



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In Reply Refer To Mail Code: 3RC50

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 26 2016

Cynthia L. Taub, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Re: Consent Agreement and Final Order
EPA Docket No. FIFRA-03-2016-0133

Dear Ms. Taub:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER (CAFO) filed today with the Regional Hearing Clerk settling the matter referenced above, with respect to you client PuriCore Inc. For your file, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosures

cc: Evelyn Sorto, EPA

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Customer Service Hotline: 1-800-438-2474*



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF

PuriCore Inc.
508 Lapp Road
Malvern, PA 19355

Respondent

DOCKET NO: FIFRA-03-2016-0133

CONSENT AGREEMENT

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OFFICE OF REGIONAL COUNSEL
PHILADELPHIA, PA

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency - Region III ("EPA" or "Complainant") and by PuriCore Inc. ("PuriCore" or "Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under FIFRA for the violations alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.

4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Factual Allegations and Legal Background

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. PuriCore is a Delaware corporation with its principle place of business located at 508 Lapp Road, Malvern, Pennsylvania.
10. PuriCore is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
11. During the time period between May 21, 2014 and May 21, 2015, PuriCore distributed or sold two products named *ProduceFresh* and *FloraFresh* under its "Sterilox Fresh" business unit.
12. During the time period between May 21, 2014 and May 21, 2015, PuriCore's website at www.steriloxfesh.com, marketing materials and labels for *ProduceFresh* included representations that the product could be used for safety purposes, protection against cross-contamination, pathogen control, and killing spoilage organisms.
13. During the time period between May 21, 2014 and May 21, 2015, PuriCore's website at www.steriloxfesh.com and marketing materials for *FloraFresh* included representations that the product could be used to sanitize buckets, control bacterial growth, and kill a broad range of pathogens.
14. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
15. Pursuant to 40 C.F.R. §§ 152.15(a)(1) and 152.15(c), the regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance "claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a

pesticide”, or “has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”

16. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and 40 C.F.R. § 152.15, the term “pest” includes viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms on or in living man or other living animals and those on or in processed food.

17. The representations made by PuriCore for its *ProduceFresh* and *FloraFresh* products described in Paragraphs 12 and 13, above, constituted claims, statements or implications by Respondent that *ProduceFresh* and *FloraFresh* are each intended for pesticidal purpose under 40 C.F.R. § 152.15.

18. During the time period between May 21, 2014 and May 21, 2015, Respondent’s *ProduceFresh* and *FloraFresh* products were each “pesticide[s]” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

Alleged Violations

COUNT 1 – VIOLATIONS OF SECTION 12(A)(1)(a) OF FIFRA

19. 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, except to the extent that distribution or sale otherwise has been authorized.

20. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 provide, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA, except as provided in 40 C.F.R. § 152.25 or in other regulations not relevant to this matter.

21. PuriCore distributed or sold one or more units of its *ProduceFresh* product to individuals, partnerships, associations, corporations and/or organized groups of persons on approximately one hundred seventy-one (171) separate occasions during the time period between May 21, 2014 and May 21, 2015.

22. PuriCore distributed or sold one or more units of its *FloraFresh* product to individuals, partnerships, associations, corporations and/or organized groups of persons on approximately two hundred forty-seven (247) separate occasions during the time period between May 21, 2014 and May 21, 2015.

23. During the time period between May 21, 2014 and May 21, 2015, neither *ProduceFresh* nor *FloraFresh* were registered with EPA as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, nor had either ever been so registered.

24. Each occasion that Respondent distributed or sold one or more units of its *ProduceFresh* or *FloraFresh* products constitutes a “distribution or sale” of a “pesticide” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3 and constitutes a separate unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136l(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

25. Respondent is a “wholesaler, dealer, retailer or other distributor” subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

Civil Penalty

26. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of five hundred fifty thousand dollars (\$550,000). The civil penalty amount is due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of five hundred fifty thousand dollars (\$550,000) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

27. The Parties represent that the settlement terms are based upon EPA’s consideration of a number of factors, including the penalty criteria set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent’s business, the effect of the penalty on Respondent’s ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act* and 40 C.F.R. Part 19.

28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

29. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

30. The costs of the Agency’s administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA’s *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties

for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

31. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

32. Respondent shall pay the amount described in Paragraph 26, above, by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

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

Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

Beneficiary: US Environmental Protection Agency

- e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 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

- f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1,1” in the search field, and opening the form and completing the required fields.

- g. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2016-0133. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Evelyn Sorto (3LC62), U.S. Environmental Protection Agency, Region III, Land and Chemicals Division, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Certification

33. Respondent certifies that to the best of its knowledge it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*

Other Applicable Laws

34. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

35. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of *the Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

36. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

37. This CAFO shall apply to and be binding upon Complainant, Respondent, and Respondent's officers, directors, successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

38. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

39. This CAFO constitutes the entire agreement and understanding of the Complainant and Respondent concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between Complainant and Respondent other than those expressed herein.

For Respondent:

5/23/16
Date


Alex Martin, Chief Executive Officer
PuriCore Inc.

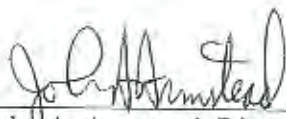
For Complainant:

5/25/16
Date


Jennifer M. Abramson
Counsel for Complainant

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

5.26.16
Date


John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

PuriCore Inc.
508 Lapp Road
Malvern, PA 19355

Respondent

EPA DOCKET NO. FIFRA-03-2016-0133

FINAL ORDER

**Proceeding under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, 7 U.S.C. § 136l(a)**

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, PuriCore Inc. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

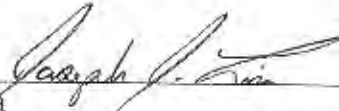
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

2016 MAY 26 PM 6:12
EPA REGION III
PHILADELPHIA, PA

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

May 26, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Docket No.: FIFRA-03-2016-0133

FROM: Mary B. Coe
Regional Counsel (3RC00)

John A. Armstead, Director
Land and Chemicals Division (3LC00)

TO: Joseph J. Lisa
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") have been negotiated with PuriCore Inc. in settlement of actionable Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") violations. The compliance issues addressed in the CAFO involve distributing or selling unregistered pesticides, which constitute unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

The litigation team calculated a civil penalty of five hundred fifty thousand dollars (\$550,000) in accordance with the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), i.e., the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violations. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *Enforcement Response Policy for Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA)*.

We recommend that you sign the attached Final Order assessing five hundred fifty thousand dollars (\$550,000) in civil penalties against Respondent. After you execute the Final Order, please return the documents to Jennifer M. Abramson of the Office of Regional Counsel for further processing.

Attachments

cc: Cynthia L. Taub, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
ctaub@steptoe.com
(202) 429-8133

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PHILADELPHIA, PA

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF

PuriCore Inc.
508 Lapp Road
Malvern, PA 19355

Respondent

DOCKET NO: FIFRA-03-2016-0133

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

Cynthia L. Taub, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

MAY 26 2016

Date



Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III

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PHILADELPHIA, PA

