



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
September 15, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 4973
RETURN RECEIPT REQUESTED

Mr. Dan Williams
EZ Groom, Inc.
10411 Capital Street
Oak Park, Michigan 48237


Consent Agreement and Final Order In the Matter of
EZ-Groom, Inc. Docket No. FIFRA-05-2014-0030

Dear Mr. Williams:

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 September 15, 2015, with the Regional Hearing Clerk.

Thank you for your payment and cooperation in resolving this matter.

Sincerely,


Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No. FIFRA-05-2014-0030
)	
EZ-Groom, Inc.)	Proceeding to Assess a Civil Penalty
Oak Park, Michigan,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	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. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.

3. Respondent is EZ-Groom, Inc., a corporation doing business in the State of Michigan.

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). 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 its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is 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.

11. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

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

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. 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.

40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

17. Respondent owned or operated a place of business located at 10631 Capital Street, Oak Park, Michigan during the calendar year 2009.

18. On August 14, 2009, an inspector employed by the Michigan Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at 10631 Capital Street, Oak Park, Michigan.

19. During the August 14, 2009 inspection, the inspector collected samples and documented the sale and distribution of *Herbal Prescription Flea Season Shampoo*, *E-Z Herbal Dip*, and *EZ Groom Natural Defense Botanical Medi-Flea Shampoo* by Respondent.

20. On April 11, 2013, an inspector employed and authorized by the EPA to conduct inspections under FIFRA, visited Respondent’s web site at www.ez-groom.com and observed the offer for sale of *Herbal Prescription Shampoo*, *Herbal Dip Spray*, and *Medi-Flee (Theraflee) Shampoo*.

21. Respondent’s web site allows visitors to shop for products, provides information about products, provides prices for products, includes a virtual shopping cart, and allows visitors to make online purchases.

22. Respondent’s label for *Herbal Prescription Flea Season Shampoo* states: “to combat problems caused by fleas, ticks, and other insects.”

23. Respondent's web page where *Herbal Prescription Shampoo* was offered for sale stated: "Effectively combats problems caused by fleas, ticks and other insects" and "Fights fleas."

24. Respondent's label for *Herbal Prescription Shampoo* indicates that the ingredients include extracts of meadowsweet, pennyroyal, Erigeron, and eucalyptus, orange oil, oils of pennyroyal, wintergreen and sesame.

25. *Herbal Prescription Flea Season Shampoo* is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. Respondent's label for *E-Z Herbal Dip* states: "E-Z Herbal Dip is a natural product blended from botanical extracts that have been used by a number of cultures to deal with problems associated with fleas and ticks...is a safe alternative to other dips."

27. Respondent's label for *E-Z Herbal Dip* indicates that the ingredients include orange oil, Jamaica dogwood, Tephrosia blend and mullein.

28. Respondent's web page where *Herbal Dip Spray* was offered for sale stated: "Sprayable dip" and "Safe alternative to other flea treatment dips" and "Treats problems caused by fleas and ticks."

29. *E-Z Herbal Dip* is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

30. Respondent's label for *EZ Groom Natural Defense Botanical Medi-Flee Shampoo* states: "This formulation utilizes these botanicals to solve problems caused by fleas and ticks."

31. Respondent's label for *EZ Groom Natural Defense Botanical Medi-Flee Shampoo* indicates that, among others, the following are ingredients: oils of eucalyptus, cedarwood, pennyroyal, wintergreen and lemongrass, as well as extract of lavender, goat's rue and derris

root.

32. Respondent's web page where *Medi-Flee (Theraflee) Shampoo* was offered for sale stated: "Total solution to the problems caused by fleas and ticks."

33. *EZ Groom Natural Defense Botanical Medi-Flee Shampoo* is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

34. *Herbal Prescription Shampoo, Herbal Dip Spray, and Medi-Flee (Theraflee) Shampoo* were not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

35. Respondent's distribution or sale of the unregistered pesticides constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

36. 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 \$6,865. In determining the penalty amount, 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 EPA's FIFRA Enforcement Response Policy, dated December 2009. Complainant has determined that there was no economic benefit associated with the alleged violation.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,865 civil penalty for the FIFRA violations by sending a cashier's or certified check, 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 Respondent's name and the docket number of this CAFO.

38. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

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

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

40. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will 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.

41. 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 amount overdue 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.

General Provisions

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

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

45. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

46. The terms of this CAFO bind Respondent, its successors and assigns.

47. Each person signing this agreement 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.

48. Each party agrees to bear its own costs and attorneys' fees, in this action.

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

EZ-Groom, Inc., Respondent

August 12, 2014
Date

Daniel Williams
Daniel Williams
Managing Director

United States Environmental Protection Agency, Complainant

9/4/2014
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division


In the Matter of:
EZ-Groom, Inc.
Docket No. FIFRA-05-2014-0030



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.

9-10-2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving EZ-Groom, Inc. was filed on September 15, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 4973, a copy of the original to the Respondent:

Dan Williams
EZ Groom, Inc.
10411 Capital Street
Oak Park, Michigan 48237



and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mark Koller, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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