



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chris Galvan
Chief Executive Officer
Blueray XL, LLC
1442 E. Lincoln Avenue, #161
Orange, California 92863

JUL 18 2016

Re: Consent Agreement and Final Order – Blueray XL, LLC

Docket No.: FIFRA-09-2016-0018

Dear Mr. Galvan:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by Blueray XL, LLC. The terms of the CAFO require the payment of \$9,120 be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO. Your completion of all actions laid out in the CAFO will close this case.

If you have any questions, please contact Scott McWhorter of my staff at 415-972-3584.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson".

Kathleen H. Johnson
Director
Enforcement Division

Enclosure

L

1 SYLVIA A. QUAST
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6

** FILED **
18JUL2016 - 04:46PM
U.S.EPA - Region 09

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2016-0018
11)
12 Blueray XL, LLC,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and Blueray
17 XL, LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent
18 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
19 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for (1) the sale and/or distribution of an
25 unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A),
26 and (2) the production of a pesticide in an unregistered establishment in violation of Section
27 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

28 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has
been duly delegated to commence and settle an enforcement action in this matter.

1 3. Respondent is Blueray XL, LLC, a California corporation with headquarter offices
2 located at 1442 E. Lincoln Avenue in Orange, California, 92863.

3 B. STATUTORY AND REGULATORY BASIS

4 4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any
5 individual, partnership, association, corporation, or any organized group of persons whether
6 incorporated or not.

7 5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides, in part, that a “pesticide” means
8 any substance or mixture of substances intended for preventing, destroying, repelling, or
9 mitigating any pest.

10 6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides that the term “to distribute or
11 sell” means to distribute, sell, offer for sale, hold for distribution, hold fo sale, hold for shipment,
12 ship, deliver for shipment, release for shipment, or receive (and having so received) deliver or
13 offer to deliver.

14 7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any
15 person to distribute or sell to any person any pesticide that is not registered under Section 3 of
16 FIFRA, 7 U.S.C. § 136a.

17 8. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” means the
18 person who manufactures, prepares, compounds, propagates, or processes any pesticide or device
19 or active ingredient used in producing a pesticide.

20 9. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), provides that an “establishment” means
21 any place where a pesticide or device or active ingredient used in producing a pesticide is
22 produced, or held, for distribution or sale.

23 10. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce a
24 pesticide subject to FIFRA in any State unless the establishment in which it is produced is
25 registered with the EPA.

26 11. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any
27 person who is a producer to violate any provision of Section 7 of FIFRA, 7 U.S.C. § 136e.
28

1 C. ALLEGED VIOLATIONS

2 12. Respondent is a corporation and therefore a “person,” as that term is defined by
3 Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

4 13. At all times relevant to this CAFO, Respondent produced and “distributed or sold”
5 the product, “Blueray XL 4 in 1 Mineral Clarifier,” as that term is defined by Section 2(gg) of
6 FIFRA, 7 U.S.C. § 136(gg).

7 14. At all times relevant to this CAFO, “Blueray XL 4 in 1 Mineral Clarifier” contained
8 84.5% copper sulfate pentahydrate, a known active ingredient in an EPA registered algaecide,
9 and its labeling bore the algaecidal claims “reduce chlorine use up to 75%,” and “replaces ALL
10 sodium bromide products.” “Blueray XL 4 in 1 Mineral Clarifier” is thus a substance intended
11 for use as an algaecide and is therefore a “pesticide,” as that term is defined in Section 2(u) of
12 FIFRA, 7 U.S.C. § 136(u).

13 15. On or about August 28, 2015, Respondent “distributed or sold,” as that term is
14 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “Blueray XL 4 in 1
15 Mineral Clarifier,” by holding and offering it for sale on the internet.

16 16. At all times relevant to this CAFO, the pesticide, “Blueray XL 4 in 1 Mineral
17 Clarifier,” that Respondent “distributed or sold” was not registered under Section 3 of FIFRA, 7
18 U.S.C. § 136a.

19 17. By distributing or selling the unregistered pesticide, “Blueray XL 4 in 1 Mineral
20 Clarifier,” on or about August 28, 2015, Respondent violated Section 12(a)(1)(A) of FIFRA, 7
21 U.S.C. § 136j(a)(1)(A).

22 18. At all times relevant to this CAFO, Respondent manufactured the pesticide, “Blueray
23 XL 4 in 1 Mineral Clarifier,” at a facility located at 1442 E. Lincoln Avenue in Orange,
24 California (the “Facility”) and is therefore a “producer” as that term is defined in Section 2(w) of
25 FIFRA, 7 U.S.C. § 136(w).

26 19. At all times relevant to this CAFO, Respondent, by manufacturing “Blueray XL 4 in
27 1 Mineral Clarifier” at the Facility, operated a pesticide-producing facility that is an
28 “establishment” as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

1 Concurrently, a copy of each check, or notification that the payment has been made by one of the
2 other methods listed above, including proof of the date payment was made, shall be sent with a
3 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
4 following addresses:
5

6 Regional Hearing Clerk
7 Office of Regional Counsel (ORC-1)
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 Scott McWhorter
12 SDWA/FIFRA Section
13 Enforcement Division (ENF-3-3)
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 Edgar P. Coral
18 Office of Regional Counsel (ORC-2)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 26. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
23 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
24 use such payment as a tax deduction.

