



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 30 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles W. Malcomb, II, Esq.
HodgsonRuss, LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202-4040

Re: *In the Matter of Crescent Marketing Inc. dba Crescent Manufacturing*
Docket No. FIFRA-02-2014-5206

Dear Mr. Malcomb:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency - Region 2.

Please note the payment provisions of the Agreement. Please arrange for payment of the penalty according to the instructions given.

Sincerely,

Naomi P. Shapiro
Assistant Regional Counsel

Enclosure

cc: Mr. Anthony Lamanno, Chief
Bureau of Pest Management, 11th Floor
Division of Materials Management
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7254

REGIONAL HEARING
CLERK

2014 NOV 12 PM 12: 17

U.S. Environmental
Protection Agency-Reg 2

2014 NOV 12 PM 12: 18

REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

Crescent Marketing, Inc. d/b/a
Crescent Manufacturing,

Respondent.

Proceeding under the Federal
Insecticide, Fungicide and Rodenticide
Act, as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2014-5206

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant

to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Crescent Marketing, Inc. d/b/a/ Crescent Manufacturing ("Crescent").
2. Respondent is located at 10285 Eagle Drive, North Collins, NY 14111.
3. Respondent is a "person" as that term is defined in FIFRA § 2(s), 7 U.S.C. § 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
4. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
6. Respondent manufactures private-label home cleaning products.
7. Among Respondent's products is Rite Aid Toilet Bowl Cleaner.
8. Respondent has produced, bottled, and applied labels to Rite Aid Toilet Bowl Cleaner ("Crescent/Rite Aid Product").
9. Rite Aid Toilet Bowl Cleaner is not a registered pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

10. On or about June 13, 2012, EPA inspectors conducted an inspection of and at the Rite Aid store located in Highland Park, NJ.

11. At the time of the June 13, 2012 inspection, the EPA inspectors identified bottles of the Crescent/Rite Aid Product offered for sale.

12. The labels on the bottles of the Crescent/Rite Aid Product viewed by the EPA inspectors included pesticidal claims, specifically statements that the product “sanitizes germs’ and “disinfects toilet bowls.”

13. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as “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. On July 3, 2012, Respondent supplied to EPA information and records regarding Respondent’s sale or distribution to Rite Aid of the Crescent/Rite Aid Product bearing the labels observed by the inspectors during the June 13, 2012 inspection.

15. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

16. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is unregistered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

17. Respondent’s sales or distributions of an unregistered pesticide, described in Paragraph 14, above, constitute unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

18. Upon notification that the pesticidal claims made on the Crescent/Rite Aid Product's labels were in violation of FIFRA, Respondent quickly informed EPA that it had instituted a recall of all of the Crescent/Rite Aid Product then in distribution, destroyed, repackaged, and/or relabeled the Crescent/Rite Aid Product recalled, and changed the label intended for use on future batches of the Crescent/Rite Aid Product to remove all pesticidal claims.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 et seq., and its implementing regulations.
2. Respondent certifies, to the best of its knowledge and based on good-faith inquiry to its direct customer, Rite Aid, that it has recalled all the Crescent/Rite Aid Product bearing labels with pesticidal claims from Rite Aid's retail outlets and distribution centers. Respondent further certifies that it destroyed, repackaged, and/or relabeled all of the Crescent/Rite Aid Product recalled.
3. If in the future EPA believes that any information certified to in paragraph 2, above, of this Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit

comments to EPA with any explanation or information Respondent wants EPA to consider. If, after consideration of Respondent's reply, the Complainant determines that either certification(s) was untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$25,000 for each certification that EPA determines was untrue or inaccurate. Any stipulated penalty shall be paid as provided in paragraphs 7 and 8, below. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq. or any other applicable law.

4. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of Thirty-Nine Thousand Dollars (\$39,000) on or before forty-five (45) days after the date of signature of the Final Order at the end of this document.

5. Payment must be received at the address listed in Paragraph 6, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due date specified above (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount

from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

6. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Crescent Marketing, Inc. d/b/a Crescent Manufacturing, Docket No. FIFRA-02-2014-5206.

Each such check shall be mailed to:

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address:
FRNYUS33
33 Liberty Street

In the Matter of Crescent Marketing, Inc. d/b/a Crescent Manufacturing, FIFRA-02-2014-5206

New York, NY 10045

- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: In the Matter of Crescent Marketing, Inc. d/b/a Crescent Manufacturing.
- g. Case Docket Number: FIFRA-02-2014-5206

Respondent shall also send proof of each payment, whether by check or EFT, to:

Naomi Shapiro
Assistant Regional Counsel
Office of Regional Counsel

Office of the Regional Hearing Clerk

and

both located at:
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

7. All stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraph 6, above. Penalties shall accrue as provided below regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

In the Matter of Crescent Marketing, Inc. d/b/a Crescent Manufacturing, FIFRA-02-2014-5206

Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or appropriate action.

8. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has demonstrated in writing, pursuant to Consent Agreement paragraph 3 above, to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA.

9. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

10. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding for the violations set out in the EPA's Findings of Fact and Conclusions of Law section above; and neither admits nor denies EPA's Findings of Fact and Conclusions of Law.

11. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

12. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certifications in this proceeding) the civil and administrative claims described above in EPA's Findings of Fact and Conclusions of Law. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

13. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any applicable stipulated penalties as set forth in this Consent Agreement and agrees to pay the civil penalty and any applicable stipulated penalties in accordance with the terms of this Consent Agreement.

14. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

15. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO.

16. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

17. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order

18. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

19. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

20. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

21. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.

22. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.

23. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

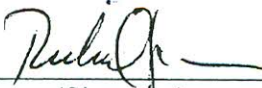
24. Each party hereto agrees to bear its own costs and fees in this matter.

25. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

26. Except as otherwise provided in this document, Respondent reserves all of its rights at law and in equity.

RESPONDENT:

Crescent Marketing, Inc. d/b/a Crescent Manufacturing

BY: 
(Signature)

NAME: Richard Frazon
(Please Print)

TITLE: President

DATE: 9/15/14

COMPLAINANT:

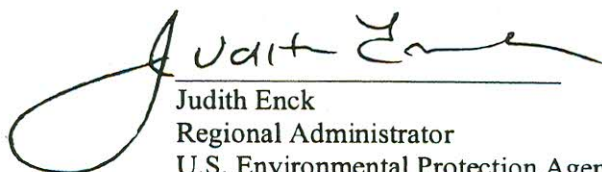


Dore F. LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

DATE: SEPTEMBER 23, 2014

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency for Region 2 ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b)



Judith Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, NY 10007

DATE: 9/27/17

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing docket number FIFRA-02-2014-5206, in the following manner to the respective addressees listed below:

Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

Charles W. Malcomb, II, Esq.
Hodgson Russ, LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202-4040

Dated: 9/30, 2014
New York, NY

