

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

2007 JUL 30 PM 2:29

U.S. EPA REGION IX  
RECEIVED  
2007-07-30 00:16

In the matter of:	)	Docket No. FIFRA-2007-0016
	)	
McGrayel Co., Inc.	)	
	)	CONSENT AGREEMENT AND
Respondent.	)	FINAL ORDER
	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA") Region IX and McGrayel Co., Inc. ("Respondent"), agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. § 22.13(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), against Respondent for failure to complete and submit an annual pesticide production report for the 2006 reporting year by March 1, 2007, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulation, 40 C.F.R. § 167.85

2. Complainant is the Director of the Communities and Ecosystems Division of EPA Region IX. By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By Regional Order Number 1255.08 CHG1, dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Director, Communities and Ecosystems Division.

3. Respondent is McGrayel Co., Inc., located in Fresno, California.

B. APPLICABLE STATUTE

4. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any

person who is a producer to violate any provision of Section 7 of FIFRA.

### C. ALLEGED VIOLATION

5. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and owned, operated and was otherwise wholly responsible for a place of business with an address at 5631 S. Villa Ave, Fresno, California (hereinafter "Facility").

6. Respondent had registered the Facility as a pesticide producing establishment in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The Establishment Number is 46978-CA-1.

7. As a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.

8. According to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulations at 40 C.F.R. § 167.85, Respondent is required to complete and submit a pesticide production report to EPA on or before March 1, annually. This report must cover the production of Respondent's pesticide(s) for the previous calendar year and the anticipated production for the subsequent year.

9. It is unlawful under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), to violate any provisions of Section 7.

10. Respondent failed to complete and submit an annual pesticide report for the 2006 production year by March 1, 2007.

11. 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 2006 reporting year by March 1, 2007.

### D. RESPONDENT'S ADMISSIONS

12. 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 this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section

I.C. of this CAFO; (iii) consents to the terms of penalty under Section I.E. of this CAFO; (iv) waives any rights to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

13. In settlement of the violation specifically alleged in Section I.C. of this CAFO, Respondent shall pay a civil administrative penalty of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200). Respondent shall pay the full amount of this penalty within thirty (30) calendar days after 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 to the following address:

U.S. Environmental Protection Agency, Region IX  
P.O. Box 371099M  
Pittsburgh, PA 15251

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

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

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

14. 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.

15. If Respondent fails to pay in full the civil administrative penalty by its due date, then (i) the entire balance of the unpaid penalty amount shall become due immediately and (ii) Respondent shall, upon demand from EPA Region IX, pay (in addition to the unpaid balance of the civil administrative penalty) a stipulated penalty in the amount of ONE THOUSAND

THREE HUNDRED DOLLARS (\$1,300). 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.

16. 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 its due date. 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.

#### F. CERTIFICATION OF COMPLIANCE

17. In executing this CAFO, Respondent certifies that it has submitted its annual pesticide production report for the 2006 production year to the U.S. EPA Region IX Pesticides Office.

#### G. RETENTION OF RIGHTS

18. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C. of this CAFO. 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 Section I.C. of this CAFO; or (ii) any criminal liability. In addition to any other authority, right, or remedy available to EPA, 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 Section I.C. of this CAFO.

19. 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.

#### H. ATTORNEYS' FEES AND COSTS

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

#### I. EFFECTIVE DATE

21. 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.

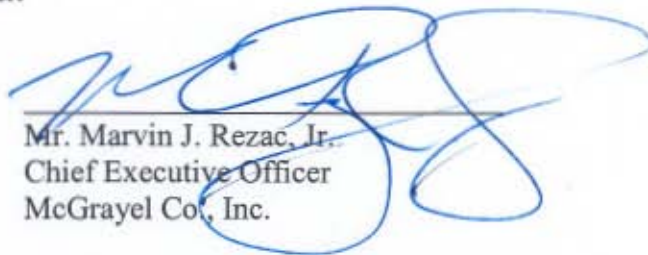
**J. BINDING EFFECT**

22. 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.

23. 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.

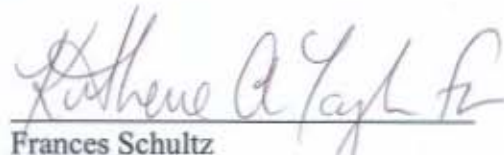
**FOR RESPONDENT McGrayel Co., Inc.:**

7-3-07  
DATE

  
Mr. Marvin J. Rezac, Jr.  
Chief Executive Officer  
McGrayel Co., Inc.

**FOR COMPLAINANT EPA REGION IX:**

July 24, 2007  
DATE


  
Frances Schultz  
Acting Director  
Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA Region IX and McGrayel Co., Inc., having entered into the forgoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-<sup>09</sup>0016-2007- ) be entered, and Respondent shall pay a civil administrative penalty in the amount of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200) in accordance with the terms set forth in the Consent Agreement.

07/27/07  
DATE

  
Steven 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 ~~9~~ 2007-0016 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7005 3110 0002 8247 3968), return receipt requested, to:

Mr. Marvin J. Rezac, Jr.  
McGrayel Co., Inc.  
P.O. Box 12362  
Fresno, CA 93777

8-1-07

DATE

Danielle Carr

Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105