



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 27 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. David Keen
President
Organic Laboratories, Inc.
2963 SE Dominica Terrace
Stuart, Florida 34997-5712

SUBJ: Docket No. FIFRA-04-2009-3037(b)
Organic Laboratories, Inc.

Dear Mr. Keen:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the first payment (\$907.37) of the assessed penalty of \$7,020 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Patricia Livingston at (404) 562-9171.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Organic Laboratories, Inc.)
)
Respondent.)
_____)

Docket No. FIFRA-04-2009-3037(b)

2009 MAY 27 AM 7:32
HEARINGS CLERK
EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Organic Laboratories, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Patricia Livingston
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9171.

5. Respondent is Organic Laboratories, Inc., a Florida corporation, located at 2963 Southeast Dominica Terrace, Stuart, Florida, 34997-5712.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. Respondent is registered as an EPA establishment and has been assigned EPA Establishment No. 070179-FL-001.

III. Specific Allegations

8. On or about May 6, 2008, an authorized representative of the EPA conducted an inspection at Organic Laboratories, Inc., 2963 SE Dominica Terrace, Stuart, FL.
9. During the aforementioned inspection, the products Nutra Sorb K-Sil and Exel LG Systemic Fungicide were identified as being produced and offered for sale or distribution on the internet by the Respondent.
10. Both products are pesticides according to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which defines "pesticide" to include any substance or mixture of substances intended for

preventing, destroying, repelling, or mitigating any pest.

11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t), as 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 microorganisms 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).
12. “Produce” is defined in Section 2(w) of FIFRA, 7 U.S.C. §136(w), as to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.
13. “Distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. §136(gg), and includes 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.
14. At the time of the inspection, “Nutra Sorb K-Sil” made pesticidal claims on both the product label and company website and was not registered as a pesticide with EPA.
15. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)9A), it is unlawful for any person in any State to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. §136a.
16. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136(a)(1)(A), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. §136l.
17. At the time of the inspection, the “Exel LG Systemic Fungicide” product was misbranded in that the company’s advertising on the internet made a false or misleading statement

that the product was “safe” without a qualifying statement, which is considered false and misleading in accordance with 40 CFR § 156.10(a)(5)(ix), a regulation promulgated pursuant to FIFRA.

18. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) defines misbranding to include labeling that bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
19. It is unlawful according to section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), for any person to distribute or sell any pesticide that is misbranded under Section 3 of FIFRA, 7 U.S.C. §136a.
20. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least two occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. §136l.
21. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
22. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent’s ability to continue in business, and the gravity of the violation.
23. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of SEVEN THOUSAND TWENTY DOLLARS (\$7,020) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
25. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
26. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

30. Respondent is assessed a civil penalty of SEVEN THOUSAND TWENTY DOLLARS (\$7,020) which is to be paid in eight installments. The first payment of \$907.37 is due within thirty (30) days of the effective date of this CAFO and subsequent payments of \$907.37 each are to be made in three-month intervals thereafter. The total penalty

amount is based on a penalty of SEVEN THOUSAND TWENTY DOLLARS (\$7,020) associated with quarterly payments. Respondent shall make payments in accordance with the following schedule.

<u>Payment Due Date</u>	<u>Payment Due</u>
30 days of filing of CAFO	\$907.37
4 months of filing of CAFO	\$907.37
7 months of filing of CAFO	\$907.37
10 months of filing of the CAFO	\$907.37
13 months of filing of the CAFO	\$907.37
16 months of filing of the CAFO	\$907.37
19 months of filing of the CAFO	\$907.37
22 months of filing of the CAFO	\$907.37

31. Respondent shall remit each penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

32. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Patricia Livingston
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

33. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
34. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
36. This CAFO shall be binding upon the Respondent, its successors and assigns.
37. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

VI. Effective Date

38. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Organic Laboratories, Inc.
Docket No. FIFRA-04-2009-3037(b)

By: David Keen (Signature) Date: 29 APR 09
Name: DAVID KEEN (Typed or Printed)
Title: PRESIDENT (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol L. Kemker (Signature) Date: 5/19/2009
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 26th day of May 2009.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE


I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Organic Laboratories, Inc., Docket Number: FIFRA-04-2009-3037(b), to the addressees listed below.

David Keen, President (via Certified Mail, Return Receipt Requested)
Organic Laboratories, Inc.
2963 SE Dominica Terrace
Stuart, Florida 34997-5712

Patricia Livingston (via EPA's internal mail)
Pesticides Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Date: 5-27-09


Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 5/21/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Organic Laboratories Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7,020
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04-2009-3037(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date: _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:
- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:
- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |