



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
FEB 03 2017

REPLY TO THE ATTENTION OF

LC-8J

VIA EMAIL

Mr. Chuck Kettler
c/o Mr. Joseph Koncelik
Attorney
Tucker Ellis LLP
950 Main Avenue, Suite 1100
Cleveland, Ohio 44113

joseph.koncelik@tuckerellis.com

Consent Agreement and Final Order In the Matter of Central Exterminating
Company, Docket Number FIFRA-05-2017-0006

Mr. Kettler:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on 2/3/2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,835 is to be paid in the manner described in paragraphs 42 and 43. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Central Exterminating Company
Cleveland, Ohio,

Respondent.



) Docket No. FIFRA-05-2017-0006

) Proceeding to Assess a Civil Penalty
) Under Section 14(a) of the Federal
) Insecticide, Fungicide, and Rodenticide
) Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Central Exterminating Company (Central), a corporation in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent 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 fact or law set forth in this CAFO, including its right to request a hearing as provided at 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, its right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), states that it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

10. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. *See* 7 U.S.C. § 136(u).

11. A “pest” is, among other things, any insect, rodent, nematode, fungus, or weed. *See* 7 U.S.C. § 136(t).

12. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. *See* 40 C.F.R. § 152.15(a)(1).

13. A “label” is the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. *See* 7 U.S.C. § 136(p).

14. “To use any registered pesticide in a manner inconsistent with its labeling” means to use any registered pesticide in a manner not permitted by the labeling, with several exceptions under FIFRA not applicable here. *See* 7 U.S.C. § 136(ee).

15. A “person” is any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. *See* 7 U.S.C. § 136(s).

16. Section 2(e)(2) of FIFRA, 7 U.S.C. § 136(e)(2), states a “private applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator’s employer or (if applied without compensation other than trading or personal services between producers of agricultural commodities) on the property of another person.

17. Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), states a “commercial applicator” is an applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervisors the use of any pesticide which is classified for restricted use for any purpose or on any property other as provided by Section 2(e)(2) of FIFRA (i.e. the definition of “private applicator”).

18. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a penalty of not more than \$5,000 for each offense. *See* 7 U.S.C. § 136l(a)(1).

19. The Administrator of U.S. EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any

provision of FIFRA of up to \$7,500 for each offense that occurred between December 6, 2013 and November 2, 2015, or for penalties assessed before August 13, 2016. See Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Count 1

20. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. Respondent is a “commercial applicator” as defined at Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3).

22. On or about March 26, 1979, EPA registered Apicide under Section 3 of FIFRA.

23. On or about March 26, 1979, EPA assigned registration number (EPA Reg. No.) 36272-14 to Apicide.

24. The active ingredient of Apicide, EPA Reg. No. 36272-14, is carbaryl.

25. On or about July 30, 2012, EPA accepted a label as part of the registration for Apicide, EPA Reg. No. 36272-14.

26. The July 30, 2012 accepted label included this statement: “Use of this product indoors is prohibited.”

27. Apicide, EPA Reg. No. 36272-14, is a pesticide as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. On or about February 18, 2016, Mr. Greg Kriak, a technician employed by Respondent, conducted a service call at the Social Security Administration (SSA) office located at 1240 East 9th Street, Cleveland, Ohio 44199 (the SSA office).

29. On or about February 18, 2016, Mr. Kriak treated parts of the SSA office with pesticides to control bed bugs (*Cimex lectularius*).

30. On or about March 23, 2016, inspectors employed by the Ohio Department of Agriculture (ODA) conducted an inspection at the SSA office, Room 793.

31. During the March 23, 2016 inspection, the ODA inspectors collected residue samples, including a sample from the surface of the outlets in the reception area of the SSA office near the guard desk in Room 793 (the outlet residue sample).

32. The residue samples collected during the March 23, 2016 inspection were analyzed on or about March 28, 2016 by the Ohio Department of Agriculture Consumer Protection Laboratory, located in Reynoldsburg, Ohio.

33. The analysis of the outlet residue sample showed, in part, the sample contained a residue of 0.204 micrograms (μg) per 100 square centimeters (cm^2) of carbaryl.

