

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2019 SEP 16 PM 7:00
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
SEATEX, LLC) Consent Agreement and Final Order
Rosenberg, Texas) U.S. EPA Docket No. FIFRA-06-2019-0301
)
RESPONDENT)

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Seatex, LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. § 136l(a), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.35.

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations contained in this CAFO; neither admits nor denies specific factual allegations contained in this CAFO; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in this CAFO, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying this CAFO.

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3. Full payment of the penalty shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this CAFO.

4. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO, to execute it, and to legally bind that party to it. This CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

5. Respondent is a limited liability company authorized to transact business in the state of Texas.

6. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

7. Respondent owns and operates a chemical blending and packaging facility located at 445 TX Hwy 36 in Rosenberg, Texas.

8. "Pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as meaning "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under [Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1)]."

9. Sansoft L “is a concentrated formulation designed for use in commercial laundry operations. [. . .] this formulation provides fabric with residual self-sanitizing activity and residual bacteriostatic activity against odor causing Gram positive and Gram-negative organisms under conditions of high relative humidity or wet contamination.... This product inhibits the growth of organisms which act on urine to produce ammonia in diapers and wet bed linens. . .”

10. Ammonia-producing bacteria and animal pathogenic bacteria (Gram negative and gram positive) are pests.

11. “Pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as meaning “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest....”

12. Sansoft L is a product intended for preventing, destroying, repelling, or mitigating one or more of the pests found at Section 2(t) of FIFRA, 7 U.S.C. § 136(t), listed above.

13. Sansoft L is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

14. “Pesticide product” is defined in 40 C.F.R. § 152.3 as meaning “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.”

15. Sansoft L is a “pesticide product” as that term is defined in 40 C.F.R. § 152.3.

16. The registered pesticide used by Respondent to blend Sansoft L is manufactured by Stepan Company (“Stepan”) and has been registered by Stepan under Section 3 of FIFRA, 7 U.S.C. § 136a, with EPA Reg. No. 1839-108 since March 17, 1982 and remains registered.

17. Respondent was, for all relevant periods, a supplemental distributor of Stepan’s pesticide

with EPA Reg. No. 1939-108, and Sansoft L was a “distributor product” as defined in 40 C.F.R. § 152.132.

18. Stepan established a supplemental distributor product registration for Sansoft L with distributor product number [EPA Reg. No.] 1839-108-42403, on April 17, 1989.

19. On November 9, 2010, Stepan sent EPA a cancellation of the distributor product registration 1839-108-42403 for Sansoft L (“Stepan Cancellation Notice”). Respondent states that the Stepan Cancellation Notice had an incorrect address for Respondent and that Respondent does not have a record of receipt of the Stepan Cancellation Notice.

20. EPA Reg. No. 1839-108-42403 became “Inactive” as of November 15, 2010 and remains inactive at the time of filing this CAFO.

21. EPA Reg. No. 1839-108, for the registered pesticide in Sansoft L, has not lapsed and remains active at the time of filing of this CAFO.

22. Sansoft L carried the label approved by EPA for the product with the EPA Reg. No. 1839-108-42403 (which is in all material respects the same as the label approved by EPA for the product with the active EPA Reg. No. 1839-108).

23. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg): “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver....”

24. Respondent distributes or sells, or has distributed or sold the pesticide product: Sansoft L.

25. On August 14, 2018, EPA representatives conducted an inspection at Respondent’s establishment located at 445 TX Hwy 36 in Rosenberg, Texas.

26. On August 14, 2018, an EPA representative requested copies of all records covering the

production, distribution, and sales for a 5-year period prior to the date of the last production, distribution, and sales of Sansoft L.

27. Respondent is a registrant, wholesaler, dealer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

B. VIOLATIONS

Distributing or Selling Unregistered Pesticides

28. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that “except as provided by [Section 12(b) of FIFRA, 7 U.S.C. § 136j(b)], it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under [Section 3 of FIFRA, 7 U.S.C. § 136a] or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.”

29. 40 C.F.R. § 152.15 provides that no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. § 152.20, 152.25, and 152.30:

30. Sansoft L, EPA Reg. No. 1839-108-42403, was cancelled and “Inactive” as of November 15, 2010.

31. Sansoft L, EPA Reg. No. 1839-108-42403, was required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Based on the records obtained from the August 14, 2018 inspection, Respondent distributed or sold Sansoft L to various customers on 61 different occasions between August 2014 and November 2017.

33. The distributions or sales of the pesticide products identified above were not authorized

by the Administrator of EPA.

34. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) by distributing or selling unregistered pesticides.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

35. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which authorizes EPA to assess a civil penalty of up to \$19,936 for each offense¹ and requires the Complainant to consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, it is **ORDERED** that Respondent be assessed a civil penalty of **\$322,200.00 (three hundred twenty-two thousand and two-hundred dollars)**.

36. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6", in accordance with the following schedule from the effective date of this CAFO:

- Within sixty (60) days: \$107,400
- Within ninety (90) days: \$107,400
- Within one hundred and twenty (120) days: \$107,400

Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified

¹ The amount of penalty that can be assessed under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) was increased to \$19,936 by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 for violations that occurred after November 2, 2015 and assessed on or after January 15, 2019.

mail, or U.S. Postal Service express mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 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" with a phone number of (412)
234-4381".

PLEASE NOTE: Docket Number FIFRA-06-2019-0301 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Lee McMillan
Enforcement Officer
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

Lorena Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

37. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

38. If Respondent fails to submit payment within the time periods established in this CAFO, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue one hundred and twenty (120) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

40. EPA will also assess a \$15.00 administrative handling charge for administrative costs on

unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. RETENTION OF ENFORCEMENT RIGHTS

41. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

42. Nothing in this CAFO shall relieve Respondent of the duty to comply with FIFRA.

43. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's establishment whether related to the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities (except as set forth in Paragraph 3 of this CAFO), or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

44. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under FIFRA or its

implementing regulations, or under other federal or state laws, regulations, or permit conditions (except as set forth in Paragraph 3 of this CAFO).

45. Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance and agrees that federal law shall govern in any such civil action. Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

46. Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of law or fact alleged in this CAFO.

47. This CAFO is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the FIFRA or with any other provisions of federal, state, or local laws, regulations, or permits.

C. COSTS

48. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. EFFECTIVE DATE

49. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR RESPONDENT:

Date: 9/10/19

[Handwritten Signature], CEO

Seatex, LLC

FOR THE COMPLAINANT:

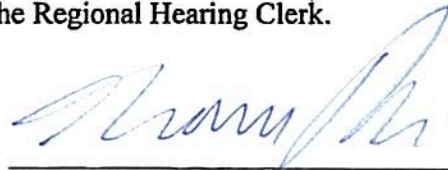
Date: 9-12-19

[Handwritten Signature]
Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 9/16/19



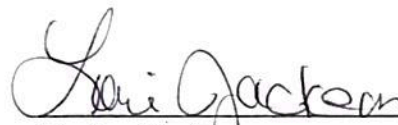
Thomas Rucki
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of Sept., 2019, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - U.S. Environmental Protection Agency, Region 6 1201 Elm Street, Suite 500-Dallas, Texas 75270, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 70092820000182842801

Chris Bell, on behalf of Seatex, LLC
Shareholder Greenberg Traurig, LLP
1000 Louisiana Street, Suite 1700
Houston, TX 77002


Ms. Lori Jackson
Paralegal