



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
June 3, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7676 8542

Mr. Bradley P. Tennis
ProActive Solutions USA, LLC
301 Bridge St.
Green Bay, Wisconsin 54303

Consent Agreement and Final Order In the Matter of
ProActive Solutions USA, LLC. FIFRA-05-2013-0010

Dear Mr. Tennis:

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 June 3, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,100 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by July 3, 2013 (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 "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

RECEIVED

JUN -3 2013

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2013-0010
)	
ProActive Solutions USA, LLC)	Proceeding to Assess a Civil Penalty
Green Bay, Wisconsin)	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 (EPA), Region 5.

3. Respondent is ProActive Solutions USA, LLC, a limited liability company doing business 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)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any registered pesticide which is adulterated or misbranded.

11. Section 2(c)(1) of FIFRA, 7 U.S.C. § 136(c)(1) defines a pesticide as adulterated if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold.

12. 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).

13. 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).

14. 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).

15. 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).

16. 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

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

18. Respondent is a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

19. Respondent owned or operated a place of business located at 301 Bridge Street, Green Bay, Wisconsin during the calendar year 2010.

20. On September 13, 2010, an inspector employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Green Bay, Wisconsin.

21. During the September 13, 2010 inspection, the inspector collected a physical sample of the product ProChlor 125, EPA Reg. No. 43497-5, which Respondent was holding for distribution or sale.

22. Respondent’s label for the ProChlor 125 collected on September 13, 2010 states:
“Active Ingredients, Sodium Hypochlorite.....12.75%.”

23. Analysis of the sample of ProChlor 125 collected by the Wisconsin Department of Agriculture, Trade and Consumer Protection found it contained only 4.33 % sodium hypochlorite.

24. ProChlor 125 is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. Respondent distributed or sold an adulterated pesticide by offering to sell ProChlor 125 containing only 4.33 % sodium hypochlorite on September 13, 2010.

26. Respondent’s distribution or sale of the adulterated pesticide ProChlor 125 constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

27. 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 \$3,100. 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.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,100 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.

29. 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

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

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

31. 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.

32. 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

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

34. 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.

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

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

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

38. 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.

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

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

ProActive Solutions USA, LLC, Respondent

5-2-13
Date

Bradley Tennis
Bradley Tennis
Vice President, Operations

United States Environmental Protection Agency, Complainant

5/23/13
Date

Michael D. Harro *for M.G.*
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
ProActive Solutions USA, LLC
Docket No. FIFRA-05-2013-0010

RECEIVED

JUN -3 2013

REGIONAL HEARING CLERK
USEPA
REGION 5

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.

5-29-13

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 ProActive Solutions USA, was filed on June 3, 2013, 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 7676 8542, a copy of the original to the Respondents:

Mr. Bradley P. Tennis
ProActive Solutions USA, LLC
301 Bridge St.
Green Bay, Wisconsin 54303

RECEIVED
JUN -3 2013
REGIONAL HEARING CLERK
USEPA
REGION 5

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Timothy Thurlow, 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

Docket No. FIFRA-05-2013-0010