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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

AUG - 7 AM 10: 02

In the matter of:)
)
Concord Enterprises, Inc.)
)
Respondent.)
_____)

Docket No. FIFRA-9-2007-00 17
CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA" or "Complainant") and Concord Enterprises, 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 Section 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. § 22.13(b).

A. AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for the sale and distribution of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May

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11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Director of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), since it is a corporation. Respondent owns, operates and is wholly responsible for a place of business with an address at 2957 East 46th Street, Los Angeles, California ("Facility").

B. APPLICABLE STATUTES AND REGULATIONS

1. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . ." 7 U.S.C. § 136(u).
2. The term "pest" means "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. . . ." 7 U.S.C. § 136(t).
3. The term "distribute or sell" means 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." 7 U.S.C. § 136(gg).
4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

C. GENERAL ALLEGATIONS

5. On November 30, 2005, California Department of Pesticide Regulation ("DPR") inspectors conducted an inspection at the Super One Dollar Stores, Inc. facility located at 6393 Florence

Avenue, Bell Garden, California. Super One Dollar Stores, Inc. provided additional documentation to DPR on December 1, 2005.

6. At the time of the November 30, 2005 DPR inspection, the unregistered pesticide product, Mega Care Toilet Bowl Cleaner ("Mega Care"), was being held for sale by Super One Dollar Stores, Inc. Super One Dollar Stores, Inc. had purchased the pesticide product from Respondent.
7. On April 10, 2006, DPR inspectors conducted an inspection at the Facility.
8. At the time of the April 10, 2006 DPR inspection, the unregistered pesticide product, Mega Care, was being held for sale by Respondent.
9. At the time of November 30, 2005, and April 10, 2006, DPR inspections, the Mega Care product claimed on the label to "kill germs." Germ is defined as a "micro-organism," which is further defined to mean an "organism that cannot be seen by the naked eye, as a bacterium or virus."
10. On March 10, 2006, and April 13 and 14, 2006, Arizona Department of Agriculture ("ADA") inspectors conducted an inspection at the Dollar Zone located at 2186 W. Cty 15th St., Somerton, AZ 85350.
11. At the time of the March 10, 2006, and April 13 and 14, 2006 ADA inspections, the unregistered pesticide product, Blue Bubble Auto Toilet Cleaner ("Blue Bubble"), was being held for sale by Dollar Zone. Dollar Zone had purchased the pesticide product from Respondent.
12. At the time of the March 10, 2006, and April 13 and 14, 2006 ADA inspections, the Blue Bubble product claimed on the label to "disinfect", which means to kill or destroy bacteria.
13. On June 6, 2006, EPA inspectors conducted an inspection at the Facility.
14. At the time of the June 6, 2006 inspection, three unregistered pesticide products, Kitchen Wipes, Glass Wipes, and Tile Wipes, were being held for sale by Respondent.

15. At the time of June 6, 2006 inspection, each of the three products identified above claimed on the label to be "antibacterial", which means "stopping the growth of bacteria."
16. Based on the claims for the four pesticidal products, Mega Care, Blue Bubble, Kitchen Wipes, Glass Wipes and Tile Wipes, each of these products prevents, destroys, repels, or mitigates "bacteria" which are "pests" as defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
17. Mega Care, Blue Bubble, Kitchen Wipes, Glass Wipes and Tile Wipes are all "pesticides" as defined by Section 2(u), 7 U.S.C. § 136(u), in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating "pests."
18. None of these products were registered as pesticides pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

D. ALLEGED VIOLATIONS

Counts 1-2

19. Paragraphs 1 through 18 above are hereby incorporated in these Counts 1-2 by reference as if the same were set forth herein in full.
20. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
21. On or about November 16, 2005, Respondent distributed or sold the pesticide product Mega Care to Super One Dollar Stores, Inc.
22. On or about April 10, 2006, Respondent distributed Mega Care from its Facility.
23. At the times Respondent distributed or sold the pesticide product Mega Care, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

24. Respondent's distributions or sales of the unregistered pesticide product Mega Care represents two counts of violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 3

25. Paragraphs 1 through 18 above are hereby incorporated in this Count 3 by reference as if the same were set forth herein in full.
26. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
27. On or about January 10, 2006, Respondent distributed or sold the pesticide product Blue Bubble to Dollar Zone.
28. At the time Respondent distributed or sold the pesticide product Blue Bubble, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
29. Respondent's distributions or sales of the unregistered pesticide product Blue Bubble represents one count of violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 4-9

30. Paragraphs 1 through 18 above are hereby incorporated in these Counts 4-9 by reference as if the same were set forth herein in full.
31. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
32. On or about April 28, 2006, Respondent distributed or sold the pesticide product Kitchen Wipes to La Boheme/99c Paradise.

