



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

DEC - 7 2017

REPLY TO THE ATTENTION OF:
LC-17J

VIA EMAIL

Mr. John Rardin
Sales Manager
PEN Products
2010 East New York Street
Indianapolis, Indiana 46201

jrardin@idoc.in.gov

Re: Consent Agreement and Final Order In the Matter of PEN Products
Docket Number **FIFRA-05-2018-0011**

Mr. Rardin:

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 December 7, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$28,160.00 is to be paid in the manner described in paragraphs 42-43. 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 "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

cc: Susan Perdomo (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

PEN Products
Indianapolis, Indiana,

Respondent.



Docket No. FIFRA-05-2018-0011

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, U.S. Environmental Protection Agency, Region 5.

3. Respondent is PEN Products, a division of the Indiana Department of Correction, doing business in the State of Indiana.

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 of the Complaint.

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.

Statutory and Regulatory Background

9. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states it shall be unlawful for any person who is a producer to violate any provisions of section 7.

10. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c) requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides (and, if applicable, active ingredients used in producing pesticides): which it is producing; which it has produced during the past year; and which it has sold or distributed during the past year. In addition, § 136e(c) provides that the required information shall be kept current and submitted to the Administrator annually, as required by regulations prescribed by the Administrator.

11. 40 C.F.R. § 167.85(a) and (b) adds requirements for reporting: devices produced at registered pesticide-producing establishments; the name and address of the establishment; and an estimate of the amount of pesticide product to be produced during the current year.

12. 40 C.F.R. § 167.85(c), requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by EPA. The applicable form, "EPA Form 3540-16, *Pesticide Report for Pesticide-Producing and Device-Producing Establishments*" requires, *inter alia*, identification of the establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the "*Instructions*

for Completing EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device-Producing Establishments Reporting Year” provides additional detail regarding information required on the Form.

13. 40 C.F.R. § 167.85(d) requires the pesticide-production reports to be filed annually on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

14. 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, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under FIFRA.

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

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as “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.” Also see 40 C.F.R. § 152.3.

17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. § 152.3.

18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “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 the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. § 152.5.

19. 40 C.F.R. § 152.15(a) states, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA. It further states that 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.

20. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 note, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$18,750 for each offense occurring after November 2, 2015.

Factual Allegations and Alleged Violations

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

22. At all times relevant to this Complaint, Respondent owned or operated a business at 3063 West 800 South, Bunker Hill, Indiana 46914, identified by EPA Establishment Number 056177-IN-002 (PEN Products facility).

23. Respondent failed to submit annual Reports for calendar years 2012, 2013, 2014 and 2015 for its PEN Products facility, EPA Est. No. 056177-IN-002, as required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c) and 40 C.F.R. § 167.85.

24. On or about March 31, 2016, Respondent submitted backdated Reports for calendar years 2012, 2013, 2014 and 2015.

25. The Report for calendar year 2012, submitted by Respondent on or about March 31, 2016, identified production and distribution of pesticide products “Clean Record Bleach,” EPA Registration Number (EPA Reg. No.) 34910-20004-56177 and “Clothes Out Laundry Bleach,” EPA Reg. No. 34910-20001-56177.

26. The Report for calendar year 2013, submitted by Respondent on or about March 31, 2016, identified production and distribution of pesticide products “Clean Record Bleach,” EPA Reg. No. 34910-20004-56177 and “Clothes Out Laundry Bleach,” EPA Reg. No. 34910-20001-56177.

27. On July 28, 2008, the EPA registration for “Clean Record Bleach,” EPA Reg. No. 34910-20004-56177 was canceled.

28. On July 28, 2008, the EPA registration for “Clothes Out Laundry Bleach,” EPA Reg. No. 34910-20001-56177 was canceled.

29. “Clean Record Bleach” and “Clothes Out Laundry Bleach” are “pesticides” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

30. At all times relevant to the Complaint, “Clean Record Bleach” and “Clothes Out Laundry Bleach” were not registered under section 3 of FIFRA, 7 U.S.C. § 136(a).

31. On at least four separate occasions during calendar years 2012 and 2013, Respondent distributed or sold unregistered pesticide products “Clean Record Bleach” and “Clothes Out Laundry Bleach.”

Counts 1-4

32. The preceding paragraphs 9-31 are incorporated by reference.

33. Respondent’s failure to submit annual Reports for calendar years 2012, 2013, 2014 and 2015 for its PEN Products facility, EPA Est. No. 056177-IN-002 as required by Section 7(c)

of FIFRA, 7 U.S.C. § 136e(c) and 40 C.F.R. § 167.85, constitutes four unlawful acts under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §136j(a)(2)(L).

34. Respondent's violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Counts 5-6

35. The preceding paragraphs 9-31 are incorporated by reference.

36. Respondent's distribution or sale of the unregistered pesticide "Clean Record Bleach" on two occasions constitutes two unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

37. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Counts 7-8

38. The preceding paragraphs 9-31 above are incorporated by reference.

39. Respondent's distribution or sale of the unregistered pesticide "Clothes Out Laundry Bleach" on two occasions constitutes two unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

40. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty

41. Pursuant to Section 14(a)(4) of FIFRA, Complainant determined that an appropriate

civil penalty to settle this action is \$28,160. 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 alleged violation.

42. Within 30 days of the effective date of this CAFO, Respondent must pay an \$28,160 civil penalty for the FIFRA violations. Respondent must pay the penalty by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

43. A transmittal letter stating Respondent's name, complete address, the case title and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter and proof of payment to:

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

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

Susan Perdomo (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 the civil penalty in a timely manner, 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.

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 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

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

48. This CAFO does not affect the rights of EPA or the United States to pursue criminal sanctions or any violations of law which occur after the effective date of this CAFO.

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

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

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

52. 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.

53. Consistent with the Standing Order Authorizing E-Mail Service of Orders 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: perdomo.susan@epa.gov (for Complainant), and jrardin@idoc.in.gov (for Respondent). The parties waive their right to service by the methods

specified in 40 C.F.R. § 22.6.

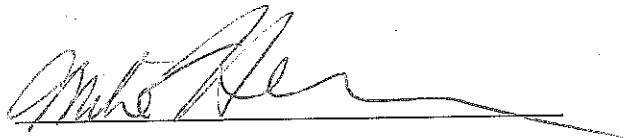
54. Each party agrees to bear its own costs and attorney fees, in this action.

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

**In the Matter of: PEN Products
Indianapolis, Indiana
Docket No. FIFRA-05-2018-**

PEN Products

11/2/17
Date



Mike Herron
Director
PEN Products

United States Environmental Protection Agency, Complainant

11/29/2017
Date

Michael D. Harris
~~Brigid Lowery~~
Acting Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of: PEN Products
Indianapolis, Indiana
Docket No. FIFRA-05-2018-0011

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.

December 6, 2017
Ann Coyle
Date

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

In the matter of: PEN Products
Docket Number: **FIFRA-05-2018-0011**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on, December 7, 2017 this day in the following manner to the addressees:

Copy by Email to
Respondent:

John Rardin
Sales Manager
PEN Products
2010 East New York Street
Indianapolis, Indiana 46201
jrardin@idoc.in.gov


Copy by e-mail to
Attorney for Complainant:

Susan Perdomo
perdomo.susan@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

December 7, 2017 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5