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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)	
)	
County of Kings, California)	Docket No. FIFRA-09-2016- <u>0008</u>
)	CONSENT AGREEMENT AND FINAL
)	ORDER PURSUANT TO
Respondent.)	40 C.F.R. §§ 22.13 AND 22.18
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and County of Kings, California (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C §§ 136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a political subdivision of the state of California whose principal offices are located at 1440 Lacey Boulevard in Hanford, California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Under section 2(s) of FIFRA, 7 U.S.C. § 136(s), a “person” is defined as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
5. Under section 2(t) of FIFRA, 7 U.S.C. § 136(t), a “pest” is defined as “(1) any insect, rodent, nematode, fungus, weed, or (2) 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 living in man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).”
6. Under section 2(u) of FIFRA, 7 U.S.C. § 136(u), a “pesticide” is defined as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . .”
7. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), “to distribute or sell” is defined as “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.”
8. Under section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if “any word, statement, or other information required by or under authority of this Act to

appear on the label or labeling is not prominently placed thereon with such conspicuousness . . . and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. . . .”

9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.
10. Pursuant to section 19 of FIFRA, 7 U.S.C. § 136q, the Administrator of EPA has issued regulations governing storage, disposal, transportation, and recall of pesticides, including container labeling regulations set forth as 40 C.F.R. Part 156.
11. Under 40 C.F.R. § 156.140(a)(4), “[a] lot number, or other code used by the registrant or producer to identify the batch of the pesticide produced which is distributed or sold” must be placed on the label on or durably marked on all non-fillable containers of pesticide products.
12. Pursuant to section 8(a) of FIFRA, 7 U.S.C. § 136f(a), the Administrator of EPA “may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of this Act. . . .”
13. Under section 2(w) of FIFRA, 7 U.S.C. 136(w), “produce” means “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

14. Under section 2(w) of FIFRA, 7 U.S.C. § 136(w), “producer” means “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.”
15. Pursuant to section 8(a) of FIFRA, 7 U.S.C. § 136f(a), EPA issued regulations governing maintenance of records at 40 C.F.R. Part 169.
16. Under 40 C.F.R. § 169.2(e), each producer of pesticides, devices, or active ingredients used in producing pesticides subject to the Act must maintain “[i]nventory records with respect to the types and amounts of pesticides or pesticide active ingredients, or quantities of devices in stock which he has produced.”
17. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), provides that it shall be unlawful for any person to refuse to “prepare, maintain or submit any records required by or under section 5, 7, 8, 11, or 19.”

C. ALLEGATIONS

18. Respondent is a governmental entity and therefore, a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
19. Respondent, through its Agriculture Department, formulates rodent baits and packages them for sale to the public in 5 pound, 10 pound, 25 pound, or 50 pound paper sacks that cannot be refilled.
20. Rodents are “pests” within the meaning of section 2(t) of FIFRA, 7 U.S.C. § 136(t).
21. Rodent baits are “pesticides” within the meaning of section 2(u) of FIFRA, 7 U.S.C. § 136(u).
22. At all times relevant to this CAFO, Respondent was a “producer” within the meaning of section 2(w) of FIFRA, 7 U.S.C. § 136(w).

