

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 JUN 15 A 7 02
REGIONAL HEARING
CLERK

-----X
In the Matter of :
San-Mar Laboratories, Inc. :
Respondent :
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended :
-----X

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2011-5205

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 136 l(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136 et seq. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (“EPA”), Region 2, issued a Complaint and Notice of Opportunity for Hearing to Respondent, San-Mar Laboratories, Inc., located at 4 Warehouse Lane, Elmsford, New York 10523.

The Complainant charged Respondent with two violations of 7 U.S.C. § 136g(c)(1) and 40 C.F.R. § 167.85, the requirements under FIFRA governing the submission of annual Pesticide Reports for Pesticide-Producing Establishments (“Pesticide Reports”). Said violations are unlawful under FIFRA § 12(a)(2)(L), 7 U.S.C. § 136j (a)(2)(L).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Parties to this Consent Agreement agree that the title to this proceeding should properly read In the Matter of San-Mar Laboratories, Inc.
2. This Consent Agreement is being entered into by Respondent, San-Mar Laboratories, Inc., and this Consent Agreement is binding on San-Mar Laboratories, Inc.
3. Respondent's establishment is registered under Section 7 of FIFRA, 7 U.S.C. § 136e. Its assigned EPA Establishment Number is 068817-NY-001.
4. Pursuant to Section 7(c) of FIFRA and 40 C.F.R. § 167.20(f), any producer operating an establishment registered under Section 7 shall submit annually to the EPA the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, has produced during the past year, and has sold or distributed during the past year.
5. Title 40 C.F.R. § 167.85 provides that a producer operating an establishment must submit an annual pesticide production report (the Report) on or before March 1 of each year, even if the producer has produced no pesticides for that reporting year.
6. Respondent failed to submit an annual pesticide production report for the calendar years 2009 and 2010.
7. Therefore, Respondent violated Section 7(c)(1) and Section 12(a)(2)(L) of FIFRA, and 40 C.F.R. § 167.85.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent agrees to waive any jurisdictional objections, regarding proper service of the Complaint and/or any other questions concerning acquisition of the personal jurisdiction of San-Mar Laboratories Inc.
3. Respondent shall comply at all times with the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e and the applicable regulations.
4. Respondent admits the specific factual allegations set forth in the Findings of Fact and Conclusions of Law in this Consent Agreement.
5. Complainant agrees to waive all penalties assessed in the Complaint due to Respondent's request for termination of its New York establishment registration and submission of a zero pesticide production report for calendar years 2009 and 2010. Such waiver is consistent with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act Enforcement Response Policy. Respondent's registration for its New York establishment has been terminated.
6. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other environmental laws.
7. Nothing in this Consent Agreement and Final Order shall preclude Complainant from further enforcement action, including the assessment of civil penalties, arising from the violation of any environmental laws.
8. This Consent Agreement is being entered into by the parties in full settlement of civil liabilities associated with pesticide production establishment reporting requirements under 7 U.S.C. § 136 (e) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7

U.S.C. § 136 et seq. Respondent has read the Consent Agreement and Final Order, finds it reasonable, and consents to its issuance and its terms.

9. Respondent explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

10. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. This Consent Agreement shall be binding on both parties to this action, their officers, directors, employees, successors, and assigns.

12. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement and bind that party to it.

13. Each party shall bear its own costs and attorney's fees in the action resolved by this Consent Agreement.

14. 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.

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RESPONDENT: San-Mar Laboratories, Inc.

BY: 

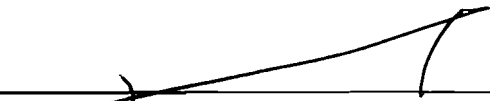
Authorizing Signature

NAME: Caleb Micceni
(PLEASE PRINT)

TITLE: President

DATE: 3/24/12

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

DATE: JUNE 1, 2012

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FINAL ORDER

The Regional Judicial Officer of the United States 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. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Helen Ferrara
Regional Judicial Officer
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

DATE: June 5, 2012

In the Matter of San-Mar Laboratories, Inc.
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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement and Final Order for the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

by Interoffice Mail:

Office of Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

USPS First Class Mail

Randy Hutt, Ph.D., Director
San-Mar Laboratories, Inc.
4 Warehouse Lane
Elmsford, NY 10523

Dated: June 12, 2012
Edison, New Jersey

