registered this pesticide as required under Section 3(a) of FIFRA.
25. By selling the unregistered pesticide named Fabuloso Aroma de Bebe, PAMEX violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(A), 161 times between January and September of 2007.

Count 162 – Clorox Magia Floral

26. Paragraphs 18-20 are incorporated by reference.
27. PAMEX sold a product named Clorox Magia Floral one time in February 2009.
28. The label on the front of Clorox Magia Floral states “Desinfecta.”
29. The claim “Desinfecta” implies that this product is intended to destroy microorganisms, and is therefore a pesticide under Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. §§ 152.3 & 152.15.
30. PAMEX never registered this pesticide as required under Section 3(a) of FIFRA.
31. By selling the unregistered pesticide named Clorox Magia Floral, PAMEX violated Section 12(a)(1)(A) of FIFRA one time in February 2009.

Civil Penalty

32. In settlement of EPA’s claims for civil monetary penalties assessable for the violations cited in this Consent Agreement, Respondent consents to the assessment of a civil penalty

of \$158,880 and agrees to pay this penalty in accordance with the schedule found in paragraph 34 and the terms below. This civil penalty amount shall become due and payable immediately upon Respondent's receipt of a copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

33. This settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violations. These factors were applied to the particular facts and circumstances of this case with specific reference to the *FIFRA Enforcement Response Policy* (December 2009), 40 C.F.R. Part 19, and *Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule* (June 2006).

Payment Schedule

34. Respondent shall pay the penalty according to the following schedule:

Time post receipt of signed CAFO	Principle	Interest	Cum Prin	Cum Int	Balance	Payment
30 days	\$ 40,000.00	\$ -	\$ 40,000.00	\$ -	\$ 118,880.00	\$ 40,000.00
3 months	\$ 14,730.46	\$ 297.20	\$ 54,730.46	\$ 297.20	\$ 104,149.54	\$ 15,027.66
6 months	\$ 14,767.29	\$ 260.37	\$ 69,497.75	\$ 557.57	\$ 89,382.25	\$ 15,027.66
9 months	\$ 14,804.20	\$ 223.46	\$ 84,301.95	\$ 781.03	\$ 74,578.05	\$ 15,027.66
12 months	\$ 14,841.21	\$ 186.45	\$ 99,143.16	\$ 967.48	\$ 59,736.84	\$ 15,027.66
15 months	\$ 14,878.32	\$ 149.34	\$ 114,021.48	\$ 1,116.82	\$ 44,858.52	\$ 15,027.66
18 months	\$ 14,915.51	\$ 112.15	\$ 128,936.99	\$ 1,228.97	\$ 29,943.01	\$ 15,027.66
21 months	\$ 14,952.80	\$ 74.86	\$ 143,889.79	\$ 1,303.83	\$ 14,990.21	\$ 15,027.66
24 months	\$ 14,990.21	\$ 37.48	\$ 158,880.00	\$ 1,341.31	\$ -	\$ 15,027.69

Payment Methods

35. Respondent shall pay the civil penalty plus any interest, administrative fees, and late payment penalties owed in the following manner:
36. All payments by Respondent shall reference its name and address, and the Docket Number of this action, *i.e.*, FIFRA-03-2012-0047.
37. All checks shall be made payable to "United States Treasury."

38. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105

39. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

40. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

41. All payments made by electronic wire transfer shall be directed to:

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"

42. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court

Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

43. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

44. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

45. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty shall be sent simultaneously to:

Magda Rodriguez-Hunt
Land and Chemicals Division (3LC62)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-202

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Interest and Late Fees

46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

47. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

48. The costs of EPA's administrative handling of overdue debts is charged and assessed monthly throughout the period the debt is overdue under 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will 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) days the penalty remains unpaid.

49. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40

C.F.R. § 13.11 (c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, pursuant to 31 C.F.R. § 901.9(d).

50. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

Certification of Compliance

51. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*

Other Applicable Laws

52. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

53. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA set forth in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO.

Full and Final Satisfaction

54. The settlement recorded herein shall constitute full and final satisfaction of Complainant's claims for federal civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations set forth in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

55. This CAFO shall apply to and be binding upon EPA, Respondent, and the officers, directors, employees, agents, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

56. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA—Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

57. This CAFO constitutes the entire agreement and understanding of the Parties regarding EPA's assessment of civil penalties for the specific violations described herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

Signatures

For Respondent:

PAMEX Foods Inc.

Date 12-18-11

By: Javier A Ramirez

Name: Javier A Ramirez

Title: President

For Complainant:

U.S. Environmental Protection Agency, Region III

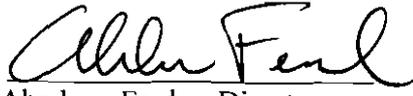
Date 12/20/2011



Wojciech Jankowski
Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

Date 12/28/11



Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

PAMEX Foods, Inc.
7900 Parston Drive
Forestville, MD 20747

RESPONDENT.

Consent Agreement

Docket No.: FIFRA-03-2012-0047

Proceeding Under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, 7 U.S.C. § 136l(a)

FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency—Region III, and PAMEX Foods Inc., Respondent, have executed a document entitled “Consent Agreement” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). The terms of the foregoing Consent Agreement are incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, UNDER Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a) (“FIFRA”), and the Consolidated Rules of Practice, and having determined, based on the parties’ representation in the Consent Agreement, that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that PAMEX pay a penalty of One Hundred Fifty-Eight Thousand Eight Hundred Eighty Dollars (\$158,880), and comply with the terms and conditions of the Consent Agreement.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S Environmental Protection Agency - Region III.

12/29/11
Date



Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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IN THE MATTER OF:

PAMEX Foods, Inc.
7900 Parston Drive
Forestville, MD 20747

RESPONDENT.

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Docket No.: FIFRA-03-2012-0047

Proceeding Under Section 14(a) of the
Federal Insecticide, Fungicide and
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CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re PAMEX Foods, Inc.*, Docket No. FIFRA-03-2012-0047 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail–return receipt requested to Javier Ramirez, President, PAMEX Foods, Inc., 7900 Parston Drive, Forestville, MD 20747.

Dated: 12/29/2011



Wojciech Jankowski
Assistant Regional Counsel
U.S. EPA Region 3