25 27. If Respondent fails to pay the assessed civil administrative penalty of NINE
26 THOUSAND, ONE HUNDRED, AND TWENTY DOLLARS (\$9,120) as identified in
27 Paragraph 25 by the deadline specified in that Paragraph, then Respondent shall also pay a
28 stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will
be TWO THOUSAND, TWO HUNDRED, AND EIGHTY DOLLARS (\$2,280) and will be
immediately due and payable upon EPA's written request, together with the initially assessed
civil administrative penalty of NINE THOUSAND, ONE HUNDRED, AND TWENTY
DOLLARS (\$9,120), resulting in a total penalty due of ELEVEN THOUSAND AND FOUR
HUNDRED DOLLARS (\$11,400). Failure to pay the civil administrative penalty specified in
Paragraph 25 by the deadline specified in that Paragraph may also lead to any or all of the

1 following actions:

2 (1) EPA may refer the debt to a credit reporting agency, a collection
3 agency, or to the Department of Justice for filing of a collection action in the appropriate United
4 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
5 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
6 collection proceeding.

7 (2) The U.S. Government may collect the debt by administrative offset
8 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
9 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
10 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
11 C.F.R. Part 13, Subparts C and H.

12 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
13 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
14 business with EPA or engaging in programs EPA sponsors or funds.

15 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
16 Government may assess interest, administrative handling charges, and nonpayment penalties
17 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
18 civil administrative penalty specified in Paragraph 25 by the deadline specified in that Paragraph.

19 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
20 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
21 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
22 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
23 (30) days of the effective date of this CAFO.

24 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
25 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
26 either actual or average cost incurred (including both direct and indirect costs), for every month
27 in which any portion of the assessed penalty is more than thirty (30) days past due.

28 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)

1 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
2 may be assessed on all debts more than ninety (90) days delinquent.

3 **F. CERTIFICATION OF COMPLIANCE**

4 28. In executing this CAFO, Respondent certifies that: (1) it is no longer selling or
5 distributing any pesticide that is unregistered in violation of Section 12(a)(1)(A) of FIFRA, 7
6 U.S.C. § 136j(a)(1)(A); (2) it is no longer producing any pesticide in an unregistered
7 establishment in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L); and (3) it is
8 currently in compliance with all other FIFRA requirements for all its ongoing operations.

9 **G. RETENTION OF RIGHTS**

10 29. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
11 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
12 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
13 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
14 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
15 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
16 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
17 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

18 30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
19 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
20 and permits.

21 **H. ATTORNEYS' FEES AND COSTS**

22 31. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
23 this proceeding.

24 **I. EFFECTIVE DATE**

25 32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
26 effective on the date that the Final Order contained in this CAFO, having been approved and
27 issued by either the Regional Judicial Officer or Regional Administrator, is filed.
28

J. BINDING EFFECT

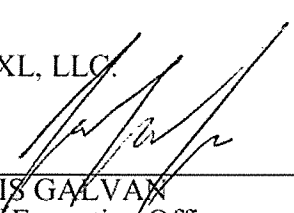
33. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

34. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT BLUERAY XL, LLC

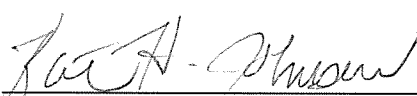
06 / 23 / 2016

DATE


CHRIS GALVAN
Chief Executive Officer
Blueray XL, LLC
1442 E. Lincoln Avenue, #161
Orange, CA 92863

FOR COMPLAINANT EPA:

7/14/16
DATE

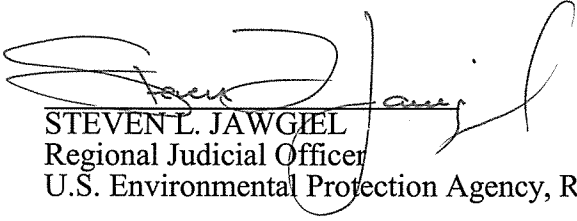

KATHLEEN H. JOHNSON
Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Blueray XL, LLC having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2016-0018) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount NINE
5 THOUSAND, ONE HUNDRED, AND TWENTY DOLLARS (\$9,120), and comply with the
6 terms and conditions set forth in the Consent Agreement.

7
8
9 07/18/16
DATE

10 
STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2016-0018) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

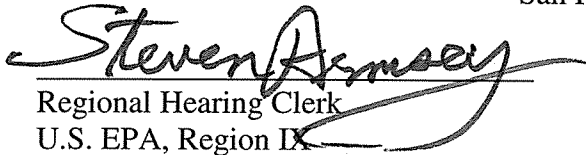
A copy was mailed via CERTIFIED MAIL to:

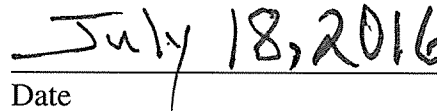
Chris Galvan
Chief Executive Officer
Blueray XL, LLC
1442 E. Lincoln Avenue, #161
Orange, California 92863

CERTIFIED MAIL NUMBER: 7015 0640 0001 1118 2261

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar P. Coral
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX


Date