

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

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In the Matter of:)
)
Accu-Care Supply, Inc) Docket No. FIFRA-01-2012-0109
109 King Philip Road)
East Providence, RI,) **CONSENT AGREEMENT and**
) **FINAL ORDER**
)
Respondent.)
_____)

INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 (“EPA”) as Complainant, and Accu-Care Supply, Inc. (“Accu-Care” or “Respondent”), as Respondent, enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent.
2. Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.
3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

PRELIMINARY STATEMENT

4. On September 27, 2012, EPA filed a Complaint and initiated this proceeding for the assessment of a civil penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a).
5. The Complaint alleges that Respondent produced nine different pesticide products at its East Providence, Rhode Island facility (the “Facility”) without the Facility being registered with EPA as a pesticide-producing establishment in violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations, at 40 C.F.R. Part

167, Subpart B.

6. On October 18, 2012, Accu-Care filed an Answer to the Complaint in which it denied the violations alleged by EPA and requested a hearing pursuant to FIFRA and the Consolidated Rules of Practice at 40 C.F.R. Part 22.

7. For purposes of this proceeding, without trial or litigation of the issues or any adjudication of the facts, Respondent: (1) admits that EPA has jurisdiction over the subject matter alleged in the Complaint, (2) neither admits nor denies the factual allegations contained in the Complaint, and (3) consents to the terms of this CAFO as a settlement of the allegations raised by EPA in the Complaint.

8. Respondent hereby waives any defenses it might have as to jurisdiction and venue, its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and its right to appeal the Final Order accompanying the Consent Agreement.

9. By signing this CAFO, Respondent certifies that: 1) as of October 31, 2012 Accu-Care's pesticide production Facility was registered with EPA in compliance with FIFRA and the regulations promulgated thereunder (Establishment No. 062032-RI-001); 2) that Accu-Care will submit to EPA an "Initial Report for Pesticide-Producing Establishments" (EPA Form 3540-16) for pesticide production during 2011 as required under FIFRA and the regulations promulgated thereunder on or by December 31, 2012; 3) that Accu-Care will submit yearly production reports to EPA for 2009 and 2010 by January 31, 2013, and 4) that Accu-Care has fully addressed the violations alleged by EPA in the Complaint.

TERMS OF SETTLEMENT

10. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 "FIFRA Enforcement Response Policy" issued by the

Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, the Monetary Penalty Inflation Adjustment Rules at 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996), and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of \$30,000 in settlement of the violations alleged in the Complaint.

11. Respondent shall pay the penalty in two installments with the first installment of \$15,000 to be paid within thirty (30) days of the effective date of this CAFO.

12. Respondent shall pay the second installment payment of \$15,000, plus interest assessed at the rate cited in IRS Revenue Ruling 2012-23, in accordance with 31 C.F.R. § 901.9(b)(2), on or before April 1, 2013.

13. Respondent shall make each payment by submitting a bank or certified check, to the order of the “Treasurer, United States of America” to:

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

and shall provide copies of the check to:

Sybil Anderson
U.S. Environmental Protection Agency
Headquarters Hearing Clerk
Office of the Administrative Law Judges
1200 Pennsylvania Avenue, NW (Mail Code 1900L)
Washington, DC 20460

If sent by commercial carrier or hand delivered the physical address is:

1099 14th Street, NW
Suite 350W
Washington, DC 20005

and

David Peterson, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES04-4)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Respondent shall include the case name and docket number (i.e., *In re: Accu-Care Supply, Inc.*, FIFRA-01-2012-0109) on the face of the check:

14. If Respondent fails to pay the civil penalty by either of the two payment deadlines, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

15. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments

in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

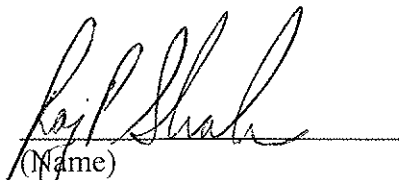
16. This CAFO constitutes a settlement by EPA of all claims for civil penalties, pursuant to Section 14(a) of FIFRA, for the specific violations alleged in the Complaint.

17. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

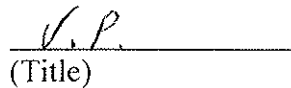
18. The Parties each shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

19. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

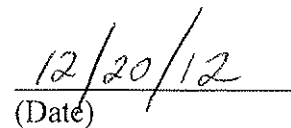
For Respondent:



(Name)



(Title)



(Date)

Accu-Care Supply, Inc.
109 King Philip Road
East Providence, RI

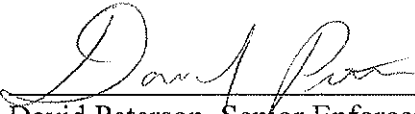
For EPA Region 1:



Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
EPA-Region 1

12/20/12
(Date)

and:



David Peterson, Senior Enforcement Counsel
Office of Environmental Stewardship
EPA-Region 1

12/20/2012
(Date)

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent, Accu-Care Supply, Inc., is hereby ordered to comply with the terms of the above Consent Agreement, which will become effective on the date it is filed with the EPA Headquarters Hearing Clerk.

12/20/12
(Date)



LeAnn W. Jensen, Acting Regional Judicial Officer
EPA-Region 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order was delivered in the following manner to the addresses listed below:

Original and One Copy by
EPA Pouch Mail to:

Sybil Anderson
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street, NW
Suite 350W, Franklin Court
Washington, DC 20005

One Copy by EPA Pouch Mail:

Hon. M. Lisa Buschmann, Administrative Law Judge
Same address as above.

One Copy by Certified Mail
Return Receipt Requested to:

Pravin Shah, President
Accu-Care Supply, Inc.
109 King Philip Road
Rumford, Rhode Island 02916

Richard A. Sherman, Esq.
Edwards Wildman Palmer LLP
2800 Financial Plaza
Providence, RI 02903

Date : 12/21/2012

Signed:



David M. Peterson
Senior Enforcement Counsel
Office of Environmental Stewardship (OES04-4)
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, MA 02109-3912