



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

AUG - 9 2017

REPLY TO THE ATTENTION OF:
LC-17J

VIA EMAIL

Mr. Michael Boucher
Partner
Dentons US LLP
1900 K Street NW
Washington, D.C. 20006-1102

michael.boucher@dentons.com

Consent Agreement and Final Order In the Matter of Isle of Dogs Corporation
Docket Number FIFRA-05-2017-0046

Mr. Boucher:

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 August 9, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,000 is to be paid in the manner described in paragraphs 44-45. 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 cursive script, appearing to read "E. Calvo".

Estrella Calvo
Pesticides Section

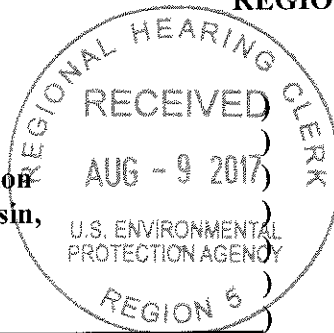
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Isle of Dogs Corporation
Germantown, Wisconsin,

Respondent.



Docket No. FIFRA-05-2017-0046

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. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Isle of Dogs Corporation, established and located in the State of Wisconsin.

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 “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

12. The term “State” as defined in Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa), means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

13. The term “to 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).

14. 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).

15. 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).

16. An organism is declared to be a pest under circumstances that make it deleterious to man or the environment if it is any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals. 40 C.F.R. § 152.5(b).

17. 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).

18. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, through November 2, 2015, 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

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

20. Respondent owned or operated a place of business during calendar year 2015 located at N118 W18531 Bunsen Drive, Suite A, Germantown, Wisconsin 53022.

21. Wisconsin is a “State” as defined at Section 2(aa) of FIFRA, 7 U.S.C. § 136(aa).

22. On June 11, 2015, an inspector employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) and authorized to conduct inspections

under FIFRA conducted an inspection at Respondent's place of business.

23. During the June 11, 2015 inspection at Respondent's place of business, the WDATCP inspector collected information related to the production and distribution and/or sale of "fragrance-free flea + tick sulfate & paraben free SHAMPOO."

24. During the June 11, 2015 inspection at Respondent's place of business, the WDATCP inspector collected labels for 16-ounce and 1-gallon containers of "fragrance-free flea + tick sulfate & paraben free SHAMPOO".

25. During the June 11, 2015 inspection at Respondent's place of business, the WDATCP inspector purchased one 16-ounce container and one 1-gallon container of "fragrance-free flea + tick sulfate & paraben free SHAMPOO".

26. The 16-ounce container and the one, 1-gallon container of "fragrance-free flea + tick sulfate & paraben free SHAMPOO" collected by the WDATCP inspector had labels affixed to them that stated, among other things:

- a. "ISLE OF DOGS EVERYDAY";
- b. "Featuring a safe and natural repellent, this flea and tick shampoo effectively removes and repels fleas and ticks."; and
- c. "Active ingredients: Permethrin - 0.1%" and "PBO - 0.5%"

27. "fragrance-free flea + tick sulfate & paraben free SHAMPOO" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. "fragrance-free flea + tick sulfate & paraben free SHAMPOO" was not registered under section 3 of FIFRA, 7 U.S.C. § 136(a).

29. On June 11, 2015, the WDATCP inspector acquired a "Completed Shipment Report for ISLE OF DOGS CORP (5260) From 01/01/2015 To 06/11/2015" for quantity of "fragrance-

free flea + tick sulfate & paraben free SHAMPOO” that was distributed or sold by Respondent in 16-ounce and 1-gallon containers.

30. The “Completed Shipment Report for ISLE OF DOGS CORP (5260) From 01/01/2015 To 06/11/2015” the WDATCP inspector collected showed that Respondent distributed or sold “fragrance-free flea + tick sulfate & paraben free SHAMPOO” in 16-ounce containers to persons on at least 96 separate occasions.

31. The “fragrance-free flea + tick sulfate & paraben free SHAMPOO” that was distributed or sold by Respondent in 16-ounce containers between January 2, 2015 through June 10, 2015 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Respondent’s distribution or sale of the unregistered pesticide “fragrance-free flea + tick sulfate & paraben free SHAMPOO” constitutes 96 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

33. The “Completed Shipment Report for ISLE OF DOGS CORP (5260) From 01/01/2015 To 06/11/2015” the WDATCP inspector collected showed that Respondent distributed or sold “fragrance-free flea + tick sulfate & paraben free SHAMPOO” in 1-gallon containers to persons on at least 31 separate occasions.