23. Pursuant to section 7 of FIFRA, 7 U.S.C. § 136e, Respondent registered its facility located at 7630 Houston Avenue, Hanford, California (the "Facility") with EPA as a pesticide producing establishment with Producer Establishment Number 11071-CA-001.
24. On or about March 23, 2015, EPA Region IX inspectors inspected the Facility.
25. On or about March 23, 2015, Respondent "distributed or sold," as that term is defined at section 2(gg) of FIFRA, two restricted use pesticides - Rodent Bait Chlorophacinone Treated Grain 0.01% (EPA SLN No. CA 890024) ("Chlorophacinone") and Rodent Bait Diphacinone Treated Grain 0.01% (EPA SLN No. CA 890022) ("Diphacinone") - by offering them for sale in 50 pound sacks at the Facility.
26. On or about March 23, 2015, the sacks of Chlorophacinone and Diphacinone that Respondent offered for sale did not have lot numbers or other codes used to identify the batches produced and sold, as required by 40 C.F.R. § 156.140(a)(4).
27. On or about March 23, 2015, Respondent's failure to mark "[a] lot number, or other code . . . to identify the batch of the pesticide produced . . . and sold" on the sacks of Chlorophacinone and Diphacinone constitutes "misbranding" as that term is defined at section 2(q)(1)(E) of FIFRA.
28. Consequently, on or about March 23, 2015, Respondent distributed or sold misbranded sacks of Chlorophacinone and Diphacinone in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
29. At all times relevant to this CAFO, Respondent never maintained a written inventory of the rodent baits produced at the Facility as required by 40 C.F.R. § 169.2(e).

30. Consequently, Respondent's failure to maintain inventory records for the types and amounts of rodent baits that it had produced at the Facility constituted a violation of section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

D. RESPONDENT'S ADMISSIONS

31. 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 the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

32. Respondent agrees to the assessment of a penalty in the amount of NINE THOUSAND AND TWO HUNDRED DOLLARS (\$9,200) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C. of the CAFO.
33. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

- a. Regular Mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York

City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = US Environmental Protection Agency

c. Certified or Overnight Mail:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

d. Automated Clearinghouse (ACH) (also known as REX or Remittance Express):

Automated Clearinghouse (ACH) payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/ Cashlink ACH Receiver
ABA = 051036706
Account Number = 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking

Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX) = 1-866-234-5681

e. On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO1.1" in the search field

Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, Please contact the EPA Cincinnati Finance Center at 513-487-2091. 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 or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, 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

Panah Stauffer
Enforcement Division (ENF-3-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

34. 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.
35. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 33, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 33 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; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 33. 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. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(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. § 13.11(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

36. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any FIFRA requirements that may apply to its ongoing operations.

G. RETENTION OF RIGHTS

37. 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 the 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 the CAFO; or (ii) any criminal liability. 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 the CAFO.
38. 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

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

I. EFFECTIVE DATE

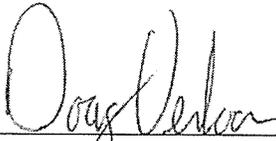
40. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

41. 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.
42. 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.

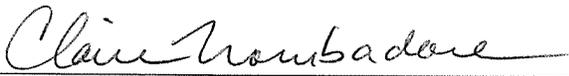
FOR RESPONDENT, COUNTY OF KINGS, CALIFORNIA

JAN 12 2016
DATE


NAME: **Doug Verboon**
TITLE: Chairman

FOR COMPLAINANT, EPA REGION IX:

2-2-2016
DATE

for 
Kathleen H. Johnson
Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

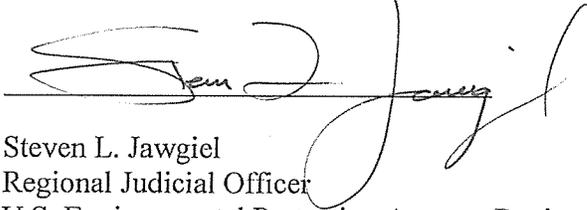
II. FINAL ORDER

Complainant and Respondent, County of Kings, California, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2016-⁰⁰⁰⁸____) be entered, and that Respondent shall pay a civil administrative penalty in the amount of NINE THOUSAND AND TWO HUNDRED DOLLARS (\$9,200) and comply with the terms and conditions set forth in the Consent Agreement.

02/02/16

DATE



Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2016- 0008) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Attn: Juliana Gmur
County of Kings, California
1440 W. Lacey Boulevard, Building #4
Hanford, CA 93230

CERTIFIED MAIL NUMBER: 7001 2510 0002 2737 1437

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

David H. Kim
Assistant Regional Counsel (ORC-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX

Feb. 3, 2016
Date