33. On or about May 19, 2006, Respondent distributed or sold the pesticide product Kitchen Wipes to Lychee Tree.
34. On or about April 14, 2006, Respondent distributed or sold the pesticide product Kitchen Wipes to Nextech.
35. On or about February 27, 2006, Respondent distributed or sold the pesticide product Kitchen Wipes to 99 Cents City.
36. On or about February 28, 2006, Respondent distributed or sold the pesticide product Kitchen Wipes to Halal Meat.
37. On or about March 29, 2006, Respondent distributed or sold the pesticide product Kitchen Wipes to Dollar Mart.
38. At the time Respondent distributed or sold the pesticide product Kitchen Wipes, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
39. Respondent's distributions or sales of the unregistered pesticide product Kitchen Wipes represents six counts of violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 10-15

40. Paragraphs 1 through 18 above are hereby incorporated into these Counts 10-15 by reference as if the same were set forth herein in full.
41. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
42. On or about April 28, 2006, Respondent distributed or sold the pesticide product Glass Wipes to La Boheme/99c Paradise.

43. On or about May 19, 2006, Respondent distributed or sold the pesticide product Glass Wipes to Lychee Tree.
44. On or about April 14, 2006, Respondent distributed or sold the pesticide product Glass Wipes to Nextech.
45. On or about February 27, 2006, Respondent distributed or sold the pesticide product Glass Wipes to 99 Cents City.
46. On or about February 28, 2006, Respondent distributed or sold the pesticide product Glass Wipes to Halal Meat.
47. On or about March 29, 2006, Respondent distributed or sold the pesticide product Glass Wipes to Dollar Mart.
48. At the time Respondent distributed or sold the pesticide product Glass Wipes, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
49. Respondent's distributions or sales of the unregistered pesticide product Glass Wipes represents six counts of violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 16-21

50. Paragraphs 1 through 18 above are hereby incorporated in these Counts 16-21 by reference as if the same were set forth herein in full.
51. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
52. On or about April 28, 2006, Respondent distributed or sold the pesticide product Tile Wipes to La Boheme/99c Paradise.

53. On or about May 19, 2006, Respondent distributed or sold the pesticide product Tile Wipes to Lychee Tree.
54. On or about April 14, 2006, Respondent distributed or sold the pesticide product Tile Wipes to Nextech.
55. On or about February 27, 2006, Respondent distributed or sold the pesticide product Tile Wipes to 99 Cents City.
56. On or about February 28, 2006, Respondent distributed or sold the pesticide product Tile Wipes to Halal Meat.
57. On or about March 29, 2006, Respondent distributed or sold the pesticide product Tile Wipes to Dollar Mart.
58. At the time Respondent distributed or sold the pesticide product Tile Wipes, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
59. Respondent's distributions or sales of the unregistered pesticide product Tile Wipes represents six counts of violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

E. RESPONDENT'S ADMISSIONS

60. 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 factual allegations contained in this CAFO; (iii) consents to the terms of penalty under Section F 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.

F. CIVIL ADMINISTRATIVE PENALTY

61. Section 14 of FIFRA, 7 U.S.C. §136I, and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, provide that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil administrative penalty by the EPA Administrator in an amount not to exceed \$6,500 for each offense. After consideration of (1) the size of Respondent's business, (2) Respondent's ability to continue in business, and (3) the gravity of Respondent's violations, EPA proposed the assessment of \$59,000 in civil penalties for the alleged violations described in Section D.

In settlement of the violations specifically alleged in Section D of this CAFO, Respondent shall pay a civil administrative penalty of FIFTY-NINE THOUSAND DOLLARS (\$59,000). Respondent shall pay the full amount of this penalty within 30 days of 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:

Mellon Bank
U.S. EPA Region IX Hearing Clerk
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

AND

Bill Lee
Pesticides Program (CED-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

62. 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.
63. If Respondent fails to pay in full the civil administrative penalty by its due date, then Respondent agrees to pay immediately a total penalty of \$111,150, increased to assess a stipulated penalty for the late payment. 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. § 13.17.

64. 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. § 13.11(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.

G. CERTIFICATION AND COMPLIANCE

65. In executing this CAFO, Respondent certifies that (1) it is no longer selling or distributing any pesticide that is unregistered in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §

136j(a)(1)(A); and (2) it has complied with all other FIFRA requirements at all facilities that it owns or operates.

H. RETENTION OF RIGHTS

66. In accordance with 40 C.F.R. § 22.18(c) and as provided below, this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Sections I.C and I.D 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 Sections I.C and I.D 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 Sections I.C and I.D of this CAFO.
67. 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.

I. ATTORNEYS' FEES AND COSTS

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

J. EFFECTIVE DATE

69. 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.

K. BINDING EFFECT

70. 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.
71. 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 CONCORD ENTERPRISES, INC.

DATE: May 128

BY: Mike Shayan
TITLE: Buyer
[Signature]
Concord Enterprises, Inc.

FOR COMPLAINANT EPA REGION IX:

August 6, 2007
DATE

BY:



ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

II. Final Order

EPA and Concord Enterprises, Inc. having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-9-2007-0017) be entered, and Respondent shall pay a civil administrative penalty in the amount of FIFTY-NINE THOUSAND DOLLARS (\$59,000), and comply with the terms and conditions set forth in the Consent Agreement.

08/07/07
DATE



STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-9-2007-00 17 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7005 3110 0002 8247 4910), return receipt requested, to:

Mr. Mike Shayan, Buyer
Concord Enterprises, Inc.
2957 East 46th Street
Los Angeles, CA 90058

8-7-07

DATE

Danielle E. Carr

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