



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2011 SEP 30 PM 2:13

FILED  
EPA REGION VIII  
TRAINING CI BRK

DOCKET NO.: FIFRA-08-2011-0016

IN THE MATTER OF:

SHAKE-AWAY, INC

2330 Whitney Avenue

Hamden, CT 06518

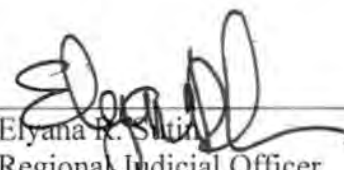
Respondent

FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

The Parties are hereby **ORDERED** to comply with this Final Order.

SO ORDERED THIS 30<sup>th</sup> Day of September, 2011

  
Elyana R. Stitt  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2011 SEP 30 PM 2:13

FILED  
EPA REGION VIII  
HEARINGS DIVISION

Docket No. **FIFRA-08-2011-0016**

IN THE MATTER OF: )

Shake-Away, Inc. )  
2330 Whitney Avenue )  
Hamden, CT 06518, )

Respondent )

**COMPLAINT AND SETTLEMENT  
AGREEMENT (CASA)**

Complainant, United States Environmental Protection Agency (EPA), Region 8, and Respondent, Shake-Away, Inc., by their undersigned representatives, hereby consent and agree as follows:

**A. JURISDICTION**

1. This Complaint and Settlement Agreement (CASA) is issued to Shake-Away, Inc. (Respondent) for two violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 12(a)(1)(C), 7 U.S.C. § 136j(a)(1)(C), and 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E).
2. The undersigned EPA officials issue this CASA under the authority vested in the Administrator of EPA by Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a).
3. This section authorizes EPA to bring an action under Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of FIFRA.
4. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This CASA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

**B. ALLEGED VIOLATION**

1. Respondent is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is therefore subject to regulation.

2. Respondent is a "distributor/seller" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w).
3. Respondent produces, sells and distributes "pesticide(s)" within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
4. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it "unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration."
5. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it "unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded."
6. On June 1, 2011, Mr. David Golden, an inspector for the U.S. EPA, performed an inspection at Gard'n-Wise, located at 12770 E 39th Ave #A, Denver, CO 80239.
7. During the inspection, Mr. Golden issued a Stop Sale, Use, or Removal Order (SSURO) to Gard'n-Wise for the adulteration of two pesticide products, Shake-Away Fox Urine Granules, EPA registration number 80917-4, and Shake-Away Coyote/Fox Urine Granules, EPA registration number 80917-5.
8. At the time of inspection, the product label on Shake-Away Fox Urine Granules, EPA registration number 80917-4, listed the active ingredient as coyote urine and the EPA accepted label lists the active ingredient as fox urine, which makes it an adulterated product.
9. The Respondent, by distributing or selling to any person any registered pesticide the composition of which differs at the time of its distribution or sale from the EPA accepted composition, has violated Section 12(a)(1)(C) of FIFRA.
10. At the time of inspection, the product label on Shake-Away Coyote/Fox Urine Granules, EPA registration number 80917-5, stated the name of the product as Shake-Away Coyote Urine Granules and the EPA accepted label states the name of the product as Shake-Away Coyote/Fox Urine Granules. The use of a different name makes it a misbranded product.
11. The Respondent, by distributing or selling to any person any pesticide which is misbranded, has violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and its implementing regulations at 40 C.F.R. Part 156--Labeling Requirements for Pesticides and Devices.

12. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, other matters as justice may require, and upon consideration of the entire record herein, EPA offers this CASA under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of three thousand six hundred and twenty-eight dollars (\$3,628).

**C. CIVIL PENALTY**

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in this CASA and neither admits nor denies the specific factual allegations contained in this CASA, and consents to the assessment of the penalty as stated in section B.12., above.
2. Respondent consents and agrees, for the purposes of settlement, to pay a civil penalty in the amount of three thousand six hundred and twenty-eight dollars (\$3,628) in the manner described in this paragraph:
  - a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this CASA. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 12:00 p.m. Central Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the above-described amount, payable to "Treasurer, United States of America" to:

(via REGULAR MAIL):

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

(via WIRE TRANSFERS):

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

(via OVERNIGHT MAIL):

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Ms. Natalie Pearson (Tel.: 314-418-4087)

(via ACH (also known as REX or remittance express)):  
Automated Clearinghouse (ACH) for receiving US currency:

PNC Bank  
ABA: 051036706  
Account Number: 310006  
CTX Format Transaction Code 22 - checking  
Environmental Protection Agency  
808 17<sup>th</sup> Street NW  
Washington DC 20074  
Contact: Jesse White, 301-887-6548

(via ON LINE PAYMENT):

There is now an On Line Payment Option, available through the Department of Treasury. To access this payment option, go to the website: [www.pay.gov](http://www.pay.gov), and enter "sfo 1.1" in the search field. Open form and complete required fields.

- c. A copy of the check, or record of payment if sent by other means, shall be sent simultaneously to:

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

and

David Golden  
Environmental Engineer (8ENF-UFO)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

- d. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues). Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 CFR § 102.13(c).

In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not yet paid. 4 CFR §§ 102.13(d) and (e).

**D. TERMS AND CONDITIONS**

1. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a final order.




2. This CASA, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This CASA contains all terms of the settlement agreed to by the parties.
3. Nothing in this CASA shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CASA.
4. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this CASA and to bind the party he/she represents to the terms and conditions of this CASA.
5. Each party shall bear its own costs and attorneys fees in connection with this matter.
6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this CASA pursuant to 40 C.F.R. § 22.15. By signing and returning this CASA to EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
7. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
8. Nothing in this CASA shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
9. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA, shall render this CASA null and void as to all parties and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
10. This CASA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full resolution of the United States' claim for civil penalties for the specific violations alleged in the complaint.

In the Matter of: Shake-Away, Inc.  
(Continued)

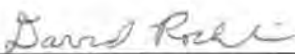
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement,  
Compliance and Environmental Justice,

Complainant.


Date: 9/29/11

By:   
Enr Sandra A. Stavnes, Director  
Technical Enforcement Program

Date: 9/29/11

By:   
David Rochlin, Acting Chief  
Regulatory Enforcement Program

Date: 9/30/11

By:   
Brenda L. Morris, Attorney  
Legal Enforcement Program



In the Matter of: Shake-Away, Inc.  
(Continued)

SHAKE-AWAY, INC.

Respondent.

Date: 9/28/2011

By: Robert N. Reynolds

Name, Title: ROBERT N REYNOLDS J.  
President

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT, SETTLEMENT AGREEMENT AND FINAL ORDER** in the matter of **SHAKE-AWAY, INC.; DOCKET NO.: FIFRA-08-2011-0016**, was filed with the Regional Hearing Clerk on September 30, 2011.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda L. Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on September 30, 2011, to:

Robert N. Reynolds, Jr., President  
Shake-Away, Inc.  
2330 Whitney Avenue  
Hamden, CT 06518

And emailed to:

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

September 30, 2011

  
Tina Artemis  
Paralegal/Regional Hearing Clerk