



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

JAN 31 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0198 4500

Stanley Abramson
Arent Fox PLLC
1050 Connecticut Ave. NW
Washington, DC 20036-5339

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0019

Dear Mr. Abramson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on January 31, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$500 is to be paid in the manner prescribed in paragraphs 30, 31 and 32. Please be certain that the number **BD 2750745P021** and the docket number are written on both the transmittal letter and on the check. Payment is due by March 2, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for Anthony Restaino
Terence Bonace
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Mary Fulghum, ORC/C-14J (w/Encl.)
Eric Volck, USEPA Cincinnati Finance/NWD (w/Encl)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. FIFRA-05-2007-0019
)	
Lambda Bioremediation Systems, Inc. Columbus, Ohio)	Proceeding to Assess a Civil Penalty Under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a)
RESPONDENT.)	

2007 JUN 29 AM 11:12

REGIONAL CLERK

Consent Agreement and Final Order Commencing and Concluding Proceeding

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 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 (2005)).

2. The Complainant, Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

3. The Respondent is Lambda Bioremediation Systems, Inc. (LBSI), a corporation organized under the laws of the State of Ohio, with a place of business located at 2824 Fisher Road Columbus, Ohio.

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); (see 40 C.F.R. § 22.13(b) (2005)).

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 entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. LBSI admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. LBSI waives any 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 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

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.

11. 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).

12. 40 C.F.R. § 168.22(a) states:

“FIFRA sections 12(a)(1)(A) and (B) make it unlawful for any person to ‘offer for sale’ any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. The EPA interprets these provisions as extending to advertisements on any advertising medium to which pesticide users or the general public have access.”

13. 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.”

14. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

15. The term “pests” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. §152.5(c) “as any insect, rodent, nematode, fungus, weed,”

16. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

17. The Administrator of EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 through March 15, 2004, and may assess a civil penalty of \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

Factual Allegations

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

19. On August 4, 2003, inspectors with the Ohio Department of Agriculture, duly authorized to conduct inspections under FIFRA, conducted an inspection at Lambda Bioremediation Systems, Inc., 2824 Fisher Road, Columbus, Ohio and obtained literature and shipping records for a product designated "**Bio-Booster.**"

20. Advertising literature collected during the August 4, 2003 inspection states:

"So far, we have identified 126 microbes that were safe to use for harmful insect control, but had no toxicity to beneficial insects, people, animals or plants. All of these microbes are a BIO-safety level 1 and are harmless to everything except mosquitoes (eggs, larva, pupa, and adult), all flies, gnats, aphids, "chiggers," "no-see-ums," Japanese Beetles, gypsy moths, ants, termites, tent caterpillars, many tree-bores and other insect pests."

"We called our process a "BIO-BOOSTER®" since it works by "boosting" all the natural microbes in your soils, ponds, creeks, trees, etc., that already exist, but not in high enough levels, to give you the insect control needed to enjoy your yards, parks, camps, and other outdoor areas.

Many mosquitoes now carry a variety of encephalitis viruses, including the West Nile Virus and are immune to chemicals and single microbes. They can be controlled with a consortium as our data has shown for over five years. These diseases can be fatal to children under 18 and adults over 60, as well as birds, horses, cattle, dogs and cats. Ohio leads the nation in validated encephalitis cases. The Asian Tiger mosquitoes and the mosquitoes carrying the West Nile are now in Ohio."

21. Respondent distributed, offered for sale, or sold **Bio-Booster** on at least ten occasions between June 6, 2003 and July 22, 2003.

22. **Bio-Booster** is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

23. Respondent is a "distributor" of **Bio-Booster** pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

24. **Bio-Booster** is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Alleged Violations

Count I

25. Through its **Bio-Booster** advertising literature on paper or in electronic media, Respondent distributes or sells an unregistered pesticide, **Bio-Booster**, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

26. 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 II-X

27. Respondent distributed, offered for sale, or sold **Bio-Booster** on at least ten occasions between June 6, 2003 and July 22, 2003.

28. Respondent's distribution of the unregistered pesticide **Bio-Booster** constitutes ten unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

29. 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

30. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriateness of the size of the penalty to the size of the business, the effect on LBSI's ability to continue in business, and the gravity of the violation, EPA has determined that an appropriate civil penalty to settle this action is \$500.00.

31. Respondent must pay the \$500.00 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

32. Respondent must send the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

33. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terrence Bonace, PTES (DT-8J)
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Mary L. Fulghum, ORC (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

34. This civil penalty is not deductible for Federal tax purposes.

35. If Respondent does not timely pay 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).

36. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a 6 percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

Final Statement

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Alleged Violations sections of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, except as provided above, and it is the responsibility of Respondent to comply with such laws and regulations.

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

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

40. Respondent certifies that it is complying fully with Section 12 (a) of FIFRA, 7 U.S.C. § 136j(a) and has ceased all advertising, sale or distribution of **BioBooster** for pesticidal purposes.

41. The terms of this CAFO bind LBSI, and its successors, and assigns.

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

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

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

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Lambda Bioremediation Systems, Inc.
Docket No. FIFRA-05-2007-0019

Lambda Bioremediation Systems, Inc., Respondent

12/19/2006
Date

Jo Davidson
Jo Davidson, President
Lambda Bioremediation Systems, Inc.

U.S. Environmental Protection Agency, Complainant

1-22-07
Date

Mardi Klevs
Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

1/25/07
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

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REGIONAL OFFICE
GENERAL COUNSEL


CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Lambda Bioremediation Systems, Inc.

Docket No. **FIFRA-05-2007-0019**

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

1/29/07
Date


Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency
Region 5

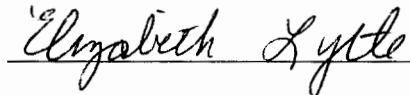
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Lambda Bioremediation, was filed on January 31, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0198 4500, a copy of the original to the Respondents:

Stanley Abramson
Arent Fox PLLC
1050 Connecticut Ave. NW
Washington, DC 20036-5339

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Mary Fulghum, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0019**

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