



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**AUG 24 2010**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Tracy Heinzman, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Re: Docket No. FIFRA-04-2010-9129(b)  
Bio-Lab, Inc.

Dear Ms. Heinzman:

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 assessed penalty of \$1,600.00 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. Payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency."

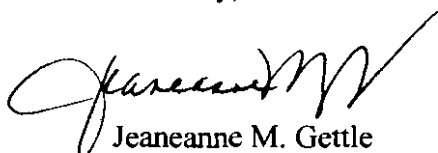
Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125, or by written correspondence to her attention at the U.S. Environmental Protection Agency's Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Molly Miller at (404) 562-9684.

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and "M".

Jeaneanne M. Gettle  
Pesticides and Toxic  
Substances Branch

Enclosures

cc: Tommy Gray, GDA

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
GENERAL CLERK

2010 AUG 24 PM 2:28

ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of: )  
 )  
Bio-Lab, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.: FIFRA-04-2010-9129(b)

**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) (hereinafter "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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Bio-Lab, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 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 C.F.R. § 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:

Molly Miller  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960  
(404) 562-9684.

## **III. Specific Allegations**

5. Respondent is Bio-Lab, Inc., a company incorporated in Georgia, and doing business at 1725 North Brown Road, Lawrenceville, Georgia.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), in that it is a corporation, and as such is subject to FIFRA and the regulations promulgated thereunder.
7. Respondent is a "registrant" as defined by Section 2(y) of FIFRA, 7 U.S.C. § 136(y) in that it is a person who has registered pesticides pursuant to the provisions of FIFRA.
8. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), in that it is a person who manufactures, prepares, compounds, propagates, or processes any pesticide.
9. "Pesticide" is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. Respondent produces pesticides "to distribute or sell" as defined by Section 2(gg) of

FIFRA, 7 U.S.C. § 136(gg), in that the pesticides are held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver.

11. Respondent produces, distributes, and sells BioGuard Maintain Silk Smart Sticks, EPA Reg. No. 5185-400.
12. Prior to January 21, 2010, Respondent distributed BioGuard Maintain Silk Smart Sticks which were misbranded in that the labels did not bear a complete ingredient statement with the percentage of its active ingredient.
13. According to 40 C.F.R. § 156.10(g), the label of each pesticide product must bear a statement which contains the name and percentage by weight of each active ingredient.
14. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states that a pesticide is misbranded if any word statement or other information required by this Act to appear on the label or labeling is not prominently placed thereon.
15. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any registered pesticide that is misbranded.
- 16. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), 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. Respondent produces, distributes, and sells Sun Pool Granular Stabilized Chlorinating Concentrate, EPA Reg. No. 5185-441-10305.
18. Prior to January 21, 2010, Respondent distributed Sun Pool Granular Stabilized Chlorinating Concentrate which bore a label claim of "Available Chlorine 90%," which was not approved as a part of its registration under FIFRA Section 3.

19. According to Section 3(c)(1)(C) of FIFRA, 7 U.S.C. § 136a(c)(1)(C), each applicant for registration of a pesticide shall file with the Administrator a statement which includes a statement for all claims to be made for it.
20. Under Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), it is unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3.
21. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B) 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.
22. On or about January 21, 2010, Respondent self disclosed the two violations of FIFRA as set forth above.
23. 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.
24. EPA's Audit Policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations," allows for further reduction of the gravity based penalty.
25. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and EPA's audit policy, EPA proposes to assess a total civil penalty of **ONE THOUSAND SIX HUNDRED DOLLARS (\$1,600)** against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations set forth above.
27. 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.
28. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
30. 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.
31. 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**

32. Respondent is assessed a civil penalty of **ONE THOUSAND SIX HUNDRED DOLLARS (\$1,600)** which shall be paid within 30 days from the effective date of this CAFO.
33. Respondent shall remit the penalty 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, Missouri 63197-9000.

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

34. 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  
Atlanta, Georgia 30303-8960;

Molly Miller  
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.

35. 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.
36. 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.

37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
38. This CAFO shall be binding upon the Respondent, its successors and assigns.
39. 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.

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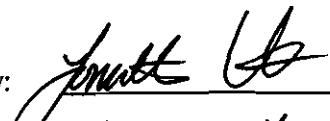
**VI. Effective Date**

40. 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:**

**Respondent: Bio-Lab, Inc.**  
**Docket No.: FIFRA-04-2010-9129(b)**

*ML*

By:  (Signature) Date: Aug 6<sup>th</sup> 2010

Name: JONATHAN VINER (Typed or Printed)

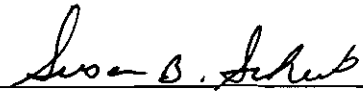
Title: PRESIDENT CONSUMER PRODUCTS (Typed or Printed)

**Complainant: U.S. Environmental Protection Agency**

By:  Date: 8/17/2010

Carol L. Kemker, Acting Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 23<sup>rd</sup> day of August 2010.

  
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 Bio-Lab , Inc., Docket Number: FIFRA-04-2010-9129(b), to the addressees listed below.

Tracy Heinzman, Esq.  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

(via Certified Mail, Return Receipt Requested)

Molly Miller  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

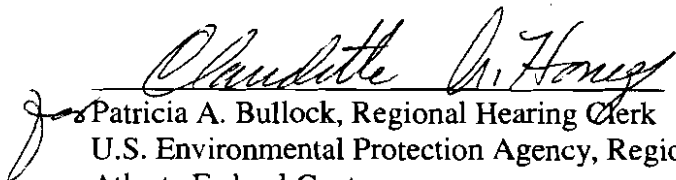
(via EPA's internal mail)

Robert Caplan, Esq.  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

(via EPA's internal mail)

Date:

*August 24, 2010*

  
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