

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

2009 SEP 29 PM 4:08

REGIONAL HEARING
CLERK

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

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No.
FIFRA-02-2009-5201

This administrative proceeding for the assessment of a civil penalty was commenced pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) ("FIFRA" or the "Act"). On December 31, 2008, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA" or "Agency"), Region 2, issued a Complaint and Notice of Opportunity for Hearing, bearing docket number FIFRA-02-2009-5201, to Respondent, Anabec, Inc. The Complaint alleged four instances of offering and/or holding for sale, distribution or shipment pesticides without having registered them with EPA. The Complaint seeks a penalty of \$26,000. Respondent filed a general denial.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims against Respondent without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). No admissions have been made by Respondent, and no findings of fact or conclusions of law have been judicially or administratively adjudicated. For the purposes of this CA/FO and for purposes of implementing the settlement set forth herein, Respondent neither admits nor denies the EPA Findings of Fact or the EPA Conclusions of Law that have been set forth below.

EPA FINDINGS OF FACT

1. Respondent is Anabec, Inc., a for-profit corporation organized, and existing since February 1996, under the laws of the State of New York.

2. Since approximately February 1996, Respondent has been, and continues to be, the owner and operator of a facility located at 9393 Main Street in Clarence (Erie County), New York ("Respondent's facility"), out of which Respondent has been (and continues to be) engaged (in whole or in part) in the business of distributing or selling pesticides.

3. On the following dates, a State of New York employee duly designated by the EPA Administrator inspected Respondent's facility pursuant to Section 9(a)(1) of FIFRA, 7 U.S.C. § 136g(a)(1):

a. November 30, 2007 (hereinafter, the "November 2007 inspection"); and

b. January 15, 2008 (hereinafter, the "January 2008 inspection").

4. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent offered for sale, held for sale, held for distribution and/or held for shipment each of the following substances (or mixtures of substances) identified by the respective labels on their containers:

a) "Anabec Anashield Plus" (hereinafter "AAP");

b) "Anabec Advanced Cleaning Solution" (hereinafter "AACS");

c) "Anabec Carpet Protector" (hereinafter "ACP"); and

d) "Anabec NewBuild 30" (hereinafter "ANB 30").

5. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent intended that each of the following be used for preventing, destroying, repelling or mitigating pests, viz. bacteria, microbes, viruses, fungi, algae, mildew and/or mold:

a) AAP;

b) AACS;

c) ACP; and

d) ANB 30.

6. At the time of the November 2007 inspection (and at other times prior and subsequent thereto), Respondent claimed, stated or implied (*inter alia*, through the label of the respective containers or through product literature, including on Respondent's website) that each of the following can or should be used as a pesticide:

a) AAP;

b) AACS;

c) ACP; and

d) ANB 30.

7. Each of AAP, AACS, ACP and ANB 30 constitutes a pesticide

8. At least up to the time of the November 2007 inspection, Respondent had never registered AAP, AACS, ACP or ANB 30 with the EPA.

EPA CONCLUSIONS OF LAW

1. Since its formation in February 1996, Respondent has been, and continues to be, a "person" (as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s)).

2. Respondent's facility constitutes an "establishment" (as defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd)).

3. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register each of AAP, AACS, ACP and ANB 30 with the EPA.

4. Respondent's having offered to sell and/or holding for sale, distribution or shipment each of AAP, AACS, ACP and ANB 30 without having registered them with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes a separate and distinct:

a. unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and

b. prohibited act pursuant to and under 40 C.F.R. § 152.15.