34. The “fragrance-free flea + tick sulfate & paraben free SHAMPOO” that was distributed or sold by Respondent in one gallon containers between January 13, 2015 through June 3, 2015 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

35. Respondent’s distribution or sale of the unregistered pesticide “fragrance-free flea + tick sulfate & paraben free SHAMPOO” constitutes 31 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

36. On November 9, 2015, an EPA representative viewed Respondent's website at www.iodogs.com and conducted a keyword search for products containing the word "flea." The search returned the product "flea + tick non-toxic & paraben free TOPICAL WIPES".

37. The product description found at www.iodogs.com for "flea + tick non-toxic & paraben free TOPICAL WIPES" states, "Featuring a safe and natural repellent, the **Flea + Tick Topical Wipes** effectively deter and repel fleas, ticks, and mosquitoes. These wipes will also help to keep dogs fresh between baths, because they feature the *Isle of Dogs*' patented odor-neutralizing *ExtenScent*."

38. The product description found at www.iodogs.com for "flea + tick non-toxic & paraben free TOPICAL WIPES" states, "The Flea + Tick Wipes are full of essential oils: **Neem Oil**, Clove Oil, Cinnamon Oil, Thyme Oil, Peppermint Oil, Lemongrass Oil, Citronella Oil, and **Eucalyptus Oil**."

39. "flea + tick non-toxic & paraben free TOPICAL WIPES" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

40. "flea + tick non-toxic & paraben free TOPICAL WIPES" was not registered under section 3 of FIFRA, 7 U.S.C. § 136(a).

41. On November 9, 2015, "flea + tick non-toxic & paraben free TOPICAL WIPES" was offered for sale on Respondent's website at www.iodogs.com.

42. The "flea + tick non-toxic & paraben free TOPICAL WIPES" that was offered for sale on November 9, 2015 was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

43. Respondent's distribution or sale of the unregistered pesticide "flea + tick non-toxic & paraben free TOPICAL WIPES" constitutes an unlawful act pursuant to Section 12(a)(1)(A)

of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

44. 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 \$10,000. 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.

45. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,000 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

Or for checks sent by express mail sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

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

Estrella Calvo (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

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

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

47. 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.

48. 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

49. 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: deleon.jose @epa.gov, for Complainant, and Boucher, Michael michael.boucher@dentons.com for Respondent. The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

51. 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.

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

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

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

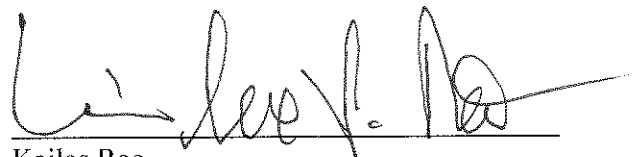
55. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Isle of Dogs Corporation, Respondent

7/11/2017
Date


Kailas Rao
Owner
Isle of Dogs Corporation

United States Environmental Protection Agency, Complainant

8/04/2017
Date

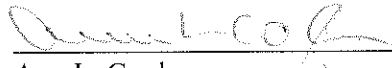
Michael D. Harris ^{for B.L.}
Brigid Lowery
Acting Director
Land and Chemicals Division

In the Matter of:
Isle of Dogs Corporation
Docket No. FIFRA-05-2017-0046

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.

August 4, 2017
Date



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

Consent Agreement and Final Order
In the matter of: Isle of Dogs Corporation
Docket Number: **FIFRA-05-2017-0046**

CERTIFICATE OF SERVICE

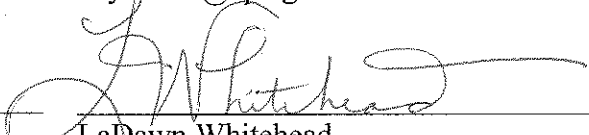
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2017-0046** which was filed on August 9, 2017, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Jose C. de Leon
deleon.jose@epa.gov

Copy by E-mail and Certified Mail
to Attorney for Respondent: Michael Boucher
Partner
Dentons US LLP
1900 K Street NW
Washington, D.C. 20006-1102

michael.boucher@dentons.com

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

Dated: August 9, 2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7662 6927