



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY, 16TH FLOOR
NEW YORK, NEW YORK 10007-1866

OCT - 3 2012

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Richard M. Levy, Esq.
Law Offices of Richard M. Levy P.C.
2448 Merrick Avenue
Merrick, New York 11566

Re: In the Matter of Nationwide Enviroserve Inc.
Docket No. FIFRA-02-2012-5211

Dear Mr. Levy:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) that resolves the above referenced matter. Please note that payment of the civil penalty assessed shall be made in accordance with the schedule in the CA/FO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Regards,

KLT

Karen L. Taylor, Esq.
Office of Regional Counsel
Waste and Toxic Substance Branch
U.S Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

Enclosure

cc: Karen Maples, Regional Hearing Clerk
Scott Menrath, NYSDEC

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 OCT - 3 A 9:07
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
In the Matter of :
 :
Nationwide Enviroserve Inc., : **CONSENT AGREEMENT**
 : **AND FINAL ORDER**
Respondent :
 : Docket No. FIFRA-02-2012-5211
 :
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended :
-----X

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 OCT - 3 A 9 01
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is being initiated pursuant to 7 U.S.C. § 136l(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.* ("FIFRA" or "the Act"). Pursuant to Section 22.13(b) of Title 40 of the Code of Federal Regulations ("C.F.R.") of the Consolidated Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to Sections 22.18(b)(2) and 22.18(b)(3). This administrative proceeding constitutes one that is being simultaneously commenced and concluded pursuant to said provisions.

Complainant and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Nationwide Enviroserve Inc., a corporation organized, existing since 2008 and doing business under and by virtue of the laws of the State of New York, located at 98A Tec Street, Hicksville, New York 11801.
2. On or about October 25, 2010, pursuant to FIFRA Sections 8 and 9, a duly authorized representative of the EPA conducted an inspection of Respondent's Hicksville establishment.
3. Based upon a review of documentary samples collected during the inspection and submitted to the EPA by Respondent subsequent to the inspection, the EPA found that Respondent distributed or sold, Foaming Root Killer, an unregistered pesticide, between January 2008 and December 2010.
4. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j (a)(1)(A), by distributing or selling sale a pesticide that is not registered.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 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. § 22.18, it is hereby agreed, and accepted by Respondent that it shall after the date of execution of this Consent Agreement comply with the following terms:

1. For purposes of this proceeding, Respondent: (a) admits that EPA has jurisdiction under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding for the violations described in EPA's Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law.

2. Respondent shall comply with the applicable requirements of FIFRA at any of its establishments.

3. Respondent shall pay, by cashier's or certified checks, a civil penalty in the amount of **Forty Eight Thousand Dollars (\$48,000.00)**, payable to the "Treasurer, United States of America." The total sum shall be divided into sixteen (16) payments: each payment in the amount of Three Thousand Dollars (\$3,000) to be made quarterly over a period of four years. Each check shall be identified with a notation of the name and docket number of this case as follows:

In the Matter of Nationwide Enviroserve Inc., Docket No. FIFRA-02-2012-5211

Each check shall be mailed to:

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

Respondent shall also send copies of each payment to each of the following:

Karen L. Taylor, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

and

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

The first payment must be received at the above address on or before 30 calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO, and the

subsequent quarterly payments must be received at the above address on or before each February 1, May 1, August 1, and November 1 thereafter until full payment has been made. (Each date by which each installment payment must be received shall hereinafter be referred to as the “due date”.)

- a. Failure to pay the penalty in full or each payment 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.
- b. Furthermore, if each 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 each 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 the due date.
- d. The effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.
- e. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
- f. This Consent Agreement and Final Order shall constitute full and complete settlement between the parties of all civil claims under FIFRA Section 14 related to the allegations that the EPA found that Respondent distributed or sold, Foaming Root Killer, an unregistered pesticide, between January 2008 and December 2010.

4. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's representations in this proceeding) the civil and administrative claims described in EPA's Findings of Fact and Conclusions of Law section above. Nothing herein shall be read to preclude the EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its 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.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

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

8. 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 all the terms and conditions set forth in this Consent Agreement.

9. The provisions of this CA/FO shall be binding upon Respondent, its agents, servants, authorized representatives and successors or assigns.

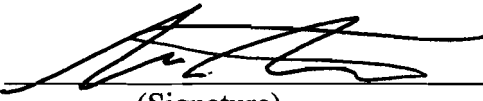
10. Respondent waives any right it may have pursuant to 40 C.F.R. Section 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or Deputy Regional Administrator where the purpose of such discussion, memorandum, 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.

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

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

In the Matter of Nationwide Enviroserve Inc.
Docket No. FIFRA-02-2012-5211

RESPONDENT: **Nationwide Enviroserve Inc.**


BY: 
(Signature)

NAME: Shawn Stein
(PLEASE PRINT)

TITLE: President

DATE: 9/14/12

COMPLAINANT:

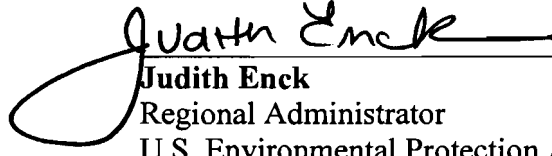

Dore LaPosta, Director
Division of Environmental Compliance and Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: SEPTEMBER 20, 2012

In the Matter of Nationwide Enviroserve Inc.
Docket No. FIFRA-02-2012-5211

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, 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 Section 14 of FIFRA and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Judith Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: 9/24/12

In the Matter of Nationwide Enviroserve Inc.
Docket No. FIFRA-02-2012-5211

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Hand:

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

Certified Mail
Return Receipt Requested

Richard M. Levy, Esq.
Law Offices of Richard M. Levy P.C.
Attorney for Respondent
2448 Merrick Avenue
Merrick, New York 11566

Dated: OCT - 3 2012
New York, NY

Mildred N. Baer