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 14(a) FIFRA, as amended, 7 U.S.C. § 136(a), and 40 C.F.R. § 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. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the non-jurisdictional allegations of the Complaint; (c) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; and (f) waives its right to seek judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **EIGHTEEN THOUSAND (\$18,000.00) DOLLARS**, to be paid in five installments as follows:

a) The first installment of THREE THOUSAND SIX HUNDRED (\$ 3,600.00) DOLLARS is to be received within forty-five (45) days¹ of the date the Regional Judicial Officer signs the Final Order accompanying this Consent Agreement (such date when this first installment payment is due henceforth referred to as the "due date");

b) The second installment of THREE THOUSAND SIX HUNDRED (\$ 3,600.00) DOLLARS is to be received within ninety (90) days after the due date;

c) The third installment of THREE THOUSAND SIX HUNDRED (\$ 3,600.00) DOLLARS to is be received one hundred eighty (180) days after the due date;

d) The fourth installment of THREE THOUSAND SIX HUNDRED (\$ 3,600.00) DOLLARS is to be received two hundred seventy (270) days after the due date;
and

e) The fifth installment of THREE THOUSAND SIX HUNDRED (\$ 3,600.00) DOLLARS is to be received three hundred sixty (360) days after the due date.

Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check or by electronic fund transfer (EFT). If payment is made by cashier's check or by certified check, each such check shall be made payable to the "**Treasurer, United States of America,**" and shall be identified with a notation thereon listing the following: ***In re Anabec, Inc., Docket Number FIFRA-02-2009-5201.*** If payment is made by either form of check, each such payment shall be mailed to the following address:

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

Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank each time payment in accordance with subparagraphs "a," "b," "c," "d" and "e" of this paragraph, above, is made:

¹ For purposes of this CA/FO, days shall mean calendar days.

a. Amount of Payment

b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 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: **Anabec, Inc.**

g. Case docket number: **FIFRA-02-2009-5201**

2. Payment instructions:

a. Payment shall be in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes payment by cashier's check or certified check, then each such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then each EFT shall be *received* on or before the date specified.

b. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that each required payment has been made, and each such proof shall be furnished to both:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

c. Failure to pay the specified amounts in full within the time periods set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

d. Furthermore, if each required payment is not received on or before the date when it is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date payment was to have been made through the date payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date (each) payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which (each) payment was required hereto to have been made.

3. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

4. Respondent will endeavor to comply with the applicable provisions of FIFRA and its implementing regulations with respect to any pesticide that it offers for sale, holds for sale, holds for distribution and/or holds for shipment, and shall maintain such compliance.

5. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

David G. Sarvadi, Esq.
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001

6. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and schedule set forth above.

7. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

8. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the administrative claims alleged in the Complaint bearing docket number FIFRA-02-2009-5201 upon full payment of the penalty amount set forth above. Notwithstanding the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any

violation(s) of law resulting from or pertaining to the operation of Respondent's facility.

9. Respondent hereby waives its right to seek or to obtain any hearing on the allegations made in the Complaint, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

10. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

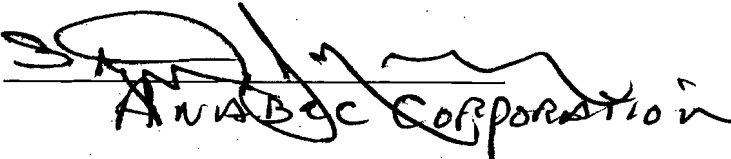
11. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, the Deputy Regional Administrator of EPA, Region 2, or the Regional Judicial Officer of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

12. Each party shall bear its own costs and fees in connection with this proceeding.

13. The undersigned signatories hereto certify that: a) they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement.

In re Anabec, Inc.,
Docket Number FIFRA-02-2009-5201

RESPONDENT:

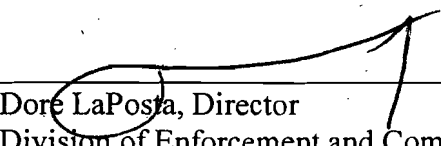
BY: 
ANABEC CORPORATION

NAME: Stephan J Meyers
[PRINT]

TITLE: PRESIDENT

DATE: 9/8/09

COMPLAINANT:


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

DATE: SEPTEMBER 16, 2009

In re Anabec, Inc.,
Docket Number FIFRA-02-2009-5201

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Anabec, Inc.*, bearing Docket Number FIFRA-02-2009-5201. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3).

DATED: September 23, 2009
New York, New York



HELEN FERRARA

Regional Judicial Officer

United States Environmental Protection Agency –

Region 2