34. On or about March 31, 2016, the ODA inspectors conducted an inspection at Respondent's facility at 3202 Saint Clair Avenue, Cleveland, Ohio 44114.

35. During the March 31, 2016 inspection, the ODA inspectors observed the service truck of Mr. Kriak.

36. On March 31, 2016, Mr. Kriak's truck contained a container of Apicide, EPA Reg. No. 36272-14.

37. On or about February 18, 2016, Respondent applied, in some amount, Apicide, EPA Reg. No. 36272-14, at the SSA office.

38. Respondent's use of Apicide indoors on or about February 18, 2016 was not permitted by the labeling on Respondent's container of Apicide.

39. On or about February 18, 2016, Respondent used Apicide, EPA Reg. No. 36272-14, in a manner inconsistent with its labeling.

40. Respondent's use of Apicide on or about February 18, 2016 in a manner inconsistent with its labeling is a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Civil Penalty

41. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$2,835. In determining the penalty, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's FIFRA Enforcement Response Policy, dated December 2009.

42. Within 30 days after the effective date of this CAFO, Respondent shall pay the civil penalty by submitting a cashier's or certified check in the amount of \$2,835, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note the following: In the Matter of Central Exterminating Company, and the docket number of this CAFO.

43. Once Respondent has submitted the check referenced in the previous paragraph, Respondent must send a notice of payment that states Respondent's name and the case docket number to U.S. EPA at the following addresses:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

44. This civil penalty is not deductible for federal tax purposes.

45. If Respondent does not pay timely the civil penalty, U.S. EPA may refer this matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

46. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

47. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: peachey.robert@epa.gov (for Complainant) and joseph.koncelik@tuckerellis.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

General Provisions

48. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in this CAFO.

49. This CAFO does not affect the rights of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. Respondent certifies that it is complying with Section 12 of FIFRA, 7 U.S.C. § 136j.

51. Respondent certifies that all of its technicians will have one bulb duster used only for Alpine Dust (i.e. indoor use for bed bugs) and a separate bulb duster used only for Apicide Dust (i.e. outdoor use for stinging insects).

52. Respondent certifies that all of its technicians in all three branch locations will receive remedial training in the proper application of pesticides, the identification of pesticidal labels, the mixing of pesticides, and the proper cleaning techniques to be used before switching to a different pesticide formulation, including using dedicated bulb dusters for indoor or outdoor use as detailed in paragraph 51.

53. Respondent certifies that, in order to minimize any chance of pesticide cross-contamination, it will implement a quarterly rotational schedule of pesticide selection such that every technician will receive the same pesticides to use during the quarter.

54. Respondent certifies that when pesticides are changed as part of the rotational program, each technician will thoroughly clean the bulb dusters with a suitable cleaning agent in order to further reduce any chance of pesticide cross-contamination.

55. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

56. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the U.S. EPA.

57. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and U.S. EPA's FIFRA Enforcement Response Policy.

58. The CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

59. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

60. Each party agrees to bear its own costs and attorney's fees in this action.

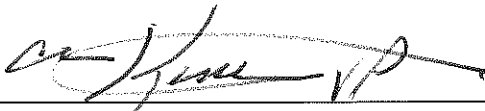
61. This CAFO constitutes the entire agreement between the parties.

62. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

In the Matter of:
Central Exterminating Company
Docket No. FIFRA-05-2017-0006

Central Exterminating Company, Respondent


11-30-2016
Date



Chuck Kettler
Vice President
Central Exterminating Company

U.S. Environmental Protection Agency, Complainant

1/26/2017
Date



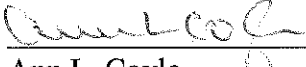
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Central Exterminating Company
Docket No. FIFRA-05-2017-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

February 1, 2019
Date


Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Central Exterminating Company
Docket Number: **FIFRA-05-2017-0006**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2017-0006**, which was filed on 2/3/2017, in the following manner to the following addressees:

Copy by E-mail to Attorney for Respondent: Joseph Koncelik
joseph.koncelik@tuckerellis.com

Copy by E-mail to Attorney for Complainant: Bob Peachey
peachey.robert@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: February 3, 2017 

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5